

[INSERT PROJECT NAME]

PROJECT FACILITATION AGREEMENT

NORTHERN TERRITORY OF AUSTRALIA

AND

[INSERT PROPONENT NAME]

NORTHERN TERRITORY OF AUSTRALIA

PROJECT FACILITATION AGREEMENT

[INSERT PROJECT NAME]

This **AGREEMENT** is made the [Insert day] day of [Insert month] 2017

BETWEEN

NORTHERN TERRITORY OF AUSTRALIA (ABN 84 085 734 992) care of the Department of Chief Minister and Cabinet, Ground Floor, Development House, 76 The Esplanade, Darwin in the Northern Territory of Australia (the "**Territory**")

AND

[**INSERT PROPONENT NAME**] [**INSERT ABN**] of [insert address] in the Northern Territory of Australia (the "**Proponent**")

BACKGROUND

- A. The Territory has awarded major project status to the Proponent in respect of its proposed [insert Project name].
- B. The Proponent proposes to develop the Project which comprises [insert Project summary].
- C. The Territory recognises the significance and the potential benefits that the Project could provide for the Proponent and the Northern Territory should it proceed.
- D. The Proponent and the Territory have agreed to work in a spirit of co-operation to seek to achieve the timely, efficient and effective development of the Project and to maximise the economic and community benefit for the Northern Territory.
- E. The Parties' commitments are set out in this Agreement.

THE PARTIES AGREE

1. DEFINITIONS AND INTERPRETATIONS

Defined Terms

- a) In this Agreement, unless the contrary intention appears:
 - i) **Business Day** means a day which is not a Saturday, Sunday or public holiday in Darwin in the Northern Territory;
 - ii) **Confidential Information** means all information in any form or media which:
 - A. by its nature is confidential;
 - B. is marked, or designated or confirmed by the discloser as confidential; or
 - C. a Party to this Agreement knows or ought to know is confidential.
 - iii) **EIS** means the Proponent's Environmental Impact Statement prepared for the purposes of assessment of the Project, in accordance with the *Environmental Assessment Act* (NT);
 - iv) **Final Investment Decision** or **FID** means a formal decision by the Proponent as to whether to proceed with the development and operation of the Project;

- v) **IPP** means an industry participation plan developed in accordance with clause 8;
- vi) **NT EPA** means the Northern Territory Environment Protection Authority, established by the *Northern Territory Environment Protection Authority Act* (NT);
- vii) **Party** or **Parties** means, depending on the context, the Territory, the Proponent, or both;
- viii) **Project** means [insert Project Description]; and
- ix) **Project Control Group** means the cross-agency working group for the Project referred to in clause 6; and

2. OBJECTIVES

- a) The Proponent's objectives in entering into this Agreement are to:
 - i) work cooperatively with the Territory to identify opportunities arising from the Project that benefit both the Territory and the Project; and
 - ii) receive all reasonable and appropriate assistance from the Territory in co-ordinating the relevant assessment of applications and determinations for granting or issuance of approvals, permits, licences or other authorities necessary for the Project in accordance with relevant statutory requirements and timeframes.
- b) The Territory's objectives in entering into this Agreement are to:
 - i) facilitate the Proponent's Final Investment Decision regarding the Project;
 - ii) provide a coordinated response to the needs of the Project:
 - A. through the operation of the Project Control Group;
 - B. by providing and reviewing information in a timely manner on issues relating to development of the Project;
 - C. by assisting to identify legislative requirements for the Project, including the obtaining of approvals, permits, licences and other authorities necessary for the Project; and
 - D. by co-ordinating timeframes for government processes to ensure proposals and applications for the Project are assessed and determinations are made in an appropriate and timely manner;
 - iii) continue to grow and diversify the economy within the Northern Territory through private investment in the infrastructure in the Project;
 - iv) maximise outcomes for local industry participation in the Project through the negotiation of an IPP which specifically addresses (but is not limited to) business opportunities, local employment, training and indigenous development opportunities; and
 - v) work proactively with the Proponent to identify, address, mitigate and manage key issues for the Project as appropriate, including water, gas, power, telecommunications, road, port and rail access and future service requirements.

3. COMMITMENT

- a) The Parties will:
 - i) work together in order to:

- A. achieve timely, efficient and effective development of the Project; and
 - B. maximise the economic and community benefits for the Territory from the Project;
- ii) share information relevant to the achievement of the matters set out in subclause i) in a timely manner; and
 - iii) allocate appropriate resources to the facilitation process contemplated by this Agreement.

4. **TERM**

- a) This Agreement will operate for a period of three (3) years from the date this Agreement is signed by both Parties unless:
 - i) extended pursuant to clause 4 b); or
 - ii) terminated earlier either:
 - A. in accordance with clause 14; or
 - B. by mutual agreement between the Parties.
- b) The Proponent may, not later than six (6) months prior to the expiry of this Agreement and in writing, seek an extension to this Agreement. The Territory may grant or refuse an extension of this Agreement in its absolute discretion and will give notice of its decision to the Proponent in writing.

5. **LEGISLATIVE AND ADMINISTRATIVE REQUIREMENTS AND APPROVALS**

- a) The Proponent will comply with all legislative and administrative requirements applicable to the Project.
- b) Where the Proponent identifies a legislative or administrative requirement that it considers to be a barrier to investment in the Project and the applicable legislation grants the Territory or relevant Minister of the Territory a discretion in respect of that requirement, the Proponent may request in writing that the Territory consider that requirement and such a request is to provide:
 - i) a detailed explanation of the practical or financial impact of compliance with the requirement on the Project;
 - ii) details of any alternative means of meeting the requirements considered by the Proponent and an explanation as to why those alternatives are not preferred by the Proponent; and
 - iii) a proposal addressing alternative means of meeting the requirement, detailing the anticipated financial impact to the Proponent and any other person resulting from the alternative proposal.
- c) Where, in accordance with clause 5(b), the Proponent has made a request to the Territory in relation to a legislative or administrative requirement, the Proponent acknowledges that:
 - i) the Territory will discuss the request with the Proponent; and
 - ii) the Territory, in its sole and absolute discretion, will decide whether to make any legislative or administrative change.

- d) The Proponent acknowledges and agrees that nothing in this Agreement is intended to fetter the exercise of any power or function contained in the laws of the Territory by a Minister, appointed officer or a delegate.

6. PROJECT CONTROL GROUP

- a) The Territory will establish the Project Control Group to facilitate the development of the Project. Membership of the Project Control Group will comprise agencies of the Territory that administer legislation relevant to the Project.
- b) The purpose of the Project Control Group is to:
 - i) identify, clarify and resolve key issues relating to the Project; and
 - ii) co-ordinate the activities of the agencies of the Territory to ensure a whole of government approach to the Project, efficient engagement between the Territory and the Proponent, and provision of appropriate responses to the Proponent.
- c) Membership of the Project Control Group by agencies of the Territory may vary over time depending upon the issues identified by the Proponent or the Territory but is anticipated to include representatives from the following Territory agencies:
 - i) Department of Primary Industry and Resources;
 - ii) Department of Trade, Business and Innovation;
 - iii) Department of Infrastructure, Planning and Logistics; and
 - iv) Department of Attorney-General and Justice,
- d) The Project Control Group will report to the Territory's Job sub-committee or other committees as determined from time to time by the Territory.
- e) The Project Control Group will meet at regular intervals as determined from time to time by the Territory.
- f) The Proponent may attend meetings of the Project Control Group where agreed to in advance by the Territory.

7. ENVIRONMENTAL ASSESSMENT

- a) The Proponent is responsible for identifying and obtaining all environmental approvals, permits, licences, authorisations or consents required for the Project to proceed.
- b) The Proponent is preparing an EIS for the Project in accordance with terms of reference issued by the NT EPA.
- c) The Proponent is aware that the NT EPA will provide recommendations to, and inform, the responsible Minister(s) about environmental matters relating to the granting or issuance of relevant approvals, permits, licenses, authorisations, or consents to proceed with the Project.

8. INDUSTRY PARTICIPATION PLAN

- a) The Proponent acknowledges that the Territory is committed to the participation of the Northern Territory and Australian industry, business and labour force in development projects within the Northern Territory.
- b) The Proponent agrees to engage with the Industry Capability Network of the Northern Territory and prepare an IPP that accords with:

- i) Territory Benefit Policy (as published by the Northern Territory Department of Trade, Business and Innovation); and
 - ii) any applicable requirements of the *Australian Jobs Act 2013* (Cth).
- c) Should any conflict arise between the two provisions in clause (b), the applicable requirements of the *Australian Jobs Act 2013* (Cth) will prevail.
- d) The Proponent acknowledges the IPP is to ensure businesses based in the Northern Territory have ample opportunity to bid for and win contracts for the Project during construction and operation of the Project.

9. MILESTONES

- a) The Proponent will progress the Project so as to achieve the milestones set out in Schedule 1 by the relevant milestone completion dates set out in Schedule 1.
- b) The Parties may amend Schedule 1 by written agreement signed by both Parties.

10. ACKNOWLEDGEMENTS BY THE PARTIES

- a) The Proponent acknowledges that:
 - i) the benefits associated with the Territory contributing to the Project through project facilitation are over and above the standard provision of regulatory and facilitative services;
 - ii) the Territory's responsibilities under this Agreement are subject always to:
 - A. the Proponent having complied with all legislative requirements;
 - B. legislative timeframes including public, third party or other consultation periods required by legislation;
 - C. the Territory giving due and proper consideration to all applications and other legislative instruments lodged by the Proponent in accordance with the relevant legislation;
 - D. the Territory's responsibilities under the *National Competition Policy* and related agreements and policies; and
 - E. factors which are outside of the Territory's reasonable control; and
 - iii) the Territory, prior to the development of this Agreement, has worked constructively with the Proponent towards achieving the objectives of this Agreement.
- b) The Territory acknowledges that the decision to proceed with all or any aspect of the Project is at the Proponent's absolute and sole discretion.

11. COMMUNICATION

- a) The Parties may:
 - i) develop and agree on a communication strategy to ensure that all stakeholders are kept informed about the Project;
 - ii) liaise in respect to briefings for Territory Ministers in relation to the Project; and
 - iii) agree on a project description, including statistics relating to the Project for use by the Parties in any publications by a Party.

12. PUBLICITY

- a) A Party will not, without the prior written consent of the other Party, make or publish any media release, press statement or public announcement ("Publication") regarding the terms of this Agreement except where:
 - i) the Territory deems the Publication to be in the public interest or the Publication is required by legislation; or
 - ii) in relation to a Publication made by the Territory, the Publication relates wholly to activities of the Territory in relation to the Project; or
 - iii) the Publication is required to be disclosed by law or the rules and requirements of a stock exchange; or
 - iv) in relation to a Publication made by the Proponent, the Publication relates wholly to activities of the Proponent in relation to the Project.
- b) If a Party is required to make a Publication under clauses 12 (a)(i) to (iv), the Party will use reasonable endeavours to notify the other Party at least five (5) Business Days prior to the Publication being published.

13. CONFIDENTIAL INFORMATION

- a) Each Party will hold all Confidential Information of the other Party in confidence and will not make any use of it, except for the purposes of performing the matters or things contemplated by this Agreement and will not disclose or permit or cause the Confidential Information of the other Party to be disclosed to any person without the prior written consent of the other Party, except:
 - i) to its employees or contractors, to the extent needed to allow them to perform the matters or things contemplated by this Agreement;
 - ii) which is required to be disclosed by law or the rules and requirements of a stock exchange;
 - iii) where such information has otherwise come into the public domain through no breach of either Party's confidentiality obligations; and
 - iv) in the case of the Territory, to the Parliament, the Administrator, Cabinet, a Minister or any Parliamentary, Ministerial or Cabinet Committee of the Territory.

14. TERMINATION OR CESSATION OF PROJECT

- a) Either Party may terminate this Agreement for any reason by giving ten (10) Business Days written notice to the other Party.
- b) If the Proponent fails to achieve two (2) or more of any of the milestones set out in Schedule 1 by the relevant milestone completion dates set out in Schedule 1, either Party may terminate this Agreement immediately by notice in writing to the other Party.
- c) Following termination of this Agreement (under this clause 14 or otherwise), the Proponent will ensure that the Project is no longer referenced or referred to as having Northern Territory major project status and will ensure that any such communications to this effect cease immediately upon termination.

15. STATUS OF AGREEMENT

- a) This Agreement is not intended to create legally binding and enforceable rights and obligations between the Parties, with the exception of clause 13 (Confidentiality) which is intended to be legally binding.
- b) The Proponent and the Territory acknowledge the benefits associated with working together on the Project and agree to work co-operatively to achieve the objectives set out in this Agreement.

16. DISPUTES

- a) If a dispute arises between the Parties as to any matter concerning this Agreement, the Party claiming the dispute will give the other Party written notice of the matter or matters in dispute ("Dispute Notice").
- b) Within five (5) Business Days of a Party receiving a Dispute Notice under clause a) above, representatives of the Parties will meet in an attempt to resolve the dispute.
- c) If the dispute is not resolved within five (5) business days of the Parties representatives meeting in accordance with clause c) above, the dispute will be referred to the chief executive officers of each Party for resolution. If the chief executive officers of the Parties cannot resolve the dispute within five (5) Business Days of it being referred to them, either Party may terminate this Agreement pursuant to clause 14 a).

17. AMENDMENTS

- a) Alterations, additions or amendments to this Agreement may only be made in writing signed by each of the Parties.

SCHEDULE 1 – PROJECT MILESTONES

No.	Project Milestone	Milestone Completion Date
1	Final investment decision	
2	Obtain key statutory approvals	
3	Financial close/Security project finance	
4	[Note – above are examples only]	
5		

EXECUTION PAGE

EXECUTED by the Parties as an Agreement.

SIGNED by _____
for and on behalf of the **NORTHERN TERRITORY OF AUSTRALIA (ABN 84 085 734 992)** in the
presence of:

Signature _____

Signature of Witness _____ Date _____

Name of Witness _____

SIGNED by **[insert proponent name]** _____

in accordance with section 127 of the *Corporations Act*.

Director _____

Name of Director _____ Date _____

Director _____

Name of Director _____ Date _____