

TERMS AND CONDITIONS FOR NGO ACCESS TO APY LANDS

Access to the Lands

- 1) While present on the Lands, you may only do and carry out activities directly required and related to the supply and the services specified in **Item 1** of the schedule attached to the letter of offer (“the schedule”). If nothing is written in **Item 1** then you must notify APY in writing within seven days of particulars of the services you are funded or contracted to deliver.
- 2) You must not remain on the Lands after the term of your contract or funding for the provision of the services has expired, the date of expiration being set out in **Item 2** of the schedule hereto. If nothing is written in **Item 2** of the schedule then you must notify APY of the expiration date of your contract or funding within seven days from the date of this letter.
- 3) You must not, while on the Lands, visit or enter any part of the Lands not strictly necessary for the provision of the services. The locations which it is agreed that you may visit are set out in **Item 3** of the schedule. If nothing is written in **Item 3** then you must notify APY in writing within seven days of particulars of those parts of the Lands which you say are necessary for you to visit to provide the services.
- 4) APY may suspend your access to the whole or any part of the Lands should he be of the view that you have committed a breach of these terms or otherwise that your presence on the Lands is not in the interests of Anangu. The General Manager shall give notice in writing of any such suspension which may be imposed in his absolute discretion, without assigning any reason and with no right of appeal. Should you invoke the dispute resolution procedure referred to in these terms and conditions then the suspension shall (other than in the case of a requirement for removal of a specified individual in accordance with these terms (clause 11)) be stayed pending the working out of the dispute resolution procedure.
- 5) Neither you or your servants or agents will enter or remain on the Lands without obtaining a permit from APY and paying the permit application fees determined by APY. The operation of the permit system shall be separate from (and not fettered by) the administration of any contract arising from the acceptance of these terms. You will notify APY immediately if any staff or contractor ceases employment with you so that APY can cancel any permit issued to such persons.
- 6) Should you continue to be present on the Lands after the expiration of your contract for funding arrangements, with or without the consent of APY, and then you will continue to be bound by these terms.

Obligations on the Lands

- 7) You may travel on the roads forming part of the Lands for the purpose of providing the services only and so as to enter and leave the Lands by the most direct route.
- 8) Under no circumstances will you take photographs or recordings of any kind or obtain or seek to obtain the execution of documents by communities or Anangu for any purpose whatsoever without first obtaining the consent of APY other than photographs of funded service activities with the consent of the people being photographed. Photographs will not be taken of children in any circumstances.
- 9) You will perform and carry out the services in a timely manner and to a high professional standard irrespective of the existence or absence of any similar requirement in your contract or funding arrangements.
- 10) While on the Lands you will comply with the reasonable directions of APY.

- 11) You will remove any person or subcontractor from the Lands if APY objects.
- 12) You will abide by the APY Code of Conduct.
- 13) You will cooperate with any Investigator appointed by APY.

Dealings with Anangu, Communities and other Organisations

- 14) You will be respectful of the authority of the Chairperson and Council members of communities on the Lands and where possible will give notice of your intended visit to a community prior to your arrival and unless circumstances otherwise require 48 hours prior to your arrival.
- 15) You will not attempt to influence the opinions or affairs of communities or Anangu and will not participate or seek to participate in any internal politics in communities or Anangu for any reason whatsoever.
- 16) You will not attempt to conduct any form of business other than the provision of the services for which you are contracted.
- 17) You will not provide benefits or payments of any kind, including vehicles, fuel, goods, travel, purchase orders or facilities of any kind to communities or Anangu other than strictly and properly necessary to comply with your contract. You will provide to APY a list of vehicles operating on the Lands, to who they are issued or used by and the purpose of the vehicles within 7 days of being requested to do so by APY.
- 18) You will not introduce, propose the use of, or force the services of any third party to communities, Anangu or any other organisation operating on/or in respect of the Lands.
- 19) You will provide a copy of any financial report provided to funding bodies to APY and if requested to do so will provide to APY at your expense an audited financial report in relation to any aspect of your dealings with communities, Anangu, APY or any other entity operating on the APY Lands. APY shall not be entitled to seek such a report other than once per quarter.

Use of Premises and Facilities

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- a) Subject to the proviso beltway grants to you a contractual licence to occupy the premises specified in **Item 4** of the schedule hereto ("the premises"), provided that in the case of non residential premises the licence shall be non exclusive, at a rental specified in the said **Item 5**. The licence granted is a licence at will and may be terminated by APY without assigning any reason by notice in writing signed by APY giving seven days notice PROVIDED THAT this licence only has effect in respect of premises occupied by you at the time of this offer and PROVIDED FURTHER THAT should any such premises not be so occupied then your occupation of those premises shall be the subject of negotiation with APY and the community concerned.
- (b) APY makes no warranty or representation that there are not or might not be claims by Anangu or Anangu organizations and you expressly release and covenant not to sue APY in respect of any such claims which covenant may be pleaded in bar. You indemnify and hold harmless APY in respect of any costs or expense which it incurs by reason of any such competing claims.
- (c) You acknowledge that it is the policy of APY to make publicly funded yards and facilities available to competing contractors to facilitate and encourage competition for work on the lands in accordance with national competition principals. APY will not grant any other

licences for the premises inconstant with your occupation prior to the end or termination of this licence, unless in the opinion of APY (in its absolute discretion) it is necessary to do so to conform with the National Competition principles.

- 20) The rental shall be paid at the times and in the manner specified in **Item 5** of the schedule hereto. In the event that you undertake commercial business in addition to the funded services then the rates of rental applicable to commercial business specified in **Item 5** apply and are chargeable.
- 21) (a) The premises shall be occupied at your risk and you shall keep both the premises in a neat and tidy condition and deliver the premises to APY in good order and condition.
- (b) You will not carry out improvements or modifications to the premises without first obtaining APYs consent and in that event the improvements shall become fixtures and will not be removed at the end of the licence and you will not be entitled to compensation in respect of the improvements.
- (c) APY is not obliged to carry out repairs or maintenance to the premises or provide services to the premises which are taken on an "as is" basis and APY makes no warranty or representation in relation to the fitness or suitability or state of repair of the premises.
- (d) You will not do anything to prejudice any insurance cover taken out by APY and will take out such insurances as are reasonably required by and acceptable to APY at your expense and noting APYS interest a copy of which shall be provided to APY (together with a certificate of currency) upon request.
- (e) APY shall not be required to incur costs or expense in relation to interference or attempted interference with the premises by Anangu but will otherwise use reasonable endeavours to prevent or minimise such interference.
- (f) You will co operate with and respect the presence of other occupants of shared premises and use your best endeavours to minimise and avoid any problems or disputes with such persons.
- (f) You shall at your expense properly secure the premises at all times and provide APY with a current set of keys.
- (g) You shall not sublet or licence any part of the premises or charge storage fees without the consent of APY.
- 22) You shall not rent or licence premises from communities or individuals unless authorised in writing by APY.

Loss and Damage

- 23) APY shall not be liable for any loss or damage arising out of **your** presence on the Lands and/or of the operation of this agreement of whatsoever nature and whether related to action taken by APY under this agreement or otherwise and you release APY absolutely from any claim, suit or demand in relation to such matters and this clause may be pleaded in bar in any proceedings.
- 24) You indemnify and hold harmless APY, its service and agents in respect of any liability, claim or demand arising out of your presence on the Lands and/or the provision of the services and shall before entering the Lands take out and have in force such insurances as are required by APY and will provide evidence of such insurance to APY.

Money Owing to APY

- 25) You shall reimburse APY for any work done by APY or its staff at your request at the rates calculated in **Item 6** of the schedule hereto and reimburse APY for the value of any property of APY lost or damaged of/and incidental to your presence on the Lands and the provision of services. A certificate by the General Manager of APY shall be conclusive evidence of the quantum of such liability.

Bond

- 26) You shall pay a bond to APY of the amount referred to in **Item 7** of the schedule hereto, **by cash or bank guarantee**, which may be applied by APY to and in respect of any liability and/or debt incurred or payable by you under these conditions and should the bond be reduced by such application you will top up the bond to the said amount within seven days of notification by APY of the need for a top up. Any unused portion of the bond will be refunded to you promptly after the day by which your contract for funding arrangement ceases or on which you quit the Lands, whichever shall first occur

Special Conditions

- 27) In addition to the terms and conditions set out in this document the parties shall be bound by the special conditions set out in **Item 8** to the schedule, if any.

Training and Employment

- 28) You will use your best endeavours to employ Anangu in training and employment.

Assignment

- 29) You shall not delegate, sublet or assign part or whole of your responsibilities in relation to the provision of the services without the consent in writing of APY. You will arrange for any subcontractor to sign an acknowledgment of these terms and the APY code of conduct and that they are bound by same.

Dispute Resolution

- 30) Should there be any dispute or grievance in relation to your presence on the Lands and/or provision of services then where the dispute or grievance relates to matters concerning a community you will, in the first instance, attempt to resolve that dispute or grievance by negotiation in good faith with the community council concerned and will notify APY both of the existence of the dispute or grievance and the outcome of negotiation.

In the event of the outcome not being acceptable to APY you will comply with any directions of the General Manager of APY in relation to the dispute or grievance.

In the event of a dispute or grievance of APY then the General Manager of APY and Chief Executive of your organisation will attempt in good faith to negotiate a resolution. If a resolution cannot be achieved within seven days then the dispute shall be the subject of mediation by a person agreed or otherwise appointed by the President for the time being of the Institute of Arbitrators and Mediators. The parties will pay one half of the mediator's expenses each.

- 31) In the event there is any dispute or difference between the parties not resolved under clause 31 above then the dispute or difference shall be referred to an expert agreed between parties or if not agreed appointed by the President for the time being of the Law Society of South Australia. The expert shall act as an expert and not an arbitrator and in a summary fashion with no right of

appeal for the purpose of identifying and resolving the real questions in dispute between the parties in a speedy and cost effective manner.

The expert shall not be bound by the rules of evidence and may inform himself of matters in such a manner as he sees fit. The expert shall have full power to regulate the procedure of the reference including the limitation of examination and cross examination of witnesses and power to avoid costs. The expert shall endeavour to conclude the reference within 30 days from the date of referral and shall produce written reasons for his determination with a further period of 14 days. The reference shall take place on the Lands unless in the opinion of the expert it should take place elsewhere and parties will, in the first instance, bear one half each of the experts fees and other costs of the reference.

- 32) You shall pay APY's legal costs and disbursements arising out of and under this agreement, in relation to any default on the solicitor and client basis and a certificate by APY shall be conclusive evidence of such costs.

Aboriginal Remains

- 33) Should you discover any Aboriginal remains while on the Lands, you shall not disturb or remove those remains but shall promptly notify APY as to their existence.

Water

- 34) These terms and conditions do not include or permit access to water present upon the Lands and any such use or access shall be separately negotiated with APY.
- 35) Should you discover any water while present on the Lands you shall immediately report that discovery to APY.

Tenements

- 36) You acknowledge that APY has granted various tenements over the Lands to third parties for various purposes including mineral exploration, grazing, residential and government uses. You shall not interfere with or trespass such tenements while present on the Lands.
- 37) You indemnify and hold harmless APY in respect of any claim, suit or demand by any such third party arising out of your actions.

Clearances

- 38) Should any anthropological or archaeological clearance be required in respect of any activity to be undertaken by you while present on the Lands (which requirement shall be determined by APY in its absolute discretion) then you shall reimburse APY for the costs of such clearance.

Cultural Sites

- 39) You acknowledge that there are extensive cultural sites throughout the Lands and shall not damage, remove or interfere with any land, vegetation, flora or fauna without the express approval of APY in writing.

Reports to APY

- 40) You will provide a concise quarterly report of your activities on the Lands to APY as provided to the funding provider and a further report on specific matters as requested by APY.

Fees and Expenses Payable to APY

- 41) You shall pay APY an administration fee of the amount set out in **Item 9** of the schedule at the commencement of your operations on the Lands and thereafter at the expiration of each period from twelve months of commencement.
- 42) APY may charge a further administration fee of up to 10% of the amount paid or payable by APY to any third party under these terms, ie. the costs of clearances.
- 43) You shall pay to APY a further fee as specified in **Item 10** of the schedule as a contribution to the costs of roads and air strips.
- 44) Should it be necessary for APY to expend time and effort dealing with issues and complaints, including complaints from Anangu or communities, in relation to the provision of the service or your presence on the Lands, then APY may charge an administrative hourly rate as set out in **Item 11** of the schedule hereto for staff whose time is occupied in dealings with the matter and should the aggregate of such expenses in any twelve month period exceed the quantum of the administration fee referred to in clause 41 above then the difference shall be payable by you as a debt to APY.
- 45) APY may issue an invoice for monies payable to it under this agreement and such invoice shall be prima facie evidence that the amount stated in the invoice is due to APY. Any such invoice shall be payable within 14 days from the date of the invoice.
- 46) Interest shall be payable to APY at the rate of 2% above the prevailing bank overdraft rate of APY's banker.
- 47) A certificate by APY shall be conclusive evidence of the issue and content of invoices issued by APY.

Applications to Executive Board

- 48) Should you wish to undertake any activity on the Lands on/or in relation to the Lands but not provided for as part of the services at the commencement of these terms, then you shall make an application to the Executive Board of APY for consent to such activity and will, regardless of the outcome of that application, pay APY's reasonable costs of considering the application.

Malpa

- 49) You shall retain a Malpa or Malpas as specified in **Item 12** of the schedule.
- 50) The purpose of the Malpa and his or her duties shall be to work with and assist non- Aboriginal personnel employed or contracted by you to deliver a service in a timely and cost effective manner and to liaise with Anangu.
- 51) The Malpas will be employed by you and not APY.
- 52) You will provide at your cost professional development for the Malpa.
- 53) You will provide at your cost workers compensation insurance for the Malpa.
- 54) The Malpa shall be at liberty to discuss with APY all and any matters relating to the provision of the service.

Advisory Committee

- 55) There shall be an Advisory Committee in respect of your presence on and activities on the Lands made up of the Chairperson and Director of Administration of APY, the MALPAS retained by you under these terms, and in the case of any community where a MALPA is not resident, a representative chosen by APY, and no more than two persons nominated in writing by you. Senior staff may attend Advisory Committee meetings unless excluded by the Chairperson.
- 56) The Advisory Committee shall meet not less than twice per year at Umuwa but at such times as the Chairperson of the Advisory Committee determines. The Chairperson of APY shall be the Chairperson of the Advisory Committee.
- 57) The principle role of the Advisory Committee shall be to consider the quality and extent of service delivery and the performance of your obligations under this agreement as well as such other matters as referred to it by you and APY.
- 58) The Anangu members of the Advisory Committee shall be paid at the rate determined set out in Item 13 of the schedule and reimbursed for fuel costs provided that there shall be no such entitlement if they are already employed or remunerated or reimbursed by any third party.

Miscellaneous

- 59) These terms may be varied in writing.
- 60) These terms are governed by the laws of South Australia and the parties submit to jurisdiction of its courts.
- 61) Notice under this agreement may be given to APY by facsimile to number (08) 8954 8110 and to you by facsimile or email to the addresses specified in **Item 14** of the schedule hereto.
- 62) APY may issue a notice of not less than 7 days making time for the performance of any obligation under this agreement of the essence.
- 63) APY may issue a notice specifying that you are in default under these terms by giving not less than 7 days notice of the default. If you have not remedied the default within the period specified in the notice APY may terminate any agreement arising from acceptance of these terms by further notice in writing.
- 64) Where compliance with any part of these terms would bring about a breach of any term and condition of any funding agreement in relation to the provision of the service you shall immediately notify APY in writing, of the relevant circumstance and seek the consent of APY to comply with the relevant obligation under the funding agreement despite any resulting conflict with these terms. APY will not unreasonably withhold its consent and will be deemed to have consented unless APY gives written notice (specifying reasons) of the withholding of consent within 7 days from the date of the notification required above. In the event of the withholding of consent by APY then either party may immediately invoke the dispute resolution procedure under clause 32 above.
- 65) The terms and conditions of any contract arising from acceptance of this offer and/or any facts or circumstances relation to the working out of any such contract shall be confidential and shall not be disclosed without the written consent of APY. It is agreed that the matters deemed to be confidential as above comprise commercially sensitive information the disclosure of which is likely to give rise to commercial loss and or the incurably of avoidable loss by APY. Breach of the obligations imposed under this clause shall be deemed to be a breach of a fundamental term.

Version current as at 24 October 2008