

**FUNDING AGREEMENT FOR
THE NORFOLK ISLAND
TERRITORY**

2011/12

COMMONWEALTH OF AUSTRALIA

as represented by the Department of Regional Australia, Regional Development and
Local Government
ABN 37 862 725 624

ADMINISTRATION OF NORFOLK ISLAND

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Parties

This agreement is made between and binds the following parties:

1. **COMMONWEALTH OF AUSTRALIA** (Commonwealth) represented by and acting through the Department of Regional Australia, Regional Development and Local Government ABN 37 862 725 624 of 4 Mort Street, Canberra City ACT 2601 (Department)

and

2. **ADMINISTRATION OF NORFOLK ISLAND**, a body politic constituted by s.5 of the *Norfolk Island Act 1979* (Cth) (Norfolk Island)

Context

This agreement is made in the following context:

- A. Norfolk Island has requested Funding from the Commonwealth to assist it to provide essential services to the Norfolk Island community for the remainder of the 2011-12 financial year.
- B. The Commonwealth has agreed to support the provision of the essential services by providing the Funding to Norfolk Island to be used for the Specified Purposes on the terms and conditions of this agreement.
- C. The Department is required by law to ensure accountability for public money, and to be accountable for all Funds provided by the Commonwealth.
- D. Norfolk Island agrees to accept and use the Funding for the Specified Purposes, and otherwise subject to the terms and conditions, set out in this agreement.

Operative provisions

In consideration of the mutual promises contained in this document, the parties agree as follows:

1. Interpretation

1.1. In this agreement, unless the contrary intention appears:

Approved Auditor	means a person who is: (a) registered as a company auditor under the <i>Corporations Act 2001</i> (Cth), a member of the Institute of Chartered Accountants in Australia, a member of CPA Australia or a member of the National Institute of Accountants; and (b) not: A. an officer or employee of Norfolk Island; or B. an auditor of Norfolk Island, whether by reason of being a resident who otherwise satisfies the requirements of paragraph (a) or a person from outside Norfolk Island appointed to provide audit services to Norfolk Island.
Auditor-General	means the office established under the <i>Auditor-General Act 1997</i> (Cth) and includes any other entity that may from time to time perform the functions of that office.
Australian Auditing Standards	refers to the standards set by the Auditor-General under section 24 of the <i>Auditor-General Act 1997</i> (Cth) and generally accepted audit practices to the extent they are not inconsistent with such standards.
Business Day	means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place.
Commencement Date	means the date this agreement is made.
Completion Date	means 30 June 2012 unless otherwise agreed in writing by the parties.
Department	Means the Department of Regional Australia, Regional Development and Local Government and includes the Department's officers, delegates, employees, agents and the Department's successors.
Electronic Communication	has the same meaning as in the <i>Electronic Transactions Act 1999</i> (Cth).
Funding or Funds	means the amounts payable under this agreement by the Department as specified in the Schedule, including interest earned on that amount.

GST	has the meaning as given in section 195-1 of the GST Act.
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Intellectual Property Rights	includes all copyright, registered and unregistered trade marks (including service marks), and all other rights resulting from intellectual activity in the literary or artistic fields.
Interest	means the rate per cent per annum determined to be the average bid rate for bank accepted bills of exchange (as defined in the <i>Bills of Exchange Act 1909</i> (Cth)) published by Reuters at or about 10am on the first day that interest would be due and payable under this agreement plus 1% per annum calculated on a daily compounding basis.
Liaison Officer	means the liaison officer for each party specified in the Schedule or such other person as notified in writing by each party.
Minister	means the Commonwealth Minister responsible for Territory matters.
Norfolk Island	includes, where the context admits, Norfolk Island officers, employees, agents and contractors.
Norfolk Island Act	means the <i>Norfolk Island Act 1979</i> (Cth).
Public Account	means the Public Account of Norfolk Island referred to in section 47 of the <i>Public Moneys Act 1979</i> (NI)
Records	includes documents, information and data stored by any means and all copies and extracts of the same.
Report	means a report that is provided by Norfolk Island to the Department on the use of the Funding and progress reports and evaluations of the obligations under this agreement, as stipulated in the Schedule.
Trust Fund	means the Trust Fund forming part of the Public Account of Norfolk Island
Schedule	refers to the schedule to this agreement.
Specified Purposes	means the purposes specified in the Schedule.
Taxable Supply	has the same meaning as it has in the GST Act.
Term	means the term of this agreement described in clause 2.1.

- 1.2. In this agreement, unless the contrary intention appears:
- a. words in the singular number include the plural and words in the plural number include the singular;
 - b. words importing a gender include any other gender;
 - c. words importing persons include a partnership and a body whether corporate, politic or otherwise;
 - d. all references to clauses are clauses in this agreement;
 - e. an uncertainty or ambiguity in the meaning of a provision of this agreement will not be interpreted against a party just because that party prepared the provision; and
 - f. where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.3. The Schedule (and annexures and documents incorporated by reference, if any) form part of this agreement. In the event of any conflict or inconsistency between any part of:
- a. the terms and conditions contained in the clauses of this agreement;
 - b. the Schedule;
 - c. the annexures, if any; and
 - d. the documents incorporated by reference, if any,

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

2. Term of this agreement

- 2.1. The Term commences on the Commencement Date and, unless terminated earlier, expires on the Completion Date.
- 2.2. The Department and Norfolk Island may agree at any time to extend the Term on such conditions as are agreed between the Department and Norfolk Island.

3. Payment

- 3.1. The Department will provide Norfolk Island with the Funding at the times and in the manner specified in the Schedule, subject to:
- a. sufficient funds being available to the Department,
 - b. Norfolk Island acting, in the Department's opinion, in a reasonable and financially prudent manner, ensuring that it preserves its overall financial position; and
 - c. compliance by Norfolk Island with this agreement and any other subsisting agreement to provide Funding.

- 3.2. In consideration of the provision of the Funds, Norfolk Island must:
- a. deposit the Funds in the Trust Fund in the Public Account of Norfolk Island; and
 - b. use the Funds only for the Specified Purposes and on the terms and conditions set out in this agreement.
- 3.3. Without limiting the Department's rights, the Department may withhold or suspend any payment in whole or in part until Norfolk Island has performed its obligations under this agreement.
- 3.4. During the Term, Norfolk Island must:
- a. not incur or renegotiate any new material liabilities or obligations or reduce its ability to meet its liabilities without first disclosing the proposed arrangements to the Commonwealth and giving the Commonwealth a reasonable opportunity to provide comments;
 - b. work with the Commonwealth in a genuine manner to implement improvements to Norfolk Island's financial framework, public sector governance and accountability arrangements and agree to remain committed (including publicly) to those reforms;
 - c. implement the provisions and particular improvements specified in Schedules 1 and 2;
 - d. in the event that Norfolk Island does not implement the particular improvements specified in Schedules 1 and 2, the Commonwealth may give 30 days' written notice to show cause why a written direction to comply with the requirement within a specified time and according to specified terms and conditions should not be issued;
 - e. continue to publicly support the Territories Law Reform Act 2010 and to work cooperatively in partnership with the Commonwealth to ensure that its provisions, objects and purposes are implemented and achieved;
 - f. publicly support a Commonwealth-funded studies into Norfolk Island's economy; and
 - g. continue to work with the Commonwealth in reviewing government services to be delivered on Norfolk Island.

4. Management of Funding

- 4.1. Norfolk Island agrees to hold the Funding in the Trust Fund and create a new head within the Trust Fund for the Funding in accordance with section 11 of the *Public Monies Act 1979 (NI)* and ensure that the Funding is credited to that head.
- 4.2. Norfolk Island must hold the Funding in a bank account that is:
- a. established solely for the purposes of this agreement;
 - b. separate from Norfolk Island's other operational bank accounts holding moneys credited to the Public Account of Norfolk Island; and

- c. operated by two signatories approved by the Department or, in the case of a recovery of a debt due and owing under this agreement, by the liaison officer of the Department.
- 4.3. The Department reserves the right to specify one of the required signatories to the bank account in which the Funds are to be held.
- 4.4. Norfolk Island must provide the Department with a written authority for the Department to obtain any details relating to any use of the bank account in which the Funds are to be held.
- 4.5. Norfolk Island must ensure that Funds that are withdrawn from the bank account must be applied immediately for the purpose for which they are withdrawn.
- 4.6. Norfolk Island must keep separate financial Records of its receipt and use of the Funds, so as to enable all income and expenditure related to the Funds to be identified in the Trust Fund including complying with section 8(6) of the *Public Monies Act 1979 (NI)*.
- 4.7. Norfolk Island must immediately return any unspent Funds to the Department on termination or expiration of this agreement which shall be a debt due to the Commonwealth.
- 4.8. Unexpended funds under clause 4.8 may be recovered by direction of the Department to the banking institution to transfer those funds from the account established for the purposes of clause 4.2 to an account nominated in writing by the Department.
- 4.9. If, at any time during the Term, there remains an amount of Funding that has not been expended in accordance with this agreement or not acquitted to the Department's reasonable satisfaction, then this amount must be refunded by Norfolk Island to the Department within 20 Business Days of a written notice from the Department or dealt with as directed in writing by the Department.
- 4.10. If an amount under clause 4.9 is not refunded to the Department within 20 Business Days or as otherwise directed by the Department, Interest will accrue and be payable on the amount after the expiry of the 20 Business Days or such longer period as is directed until the amount is paid in full.
- 4.11. Any amount owed to the Department under clause 4.9 and any Interest owed under clause 4.10, will be recoverable by the Department as a debt due to the Department by Norfolk Island without further proof of the debt by the Department being necessary.
- 4.12. Any amount owed to the Department under Clause 4.9 and any Interest owed under clause 4.10 may be recovered by direction of the Department to the banking institution to transfer those funds from the account established for the purposes of clause 4.2 to an account nominated in writing by the Department.

5. Expenditure of Funding

- 5.1. Norfolk Island must only expend the Funding for the Specified Purposes on the terms and conditions set out in this Funding agreement.

- 5.2. Norfolk Island must expend the Funds on the Specified Purposes during the Term and must not commit any part of the Funds for expenditure that is likely to occur after the end of the Term without prior written approval from the Department.
- 5.3. The Department is not responsible for the provision of additional money to meet any expenditure in excess of the Funds.
- 5.4. Any expenditure of the Funds by Norfolk Island on a procurement of goods or services must provide value for money, which (except as agreed in writing by the Department) will involve:
 - a. a comparative analysis of all relevant costs and benefits of each procurement proposal throughout the whole procurement cycle (whole-of-life costing);
 - b. encouraging competition by ensuring non-discrimination in procurement and using competitive procurement processes;
 - c. promoting the use of resources in an efficient, effective and ethical manner; and
 - d. making decisions in an accountable and transparent manner.
- 5.5. Norfolk Island must advise the Department of all proposed procurements and specific items of expenditure for these purposes prior to expending Funds. The Department reserves the right to require Norfolk Island to provide further detail of the proposed expenditure and any procurement process undertaken.
- 5.6. Norfolk Island agrees that it will not make any payment from the bank account established for the purposes of paragraph 4.2(b) unless the Department is satisfied that Norfolk Island has demonstrated that the proposed expenditure provides value for money and signifies its agreement in writing that the proposed expenditure provides value for money.

6. Records

- 6.1. Norfolk Island must keep full and accurate Records of the use of Funding.
- 6.2. The Records must identify:
 - a. the amount of Funds received from the Department;
 - b. the date of receipt of the Funds;
 - c. details of the account into which the Funds are deposited, including separately identifying any interest earned on the Funds;
 - d. the date of withdrawal of the Funds; and
 - e. the Specified Purpose to which the Funds were applied.
- 6.3. Norfolk Island will provide to the Commonwealth a monthly reconciliation of the account established under 4.2 certified by the Chief Executive Officer (CEO) of the Administration as a true and accurate record within 20 Business Days of the end of each month.

- 6.4. Records maintained under clause 6.1 must be retained by Norfolk Island for a period of no less than 7 years after the end of the Term.

7. Reporting

- 7.1. Norfolk Island must provide to the Department, progress reports at the times and in the manner stated in the Schedule.
- 7.2. After the expiry of the Term or any earlier termination of this agreement Norfolk Island must, within the period stated in the Schedule, provide the Department with a final Report, being:
- a. an independent, audited and detailed statement of receipts and expenditure in respect of the Funding which must include a definitive statement as to whether the financial accounts are complete and accurate; and
 - b. an audited statement that the Funding was expended for Specified Purposes and otherwise in accordance with this agreement.
- 7.3. The audits referred to in clause 7.2 must be carried out by an Approved Auditor and must comply with the Australian Auditing Standards.

8. Taxes, Duties and Government Charges

- 8.1. All taxes, duties and government charges imposed or levied in Australia or overseas in connection with this agreement must be borne by Norfolk Island.
- 8.2. The parties agree that section 83-5 of the GST Act applies to any taxable supply made under this agreement and that the Department is liable to pay any GST on a taxable supply made under this agreement.
- 8.3. The Funds paid by the Department under this agreement exclude any amount on account of any GST imposed on supplies provided by Norfolk Island to the Department in accordance with this agreement and which are Taxable Supplies.

9. Liaison and Monitoring

- 9.1. Norfolk Island must:
- a. liaise with and provide information to the Department as reasonably required by the Department; and
 - b. comply with all the Department's reasonable requests, directions or monitoring requirements.
- 9.2. Norfolk Island may nominate, from time to time, a person who has authority to receive and sign notices and written communications for Norfolk Island under this agreement and accept any request or direction in relation to the Services, such person to be identified in the Schedule as the Norfolk Island Liaison Officer.

10. Disclosure of Information

- 10.1. Norfolk Island acknowledges that the Department may be required to provide information in relation to the Funding or this agreement, as required by any law, judicial or parliamentary body or governmental agency and accordingly the Department can give no undertakings to treat any of the Reports, other information relating to Norfolk Island or this agreement as confidential information.

11. Indemnity

- 11.1. Norfolk Island must provide a separate indemnity in writing within 20 Business Days of execution of this agreement indemnifying the Department against any:
- a. loss or liability incurred by the Department;
 - b. loss of or damage to the Department's property; or
 - c. loss or expense incurred by the Department in dealing with any claim against the Department in connection with this agreement, including legal costs and expenses on a solicitor/own client basis and a cost of time spent, resources used, or disbursements paid by the Department,
- arising from:
- a. any act or omission by Norfolk Island in connection with this agreement, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
 - b. any breach by Norfolk Island of its obligations or warranties under this agreement; or
 - c. any claims by third parties about the ownership or right to use Intellectual Property Rights.
- 11.2. In this clause 11, "fault" means any negligent or unlawful act or omission or wilful misconduct.
- 11.3. Norfolk Island's liability to indemnify the Department under this clause 11 will be reduced proportionally to the extent that any fault on the Department's part contributed to the relevant loss, damage, expense or liability.
- 11.4. The Department's right to be indemnified under this clause 11 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but the Department is not entitled to be compensated in excess of the amount of the relevant liability, damage, loss or expense.
- 11.5. The Department will, in consultation with Norfolk Island, take all reasonable steps to mitigate any circumstances which arise or which would arise or which would result in any amount becoming payable under clause 11.1.

12. Access to Premises and Records

- 12.1. Norfolk Island agrees that it must provide full, accurate, timely and ongoing disclosure of its financial position together with such independent verification of that position as may be available or required by the Department.
- 12.2. Norfolk Island must upon request, provide the Department with copies of Records and such material for purposes associated with this agreement, any review of performance under this agreement or any other matter pertaining to its obligations under this agreement.
- 12.3. Norfolk Island must give persons authorised in writing by the Department (referred to in this clause 12 collectively as 'those permitted') access to premises (at the risk and expense of those permitted) at which Records and other material associated with this agreement are stored at all reasonable times and allow those permitted to inspect and copy Records and such material for purposes associated with this agreement or any review of performance under this agreement.
- 12.4. Norfolk Island must provide all reasonable assistance requested by those permitted when they exercise the rights under clause 12.1.
- 12.5. The rights referred to in clause 12.1 are subject to:
- a. the provision of reasonable prior notice by those permitted (except where they believe that there is an actual or apprehended breach of the law); and
 - b. Norfolk Island's reasonable security and safety procedures.
- 12.6. The requirement for access as specified in clause 12.1 does not in any way reduce Norfolk Island's responsibility to perform Norfolk Island's obligations in accordance with this agreement.
- 12.7. This clause 12 applies for the Term and for a period of 7 years from the date of expiration or earlier termination of this agreement.

13. Termination with Costs

- 13.1. The Department may, by one month's written notice to Norfolk Island, terminate this agreement in whole or reduce the scope of this agreement without prejudice to the rights, liabilities or obligations of either party accruing prior to the date of termination.
- 13.2. If this agreement is terminated or reduced in scope the Department will only be liable for:
- a. subject to clause 13.3, payments then due and payable under the payment provisions of this agreement; and
 - b. subject to clauses 13.4, 13.5 and 13.6, any reasonable costs incurred by Norfolk Island and directly attributable to the termination of this agreement or reduction in scope of the agreement,

provided that nothing in this clause requires the Department to pay to Norfolk Island an amount exceeding the total Funding which would have been payable under this agreement had it not been terminated or reduced in scope.

- 13.3. Upon receipt of a notice of termination or reduction in scope Norfolk Island must:
- a. cease or reduce the performance of its obligations under this agreement in accordance with the notice;
 - b. immediately do everything possible to mitigate all losses, costs and expenses arising from the termination or reduction in scope contained in the notice; and
 - c. immediately return to the Department any Funds in accordance with clause 13.4.b or deal with any such Funds as the Department may direct in writing.
- 13.4. Where the Department terminates this agreement under clause 13.1 the Department:
- a. will not be obliged to pay to Norfolk Island any outstanding amount of the Funds, except to the extent that those monies have been legally committed for expenditure by Norfolk Island in accordance with this agreement and which are immediately payable by Norfolk Island (written evidence of which will be required) by the date notice of termination given under clause 13.1 is deemed to be received under this agreement; and
 - b. will be entitled to recover from Norfolk Island any part of the Funds which:
 - i. has not been legally committed for expenditure by Norfolk Island in accordance with this agreement and which are not immediately payable by Norfolk Island (written evidence of which will be required) by the date the notice of termination given under clause 13.1 is deemed to be received under this agreement; or
 - ii. has not, in the Department's reasonable opinion, been expended by Norfolk Island in accordance with the terms and conditions of this agreement,

and all such Funds will be regarded as a debt due to the Department capable of being recovered as such in any court of competent jurisdiction.

- 13.5. If there is a reduction in scope of the obligations under this agreement, the Department's liability to pay any part of the Funding will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this agreement.

- 13.6. The Department's liability to pay any compensation under or in relation to this clause 13 is subject to:
- a. Norfolk Island's strict compliance with this clause 13; and
 - b. Norfolk Island's substantiation of any amount claimed under clause 13.2.b.

- 13.7. The Department will not be liable to pay compensation for loss of any benefits that would have been conferred on Norfolk Island had the termination or reduction not occurred.

14. Termination for Default

- 14.1. If Norfolk Island fails to fulfil or is in breach of any of its obligations under this agreement, and does not rectify the omission or breach within 10 Business Days of receiving a notice in writing from the Department to do so, the Department may immediately terminate this agreement by giving written notice to Norfolk Island.
- 14.2. Where the Department terminates this agreement under clause 14.1, the Department:
- a. will not be obliged to pay Norfolk Island any outstanding amount of the Funds; and
 - b. will be entitled to recover from Norfolk Island any part of the Funds which:
 - i. has not been legally committed for expenditure by Norfolk Island in accordance with this agreement and is not immediately payable by Norfolk Island (written evidence of which will be required) by the date the notice of termination given under clause 14.1 is deemed to be received under this agreement; or
 - ii. has not, in the Department's reasonable opinion, been expended by Norfolk Island in accordance with the terms and conditions of this agreement.
- 14.3. If Norfolk Island does not repay the Department the amount referred to in clause 14.2.b within 10 Business Days of receipt of the notice of termination, Norfolk Island must also pay the Department Interest on the outstanding amount (which Norfolk Island acknowledges represents a reasonable pre-estimate of the loss incurred by the Department as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid). The amount set out in the notice and Interest owed under this clause will be recoverable by the Department as a debt due to the Department by Norfolk Island.
- 14.4. Notwithstanding any other provision in this agreement, any amount referred to in Clause 14.3 may be recovered by direction of the Department to the banking institution to transfer those funds from the account established for the purposes of clause 4.2 to an account nominated in writing by the Department.
- 14.5. Clause 14.2 does not limit or exclude any of the Department's other rights, including the right to recover any other amounts from Norfolk Island on termination of this agreement.

15. Compliance with Laws

- 15.1. Norfolk Island must, in carrying out its obligations under this agreement, comply with the provisions of all relevant statutes, regulations, by-laws, including the Norfolk Island Act and the *Public Monies Act 1979* (NI).

16. Entire Agreement, Variation and Severance

- 16.1. This agreement records the entire agreement between Norfolk Island and the Department in relation to its subject matter.
- 16.2. Except for action the Department is expressly authorised to take elsewhere in this agreement, no variation of this agreement is binding unless it is agreed in writing and signed by Norfolk Island and the Department.
- 16.3. If a court or tribunal says any provision of this agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate any other provision.

17. Waiver

- 17.1. If either Norfolk Island or the Department do not exercise (or delay in exercising) any of their respective rights, that failure or delay does not operate as a waiver of those rights.
- 17.2. A single or partial exercise by Norfolk Island or the Department of any respective rights does not prevent the further exercise of any right.
- 17.3. Waiver of any provision of, or right under, this agreement:
- a. must be in writing signed by the party entitled to the benefit of that provision or right; and
 - b. is effective only to the extent set out in the written waiver.
- 17.4. In this clause 17, "rights" means rights or remedies provided by this agreement or at law.

18. Assignment

- 18.1. Norfolk Island must not assign its rights under this agreement without prior written approval from the Department.

19. Survival

- 19.1. Unless the contrary intention appears, the expiry of the Term or earlier termination of this agreement will not affect the continued operation of any provision relating to:
- a. management of the Funding;
 - b. maintaining Records;
 - c. Reporting and auditing;
 - d. an indemnity;
 - e. dispute resolution; or
 - f. any other provision which expressly or by implication from its nature is intended to continue.

20. Dispute Resolution

- 20.1. Both Norfolk Island and the Department agree not to commence any legal proceedings in respect of any dispute arising under this agreement until the procedure provided by this clause has been utilised.
- 20.2. Both Norfolk Island and the Department agree that any dispute arising during the course of this agreement will be dealt with as follows:
- a. the party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
 - b. the parties will try to resolve the dispute by referring the matter(s) to the Chief Executive Officer of the Norfolk Island Administration and the Secretary of the Department, or his or her delegate, who will undertake negotiations in order to resolve the dispute; and
 - c. failing resolution by these officers, the dispute will then be referred to the Norfolk Island Chief Minister and the Minister, with the Minister as the final arbiter of any dispute.

21. Applicable Law and Jurisdiction

- 21.1. The laws of the Australian Capital Territory apply to this agreement.
- 21.2. Both Norfolk Island and the Department agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of any dispute under this agreement.

22. Notices

- 22.1. A party giving notice or notifying under this agreement must do so in writing or by Electronic Communication:
- a. directed to the Liaison Officer's address, as varied by any notice; and
 - b. hand delivered or sent by pre-paid post or Electronic Communication to that address.
- 22.2. The address details for each of the parties' Liaison Officers are as specified in the Schedule.
- 22.3. A notice given in accordance with clause 22.1 is taken to be received:
- a. if hand delivered, on delivery;
 - b. if sent by pre-paid post, 5 Business Days after the date of posting unless it has been received earlier;
 - c. if sent by Electronic Communication, at the time that would be the time of receipt under the Electronic Transactions Act 1999 (Cth) if a notice was being given under a law of the Commonwealth, which is currently when the Electronic Communication enters the addressee's information system within the meaning of that Act.

SCHEDULE 1.

1. Specified Purposes

- 1.1. The Funds must be used solely for the purpose of enabling Norfolk Island to continue to provide the following essential government services for which it has responsibility:
- public health and welfare; and
 - energy supply.

2. Funding and Payment

2.1. The total Funding for the Specified Purposes is a maximum of \$2.9 million (including GST).

2.2. The Funding will be made available for the Specified Purposes as follows:

Within 10 Business days	October 2011	November 2011	December 2011	January 2012	February 2012	March 2012	April 2012	May 2012	June 2012
\$725,000	\$241,667	\$241,667	\$241,667	\$241,667	\$241,667	\$241,667	\$241,667	\$241,667	\$241,667

2.3. One each occasion when the Funding is disbursed from the account established under this agreement for the purposes of the management of the Funding, Norfolk Island must:

- nominate which of the Specified Purposes the disbursement is being applied to;
- the amount being applied to each Specified Purpose;
- the purpose within each Specified Purpose for which the amount is being disbursed; and
- provide all invoices and supporting information or other documentation to substantiate the above.

2.4. Norfolk Island must:

- provide a revised Revenue Fund budget and statement of cash flows for the remainder of the 2011/2012 financial year prepared as at the date of the provision of each monthly report required by item 3.1 of this Schedule;
- provide, for the previous calendar month, a trial balance by cost centre and a statement of Financial Indicators for the Revenue Fund forming part of the Public Account of Norfolk Island; and
- advise the Commonwealth immediately it becomes aware of any material departures from the budget and cash flows for the Revenue Fund and any non-Revenue Fund entity.

2.5. The Department will make payments of the Funds in accordance with the Table above within the first 10 Business Days of the month to which the Funds relate.

2.6. Any variations sought by Norfolk Island to the approved funding instalments within the total Funding amount must be approved by the Department's Liaison Officer.

- 2.7. The Department will make any payments of Funds required to give effect to approved variations to the Funding within 10 Business days of the required Commonwealth approval being given.

3. Reports

- 3.1. Norfolk Island must provide monthly Reports to the Department beginning at the end of the first month in respect of which Funds have been provided. The Reports must be submitted no later than 20 Business Days following the end of the relevant month and must contain the following information:
- a. receipts of payment for each stream of funding; and
 - b. certification by the Chief Executive Officer that the Funds have been spent on the Specified Purposes in accordance with this agreement.
- 3.2. The Department's obligation to pay Funding to Norfolk Island under this agreement is conditional upon provision of Reports by Norfolk Island acceptable to the Commonwealth in accordance with this agreement. The Department will notify Norfolk Island no later than 10 Business Days after Norfolk Island provides the Department with a Report whether or not the Department accepts the Report.
- 3.3. The monthly Reports provided by Norfolk Island to the Department are not required to be audited.
- 3.4. The final Report must be provided to the Department no later than 6 months following the end of the Term and must provide the information specified in clause 7.2.

4. Liaison Officers

- 4.1. The Department's Liaison Officer details are as follows:

Julian Yates
First Assistant Secretary
Territories Division
Department of Regional Australia, Regional Development and Local Government
4 Mort St Civic
CANBERRA ACT 2601

Telephone: (02) 6274 7878
Fax: (02) 6274 7414
Email: julian.yates@regional.gov.au

- 4.2. Norfolk Island's Liaison Officer details are as follows:

George Plant
Chief Executive Officer
Norfolk Island Administration
Old Military Barracks
Kingston
NORFOLK ISLAND 2899

Telephone: 0011 6723 22001
Fax: 0011 6723 22205
Email: gplant@admin.gov.nf

SCHEDULE 2. SPECIFIED IMPROVEMENTS

[See clause 3]

1. The Norfolk Island Government will introduce into the Legislative Assembly amendments to the *Public Monies Act 1979* (NI) before March 2012 to include provisions to the following effect, and use their best endeavours to obtain agreement to the amendments:
 - a. the Norfolk Island Administration must not enter into an arrangement, including a contract or agreement that incurs a total liability in excess of \$50,000.00, under which public money is payable or may become payable, unless the CEO of the Norfolk Island Administration (or a delegate of the CEO) has beforehand approved a proposal that could lead to the entering into of the arrangement.
 - b. the responsible Minister of Norfolk Island may give the CEO directions or guidelines about the approval of a proposal that could lead to the entering into of an arrangement.
 - c. When a direction has been given, the Norfolk Island Administration must not enter into the arrangement until 7 days after the direction or guideline has been published in the Norfolk Island Gazette and tabled by the responsible Minister at the next sitting of the Norfolk Island Legislative Assembly.

2. The Norfolk Island Finance Minister must publish in the Norfolk Island Gazette at least once each calendar month commencing in October 2011 the following key financial information for the preceding month:

Revenue Fund

Cash at bank (Beginning of month)
Cash received
Cash paid
Cash at bank (End of month)

Unpresented cheques (End of month)

Other items

GST collected
Commonwealth Funds expended

Accounts owed by Revenue Fund (End of month)
Accounts collectable by Revenue Fund (End of month)

Owed to Commonwealth (End of month)
Prepaid air tickets Trust Fund (End of month)

Healthcare Fund (End of month)
Workers Compensation Fund (End of month)

3. From the Commencement Date until such time as any new arrangement for the provision of air services to the Norfolk Island Territory is implemented, monies received in respect of air services to be provided by the Norfolk Island Administration (trading as 'Norfolk Air') (including moneys already received) must continue to be credited to a head of the Trust Fund created for that purpose, unless the air service to which the fares relates is to be provided in the same calendar month.
4. Norfolk Island will commit to:
 - a. supporting (including publicly) and cooperating with, all Australian Government funded reviews, including but not limited to the Public Service Review and an Economic Development Strategy and Action Plan;
 - b. implementing the recommendations of those reviews, including necessary legislative reform, as agreed between the Parties.
5. Norfolk Island will make available all information required by the staff of the Commonwealth Grants Commission to update its 2006 review of the financial capacity of Norfolk Island.
6. Norfolk Island will make public by 30 October 2011 its arrangements for the 2011/12 Financial Year for applying the revenue received for telecommunication services provided by Norfolk Telecom to ensure that supplier costs are met and that revenue surplus to costs contribute to its forward financial debt management strategy required by Item 10 below.
7. Norfolk Island will ensure that any liquor purchases for the balance of 2011/12 do not result in stock levels in excess of \$500,000.00.
8. Norfolk Island will defer for the balance of 2011/12 any capital expenditure proposals in excess of \$50,000.00 for total project and associated costs which are outside the approved appropriation or the acquisition of new services exceeding the total value of \$50,000.00 per annum.
9. Norfolk Island, for the balance of 2011/12, will seek Commonwealth approval for any expenditure which it is unable to defer under Item 8 above.
10. Norfolk Island will continue to implement its financial debt management strategy for the 2011/12 Financial Year and publish that strategy by 30 October 2011, including existing debt to:
 - a. Telecom New Zealand Ltd;
 - b. NSW Department of Education and Training;
 - c. the Australian Federal Police; and
 - d. any other material liability that may arise during the term of the agreement.

11. Norfolk Island will:
 - a. :
 - i. by 31 October 2011 amend any current restrictions to allow self-funded retirees who are Australian citizens to live within the Norfolk Island Territory as part of the permanent population;
 - ii. by 1 January 2012 remove immigration restrictions on Australian citizens or permanent residents arriving as tourists on Norfolk Island; and
 - iii. by 30 June 2012 remove immigration restrictions on Australian citizens arriving and remaining on Norfolk Island to facilitate the extension of the *Migration Act 1958* (Cth) to the Norfolk Island Territory. This condition is subject to the Commonwealth outlining an implementation plan for access to Commonwealth benefits schemes, including Social Security and Medicare.
 - b. In relation to these reforms the Commonwealth will review their impacts by 30 June 2014, including economic, environmental (including land use) and social/cultural impacts.
12. Norfolk Island agrees to and will support and/or implement:
 - a. the full extension to Norfolk Island of the *Competition and Consumer Act 2010* (Cth) with effect from 1 January 2012, or such other date as agreed between the parties;
 - b. the reduction of any regulatory or other barriers to competition:
 - i. for telecommunications services by 30 March 2012; and
 - ii. for any other business activity, including and legislative restrictions to enable Australian citizens to start any new businesses within the Territory by 30 June 2012;
 - c. local policies to promote competition and investment in Norfolk Island with effect from 30 March 2012.
13. Norfolk Island will accept, promote and support the full rollout of Commonwealth regulations by 1 January 2012 or such other date as agreed by the parties, extending the jurisdiction of the Australian Administrative Appeals Tribunal to decisions made by the Norfolk Island Government.
14. To implement its prior commitment to provide for a Norfolk Island Ombudsman, Norfolk Island will use its best endeavours to pass legislation already introduced into the Legislative Assembly in accordance with any comments of the Commonwealth, to commence no later than 1 January 2012 or such other date as agreed between the parties.

15. Norfolk Island will develop, in consultation with the Department and having regard to the supporting studies in Clauses 4 (Public Service Review and Economic Development Strategy and Action Plan) and 5 (Commonwealth Grants Commission update of financial capacity), a proposal for revenue measures to be implemented by the Norfolk Island Government that are more closely aligned with those of the other Australian jurisdictions for funding the provision of government services.

This proposal will be subject to the following milestones:

- a. A discussion paper canvassing options to be provided to the Department by 30 January 2012 or such other date as determined by the Commonwealth;
 - b. An outline of the proposal to be provided to the Department by 30 March 2012 or such other date as agree by the parties; and
 - c. A full proposal, including indicative implementation timeframes, to be provided to the Department by 30 June 2012 or such other date as agree by the parties.
16. Norfolk Island will continue to support the need for revised management arrangements for the world heritage Kingston and Arthur's Vale Historic Area, and will work cooperatively, collaboratively and in good faith with the Department to:
 - a. finalize the preferred model of management by the next meeting of the Management Board; and
 - b. implement the new governance model by 30 June 2012.
 17. Commercial-in Confidence.
 18. Norfolk Island agrees to work in partnership with the Commonwealth to further build its capability to provide children and family support services on Norfolk Island. The parties will agree to engage an independent expert to undertake a review of the existing children and family support services and provide a report to both Governments by 30 January 2012. This report will be considered in the context of broader Norfolk Island reforms.

THIS AGREEMENT is made on the 22nd day of September 2011.

EXECUTION CLAUSES

Executed by the parties.

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA by

Mr Dan O'Brien, Deputy Secretary,
Programs and Engagement Group,
Department of Regional Australia,
Regional Development and Local
Government,

Sign here

in the presence of:

Mr Julian Yates

Name of witness

Witness signature

SIGNED for and on behalf of the
**ADMINISTRATION OF NORFOLK
ISLAND** by

Mr George Plant, Chief Executive
Officer,

Sign here

in the presence of:

Mr Bruce Taylor

Name of witness

Witness signature