



Participation Deed

Australian Capital Territory

[INSERT OWNERS CORPORATION]

Participation in the ACT Private Buildings Cladding Scheme

Prepared by the ACT Government Solicitor for:

Major Projects Canberra
ACT Government
GPO Box 158
Canberra ACT 2601

DETAILS

Parties		
Territory	Name	Australian Capital Territory the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cth) represented by Major Projects Canberra
	Attention	Mr Adrian Piani
	Address	Major Projects Canberra Level 3, Callum House 50 Easty Street Phillip, ACT, 2602
	Email	Adrian.Piani@act.gov.au
	Phone	02 6207 8944
OC	Name	
	ABN	
	Attention	
	Address	
	Email	
	Phone	
Date of this Deed	See Signing page	
Background	A.	As part of the ACT Private Buildings Cladding Scheme, the ACT Government has committed to supporting the provision of concessional loans to eligible owners corporations to assist with funding remediation works for combustible cladding material on eligible private apartment buildings.
	B.	The Territory has engaged a contractor (the Loan Administrator) to deliver and administer the loans as part of the Scheme (Participant Loans).
	C.	Prior to obtaining a Participant Loan, an eligible owners corporation must enter into a Participation Deed with the Territory which, among other things, sets out its roles and responsibilities in relation to its admission to participate in the Scheme.
	D.	The terms and conditions of the Participant Loans and the responsibilities of an owner corporation under its Participant Loan will be set out in a separate loan agreement between the Loan Administrator and the owners corporation.

OPERATIVE PROVISIONS

1. Interpretation

1.1 Definitions

In this Deed, unless the context requires otherwise:

- (a) **Approved Building** means the building described at **Item 1 Schedule 1**;
- (b) **Approved Works** means the works described at **Item 2 Schedule 1**;
- (c) **Builder** means a supplier of building and construction services who is on the Register of Potential Suppliers or who, the Territory considers in its absolute discretion would be eligible for inclusion on the Register of Potential Suppliers;
- (d) **Building Contract** means a legally binding written agreement with a Builder to undertake the Approved Works on the Approved Building;
- (e) **Business Day** means a day in the Territory that is not:
 - (i) a Saturday or Sunday;
 - (ii) a public holiday for the Territory pursuant to the *Holidays Act 1958 (ACT)*; or
 - (iii) the 27th, 28th, 29th, 30th or 31st of December.
- (f) **Claim** means any claim, action, demand, suit or proceeding (including by way of contribution or indemnity) made:
 - (i) under or in connection with this Deed; or
 - (ii) at law or for specific performance, restitution, payment of money (including damages) or any other form of relief;
- (g) **Cluster of Buildings** means a residential complex of unit titled dwellings with an owners corporation and with shared walls which has an increased potential for fire to spread between buildings should a fire event occur. The residential complex must consist of:
 - (i) class 1a multi storey residential buildings, such as townhouses or semi-detached terraces of three storeys or higher; and
 - (ii) comprise at least 5 separate residential dwellings joined together by shared walls;
- (h) **Complex Works** means works which cost \$1 million or more to complete;
- (i) **Contract Price** means the total cost of all Approved Works as set out in the Building Contract;
- (j) **Cost Estimate** means an estimate certified by a qualified quantity surveyor in respect of the total cost of the Approved Works and which is agreed by the Territory;
- (k) **Credit Approval** means approval by the Loan Administrator of the Participant Loan proposed in the Preliminary Approval or Final Approval (as the case may be);
- (l) **Deed** means this deed and includes any schedules and annexures to this deed;

- (m) **Eligible Building** means a building that was recognised by the Territory as being eligible for its Private Buildings (Rebate) Scheme or is a building that meets all of the following criteria:
- (i) is located in the Territory;
 - (ii) is a class 2 apartment building or is a Cluster of Buildings;
 - (iii) is a mixed-use or solely residential use building; and
 - (iv) has a rise of at least 3 storeys as calculated in accordance with the National Construction Code.
- (n) **Eligible Works** means works which are necessary to remediate the cladding of an Eligible Building, including removing the cladding, and replacing it with non-combustible material which is compliant with the National Construction Code, including works which are incidental to and only required because of the cladding remediation (for example; retiling, repainting, fixing garden beds) and any additional works in or to the external walls of the Eligible Building which are required for issue of a certificate of occupancy or use;
- (o) **Final Credit Approval** means approval by the Loan Administrator of the Participant Loan (or variation to the existing Participant Loan) proposed in the Final Approval;
- (p) **Final Approval** means a certification in writing by the Territory to the Loan Administrator in accordance with **clause 5.3(e)** which includes:
- (i) the amount of the proposed Participant Loan or varied amount of the existing Participant Loan (as the case may be);
 - (ii) the term of the proposed Participant Loan or varied term of the existing Participant Loan (as the case may be) including the respective terms of the drawdown period and repayment period;
 - (iii) if the proposed Participant Loan for the OC which did not obtain a Preliminary Approval, the interest rate and fees (if any) applicable to the loan;
 - (iv) any additional sum allowed in the amount of the proposed Participant Loan for OC Loan Administration Costs and how that sum is to be paid by the Loan Administrator;
 - (v) in respect of a proposed Participant Loan for an Eligible Participant which did not obtain a Preliminary Approval, the interest rate and fees (if any) applicable to the proposed loan;
 - (vi) the proposed or existing Building Contract or Milestone Schedule; and
 - (vii) the cost of any works other than the Approved Works that the OC intends to undertake and confirmation that the Eligible Participant has a source of funds (other than the proposed Participant Loan) to fund those costs and the details of such source.
- (q) **Government Party** means the Territory and any government or any governmental, semi-governmental or local government authority of the Territory, administrative or judicial body or tribunal of the Territory, department, commission, public authority, agency, minister, statutory corporation or instrumentality of the Territory;
- (r) **Liability** means any debt, obligation, claim, action, cost, (including legal costs, deductibles or increased premiums) expense, loss (whether direct or indirect),

damage, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- (i) actual, prospective or contingent; or
 - (ii) currently ascertainable or not,
 - (iii) and whether under or arising out of or in any way in connection with this Deed or arising at law;
- (s) **Loan Administrator** means the other party to the Participant Loan Agreement with the OC;
- (t) **Milestone Schedule** has the meaning in **clause 5.3(b)(i)**.
- (u) **OC Loan Administration Costs** means an amount not exceeding \$10,000.00 (including GST) that the OC incurs directly in relation to the administration, and professional oversight, of the Participant Loan.
- (v) **OC Scheme Requirements** means the guidelines for the Scheme as determined by the Territory from time to time and published here: <https://www.act.gov.au/majorprojectscanberra/act-cladding-program>;
- (w) **Participant Loan** means a debt obligation of the OC under a Participant Loan Agreement;
- (x) **Participant Loan Agreement** means an agreement between the Loan Administrator and the OC in respect of a Participant Loan;
- (y) **Preliminary Approval** means a certification in writing by the Territory to the Loan Administrator that the OC satisfies the requirements of the Scheme for the advance of the first instalment of a Participant Loan, being the Preliminary Costs, and includes:
- (i) the total amount of the Participant Loan (which will be based on the Cost Estimate);
 - (ii) the Preliminary Cost Estimate and the nature of the Preliminary Costs which are proposed to be funded by the first instalment of the Participant Loan prior to Final Approval being issued;
 - (iii) the term of the proposed Participant Loan including the respective terms of the drawdown period and repayment period; and
 - (iv) the interest rate and fees (if any) applicable to the proposed loan;
- (z) **Preliminary Cost Estimate** an estimate by the OC in respect of the Preliminary Costs and which is agreed by the Territory;
- (aa) **Preliminary Costs** means the costs incurred by the OC in order to obtain a proposed Building Contract up to the Preliminary Cost Estimate and provided such costs are of the nature, and otherwise accord with any requirements, set out in the Preliminary Approval.;
- (bb) **Project Manager** means a project manager that is on the Register of Potential Suppliers or who, the Territory considers in its absolute discretion would be eligible for inclusion on the Register of Potential Suppliers;
- (cc) **Register of Potential Suppliers** means the register published by the Territory from time to time here: <https://www.act.gov.au/majorprojectscanberra/act-cladding-program/potential-suppliers-database>;

- (dd) **Scheme** means the ACT Private Buildings Cladding Scheme, being the scheme pursuant to which concessional loans are offered to eligible owners corporations of Eligible Buildings to fund the cost of Eligible Works; and
- (ee) **Term** means the period set out in **clause 2**.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) **(count and gender)**: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;
- (b) **(Deed references)**: a reference to a party, clause, Schedule, Annexure, exhibit or attachment is a reference to a party, clause, Schedule, Annexure, exhibit or attachment of or to this Deed;
- (c) **(Deed as amended)**: a reference to this Deed or to any other deed, agreement, document or instrument includes a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (d) **(party)**: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
- (e) **(OC)**: references to "OC" include any employees, agents or subcontractors of the OC;
- (f) **(person)**: a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (g) **(legislation)**: a reference to legislation includes its delegated legislation and a reference to such legislation or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) **(definitions)**: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **("includes")**: "include", "includes" and "including" will be read as if followed by the phrase "(without limitation)";
- (j) **("or")**: the meaning of "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (k) **(information)**: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) **("\$")**: a reference to "\$", AUD or dollar is to Australian currency;
- (m) **(time)**: a reference to time is a reference to time in the Australian Capital Territory, Australia;
- (n) **(rights)**: a reference to a right includes any benefit, remedy, function, discretion, authority or power;

- (o) **(obligations and liabilities)**: a reference to an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (p) **("may")**: unless the Territory is expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by the Territory, means that the Territory can exercise that power, right or remedy in its absolute and unfettered discretion and the Territory has no obligation to do so;
- (q) **(construction)**: where there is a reference to a Government Authority, institute or association or other body referred to in this Deed which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or
 - (ii) ceases to exist, this Deed is deemed to refer to such new entity as serves substantially the same purpose or object as the former entity; and
- (r) **(contra proferentem rule not to apply)**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

1.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Deed.

2. Term

This Deed commences on the date it is signed by the parties and continues until such time as:

- (a) the Territory notifies the OC that it is ineligible for the Scheme; or
- (b) the Participant Loan Agreement expires, is terminated or otherwise comes to an end,

(with such period being the **Term**).

3. Eligibility for Scheme

3.1 Eligibility for Scheme

- (a) The OC acknowledges and agrees that, to be eligible to participate in the Scheme and receive a Participant Loan, the Territory must be satisfied that:
 - (i) the OC meets the OC Scheme Requirements;
 - (ii) the building which is the subject of the works to be funded by the proposed Participant Loan is an Eligible Building; and
 - (iii) the works proposed to be funded by the proposed Participant Loan are Eligible Works.
- (b) The Territory confirms that based on the information the OC has provided to it, as at the date of this Deed, it is satisfied that the OC is eligible to participate in the Scheme.

3.2 Warranty as to correctness

The OC warrants that to the best of its knowledge and belief that the information provided to the Territory for the purpose of the Territory assessing its eligibility to participate in the Scheme is complete and correct in all material respects.

3.3 Change in circumstances

The OC must promptly during the Term notify the Territory upon becoming aware of:

- (a) any new matter, fact or circumstance;
- (b) that any of any matter, fact or circumstance previously advised has changed; or
- (c) that any matter, fact or circumstance previously advised is incorrect or incomplete,

and which may result in the Territory not being satisfied of the matters in **clause 3.1**.

4. Building works

4.1 OC responsible for Approved Work

The OC acknowledges and agrees that it is responsible for all matters in connection with the completion of the Approved Works on the Approved Building including:

- (a) sourcing and engaging a Builder to undertake the Approved Works;
- (b) taking all necessary steps to obtain a Participant Loan to fund the completion of the Approved Works and doing all things necessary, including raising levies, to meet its obligations under the Participant Loan, including to pay all amounts owing by it under the Participant Loan as and when they become due and payable;
- (c) oversight of the Approved Works through to completion; and
- (d) management of its relationship with the Builder, Project Manager (where applicable) and any other supplier it engages in connection with the Approved Works.

4.2 Funding for Work Other than Approved Work

- (a) The OC acknowledges and agrees a Participant Loan may only be used to fund the costs it incurs in undertaking the Approved Work.
- (b) Where the OC intends to undertake any works other than the Approved Work at or about the same time as undertaking the Approved Work the OC must notify the Territory of the cost of those works and must be able to satisfactorily demonstrate to the Territory that it has a source of funding for those works other than the Participant Loan.
- (c) The Loan Administrator will take into account the cost of any works to be undertaken by the OC in addition to the Approved Work in considering whether to grant Credit Approval.

4.3 Requirement for Building Contract

- (a) Subject to the issue of a Final Approval by the Territory and a Final Credit Approval by the Loan Administrator, the OC must:
 - (i) enter into a Building Contract which is in form and substance the same in all material respects as the proposed Building Contract in respect of which Final Approval was provided by the Territory; and

- (ii) ensure that the Building Contract remains on foot at all times during the Term.
- (b) The OC must not vary the Building Contract in any material respect without the prior written approval of the Territory.

4.4 Requirement for Project Manager

Where Approved Works are determined by the Territory to be Complex Works, the OC must engage, at its expense, a Project Manager to oversee the completion of the Approved Works in accordance with the Building Contract and must advise the Territory of the name of the Project Manager and if the Project Manager is replaced at any time by the OC, the name of the replacement Project Manager.

4.5 Completion and approval of Building Works

The OC must:

- (a) diligently manage the Building Contract (or take all reasonable steps to ensure its Project Manager diligently manages the Building Contract in order to ensure the Building Contract is as far as practically possible, completed in the timeframes and at the costs set out in the Building Contract);
- (b) ensure that the Approved Works are completed in accordance with any standards, requirements, specifications and timeframes set out in the Building Contract; and
- (c) obtain a certificate of occupancy or use from the relevant authority for the Approved Works.

4.6 Territory's right to audit and inspect

- (a) Upon the provision of reasonable notice from the Territory, the OC must facilitate access by the Territory or its representatives to the Approved Building for the purpose of the Territory inspecting the progress and quality of the Approved Works.
- (b) The Territory may, at its cost, inspect records kept by the OC and conduct audits and other checks, to monitor:
 - (i) the eligibility of the OC to participate in the Scheme;
 - (ii) the compliance by the OC with this Deed;
 - (iii) the financial position, resources and the ability of the OC to service the Participant Loan; and
 - (iv) the progress of the Approved Works and compliance by the Builder with the Building Contract.
- (c) The OC must act reasonably to cooperate with persons authorised to conduct an audit or checks and allow the Territory (at the Territory's expense) to take copies of all relevant records.

5. Approval of Participant Loan

5.1 Preliminary Approval

- (a) If the OC does not already have a proposed Building Contract, the OC must satisfy all of the requirements from time to time of the Territory in order to confirm the OC is entitled to participate in the Scheme, including the provision of an acceptable Cost Estimate and Preliminary Cost Estimate.

- (b) Upon being satisfied in respect of the matters in **clause 5.1(a)**, the Territory will issue its Preliminary Approval to the OC and the Loan Administrator.
- (c) Subject to being provided a Credit Approval by the Loan Administrator, the Preliminary Approval will authorise the Loan Administrator to pay to the OC an amount or amounts up to the Preliminary Cost Estimate under a Participant Loan to assist the OC in obtaining a proposed Building Contract. The OC must provide evidence satisfactory to the Loan Administrator that it has incurred the costs and that the relevant costs are set out in the Preliminary Cost Estimate before the Loan Administrator will advance monies from the Participant Loan to pay any of those costs.
- (d) The OC acknowledges and agrees that if the OC has not provided a proposed Building Contract to the Territory and sought Final Approval within 3 months (or such longer time agreed in writing by the Territory) of issue of the Preliminary Approval, the Participant Loan provided to the OC by the Loan Administrator will be immediately repayable in accordance with the Participant Loan Agreement.

5.2 Credit Approval (Preliminary Approval)

- (a) Upon receipt of a Preliminary Approval from the Territory, the OC must satisfy all of the requirements from time to time of the Loan Administrator in order to confirm the OC is entitled to a Participant Loan of an amount equivalent to the Costs Estimate. The Territory does not guarantee, represent or warrant that the OC will receive Credit Approval from the Loan Administrator.
- (b) Upon being satisfied in respect of the matters in **clause 5.2(a)**, the Loan Administrator will provide its Credit Approval and, subject to the terms of the Participant Loan Agreement, will be required to advance the first instalment of the Participant Loan Agreement to the OC, being an amount equivalent to the Preliminary Cost Estimate (or such other sum agreed by the Territory).
- (c) The Loan Administrator will not be required to advance any further amounts under the Participant Loan Agreement until the Territory issues its Final Approval and the Loan Administrator issues its Final Credit Approval and any other conditions set out in the Participant Loan Agreement are satisfied.
- (d) The Territory is not liable or responsible to the OC for any decision to grant or withhold Credit Approval, any failure to grant Credit Approval, any failure to provide an instalment or any other act or omission of the Loan Administrator.

5.3 Final Approval

- (a) If it has not done so already in respect of a Preliminary Approval, the OC must satisfy all the requirements of the Territory as determined by the Territory from time to time in order to confirm the OC is entitled to participate in the Scheme.
- (b) The OC must provide the proposed Building Contract to the Territory which must include:
 - (i) a schedule of the Approved Works, the date for completion of certain components of the Approved Works and the amount payable by the OC to the Builder upon each component of the Approved Works being achieved (**Milestone Schedule**); and
 - (ii) include a requirement for the Builder to recycle all cladding removed from the Eligible Building.

- (c) The last payment to the Builder set out in the Milestone Schedule must:
 - (i) be conditional upon the Approved Works receiving a certificate of occupancy and use from the relevant authority; and
 - (ii) be of an amount which is equal to at least 10% of the total price payable by the OC to the Builder pursuant to the Building Contract.
- (d) Within 10 Business Days of receipt of the proposed Building Contract, the Territory may notify the OC that it must request changes to the Milestone Schedule where it considers:
 - (i) that the Milestone Schedule is not consistent with the Approved Work;
 - (ii) the amount payable to the Builder is significantly higher and/or not consistent with any Cost Estimate for the Approved Works provided by the OC to the Territory; or
 - (iii) in the reasonable opinion of the Territory it represents a significant departure from best industry practice.
- (e) Provided the Territory:
 - (i) has received all documents and information from the OC required for the purpose of the Scheme; and
 - (ii) it is satisfied with the documents and information provided by the OC including the proposed Building Contract,

the Territory will, within a reasonable period of time, issue a Final Approval to the OC and the Loan Administrator.

5.4 Final Credit Approval

- (a) If the OC has already obtained a Credit Approval from the Loan Administrator, upon issue of a Final Approval by the Territory, the Loan Administrator will be required to make any necessary amendments to the Participant Loan Agreement as directed by the Territory in its Final Approval, taking into account any difference between the Cost Estimate and Contract Price. Upon the Loan Administrator confirming in writing to the OC that it has made those adjustments to the Participant Loan Agreement, Final Credit Approval will be deemed to have issued to the OC.
- (b) If the OC has not already obtained a Credit Approval from the Loan Administrator, upon receipt by the Loan Administrator of a Final Approval from the Territory:
 - (i) the OC must satisfy all of the requirements from time to time of the Loan Administrator in order to confirm the OC is entitled to a Participant Loan of an amount equivalent to the Contract Price; and
 - (ii) upon being satisfied in respect of the matters in **clause 5.4(b)(i)**, the Loan Administrator will be required to provide its Final Credit Approval.
- (c) The Territory does not guarantee, represent or warrant that the OC will receive Final Credit Approval from the Loan Administrator.
- (d) The Territory is not liable or responsible to the OC for any decision to grant or withhold Final Credit Approval, any failure to grant Final Credit Approval, any failure to provide an instalment or any other act or omission of the Loan Administrator.

5.5 Hardship Policy

The OC must cooperate in good faith, provide any reasonable assistance required and comply with any reasonable request of the Territory in any instance where the Territory may wish to grant relief to an owner of a unit in the Approved Building who is unable to pay the required levies in respect of the Participant Loan due to bona fide hardship reasons. This does not limit any rights that the OC or an owner may have under law, including the *National Consumer Credit Protection Act 2009* (Cth) to the extent applicable.

6. Removal from Scheme

The Territory may require the Loan Administrator to:

- (a) withhold the payment of funds to the OC under the Participant Loan Agreement; and/or
- (b) terminate the Participant Loan Agreement;

where the OC is in breach of a provision of this Deed and:

- (c) OC has failed to remedy the breach within the period specified in a notice by the Territory; or
- (d) the breach is not capable of being remedied.

7. Liability

7.1 Release

The OC:

- (a) releases the Territory from any Claim or Liability; and
- (b) must not, and must not attempt to, bring or pursue or procure a third party to bring or pursue, any Claim against the Territory,

in connection with the Scheme, the Approved Works or the Participant Loan.

7.2 Indemnity

The OC indemnifies the Territory from and against any Claim or Liability suffered or incurred by the Territory in connection with:

- (a) any loss or damage to or of property, including any real or personal property, including property belonging to the Territory;
- (b) any injury to, illness or death of, any person; or
- (c) any third party actions brought against the Territory,

to the extent caused or contributed to by the OC, its agents, officers or subcontractors in connection with the Scheme, the Approved Works or the Participant Loan.

7.3 Limit on OC's indemnity

The OC's liability to indemnify and release the Territory in accordance with this Deed will be reduced to the extent that any such Claim or Liability is caused or contributed to by:

- (a) any breach by the Territory of this Deed; or

- (b) any fraudulent, negligent, reckless, unlawful or malicious act or omission of the Territory.

The Loan Administrator is not an agent or representative of the Territory. The acts or omissions of the Loan Administrator are not the acts or omissions of the Territory for the purposes of this Deed or the Scheme.

8. General

8.1 Territory's executive rights, duties and functions

- (a) Unless otherwise expressly provided, nothing in this Deed gives rise to any duty on the part of the Territory to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations in accordance with this Deed.
- (b) Notwithstanding anything expressly provided or implied in this Deed to the contrary, the parties agree that the Territory:
 - (i) is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other Government Party in the proper exercise and performance of any of its executive or statutory rights or duties; and
 - (ii) nothing expressly provided or implied in this Deed has the effect of constraining the Territory or placing any fetter on the Territory's discretion to exercise or not to exercise any of its executive or statutory rights or duties.
- (c) The OC is not entitled to make any claim against the Territory for any liability relating to any exercise or failure of the Territory to exercise any of its executive or statutory rights or duties

8.2 Variation

This Deed may be varied only by the written agreement of the parties prior to the expiration of this Deed.

8.3 No waiver

- (a) A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (b) A failure to exercise or enforce, a delay in the exercise or enforcement of or the partial exercise or enforcement of a right provided by law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by law or under this Deed.
- (c) No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

8.4 Severability

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

8.5 Governing law and jurisdiction

- (a) **(Governing Law)**: This Deed is governed by, and must be construed according to, the laws of the Australian Capital Territory.
- (b) **(Jurisdiction)**: Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

8.6 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same agreement.

8.7 Survival of clauses

- (a) All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:
 - (i) either party's rights to set-off and/or recover money;
 - (ii) any indemnity, release or financial security given under this Deed;
 - (iii) any limitation on liability; and
 - (iv) any right or obligation arising on termination or expiry of this Deed.
- (b) No provision of this Deed which is expressed to survive the termination, rescission or expiration of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination, rescission or expiration of this Deed.
- (c) No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.

SCHEDULE 1 - DETAILS

Item 1. Approved Building

[INSERT description]

Item 2. Approved Works

[INSERT description]

Signing page

EXECUTED as a **DEED**

DATED:

SIGNED for and on behalf of the **AUSTRALIAN**)
CAPITAL TERRITORY in the presence of:)

)
Signature of Territory delegate

)
Signature of witness

)
Print name

)
Print name

SIGNED by **[INSERT NAME OF OC]** by its)
authorised officer/s:)

)
Signature of authorised officer

)
Signature of second authorised officer

)
Print name and position

)
Print name and position