



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2022-262

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	Waived
6. Processing time (in working days)	47
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

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**From:** [REDACTED]  
**Sent:** Wednesday, 24 August 2022 4:00 PM  
**To:** CMTEDD FOI  
**Cc:** [REDACTED]  
**Subject:** 2022-262 FOI Request | ACT Government's 2019 Agreement with CBRIN

Good Afternoon,

**RE: FOI REQUEST – ACT GOVERNEMENT'S 2019 AGREEMENT WITH CBRIN**

I write to request under the *Freedom of Information Act 2016* a copy of the ACT Government's 2019 Agreement with CBRIN.

Should you require any further information or clarification about my request, please contact my office on [REDACTED]

Best,





**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDDFOI2022-262



## **FREEDOM OF INFORMATION REQUEST**

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 24 August 2022, in which you sought access to *a copy of the ACT Government's 2019 Agreement with CBRIN*.

### **Authority**

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

### **Timeframes**

In accordance with section 40 of the Act, and after extension under section 41 of the Act, CMTEDD was required to provide a decision on your access application by 13 October 2022. Third-party consultation was required, and under section 40 of the Act, the due date for a response on your access application is now 6 November 2022.

### **Decision on access**

Searches were completed for relevant documents and two documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

I have decided to grant partial access to both documents relevant to your request.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as **Attachment B** to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below.

## Statement of Reasons

In reaching my access decisions, I have taken the following into account:

- the Act,
- the content of the documents that fall within the scope of your request,
- third-party views on disclosing this information, in accordance with section 38 of the Act, and
- the *Human Rights Act 2004*.

## Exemption claimed

My reasons for deciding not to grant access to components of the relevant documents are as follows:

Information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act

### Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interest lies. As part of this process, I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when ‘used in a statute, the term [public interest] derives its content from “the subject matter and the scope and purpose” of the enactment in which it [public interest] appears’. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the ‘public interest’.

### Factors favouring disclosure in the public interest under Schedule 2, s2.1:

(a) *disclosure of the information could reasonably be expected to do any of the following:*

- Promote open discussion of public affairs and enhance the government’s accountability.*
- Contribute to positive and informed debate on important issues or matters of public interest.*
- Ensure effective oversight of expenditure of public funds.*

I consider release of information concerning government’s investment in industry, including the innovation ecosystem to be within the public interest as it impacts many within the community both directly and indirectly. This may include students, businesses, researchers, and entrepreneurs interested in investing in the Capital, in addition to those who may benefit from such investment.

I weight the factors for disclosure of this information, that it could reasonably be expected to promote discussion on public affairs, contribute to positive and informed debate, in addition, to ensuring the effective oversight of expenditure of public funds, highly.

However, these factors are required to be balanced against those factors favouring nondisclosure.

Factors favouring nondisclosure in the public interest under Schedule 2, s2.2:

(a) *disclosure of the information could reasonably be expected to do any of the following:*

(ii) *Prejudice the protection of an individual's right to privacy or any other right under the [Human Rights Act 2004](#).*

(xi) *Prejudice trade secrets, business affairs or research of an agency or person.*

Having reviewed the documents, I consider that the protection of an individual's right to privacy, especially in the course of dealings with the ACT Government is a significant factor as the parties involved have provided their personal information for the purposes of working with the ACT Government. This, in my opinion, outweighs the benefit which may be derived from releasing personal information of the individual's involved in this matter.

Individuals are entitled to expect that the personal information they have supplied as part of this process will be dealt with in a manner that protects their privacy. Considering the type of information to be withheld from release, I am satisfied that the factors in favour of release can still be met while protecting the personal information of the individuals involved. I therefore weigh the factor for nondisclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of this information (signatures) could prejudice their right to privacy under the *Human Rights Act 2004*.

I have also considered the impact of disclosing information which relates to business affairs. In the case of *Re Mangan and The Treasury* [2005] AATA 898 the term 'business affairs' was interpreted as meaning 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'. Schedule 2 section 2.2(a)(xi) allows for government information to be withheld from release if disclosure of the information could reasonably be expected to prejudice the trade secrets, business affairs or research of an agency or person. The information withheld from release concerns member contributions and could reasonably be expected to unfairly prejudice the business affairs of Canberra Innovation Network, by undermining trust with their members.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information and information pertaining to business affairs contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

### **Charges**

Processing charges are not applicable for this request because less than 50 pages are being released to you.

### **Online publishing – Disclosure Log**

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published on the CMTEDD disclosure log three days after my decision. Your personal contact details will not be published. You may view CMTEDD disclosure log at <https://www.cmtedd.act.gov.au/functions/foi>

### **Ombudsman Review**

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman:

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

Via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

### **ACT Civil and Administrative Tribunal (ACAT) Review**

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT:

ACT Civil and Administrative Tribunal  
Level 4, 1 Moore St  
GPO Box 370  
Canberra City ACT 2601  
Telephone: (02) 6207 1740  
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email [CMTEDDFOI@act.gov.au](mailto:CMTEDDFOI@act.gov.au).

Yours sincerely,



Emma Hotham  
Information Officer  
Information Access Team  
Chief Minister, Treasury and Economic Development Directorate

31 October 2022



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
A copy of the ACT Government's 2019 Agreement with CBRIN.	CMTEDDFOI 2022-262

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-37	Funding agreement: CBR Innovation Network	17 June 2019	Partial	Sch 2 s2.2 (a)(xi) Sch 2 s2.2 (a)(ii)	Yes
2	38-43	Deed of Variation: Variation of the CBD Innovation Network Funding Agreement	10 Sept 2020	Partial	Sch 2 s2.2 (a)(ii)	Yes
<b>Total No of Docs</b>						
2						



**ACT**  
Government

# FUNDING AGREEMENT

**Dated**

17 June 2019

**Parties**

**AUSTRALIAN CAPITAL TERRITORY**

**CBR INNOVATION NETWORK LIMITED  
ACN 601 492 826**

**Title**

**CBR INNOVATION NETWORK**

**Prepared by**

ACT Government Solicitor  
Level 5, 12 Moore Street  
CANBERRA CITY ACT 2601  
Ph: 6207 0666  
Ref: 636040

**Version**

17 June 2019



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**PARTIES:** **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the Chief Minister, Treasury and Economic Development Directorate.

**CBR INNOVATION NETWORK LIMITED ACN 601 492 826**, of ACT 2601 (**Company**).

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## **BACKGROUND**

- A. The principal object of the Company is to provide a network linking businesses and entrepreneurs to services, facilities and stakeholders that will accelerate their innovation and growth and promote a culture of innovation and entrepreneurship in the ACT.
  - B. The CBR Innovation Network was launched in November 2014 with the support of funding from the ACT Government. The initial Territory Funding Agreement expired on 30 June 2019.
  - C. The Territory has agreed to provide further funding to the Company for the purpose of conducting the Funded Activities.
  - D. This Agreement sets out the terms and conditions upon which the Territory will provide the Funds to the Company and the Company will undertake the Funded Activities.
- 

## **OPERATIVE PROVISIONS**

### **1. Interpretation**

#### **1.1 Definitions**

In this Agreement, unless the context otherwise requires:

<b>ACNC Act</b>	<i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth)
<b>Agreement</b>	means this agreement and includes the schedules and annexure to this agreement.
<b>Agreement Material</b>	means all Material which the Company or any of its Associates prepare, use or provide to the Territory or any of its Associates in the course of carrying out the Funded Activities or otherwise in connection with this Agreement and includes all Intellectual Property Rights in that Material, but excludes Existing Material.
<b>Asset</b>	means item of tangible property purchased, leased, created or otherwise brought into existence either wholly or in part with use of the Funds.
<b>Associate</b>	means, in relation to a person, any officer, agent, adviser, consultant, contractor or employee of that person.

<b>Associate Member</b>	means those persons, other than Foundation Members, who are admitted as members of the Company on terms and conditions established by the Board.
<b>Australian Accounting Standards</b>	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth).
<b>Board</b>	means the Board of Directors of the Company.
<b>Business Day</b>	means a day in the Territory that is not: <ul style="list-style-type: none"> <li>(1) a Saturday or Sunday;</li> <li>(2) a public holiday for the Territory pursuant to the <i>Holidays Act 1958</i> (ACT); or</li> <li>(3) the 27th, 28th, 29th, 30th or 31st of December.</li> </ul>
<b>Annual Work Plan</b>	means an annual business plan prepared by the Company and approved by the Territory in accordance with <b>clause</b> Error! Reference source not found..
<b>Commencement Date</b>	means the commencement date of this Agreement set out in <b>Item 1</b> .
<b>Confidential Information</b>	means information that: <ul style="list-style-type: none"> <li>(1) is by its nature confidential;</li> <li>(2) is designated by a party as confidential;</li> <li>(3) is listed in <b>Item 8</b>, which may be added to from time to time following execution of this Agreement; or</li> <li>(4) a party knows, or ought to know, is confidential,</li> </ul> but does not include: <ul style="list-style-type: none"> <li>(5) information that is or becomes public knowledge otherwise than by breach of this Agreement or any other confidentiality obligations.</li> </ul>
<b>Contact Officer</b>	means, in relation to each party, the representative whose name and contact details are specified in <b>Item 5</b> , or as notified in writing from time to time by one party to the other.
<b>Contribution</b>	means all forms of contributions described in this Agreement.
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth).
<b>Existing Material</b>	means any and all Material in existence prior to the date of this Agreement:

	<ul style="list-style-type: none"> <li>(1) incorporated in,</li> <li>(2) supplied with, or as part of; or</li> <li>(3) required to be supplied with, or as part of,</li> </ul> <p>the Agreement Material.</p>
<b>Foundation Member</b>	means a person who is admitted to that category of membership of the Company, with the current list of members being attached a <b>Schedule 5</b> .
<b>Foundation Member's Agreement</b>	means the agreement between the Company and the Foundation Members to establish, manage, govern and otherwise participate in the Company.
<b>Foundation Member Contributions</b>	means the cash or in-kind contributions (if any) from Members determined in accordance with <b>clause 7.1</b> .
<b>Fund Account</b>	means the account maintained by the Company in accordance <b>clause 8.4</b> .
<b>Funded Activities</b>	means the activities approved by the Territory in the Annual Work Plan for the current Funding Year and where the context requires, includes the Funded Activities approved under a previous year's Annual Work Plan.
<b>Funding Period</b>	means the period set out in <b>Item 2</b> (as may be extended in accordance with <b>clause 3.2</b> ).
<b>Funding Year</b>	means a period of 12 months with the first such period commencing on the Commencement Date and each subsequent period commencing on the anniversary of that date.
<b>Funds</b>	means the amount specified in <b>Item 3</b> and includes any interest accruing on that amount.
<b>GST</b>	has the meaning given in the GST Act.
<b>GST Act</b>	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>GST Law</b>	has the meaning given in the GST Act.
<b>Insolvency Event</b>	means, in relation to a party, the occurrence of any of the following events: <ul style="list-style-type: none"> <li>(1) a liquidator, provisional liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of the party or any asset of the party;</li> <li>(2) a distress, attachment or other execution is levied or enforced upon or against any assets of the party and in the case of a writ of execution or other order or process requiring payment, it</li> </ul>

is not withdrawn or dismissed within 10 Business Days;

- (3) an order is made for the administration, dissolution or winding up of the party, or a resolution is passed for the administration or winding up of the party other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Territory;
- (4) the party ceases, or threatens to cease, to carry on its business or payment of its debts generally, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Territory;
- (5) the party enters, or resolves to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Territory;
- (6) an inspector is appointed under any companies legislation to investigate all or any part of the affairs of the party in relation to a possible contravention by the party of that legislation and the appointment:
  - (a) is not withdrawn within 10 Business Days; and
  - (b) in the reasonable opinion of the Territory, may have a material adverse effect on the performance of this Agreement;
- (7) the party is, in the reasonable opinion of the Territory, unable to pay its debts when they fall due, or is deemed unable to pay its debts under any applicable Law;
- (8) for a party that is a registered corporation under the Corporations Act, a step is taken under section 601AA, 601AB or 601AC of the Act to cancel its registration; or
- (9) any act is done or any event occurs which has an analogous or similar effect to any of the events in paragraphs (1) to (8).

**Invoice**

means an invoice that:

- (1) clearly sets out the amount that is due for payment and is correctly calculated;
- (2) is rendered at the times specified in **Item 3** (if

any) and addressed to the Territory's Contact Officer; and

- (3) if GST applies, complies with the requirements set out in **clause 9**.

**Intellectual Property Rights**

means:

- (1) all copyright and analogous rights;
- (2) all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs (whether or not registrable), confidential information (including trade secrets and know-how), circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific or artistic fields; and
- (3) all rights to register, rights in applications for the registration of and rights to extend or renew the registration of any of the foregoing,

whether created or in existence before, on or after the Commencement Date and whether existing in Australia or otherwise.

**Item**

means an "Item" appearing in **Schedule 1**.

**Law**

means:

- (1) those principles of common law and equity established by decisions of courts; and
- (2) all legislation, statutes, rules, regulations, by-laws, ordinances and subordinate legislation of the Commonwealth or the Territory.

**Legal Commitment**

in relation to the Funds, means a present legal obligation or accrued obligation derived from contract or operation of Law, on the Company to pay money to a third party, and "Legally Committed" has the corresponding meaning.

**Material**

means tangible and intangible information, documents (including any document within the meaning of the *Evidence Act 2011* (ACT)), reports, software (including source and object code), inventions, discoveries, designs, innovations, technology, processes, methods, techniques, know-how, data and other materials in any media whatsoever.

**Minister**

means the ACT Minister for Trade, Industry and Investment and includes his or her successors and assigns, and the Minister's authorised delegate.

**Moral Rights**

has the meaning given to that term in the *Copyright Act 1968* (Cth) and includes any corresponding or similar

	rights granted under any other laws anywhere in the world.
<b>Performance Review</b>	means a performance review conducted in accordance with <b>clause 13</b> .
<b>Prescribed Insurer</b>	means an insurer that is authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia and rated at AA or better by Standard & Poor's.
<b>Progress Meeting</b>	means a meeting conducted under <b>clause 12.1</b> .
<b>Related Entity</b>	has the meaning given in section 9 of the Corporations Act.
<b>Territory</b>	means: <ul style="list-style-type: none"> <li>(1) when used in a geographical sense, the Australian Capital Territory; and</li> <li>(2) when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth).</li> </ul>
<b>Territory Material</b>	means any and all Material (including any Territory logo, trademark, branding or other such reference to the Territory which may be included in any advertising and promotional material produced, published, broadcast or displayed by the Company) provided by the Territory to the Company for the purposes of this Agreement or which is copied or derived from that Material, except for Agreement Material.

## 1.2 General

In this Agreement, headings are for convenience only and do not affect interpretation, and unless the context otherwise requires:

- (1) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any determinations, notifiable instruments or other subordinate legislation issued under that legislation or legislative provision;
- (2) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (3) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (4) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this Agreement;



- (5) a recital, schedule, annexure or description of the parties forms part of this Agreement;
- (6) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;
- (7) a reference to any party to this Agreement, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (8) where an expression is defined anywhere in this Agreement it has the same meaning throughout;
- (9) a reference to "dollars" or "\$" is to an amount in Australian currency;
- (10) the word "include" and its derivations are not to be construed as words of limitation; and
- (11) the expression "this Agreement" includes the agreement, arrangement, understanding or transaction recorded in this Agreement.

### **1.3 Reasonable endeavours of Territory**

Any statement in this Agreement providing that the Territory or any officer or agent of the Territory will use or exercise "reasonable endeavours" or "act reasonably" in relation to an outcome, means that the Territory or any officer or agent of the Territory:

- (1) will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;
- (2) does not guarantee the relevant outcome will be brought about; and
- (3) is not required to:
  - (a) exercise a right of any government party, or to influence, override, interfere with or direct any other government party in the proper exercise and performance of its legal, statutory or executive duties and functions;
  - (b) exercise a power or discretion in a manner that the Territory regards as not in the public interest;
  - (c) develop or implement new policy or a change in policy;
  - (d) procure any new legislation or a change in legislation; or
  - (e) act in any way that the Territory regards as not in the public interest.

## 2. Precedent regime

The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this Agreement:

- (1) clauses 1 to 29 of this Agreement;
- (2) the Schedules;
- (3) any attachments to the Schedules; and
- (4) documents incorporated by reference in this Agreement (including the Foundation Members' Agreement).

## 3. Funding Period

### 3.1 Funding Period

This Agreement commences on the Commencement Date and, unless terminated earlier pursuant to its terms or at Law, ends on the expiry of the Funding Period.

### 3.2 Extension of Funding Period

- (1) The Territory may, at its absolute discretion, offer to extend the Funding Period.
- (2) If the Territory wishes to extend the Funding Period in accordance with **clause 3.2(1)**, it must give written notice of such intention to the Company no less than 6 months prior to the expiry of the Funding Period specifying the proposed period of extension (**Extension Notice**).
- (3) If the Company wishes to accept the Territory's offer to extend the Funding Period under **clause 3.2(2)**, it must give the Territory written notice of that acceptance within 30 days of receipt of the Extension Notice.
- (4) If the parties agree to extend the Funding Period pursuant to this **clause 3.2**, the parties agree that:
  - (a) this Agreement will continue on the same terms and conditions, unless varied by the parties in accordance with **clause 29.6**; and
  - (b) in negotiating any extension of this Agreement, the outcomes of any Performance Reviews may be taken into consideration by the Territory.

## 4. Performance of Funded Activities

The Company must undertake the Funded Activities diligently, to a high professional standard and otherwise in accordance with:

- (1) all applicable Laws; and
- (2) any Territory policies set out in this Agreement and specific requirements agreed between the Territory and the Company.

## 5. Governance

- (1) The Company must implement and maintain a framework of good corporate governance in managing the Funds drawing on the *Good Governance Principles and Guidance for Not-for-Profit Organisations*, 2nd Edition (January 2019) from the Australian Institute of Company Directors (**Governance Principles**), and any updates to these Governance Principles, as appropriate. In particular:
  - 1.2 The Board approves a strategy to carry out the Company's purpose;
  - 1.3 Decisions by the Board further the Company's purpose and strategy;
  - 6.1 The Board oversees appropriate use of the Company's resources; and
  - 8.2 The Board oversees a framework for the meaningful engagement of stakeholders.
- (2) The Company must inform the Territory whenever there is a change in its Constitution, structure, management or operations which could reasonably be expected to have an adverse effect on the Company's ability to comply with its obligations under this Agreement.
- (3) The Company agrees not to employ any person in its management or financial administration of the Funded Activities if:
  - (a) the person is a Related Entity of any of the directors, members or shareholders of the Company, without the consent of the Territory, such consent will not be unreasonably withheld;
  - (b) the person is an undischarged bankrupt;
  - (c) there is in operation a composition, deed of arrangement or deed of assignment with the person's creditors under the law relating to bankruptcy;
  - (d) the person has suffered final judgment for a debt and the judgment has not been satisfied;
  - (e) subject to the *Spent Convictions Act 2000* (ACT), the person:
    - (i) has been convicted of an offence within the meaning of section 6 of that Act, unless:
      - A. that conviction is regarded as spent under section 12 of that Act;
      - B. the person was granted a pardon because the person was wrongly convicted of the offence; or
      - C. the person's conviction for the offence has been quashed or extinguished; or
    - (ii) is or was a Director or occupied an influential position in the management or financial administration of an

organisation that had failed to comply with funding requirements of the Territory; or

- (f) the person is otherwise prohibited from being a member or Director or employee or responsible officer of the Company.
- (4) Where a person falls or is discovered as falling within any of the sub-clauses in **clause 5(3)** while employed or engaged by the Company, the Company must immediately notify the Territory and take all actions required by the Territory to ensure the person ceases to have any involvement in the Funded Activities. If the Territory is not satisfied with the actions taken by the Company, the Territory may terminate this Agreement.

## **6. Company Members**

### **6.1 Members**

- (1) The Company's Constitution provides for various classes of membership to the Company.
- (2) The Board may, from time to time, approve:
  - (a) new Foundation Members who agree to the terms and conditions of the Foundation Member's Agreement; and
  - (b) Associate Members on the terms and conditions agreed by the Board.

### **6.2 Notification of change of Foundation Members**

- (1) Payment of the Funding is dependent on the ongoing support of the Foundation Members as at the Commencement Date. A Foundation Member, once signed up to the Company, is required to give the Company six months' notice if it decides to exit the Company. During the six month period the existing Foundation Members remain liable to meet all of its commitments to the Company.
- (2) The Company must provide to the Territory as soon as practicable notice of any changes to the number of Foundation Members. This notice must include:
  - (a) the details of the new or existing Foundation Members;
  - (b) the likely budget effect of the change in the number of Foundation Members and any steps the Company proposes to take to deal with any possible financial shortfall; and
  - (c) an assessment as to the degree to which the Company's viability or capacity to undertake the Funded Activities and achieve the outcomes is likely to be affected.
- (3) The Minister may agree to a less number than four Foundation Members during the Funding Period if, in the Minister's view, the Company is still viable with a smaller number of Foundation Members.

7.3. **Exemption from the provisions of the Money-lending Act, 1946.**

The Money-lending Act, 1946 does not apply to any person or institution who is engaged in the business of money-lending in the exercise of powers conferred on him or her by or under any law for the time being in force in that behalf.

- (a) Government or any authority or institution established by or under any law for the time being in force in that behalf.
- (b) Any person or institution established by or under any law for the time being in force in that behalf.
- (c) Any person or institution established by or under any law for the time being in force in that behalf.
- (d) Any person or institution established by or under any law for the time being in force in that behalf.

7.4. **Central Board.**

7.5. **Board of Finance and Money-lending Act, 1946.**

# Sch 2.2(a)(xi)

7.2. **Central Board of Finance and Money-lending Act, 1946.**

The Central Board of Finance and Money-lending Act, 1946 shall be deemed to have been established by or under any law for the time being in force in that behalf.

8. **Temporary Funding**

8.1. **Project of Finance**

The project of finance is as follows:

(a) The project of finance is as follows:

(b) The project of finance is as follows:

The project of finance is as follows:

8.2. **Project of Finance**

The project of finance is as follows:

### 8.3 Deferment of Funds

- (1) Without limiting any other right or remedy of the Territory, the Territory may, in its sole discretion and with one month's written notice, defer payment of the Funds (or any part of them) if:
  - (a) the Company has not provided to the Minister the Annual Work Plan for the forthcoming Funding Year in accordance with **clause 10**;
  - (b) the Company has not achieved an outcome set out in the Annual Work Plan and, in the Territory's view, the failure to achieve the outcome has significantly affected the Company's ability to meet the Territory's expectations as set out in **Schedule 2**; or
  - (c) as otherwise provided in this Agreement.
- (2) Despite any deferment and subject to meeting any Legal Commitments and, if applicable, the cost of winding-up the Company, the Company must continue to perform its obligations under this Agreement to the extent that Funds were paid in advance.

### 8.4 Separate account for Funds

The Company must:

- (1) deposit and hold the Funds in an account:
  - (a) which is an interest bearing account;
  - (b) in the Company's name, and which the Company solely controls; and
  - (c) with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia;
- (2) promptly notify the Territory of:
  - (a) the details of that account; and
  - (b) any change to that account; and
- (3) not cause or allow any funds other than the Funds to be deposited into that account.

### 8.5 No additional Territory Funding

The Territory is not responsible for the provision of additional funds to meet any expenditure in excess of the Funds.

## 9. Taxes, duties and government charges

### 9.1 Definitions

In this **clause 9**, words and expressions which are not defined in this Agreement, but which have a defined meaning in the GST Law, have the same meaning as in the GST Law.

## 9.2 Consideration GST exclusive

Unless otherwise expressly stated, all sums payable or consideration to be provided under this Agreement are exclusive of GST.

## 9.3 Payment of GST

If GST is payable by a party (**Supplier**) on any Taxable Supply made under this Agreement, the party which is the recipient of the Taxable Supply (**Recipient**) will pay to the Supplier an amount equal to the GST payable on the Taxable Supply.

## 9.4 Timing of GST payment

The Recipient will pay the amount referred to in **clause 9.3** in addition to and at the same time that the consideration for the Taxable Supply is to be provided under this Agreement.

## 9.5 Tax Invoice

- (1) The Supplier must deliver a Tax Invoice or an Adjustment Note to the Recipient before the Supplier is entitled to payment of an amount under **clause 9.3**.
- (2) The Recipient can withhold payment of the amount until the Supplier provides a Tax Invoice or an Adjustment Note, as appropriate.

## 9.6 General

Except as otherwise provided by this Agreement, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement will be borne by the Company.

## 10. Annual Work Plan

- (1) During the Funding Period, the Company must submit an Annual Work Plan to the Territory for its approval in accordance with this **clause 10**.
- (2) The Annual Work Plan for the first Funding Year must be submitted by 31 May 2019 and will cover the period from 1 July 2019 to 30 June 2020. The Annual Work Plan in each subsequent Funding Year must be submitted by 31 May in the immediately preceding Funding Year.
- (3) The Annual Work Plan must include, as a minimum:
  - (a) the proposed outcomes for the forthcoming Funding Year that meet the Territory expectations for the Company as set out in **Schedule 2**; and
  - (b) the proposed budget for the forthcoming Funding Year.
- (4) The format of the Annual Work Plans will be agreed between the Territory and the Company.
- (5) If the parties fail to reach agreement on the format and details for the Annual Work Plan by 30 April in any calendar year, the Territory will

have the sole right to impose on the Company a reasonable format for the Annual Work Plan.

## 11. Repayment of Funds

### 11.1 Entitlement to Funds

- (1) Where at the end of the Funding Period or winding up of the Company (whichever occurs first), the Company has not applied an amount of the Funds for a Funded Activity including the costs of winding up the Company (if any), that amount must be repaid to the Territory or otherwise dealt with in accordance with **clause 11.2**
- (2) For the purpose of this **clause 11**, the Company will have applied such an amount of the Funds where it has expended such an amount for the conduct of the Funded Activities, or entered into a Legal Commitment to expend such an amount for the conduct of the Funded Activities, with such expenditure or commitment meeting all relevant requirements of this Agreement.

### 11.2 Repayment during the Funding Period

The Territory is entitled to recover from the Company any amount of money which, at any time, in the Territory's reasonable opinion, has been spent or applied other than in accordance with this Agreement, provided that:

- (1) the money is not Legally Committed; and
- (2) the Company has been notified of the reason for the recovery and has been given an opportunity to rectify the matter or any breach if relevant.

### 11.3 Repayment at the end of Funding Period

At the end of the Funding Period (or termination of this Agreement) or, if applicable, during the winding up of the Company (whichever occurs earlier), the Territory is entitled to recover an amount calculated in accordance with the following formula:

$$\text{Amount Recoverable} = \text{Available Funds} \times \left( \frac{\text{Territory Funds}}{\text{Total Funds}} \times 100 \right)$$

Where:

**Available Funds** means money standing to the credit of the Fund Account less any amount which has been Legally Committed or is or may be required by the Company to pay wind-up costs.

**Territory Funds** means the aggregate of all money provided to the Company by the Territory under this Agreement.

**Total Funds** means the aggregate of all moneys contributed to the Company by way of grant by any person, including the Territory, during the Funding Period.

### 11.4 Repayment Notice

- (1) The Territory may give the Company a notice requiring the Company to repay (or deal with as specified by the Territory) any amount which the



Territory is entitled to recover under **clause 11.2 or 11.3 (Repayment Notice)**.

- (2) If the Company issues a Repayment Notice, the Company must repay the amount specified in the Repayment Notice in full (or deal with it as specified by the Territory) within 30 days from the date of the Repayment Notice.

## **12. Progress meetings and reporting**

### **12.1 Progress meetings**

The Territory and the Company will meet at the times and in the manner agreed between the parties to discuss any issues in relation to this Agreement or the Funded Activities. The Company must make best endeavours to provide full, accurate and timely answers to any issues raised by the Territory.

### **12.2 Progress reports and annual reports**

The Company must provide written reports to the Territory in the manner and at the times specified in **Schedule 3** to report in relation to the progress of the Funded Activities and the expenditure of the Funds.

### **12.3 Provision of reports**

- (1) If the Company does not provide a report to the Territory under this **clause 12** within the timeframe specified in **Schedule 3**, or the report is not satisfactory to the Territory, the Territory will advise the Company of this in writing and require those issues to be satisfactorily addressed within 30 days of the date of the notice (**Reporting Notice**).
- (2) If the Territory is not satisfied with the Company's response to the Reporting Notice, in the Territory's sole discretion, the Territory may, without limiting any of its other rights under this Agreement or at Law, reduce or suspend payment of the Funds or terminate this Agreement.

### **12.4 Other notifications**

The Company must keep the Territory reasonably informed about all matters that are likely to materially or adversely affect the timing, scope or cost of the Funded Activities or the Company's ability to carry on the Funded Activities in accordance with this Agreement.

## **13. Performance reviews**

### **13.1 Reviews of the Company**

- (1) The Company must participate in any review which may be commissioned by the Territory during the Funding Period.
- (2) The Territory will bear the cost of any review, audit or evaluation conducted under this **clause 13.1**.

### **13.2 Cooperation**

In relation to any review conducted under **clause 13.1**, the Company must:

- (1) provide all reasonable assistance to;
  - (2) respond to all reasonable request of; and
  - (3) provide any information reasonably requested by,
- the Territory or its authorised representatives.

## **14. Subcontracts**

- (1) The Company may subcontract the performance of any of its obligations under this Agreement including any aspects of the Funded Activities, subject to informing the Territory at the next Progress Meeting.
- (2) Notwithstanding **clause 14(1)**, the Company remains fully responsible for undertaking the Funded Activities or performing its obligations under this Agreement.

## **15. Assets**

### **15.1 Ownership**

Subject to the terms of any lease or other arrangement, the Company owns any Assets.

### **15.2 Use and dealings**

During the Funding Period, the Company must use any Asset only for purposes related to the Funded Activities, unless otherwise approved by the Territory.

## **16. Territory Material**

The Territory may provide the Existing Material details in **Item 7** for the use of the Company.

## **17. Intellectual Property**

### **17.1 Ownership of Material**

- (1) Subject to this **clause 17**, ownership of all:
  - (a) Agreement Material vests on its creation in the Company;
  - (b) Territory Material remains vested in the Territory.

- (2) Nothing in this **clause 17** affects the ownership of, including any Intellectual Property Rights in, any Existing Material of the Territory or the Company.

## **17.2 Licence to Territory**

- (1) Subject to **clause 17.2(2)**, the Company grants to the Territory, or must arrange the grant to the Territory of, a worldwide, irrevocable, non-exclusive, royalty-free licence to use Agreement Material and the Company Existing Material for the purposes of reporting on, evaluating, monitoring, communicating and publicising the Funded Activities.

- (2) For the purpose of this clause, "use" means:

- (a) the reproducing, communicating to the public, adapting, storing, modifying and copying of Agreement Material and the Company Existing Material,

but does not include the right, without the prior written consent of the Company, for the Territory to:

- (b) use (or permit any third party to use) any logo, design, trademark or business name of the Company; or
- (c) use Agreement Material or the Company Existing Material for the primary purpose of making financial gain or advantage.

## **17.3 Licence to the Company**

The Territory grants to the Company a limited, non-exclusive, royalty-free licence (including a right to sub-licence) to use, copy and reproduce Territory Material and Territory Existing Material for the purpose of undertaking the Funded Activities and complying with the Company's obligations under this Agreement.

## **17.4 Moral Right**

The Company must make reasonable efforts, unless otherwise agreed in writing with the Territory, to procure from every person who is an author for the purposes of Part IX of the *Copyright Act 1968* (Cth) of Material forming part of the Agreement Material, a written consent which is valid and effective under the *Copyright Act 1968* (Cth) and signed by that person by which that person irrevocably and unconditionally consents to the Territory and its Associates, any person nominated or authorised by the Territory and the Company and its Associates (**Beneficiaries**):

- (1) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Material anywhere in the world in whatever form any of the Beneficiaries thinks fit (including the making of any distortions, additions or alterations to the Material or any adaptation thereof, or to any part of the Material in a manner which, but for the consent, infringes or may infringe that person's Moral Rights in the Material); and
- (2) taking any action referred to in **clause 17.4(1)** without making any identification of the author of the Material.

## **18. Indemnity – Not used**

## **19. Insurance**

The Company must effect and maintain for the Funding Period:

- (1) all insurance coverage required to be effected by it by Law;
- (2) public liability insurance with coverage in the amount of not less than the amount specified in **Item 4(1)** in respect of each occurrence; and
- (3) any other insurance specified in **Item 4(2)**,

with a Prescribed Insurer and must (if requested) produce evidence of that insurance.

## **20. Acknowledgement of Funds**

### **20.1 Acknowledgement of Territory support**

- (1) The Company must, in relation to the Funded Activities:
  - (a) acknowledge the support of the Territory in any public event, media release or media coverage; and
  - (b) include an acknowledgement in the form set out in **Item 6** in all documents, brochures, books, articles, newsletters, other artistic works or literary works or advertising produced or created, or caused to be produced or created by the Company and which are made available to the public.
- (2) Notwithstanding **clause 20.1(1)**, the Territory reserves the right to publicise and report on the rewarding of the Funds, and may do this by, amongst other means, including the Company's name, the amount of the Funds and the title and a brief description of the Funded Activities in media releases, general announcements about the CBR Innovation Network and reports.

### **20.2 Other obligations**

The Company must:

- (1) in relation to the material referred to in **clause 20.1(1)(b)**, promptly provide to the Territory:
  - (a) if requested by the Territory in sufficient time, a draft of the material prior to publishing or printing; and
  - (b) a copy of that material as published or printed; and
- (2) on reasonable notice, invite the Minister to participate in any public event, media release or media coverage related to the Funded Activities.

## **21. Confidential Information**

### **21.1 Prohibition on disclosure**

Subject to clause, the Territory and the Company must not, without the prior written consent of the other party, disclose the other party's Confidential Information to a third party.

### **21.2 Conditions of approval**

In giving written consent to use or disclose a party's Confidential Information, that party may impose such conditions as it thinks appropriate in all the circumstances.

### **21.3 Exceptions to obligations**

The obligations of each party under clause will not be taken to have been breached to the extent that the Confidential Information of the other party:

- (1) is disclosed by a party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (2) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of activities related to this Agreement;
- (3) is disclosed by the Territory to the responsible Minister;
- (4) is shared within the Territory, or with another Territory agency, where this serves the Territory's legitimate interests; or
- (5) is in the public domain other than by a breach of this Agreement.

### **21.4 Period of confidentiality**

The obligations under this **clause 21** survive expiry or termination of this Agreement.

### **21.5 Return of Confidential Information**

On the expiry or termination of this Agreement, each party must promptly return all of the other party's Confidential Information in a form reasonably requested by the other party. Alternatively, if requested by the other party, a party must destroy such items in the manner specified and promptly certify in writing that it has done so.

## **22. Conflict of Interest**

- (1) The Company warrants that at the date of this Agreement no conflict of interest exists or is likely to arise in the performance of the Funded Activity and of its other obligations under this Agreement.
- (2) If a conflict or risk of a conflict of interest arises during the Funding Period, the Company must notify the Territory immediately in writing and

comply with any reasonable requirement of the Territory to eliminate or otherwise deal with that conflict or risk of a conflict of interest.

- (3) For the purpose of this **clause 22**, "conflict of interest" means having an interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with the Company's ability to perform its obligations under this Agreement fairly, objectively and independently.

## **23. Books and records**

### **23.1 Obligation to keep records**

The Company must:

- (1) keep proper books of account and other records (**Accounts and Records**) that:
  - (a) detail and document the conduct and management of the Funded Activity and all other activities undertaken by the Company;
  - (b) identify the receipt and expenditure of the Funds separately within the Company's accounts so that at all times the Funds are identifiable; and
  - (c) enables all receipts and payments related to the Funded Activity to be identified and reported in accordance with this Agreement;
- (2) ensure that its Accounts, Records and Annual Information Statement are prepared and audited in accordance with the requirements of the ACNC Act, Corporations Act and the Australian Accounting Standards, and fairly represent its operations and financial condition; and
- (3) retain its Accounts and Records for at least 7 years following the expiration or earlier termination of this Agreement, whichever occurs first.

### **23.2 Costs**

The Company must bear its own costs of complying with this **clause 23**.

## **24. Audit and access**

### **24.1 Access to premises**

- (1) The Territory may, at reasonable times and on reasonable notice for the purpose of auditing the Company's compliance with this Agreement and to otherwise ensure the financial and operational capacity of the Company to continue to perform its obligations under this Agreement, enter the Company's premises and inspect its Accounts and Records.
- (2) The Company must:
  - (a) give the Territory access to those facilities and such assistance as may reasonably be required to enable the Territory to conduct an audit under **clause 24(1)**; and

- (b) permit the Territory, at its own cost, to take copies of any Accounts and Records which the Territory, acting reasonably, considers relevant to its audit.

## **24.2 Territory's Auditor-General**

The Territory's rights under this **clause 24** do not derogate from any of the rights of the Territory's Auditor-General at Law and may be exercised by:

- (1) any agent, employee or contractor appointed by the Territory;
- (2) the Territory's Auditor-General;
- (3) delegate of the Auditor-General; or
- (4) any other relevantly qualified person engaged by the Territory to perform any functions of the Auditor-General.

## **25. Dispute resolution**

### **25.1 Negotiation and mediation of disputes**

- (1) If a difference or dispute (**Dispute**) arises in relation to this Agreement, then either party may give written notice to the other that a Dispute exists, which specifies details of the Dispute, and the parties agree that they will endeavour to resolve the Dispute by negotiations, or, if the Dispute has not been resolved within 28 days of the issue of the notice, undertake a mediation process.
- (2) If a mediation process is undertaken in accordance with **clause 25.1(1)** the mediator will be an independent mediator agreed by the parties or, failing agreement, nominated by the Resolution Institute. Unless otherwise agreed, the parties will equally share the costs of the engagement of the mediator.

### **25.2 No prejudice**

Nothing in this **clause 25** will prejudice the rights of either party to institute proceedings to enforce this Agreement or to seek injunctive or urgent declaratory relief in respect of any Dispute.

## **26. Termination**

### **26.1 Termination by the Company**

- (1) The Company may terminate this Agreement by giving 12 months' written notice to the Territory of its intention to terminate the Agreement (**Notice Period**).
- (2) If the Company terminates this Agreement under **clause 26.1(1)**, and subject to agreement by the Territory, the Territory may reduce the Funds available to the Company during the Notice Period where there is an associated reduction in the scope of Funded Activities.

## 26.2 Termination for default

The Territory may terminate this Agreement at any time by written notice to the Company if:

- (1) an Insolvency Event occurs; or
- (2) the Company:
  - (a) fails to undertake the Funded Activities diligently and in a timely manner, having regard to any timeframes specified in this Agreement;
  - (b) commits any serious or persistent breach of this Agreement;
  - (c) engages in fraud, collusion or dishonest conduct in performing its obligations under this Agreement; or
  - (d) commits any other breach of this Agreement, where that breach:
    - (i) if capable of being remedied, is not remedied within the period specified in a written notice by the Territory (which must be a reasonable period having regard to the nature of the breach); or
    - (ii) is not capable of being remedied.

## 26.3 Consequences of termination for default

If this Agreement is terminated pursuant to **clause 26.2**:

- (1) the Company must comply with **clause 11**;
- (2) the Territory will not be liable to pay any compensation or other money to the Company except as expressly provided for in this Agreement; and
- (3) the rights and obligations of the parties under this Agreement will cease except for:
  - (a) any obligations arising or rights accrued as a result of a breach of this Agreement existing prior to termination; and
  - (b) any obligations which are expressed to survive termination of this Agreement or by their nature continue in accordance with this Agreement.

## 26.4 Termination with cost and reduction in scope

- (1) The Territory may, at any time, and for any reason, by written notice to the Company, terminate this Agreement 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.
- (2) On receipt of a notice of termination or reduction in scope under **clause 26.4(1)**, the Company agrees to:
  - (a) stop or reduce the performance of its obligations as specified in the notice except to the extent Legally Committed;



- (b) take all available steps to minimise loss resulting from that termination or reduction in scope;
  - (c) continue performing any part of the Funded Activities or this Agreement not affected by the notice if requested to do so by the Territory; and
  - (d) comply with its obligations under **clause 11** or otherwise deal with any such Funds as the Territory may direct in writing.
- (3) If there is a reduction in scope under this **clause 26.4**, the Territory's liability to pay any part of the Funds will, in the absence of the written agreement of the parties to the contrary, abate proportionately to the reduction in the Company's obligations under this Agreement.
- (4) Where the Territory terminates this Agreement under this **clause 26.4**, the Territory will be liable only to:
- (a) pay any part of the Funds due and owing to the Company under this Agreement at the date of the notice; and
  - (b) reimburse any reasonable and substantiated expenses the Company unavoidably incurs that relate directly and entirely to the termination of this Agreement.
- (5) The Territory's liability to pay any amount under this **clause 26.4** is subject to the Company's compliance with this Agreement.

#### **26.5 No prejudice**

Nothing in this **clause 26** prejudices any other rights or remedies of the Territory in respect of any breach of this Agreement.

#### **27. Survival**

This **clause 27** and the following clauses survive the expiry or termination of this Agreement:

- (1) clause 13 (**Performance reviews**);
- (2) clause 19 (**Insurance**);
- (3) clause 20 (**Acknowledgement of Funds**);
- (4) clause 21 (**Confidential Information**);
- (5) clause 23 (**Books and records**) for a period of seven years after the expiry or termination; and
- (6) clause 24 (**Access and audit**) for a period of seven years after the expiry or termination,

together with any provision of this Agreement which expressly or by implication from its nature is intended to survive the expiry or termination of this Agreement.

## **28. Notices**

Any notice, including any other communication, required to be given or sent to either party under this Agreement must be in writing and given to the relevant Contact Officer. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent; or
- (3) if sent by electronic mail, on whichever of the following occurs first:
  - (a) the other party's acknowledgement of receipt by any means;
  - (b) the sender's electronic mail device recording that the electronic mail has been successfully transmitted to the recipient's address; or
  - (c) the expiration of two business days after the date on which it was sent without receipt of a notification that the delivery failed,

and if given in two or more ways, on the first of paragraphs (1) to (3) occurring.

## **29. General**

### **29.1 No assignment**

The Company must not assign the whole or any part of this Agreement without the prior written consent of the Territory. If the Territory gives its consent, the Territory may impose any conditions.

### **29.2 No employment, partnership or agency relationship**

Nothing in this Agreement constitutes the Company or its Associates as employees, partners or agents of the Territory or creates any employment, partnership or agency for any purpose, and the Company must not represent itself, and must ensure its Associates do not represent themselves, as being employees, partners or agents of the Territory.

### **29.3 Entire agreement**

This Agreement comprises the entire agreement between the parties about its subject matter and supersedes any prior representations, negotiations, writings, memoranda and agreements on that subject matter.

### **29.4 Severability**

Any provision of this Agreement that is illegal, void or unenforceable will not form part of this Agreement to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Agreement will not be invalidated by an illegal, void or unenforceable provision.

### **29.5 No waiver**

- (1) Failure or omission by either party at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect

or impair that provision in any way or the rights and remedies that party may have in respect of that provision.

- (2) A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (3) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

## **29.6 Variation to Agreement**

No amendment or variation of this Agreement is valid or binding on a party unless made in accordance with the provisions of this Agreement or otherwise in writing executed by both parties.

## **29.7 Set off**

- (1) The Territory may set off against any amount due and payable by the Territory to the Company any amount the Territory, acting reasonably, considers is due and payable by the Company to the Territory whether under this Agreement or otherwise at Law.
- (2) The Company must not set off against any amount due and payable by the Company to the Territory, any amount due and payable by the Territory to the Company whether under this Agreement or otherwise at Law.

## **29.8 Compliance with laws and governing law**

This Agreement is governed by and construed in accordance with the Law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory. Each party must comply with the Laws from time to time in force in the Territory in performing its obligations under this Agreement.

## **29.9 Counterparts**

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

# SCHEDULE 1

## FUNDING DETAILS

<b>Item 1. Commencement Date</b> <i>See clauses 1.1 and 3</i>	1 July 2019
<b>Item 2. Funding Period</b> <i>See clauses 1.1 and 3</i>	Four years commencing on the Commencement Date and ending on 30 June 2023.
<b>Item 3. Funds</b> <i>See clauses 1.1 and 8</i>	<p>(1) Total funding amount is \$5,000,000 (excl. GST).</p> <p>(2) The Funds are payable by quarterly instalments. Invoices may only be rendered in accordance with the table set out in <b>Schedule 4</b>.</p> <p>(3) Except if otherwise stated in this Agreement, the Funds are payable within 30 days of receipt by the Territory of an Invoice.</p>
<b>Item 4. Other insurance requirements</b> <i>See clause 19</i>	<p>(1) Public Liability Insurance: \$20 million.</p> <p>(2) Other insurance: not applicable.</p>
<b>Item 5. Contact Officers</b> See clauses 1.1 and 28	<p><b>For the Territory:</b> Glen Hassett Senior Director Innovation, Industry and Investment Economic Development Chief Minister, Treasury and Economic Development Directorate</p> <p><b>Postal address:</b> GPO Box 158, Canberra ACT 2601</p> <p><b>For The Company:</b> Sharyn Smith Chief Operating Officer CBR Innovation Network Limited</p> <p><b>Postal address:</b> GPO Box 596 Canberra ACT 2601</p>
<b>Item 6. Form of Acknowledgement</b> <i>See clause 20</i>	[ACT Government logo] Supported by funding from the ACT Government.
<b>Item 7. Territory Material</b> <i>See clauses 1.1 and 16</i>	Not used

**Item 8. Confidential Information**

*See clauses 1.1 and 21*

**Territory Confidential Information:**

Not used

**Company Confidential Information:**

Documents provided to the Territory upon request from time to time to deliver specific services in addition to the ones specified in this agreement unless these are specifically agreed by the Company to be made publicly available.

## SCHEDULE 2

### Territory's Expectation of the Company

#### 1. Operation of this Schedule

- (1) This Schedule sets out the Territory's expectations of the Company (**Expectations**). The Annual Work Plan for each Funding Year during the Funding Period must identify outcomes that the Company will achieve to meet the Expectations.
- (2) The Expectations may be amended annually by the Territory during the Funding Period, subject to agreement of the Company.
- (3) If the Territory and the Company are unable to reach agreement on the proposed changes to the Expectations, then either party may invoke the dispute resolution process set out in **clause 25** of this Agreement.

#### 2. Expectations (as at 1 July 2019)

##### 2.1 The vision

*A network linking businesses and entrepreneurs to accelerate innovation and growth to maximise wealth creation.*

To achieve this vision the Company will develop strong linkages across the innovation ecosystem. It will identify gaps in the innovation ecosystem and develop strategies for addressing these gaps.

In the medium to longer term the Company may review the mix of services and the delivery of them to maximise the growth of entrepreneurial wealth creating companies. This is discussed further below under Service Provision.

The Company will also deliver the physical infrastructure necessary to create company growth, such as incubation, acceleration and shared working space. The Government will make available premises at 1 Moore Street for this purpose. The Company will lease these premises from the ACT Government at peppercorn rental for four years initially and rental costs after this period will be subject to review.

The Company will need to determine how these services are made available across the ACT.

##### 2.2 Positioning the Company

The Company should develop a reputation as the principal proponent of a new approach to accelerating innovation in the ACT.

The Company will position itself as the 'go to' point for developing the innovation ecosystem in the ACT.

The Company will position itself to clearly articulate to government new and different approaches to developing the ACT's innovation ecosystem and its key sectors.

To achieve this, the Company will develop strong relationships with key individuals, organisations, companies and precincts in the ACT and address areas of need identified by a wide variety of sources.

## **2.3 Service Provision**

### **2.3.1 General Principles**

The Company's service provision will be ACT wide and will include all key players and precincts across various campuses and activity centre locations.

The Company's services will add value to services that already exist in the innovation ecosystem or complement existing services. The role of the Company will be to promote the services necessary to accelerate innovation and make them available and accessible by start-up entrepreneurs and existing businesses wishing to grow and develop. The Company will introduce and evolve new services that target existing gaps and fit within the strategic directions of the company.

The Company will have both a physical and virtual presence and branding that makes it recognisable as the 'go to' point for business innovation support and advice in the ACT. Over time that branding will extend and resonate nationally and internationally.

The Company will balance the advantages of a strong virtual presence and delivery methods with the need to maintain person to person channels of contact.

The Company will provide a 'triage' style of service for all entities that contact it. It will assess and help direct new entrants to the best-value aspects of the network according to their specific needs at the time. It will provide services that engage deliberately and effectively with potential high growth businesses.

The Company will adopt the 'Minimum Viable Proposition' approach and a 'fast failure' approach where participants will be encouraged to minimise the investment of time and capital for fast and quantitative market testing and feedback of ideas and early prototypes and direct effort to those with the best likelihood of success.

The Company will seek private sector sponsorship and involvement and develop relationships with like-minded organisations and entities in denser markets such as other Australian capital cities or progressive regions.

The Company will develop linkages to position high growth potential companies into national and international markets.

The Company will deliver a comprehensive set of engagement and marketing initiatives to showcase and profile innovation ecosystem success stories providing case studies on Canberra businesses and entrepreneurs as they progress through different phases of business development.

### 2.3.2 Services necessary to accelerate innovation

The Company will deliver services and outcomes as agreed by the Territory and outlined in the Annual Work Plan (clause 10 of this Agreement).

The Company will deliver services in three key areas:

**Innovation Capacity Building** – mobilise capability development within the education, research and government sectors to enable and empower collaboration and productive interactions with industry and entrepreneurship.

**Entrepreneurial Capacity Building** – continue to strengthen the entrepreneurial capacity of Canberra and the region's innovation ecosystem by developing, delivering and linking programs and resources that support growth of innovative companies.

**Place making** – work towards a permanent home for the Company in the central business district to create an 'iconic' neutral place (connected to a powerful collaborative network) that people and organisations come to in order to solve problems and address challenges through collaboration and innovation (impact).



## SCHEDULE 3

### REPORTING REQUIREMENTS

#### 1. Reporting requirements

The Company agrees to:

- (1) create the following reports in the form as may be required by the Territory from time to time; and
- (2) provide the reports to the Territory's Contact Officer at the times specified below:

Details	Due Date
<b>Progress Report – Quarterly for the period:</b> (1) 1 July to 30 Sep; (2) 1 Oct to 31 Dec; and (3) 1 Jan to 31 Mar.	Within 31 days of the end of each quarter during the Funding Period.
<b>Annual Report – for the period 1 July to 30 June.</b>	Within 150 days of the end of each Funding Year.

#### 2. Progress Report

The Company must provide the Territory with a Progress Report in relation to each quarter as set out above, detailing progress against the Funded Activities.

#### 3. Annual Report

- (1) The Company must provide the Territory with an Annual Report in relation to the immediately preceding Funding Year that includes:
  - (a) their Annual Information Statement;
  - (b) a report on the Company's achievements against the Annual Work Plan for that Funding Year; and
  - (c) a certified annual financial statement (**Financial Report**) that complies with the ACNC Act, Corporations Act and Australian Accounting Standards and which states that the Financial Report presents fairly that the Funds and Contributions have been expended solely for the Funded Activities, or a purpose agreed by the Territory. The Financial Report must state that it has been prepared in accordance with the Australian Accounting Standards and that all transactions were conducted through the Fund Account.
- (2) If requested by the Territory, the Company must include in its Annual Report details of steps taken to improve board corporate governance and performance in accordance with **clause 5** of this Agreement.

## SCHEDULE 4

### Funds

Financial Year	Funding Amount	Total (GST inclusive)	Milestone Achieved	Amount of each Quarterly instalment (GST inclusive)
2019/20	\$1,250,000	\$1,375,000	Meeting the goals and milestones set out in the Annual Work Plan	\$343,750
2019/20	\$655,464 <sup>1</sup>	\$721,010	Peppercorn licence for 1 Moore Street	
2020/21	\$1,250,000	\$1,375,000	Meeting the goals and milestones set out in the Annual Work Plan	\$343,750
2020/21	\$671,850	\$739,035	Peppercorn licence for 1 Moore Street	
2021/22	\$1,250,000	\$1,375,000	Meeting the goals and milestones set out in the Annual Work Plan	\$343,750
2021/22	\$688,646	\$757,511	Peppercorn licence for 1 Moore Street	
2022/23	\$1,250,000	\$1,375,000	Meeting the goals and milestones set out in the Annual Work Plan	\$343,750
2022/23	\$705,869	\$776,456	Peppercorn licence for 1 Moore Street	
<b>TOTAL</b>	<b>\$7,721,829</b>	<b>\$8,494,012</b>		

<sup>1</sup> Figures against Peppercorn licence for 1 Moore Street are based off an estimated Consumer Price Index increase of 2.5 per cent per annum.

## SCHEDULE 5

### Foundation Members

<b>Name</b>	<b>Organisation Type</b>	<b>ABN</b>	<b>Role</b>
<b>ANU</b>	Higher education/research institute	52 234 063 906	Foundation Member
<b>Data61</b>	Research institute	62 102 206 073	Foundation Member
<b>CSIRO</b>	Research institute	41 687 119 230	Foundation Member
<b>University of Canberra</b>	Higher education/research institute	81 633 873 422	Foundation Member
<b>UNSW Canberra</b>	Higher education/research institute	57 195 873 179	Foundation Member
<b>Canberra Institute of Technology</b>	Vocational education provider	43 273 796 990	Foundation Member

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Sch 2.2(a)(ii)

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Sch 2.2(a)(ii)

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Sch 2.2(a)(ii)

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# DEED OF VARIATION

Dated

10 SEPTEMBER 2020.

Parties

AUSTRALIAN CAPITAL TERRITORY

CBR INNOVATION NETWORK  
ACN 601 492 826

VARIATION OF THE CBR INNOVATION  
NETWORK FUNDING AGREEMENT

Prepared by

CHIEF MINISTER TREASURY AND ECONOMIC  
DEVELOPMENT - ECONOMIC DEVELOPMENT  
CANBERRA NARA CENTRE  
1 CONSTITUTION AVENUE  
CANBERRA CITY  
Ph: 6207 8040  
Ref: CM2020/3818

Version

Final 4 September 2020

**PARTIES:**            **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the Chief Minister Treasury and Economic Development Directorate.

**CBR INNOVATION NETWORK 601 492 826** of ACT 2601 (**Company**).

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## **BACKGROUND**

- A.     The Territory and the Company executed an agreement (**Agreement**) on or about 17 June 2019 in relation to CBR Innovation Network.
  - B.     Clause 29.6 provides for variations to the Agreement to be made only by the written agreement of the parties.
  - C.     The parties have agreed to vary the Agreement in accordance with the terms of this Deed.
- 

**IT IS AGREED** by the parties as follows.

### **1. Interpretation and Governing Law**

- (1)     Unless the context requires or it is otherwise specified in this Deed, any words used in this Deed that are defined in the Agreement have the same meaning for the purpose of this Deed.
- (2)     This Deed is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.

### **2. Effective Date**

The variations to the Agreement described in this Deed take effect on the date of this Deed.

### **3. Variation**

- (1)     **Schedule 3** is deleted and replaced with the attachment to this Deed titled "Schedule 3"
- (2)     **Schedule 4** is deleted and replaced with the attachment to this Deed titled "Schedule 4"

## SCHEDULE 4

### Funds

Financial Year	Funding Amount	Total (GST inclusive)	Milestone Achieved	Amount of each Quarterly instalment (GST inclusive)
2019/20	\$1,250,000	\$1,375,000	Submission of quarterly reports in accordance with Schedule 3; and meeting the goals and milestones set out in the Annual Work Plan	\$343,750
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Sch 2.2(a)(ii)

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Sch 2.2(a)(ii)

SHARON SMITH

PETER ADAMS, CEO

SHARON SMITH

PETER ADAMS, CEO

