



**Australian Government**

**Department of the Environment**

## **FUNDING AGREEMENT**

### **Caring for our Country: Target Area Grants 2013- 2014**

Project: Maria Creek invasive species control project

Project ID: TAG14-00326

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Commonwealth of Australia as represented by the  
Department of the Environment  
ABN 34 190 894 983 (**Department**)

Australian Rainforest Foundation  
ABN 44 073 434 563 (**Recipient**)



# PART A – Project specific details

## 1. How this Agreement works – overview

### 1.1 Components of this Agreement

This Agreement is comprised of:

- (a) Part A – these Project specific terms and conditions, the execution page and any applicable map;
- (b) Part B, Version 3.0 – the standard terms and conditions that apply to funding by the Department, available at [www.nrm.gov.au](http://www.nrm.gov.au); and
- (c) Part C, Version 1.0 – Program specific terms and conditions that apply to the Caring for our Country Target Area Grants: 2013-2014, available at [www.nrm.gov.au](http://www.nrm.gov.au).

### 1.2 Defined terms

Unless the contrary intention is expressed, capitalised terms in this Part A are defined at the front of either Part B or Part C.

## 2. Agreement Details

| Item No. | Description                      | Clause reference | Details   |
|----------|----------------------------------|------------------|---|
| 2.1      | <b>Department details</b>        | 1                | Commonwealth of Australia as represented by the Department of the Environment<br>ABN 34 190 894 983   |
| 2.2      | <b>Department Representative</b> | 1                | Position: Director, Queensland State Team<br>Phone: 1800 552 008<br>Email: <a href="mailto:CaringForOurCountry@environment.gov.au">CaringForOurCountry@environment.gov.au</a> |
| 2.3      | <b>Recipient details</b>         | 1                | Australian Rainforest Foundation<br>ABN 44 073 434 563  |
| 2.4      | <b>Recipient Representative</b>  | 1                | Name: Mr Roger Phillips<br>Position: Executive Director<br>Phone: 07 4051 2000<br>Email: <a href="mailto:arfroger@hotmail.com">arfroger@hotmail.com</a>                       |
| 2.5      | <b>Site details</b>              | 23               | The exact locations of Sites are as specified in the Project MERI Plan.   |
| 2.6      | <b>GST</b>                       | 7.3 and 7.5      | The Recipient is not a Government Related Entity.<br>The Recipient is registered for GST.   |

| Item No. | Description  | Clause reference | Details  |
|----------|--|------------------|--|
| 2.7      | <b>Exclusion from a perpetual Creative Commons Attribution Licence (CC-BY 3.0)</b> | 11.2             | None specified.  |
| 2.8      | <b>Confidential Information</b>  | 13               | Department's Confidential Information:<br>Not Applicable.<br>Recipient's Confidential Information:<br>None Specified.  |
| 2.9      | <b>Insurance</b>   | 16               | As at the Commencement Date:<br>(a) to the extent required by Law, workers' compensation insurance in respect of the Recipient's liability for any loss or claim by a person employed or otherwise engaged, or deemed to be employed or otherwise engaged, by the Recipient in connection with the Project; and<br>(b) public liability insurance covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Project for an insured amount of \$10 million per occurrence and not less than \$20 million in aggregate. |
| 2.10     | <b>Address for notices</b>   | 20               | <b>Department:</b><br>Position: Assistant Secretary, Program Delivery and Assessment Branch<br>Department of the Environment<br>Postal address: GPO Box 787, Canberra, ACT, 2601<br>Physical address: John Gorton Building, King Edward Terrace, Parkes, ACT, 2600<br>Email: CaringForOurCountry@environment.gov.au<br><b>Recipient:</b><br>Name: Mr Roger Phillips<br>Position: Executive Director<br>Postal address: PO Box 3006, Cairns QLD 4870  |

| Item No. | Description           | Clause reference | Details  |
|----------|-----------------------|------------------|--|
|          |                       |                  | Physical address: Suite 1B, 51 The Esplanade, Cairns, QLD, 4870<br>Email: arfroger@hotmail.com   |
| 2.11     | <b>Acknowledgment</b> | 34               | The Recipient must acknowledge the provision of the Funds:<br>(a) at a minimum, in accordance with the <i>Caring for our Country Recognition Guidelines</i> available at <a href="http://www.nrm.gov.au/resources/publications/c4oc/recognition-guidelines.html">http://www.nrm.gov.au/resources/publications/c4oc/recognition-guidelines.html</a> , or<br>(b) in any other form required by the Department. |

### 3. Project

The Project will be delivered in accordance with the Project MERI Plan.

#### 3.1 Project title

Maria Creek invasive species control project

#### 3.2 Project ID

TAG14-00326

#### 3.3 Project description

The Project will reduce and prevent the spread of invasive weed species into new habitats from private land located in the Mission Beach Cassowary Corridor, adjacent to the World Heritage listed Wet Tropics of Queensland. The Project will also increase landscape resilience, as well as the resilience of several populations of nationally significant species at risk on the property, by extending and recovering habitat range. The Project will be undertaken using disadvantaged Indigenous young people through an established partnership.

#### 3.4 Project Outcomes

The Project will deliver Project Outcomes in the Project Sites including:

- Conserve, protect and maintain species and ecosystems;
- Re-establish biodiverse environments that have been modified or removed from the landscape as a result of urbanisation;
- Protect our conservation estate; and
- Enhance the capacity of Indigenous and the broader community to conserve, manage and protect natural resources.

### 3.5 Project Activities

The Project will include the following Project Activities:

- Removal of the soil seed bank to control invasive species;
- Traditional fire management and pre-planting cultivation;
- Control of feral pigs;
- Revegetation; and
- Activities to engage and build capacity and skills of Indigenous and broader community in natural resource management.

### 3.6 Additional requirements

None Specified.

## 4. Project Period

The Project Period commences on the Commencement Date and ends no later than 30 June 2016.

## 5. Funds

### 5.1 Maximum amount of Funds

The maximum amount of approved Funds payable by the Department under this Agreement will be \$705,000 (exclusive of GST).

### 5.2 Payment

The Funds will, subject to clause 6.1, be paid within 30 days of each payment Milestone date specified in the Milestone Schedule.

### 5.3 Annual allocation of Funds

| Annual allocation of Funds (GST exclusive) |           |           |           |
|--|-----------|-----------|-----------|
|  | 2013/14   | 2014/15   | 2015/16   |
| Department Funds                           | \$297,500 | \$332,500 | \$75,000  |
| TOTAL (GST exclusive)                      |           |           | \$705,000 |

## 6. Milestone Schedule

| No.                             | Milestone description  | Milestone due on or before   | Amount (excluding GST) |
|---------------------------------|--|--|------------------------|
| <b>2013-14 Financial Year</b>   |  |  |                        |
| 1                               | Signing of Agreement by the Department   | Commencement Date  | \$59,500               |
| 2                               | Delivery of draft Project MERI Plan and confirmed Project Budget to the Department               | 40 business days from Signing of Agreement by the Department   | Not applicable         |
| 3                               | Approval of Project MERI Plan and Project Budget by the Department                               | 10 business days from Delivery of draft Project MERI Plan and confirmed Project Budget to the Department | \$119,000              |
| 4                               | Delivery of the mid-year progress report for the 2013-2014 financial year to the Department      | 3 February 2014  | Not applicable         |
| 5                               | Acceptance of the mid-year progress report for the 2013-2014 financial year by the Department    | 17 February 2014   | \$119,000              |
| 6                               | Delivery of pre-end-of-financial-year project status as at 31 May 2014 to the Department         | 15 June 2014   | Not applicable         |
| <b>2014-2015 Financial Year</b> |  |  |                        |
| 7                               | Delivery of the end-of-year progress report for the 2013-2014 financial year to the Department   | 1 August 2014  | Not applicable         |
| 8                               | Acceptance of the end-of-year progress report for the 2013-2014 financial year by the Department | 15 August 2014   | \$66,500               |
| 9                               | Delivery of the financial report for the 2013-2014 financial year to the Department              | 1 September 2014   | Not applicable         |

| No.                             | Milestone description  | Milestone due on or before | Amount (excluding GST) |
|---------------------------------|--|----------------------------|------------------------|
| 10                              | Acceptance of the financial report for the 2013-2014 financial year by the Department            | 15 September 2014          | \$133,000              |
| 11                              | Delivery of the mid-year progress report for the 2014-2015 financial year to the Department      | 2 February 2015            | Not applicable         |
| 12                              | Acceptance of the mid-year progress report for the 2014-2015 financial year by the Department    | 16 February 2015           | \$133,000              |
| 13                              | Delivery of pre-end-of-financial-year project status as at 31 May 2015                           | 15 June 2015               | Not applicable         |
| <b>2015-2016 Financial Year</b> |  |                            |                        |
| 14                              | Delivery of the end-of-year progress report for the 2014-2015 financial year to the Department   | 3 August 2015              | Not applicable         |
| 15                              | Acceptance of the end-of-year progress report for the 2014-2015 financial year by the Department | 17 August 2015             | \$15,000               |
| 16                              | Delivery of the financial report for the 2014-2015 financial year to the Department              | 1 September 2015           | Not applicable         |
| 17                              | Acceptance of the financial report for the 2014-2015 financial year by the Department            | 15 September 2015          | \$30,000               |
| 18                              | Delivery of the mid-year progress report for the 2015-2016 financial year to the Department      | 1 February 2016            | Not applicable         |

| No.                          | Milestone description   | Milestone due on or before   | Amount (excluding GST) |
|------------------------------|---|--|------------------------|
| 19                           | Acceptance of the mid-year progress report for the 2015-2016 financial year by the Department | 15 February 2016   | \$30,000               |
| 20                           | Delivery of pre-end-of-financial-year project status as at 31 May 2016                        | 15 June 2016   | Not applicable         |
| 21                           | Delivery of the final report and financial report to the Department                           | Within 40 Business Days after the end of the Project Period or the earlier termination of this Agreement | Not applicable         |
| <b>TOTAL (GST exclusive)</b> |   |  | <b>\$705,000</b>       |

## 7. Recipient Contributions and Other Contributions

- (a) The total amount of the Recipient's Contributions and / or Other Contributions is \$75,000 (exclusive of GST) and must be paid in accordance with the Project Budget.
- (b) The types and amounts of the Recipient's Contributions and the sources, types and amounts of the Other Contributions must be fully set out in the Project Budget.

## 8. Project Budget

### 8.1 Funds granted/contributed

| Payer                        | Amount (GST exclusive) |
|------------------------------|------------------------|
| Department                   | \$705,000              |
| Recipient Contributions      | \$ 0                   |
| Choice Australia Management  | \$75,000               |
| <b>TOTAL (GST exclusive)</b> | <b>\$780,000</b>       |

### 8.2 Planned expenditure

| Expenditure item                    | Amount (GST exclusive) |
|-------------------------------------|------------------------|
| Monitoring and reporting activities | \$25,000               |
| Project administration              | \$56,000               |
| Project specific activities         | \$624,000              |
| <b>TOTAL (GST exclusive)</b>        | <b>\$705,000</b>       |





**Australian Government**  
**Department of the Environment**

**8.3 Assets (if any)**

| Date approved by Department  | Date of expected acquisition | Description of Asset | Value          |
|------------------------------|------------------------------|----------------------|----------------|
| None specified               |                              |                      |                |
| <b>TOTAL (GST exclusive)</b> |                              |                      | None specified |

# Execution page

EXECUTED as an Agreement

## DEPARTMENT SIGNATURE BLOCK

SIGNED for and on behalf of the Commonwealth of Australia as represented by the **Department of the Environment** ABN 34 190 894 983 by a duly authorised representative

*Mark Nash*

Name of authorised representative (print)

*[Signature]*

Signature of authorised representative

*3/12/13*

Date

s22

*[Redacted]*

Name of witness (print)

*[Signature]*

Signature of witness

*3/12/13*

Date

## RECIPIENT SIGNATURE BLOCK

SIGNED by **Australian Rainforest Foundation** ABN 44 073 434 563 in accordance with section 127 of the *Corporations Act 2001* (Cth) by

*DAVID ANGLUS BUTLER*

Name of Director (print)

*[Signature]*

Signature of Director

*18 NOVEMBER 2013*

Date

*ROGER PHILLIPS*

Name of Director / Company Secretary (print)

*[Signature]*

Signature of Director / Company Secretary

*18 NOVEMBER 2013*

Date

## PART B – Standard terms and conditions

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### 1. Definitions

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

|                             |   |
|-----------------------------|---|
| <b>ABN</b>                  | has the same meaning as it has in section 41 of the <i>A New Tax System (Australian Business Number) Act 1999</i> (Cth).  |
| <b>Aboriginal Tradition</b> | has the same meaning as it has in section 3 of the <i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i> (Cth).   |
| <b>Accounting Standards</b> | the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia. |
| <b>Advisers</b>             | (a) the financial or legal advisers of a party; and<br>(b) the respective officers and employees of those financial or legal advisers.  |
| <b>Agreement</b>            | this agreement between the Department and the Recipient comprising Parts A, B and C, as amended from time to time in accordance with clause 21.3, and includes any Annexures.   |
| <b>Agreement Period</b>     | the period specified in clause 3.   |
| <b>Audit</b>                | an audit carried out by a Qualified Accountant in accordance with the Auditing Standards.   |
| <b>Auditor-General</b>      | the office established under the <i>Auditor-General Act 1997</i> (Cth) and includes any other person that may, from time to time, perform the functions of that office.   |
| <b>Auditor's Report</b>     | has the same meaning it has in the Auditing Standards.  |
| <b>Auditing Standards</b>   | has the same meaning as it has in sections 9 and 336 of the <i>Corporations Act 2001</i> (Cth), and refers to the auditing standards made by the Australian Auditing and Assurance Standards Board.   |
| <b>Business Day</b>         | in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place.   |
| <b>Commencement Date</b>    | the date this Agreement is executed by the parties or, if executed on separate days, the date on which this Agreement is executed by the last party to do so.   |
| <b>Commonwealth</b>         | the Commonwealth of Australia.  |
| <b>Completion Date</b>      | the day after the Recipient has done all that it is required to do under clauses 5 (Conduct of the Project), 6 (Funds)  |

and 8 (Records, reports and acquittals) of this Agreement to the satisfaction of the Department.

**Confidential Information**

information that is by its nature confidential; and

- (a) is designated by a party as confidential;
- (b) a party knows or ought to know is confidential; or
- (c) is Secret and Sacred Material,

but does not include:

- (d) information which is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation.

**Conflict of Interest**

any circumstance in which the Recipient or any of the Recipient's Personnel has an interest (whether financial or non-financial) or an affiliation that is affecting, will affect, or could be perceived to affect, the Recipient's ability to perform the Project, or its obligations under this Agreement, fairly and independently.

**Department**

the Commonwealth Department of the Environment or any other agency that administers this Agreement from time to time.

**Department Material**

any Material provided to the Recipient by the Department.

**Department Representative**

the person identified as such in the Agreement Details in Part A, or such other person as is notified by the Department from time to time.

**Electronic Communication**

has the same meaning as in the *Electronic Transactions Act 1999* (Cth).

**Financial Information**

information relating to the Recipient's receipt, retention and expenditure of the Funds, Recipient Contributions and Other Contributions including, at a minimum:

- (a) a balance sheet, an income statement and a cash flow statement in relation to the Funds, Recipient Contributions and Other Contributions;
- (b) a statement identifying any Funds, Recipient Contributions and / or Other Contributions paid to the Recipient under this Agreement that were not spent or committed by the end of the relevant financial year during the Agreement Period;
- (c) a detailed statement of revenue and expenditure in relation to the Funds, Recipient Contributions and Other Contributions received and receivable by the Recipient under this Agreement, which must include a definitive statement as to whether the Recipient's financial accounts in relation to the Funds, Recipient Contributions and Other Contributions are complete and accurate, and a statement of the balance of the Funds, Recipient

Contributions and Other Contributions in the relevant bank account; and

- (d) notes, comprising a summary of significant accounting policies and other explanatory notes that are relevant to the Funds, Recipient Contributions and Other Contributions,

prepared in accordance with the Accounting Standards for the relevant financial year.

**Freedom of Information Commissioner**

the office of that name established under the *Australian Information Commissioner Act 2010* (Cth) and includes any other person that may, from time to time, perform the functions of that office.

**Funds**

the amount payable by the Department to the Recipient under this Agreement and specified in Part A.

**GST Act**

the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Information Commissioner**

the office of that name established under the *Australian Information Commissioner Act 2010* (Cth) and includes any other person that may, from time to time, perform the functions of that office.

**Insolvency Event**

in respect of a party means:

- (a) if the party:
  - (i) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors; or
  - (ii) suffers any execution against its assets which has or will have an adverse effect on its ability to perform this Agreement; or
- (b) if the party is an incorporated entity:
  - (i) being insolvent; or
  - (ii) an administrator, liquidator, provisional liquidator, receiver, manager or controller under the *Corporations Act 2001* (Cth) being appointed to the party; or
  - (iii) an order being made for the winding up of the party; or
- (c) if the party is an individual:
  - (i) being bankrupt; or
  - (ii) entering into a scheme of arrangement with creditors; or
  - (iii) a mortgagee's or a chargee's agent being appointed; or
- (d) if the party is an Aboriginal or Torres Strait Islander corporation, the management of some or

all of the affairs of the corporation is assumed by someone other than the directors of the corporation in accordance with the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

|                                     |   |
|-------------------------------------|---|
| <b>Intellectual Property Rights</b> | <p>all intellectual property rights, including the following rights:</p> <ul style="list-style-type: none"><li>(a) copyright, patents, rights in circuit layouts, trade marks, designs, trade secrets, know how, domain names and any right to have Confidential Information kept confidential;</li><li>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and</li><li>(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,</li></ul> <p>whether or not such rights are registered or capable of being registered.</p> |
| <b>Interest</b>                     | <p>means interest calculated at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) plus 20 basis points.</p>   |
| <b>Item</b>                         | <p>an Item in Part A.</p>   |
| <b>Law</b>                          | <p>any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government.</p>   |
| <b>Losses</b>                       | <p>liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party).</p>   |
| <b>Material</b>                     | <p>any software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, data, metadata, and the subject matter of any category of Intellectual Property Rights.</p>   |
| <b>Milestone</b>                    | <p>any fixed date to be met by the Recipient in performing any of its obligations under this Agreement, as specified in the Milestone Schedule.</p>   |
| <b>Milestone Schedule</b>           | <p>the Milestone schedule set out in Part A.</p>  |
| <b>Moral Rights</b>                 | <p>the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in</p>   |

|                             |   |
|-----------------------------|---|
|                             | the <i>Copyright Act 1968</i> (Cth).  |
| <b>Ombudsman</b>            | the office of that name established under the <i>Ombudsman Act 1976</i> (Cth) and includes any other person that may, from time to time, perform the functions of that office.  |
| <b>Other Contributions</b>  | third party monetary contributions, if any, specified in Part A.  |
| <b>Part A</b>               | Part A to this Agreement, comprising terms and conditions specific to the Project.  |
| <b>Part B</b>               | Part B to this Agreement of the version stated in Part A, comprising standard terms and conditions.   |
| <b>Part C</b>               | Part C to this Agreement of the version stated in Part A, comprising terms and conditions specific to the Program.  |
| <b>Personal Information</b> | information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.   |
| <b>Personnel</b>            | in relation to a party, any natural person who is an employee, officer, agent or professional adviser of that party or, in the case of the Recipient, of a subcontractor.   |
| <b>Privacy Act</b>          | the <i>Privacy Act 1988</i> (Cth).  |
| <b>Privacy Commissioner</b> | the office of that name established under the <i>Australian Information Commissioner Act 2010</i> (Cth) and includes any other person that may, from time to time, perform the functions of that office.  |
| <b>Program</b>              | the program defined in Part C.  |
| <b>Program Outcomes</b>     | the Program outcomes defined in Part C.   |
| <b>Project</b>              | the project described in Part A.  |
| <b>Project Activities</b>   | the Project activities described in Part A.   |
| <b>Project Budget</b>       | the Project budget, if any, defined in Part C.  |
| <b>Project Event</b>        | any promotional event conducted by the Recipient relating to the Project, including celebration of Funds, all openings, ceremonies or other public events to mark the completion of any aspect of the Project and all other openings, ceremonies or public events which are related to the Project, excluding any event or aspects of any event (such as a ceremony) which involves Secret and Sacred Material. |
| <b>Project Material</b>     | any Material that is: <ul style="list-style-type: none"> <li>(a) created by the Recipient for the purpose of, or as a result of, the Recipient's performance of its</li> </ul>  |

|                                   |  |
|-----------------------------------|--|
|                                   | obligations under this Agreement; or   |
|                                   | (b) Third Party Material.  |
| <b>Project Outcomes</b>           | the Project outcomes described in Part A.  |
| <b>Project Period</b>             | the period during which the Project is to take place, as specified in Part A.  |
| <b>Qualified Accountant</b>       | a person who is: <ul style="list-style-type: none"> <li>(a) a member of the Institute of Chartered Accountants in Australia or of CPA Australia; and</li> <li>(b) unless otherwise agreed in writing by the Department, independent of the Recipient.</li> </ul>   |
| <b>Recipient</b>                  | the party specified as such in the Agreement Details in Part A.  |
| <b>Recipient Representative</b>   | the person identified as such in the Agreement Details in Part A, or such other person as is notified by the Recipient from time to time.  |
| <b>Recipient's Contributions</b>  | the recipient's monetary contributions, if any, specified in Part A.   |
| <b>Secret and Sacred Material</b> | any information or knowledge of special religious, spiritual or customary significance considered to be secret, exclusive or restricted by an Aboriginal person or according to Aboriginal Tradition.  |
| <b>Third Party Material</b>       | Material created by a third party that is: <ul style="list-style-type: none"> <li>(a) created or used for the purpose of, or as a result of, the Recipient's performance of its obligations under this Agreement; or</li> <li>(b) included, embodied in or attached to Project Material created by the Recipient.</li> </ul> |
| <b>Traditional Owner(s)</b>       | in relation to land, a local descent group of Aboriginal people who have common spiritual affiliations to an area of land (which affiliations place the group under a primary spiritual responsibility for the site) and who are entitled by Aboriginal Tradition to forage over the land.                                   |

## 2. Priority of Agreement documents

If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) Part C;
- (b) Part B;
- (c) Part A; and
- (d) documents incorporated by reference in this Agreement including, for example, the Project Budget, the Project Plan, or the Project MERI Plan, if any.



### **3. Agreement Period**

This Agreement commences on the Commencement Date and, unless terminated earlier, expires on the Completion Date.

### **4. Warranties and representations**

#### **4.1 Recipient warranties and representations**

The Recipient represents and warrants to the Department that:

- (a) it has all rights, title, licences, interests, property and regulatory approvals necessary to lawfully perform the Project (including, without limitation, the agreement or consent, where required by Law, of the relevant native title holder or claimants and the Traditional Owners recognised under land rights legislation);
- (b) it has, or is able to obtain, the written consent of any organisation that it will partner with or represent on the Project, including Traditional Owners (if relevant);
- (c) it has not received funding through other initiatives, programs or third parties for substantially the same activities to be undertaken for the Project;
- (d) it has full power and authority to enter into, perform and observe its obligations under this Agreement;
- (e) the execution, delivery and performance of this Agreement has been duly and validly authorised by the Recipient; and
- (f) no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, are threatened which, if adversely decided, could have an adverse effect on the Recipient's ability to perform its obligations under this Agreement.

#### **4.2 Recipient acknowledgement**

The Recipient acknowledges that the Department, in entering into this Agreement, is relying on the warranties and representations contained in this Agreement.

### **5. Conduct of the Project**

#### **5.1 Obligation to perform the Project**

In consideration of the provision of the Funds, the Recipient must perform the Project:

- (a) consistently with, and in furtherance of, the Program Outcomes;
- (b) within the Project Period;
- (c) in accordance with the Project Budget;
- (d) in accordance with all applicable Laws;
- (e) so as to meet the Milestones (by achieving the criteria for completion of the relevant Milestone specified in the Milestone Schedule, if any) and other Project performance requirements, and where no Milestones or Project performance requirements are specified, promptly and without delay;

- (f) so as to deliver the Project Outcomes and Project Activities and meet all reporting requirements, in accordance with the requirements of this Agreement; and
- (g) otherwise in accordance with the provisions of this Agreement.

## **5.2 Management of Conflicts of Interest**

- (a) The Recipient warrants, to the best of its knowledge, as at the Commencement Date, that no Conflict of Interest exists or is likely to arise in the performance of the Recipient's obligations under this Agreement.
- (b) If during the Agreement Period, a Conflict of Interest arises, or appears likely to arise, the Recipient must:
  - (i) immediately notify the Department in writing of the Conflict of Interest making a full disclosure of all relevant information relating to the Conflict of Interest and setting out the steps the Recipient proposes to take to resolve or otherwise deal with the Conflict of Interest; and
  - (ii) take such steps as the Department may reasonably require to resolve or otherwise deal with that Conflict of Interest.

## **5.3 Personnel**

The Recipient must, where required to do so by the Department, promptly provide information to the Department regarding the qualifications and / or performance of any Personnel of the Recipient in relation to the Project.

## **5.4 Liaison**

- (a) The Recipient must liaise with and report to the Department's Representative in relation to the Project, and as required by the Department's Representative for the purposes of this Agreement.
- (b) Upon request, the Recipient must, within the timeframe stipulated in the request or promptly if no timeframe is stipulated in the request, provide all information in relation to the Project or the Recipient as requested by the Department's Representative for the purposes of this Agreement, including for monitoring and evaluation purposes.

## **5.5 Delay**

- (a) Without limiting its obligations under clause 5.1, the Recipient must take all reasonable steps to minimise delay in undertaking or completing the Project.
- (b) If the Recipient anticipates any delay in performing its obligations under this Agreement, it must notify the Department of that delay:
  - (i) if a force majeure event has or is likely to occur, in accordance with clause 17; or
  - (ii) otherwise in accordance with clause 19.2.

## **5.6 Exclusions for emergency situations**

The Recipient is not required to perform any Project Activities where alternative actions are required in an emergency situation to mitigate and manage fire risks or other natural disasters to prevent the loss of life and / or property.

## **6. Funds**

### **6.1 Payment of the Funds**

- (a) Subject to Parliamentary appropriation and to the provisions of this Agreement, the Department agrees to pay to the Recipient the Funds in accordance with the Milestone Schedule.
- (b) Notwithstanding any other clause of this Agreement the Department may defer, reduce or not make a payment of Funds if at any time:
  - (i) the Recipient has not achieved a Milestone to the Department's satisfaction, that was due to be completed before the date of payment, until that Milestone is completed to the Department's satisfaction;
  - (ii) the Recipient has not performed the Project to the satisfaction of the Department and in accordance with the terms of this Agreement, until the Recipient remedies its non-performance;
  - (iii) the Recipient has any overdue reports or acquittals, under any contractual or statutory arrangement for funding with the Department or any other Australian Government agency;
  - (iv) the Department is of the reasonable opinion that the Recipient and / or its Personnel is not properly managing the Funds;
  - (v) the Department has insufficient Program funding available at the time the payment is due to the Recipient;
  - (vi) there is an Insolvency Event;
  - (vii) the Department has become entitled to terminate this Agreement under clause 19.1;
  - (viii) the Department forms the opinion, on reasonable grounds, having regard to the Project Budget (if any) and information provided in the reports, that the full payment is not properly required by the Recipient to carry out the Project or because of Project surpluses or underspends; or
  - (ix) the Recipient has not complied with any provision of this Agreement which provides that the Recipient will not be entitled to spend or receive any Funds until that obligation has been complied with.
- (c) Notwithstanding any other clause of this Agreement, if the Recipient has received any Funds, the Recipient is not entitled to spend those Funds if the Department has notified the Recipient that one or more of the circumstances specified in clauses 6.1(b)(i) to 6.1(b)(ix) (inclusive) applies, unless the Department agrees in writing otherwise.

### **6.2 Use of the Funds**

Funds provided under this Agreement:

- (a) must only be used for the purposes of carrying out the Project and performing this Agreement;
- (b) must not be used to cover the cost of any activities completed prior to the execution of this Agreement;
- (c) must not, unless agreed by the Department in writing, be used to cover the cost of any activities commenced but not yet completed prior to the execution of this Agreement;

- (d) are not to be applied towards administrative and other general costs of the Recipient unless any such costs are approved in writing by the Department or expressly included in the Project Budget;
- (e) must not, unless the prior written approval of the Department has been obtained, be used in a manner which is inconsistent with the Project Budget;
- (f) subject to clause 6.2(g), must not be used as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of any litigation. This clause 6.2(f) does not prevent the Recipient:
  - (i) providing a copy of this Agreement to a prospective financier; or
  - (ii) indicating to prospective financiers that the Department has agreed to provide the Funds for the purposes of the Project; and
- (g) may form part of an existing security held over the Recipient's assets provided a priority agreement is entered into between the Department, the Recipient and the Recipient's financier or holder of the existing security. The priority agreement must be on terms acceptable to the Department and must not allow the financier or holder of the existing security priority to the Funds.

### **6.3 Amount of Funds capped**

The amount of Funds to be contributed by the Department in relation to the Project will not exceed the maximum amount of Funds specified in Part A.

### **6.4 No liability for Department**

The Department accepts no liability for:

- (a) any debts incurred by the Recipient;
- (b) any monies owing by the Recipient to its Personnel;
- (c) any Project Budget or cost overruns; or
- (d) there being insufficient monies to complete the Project.

### **6.5 Repayment of Funds**

If:

- (a) on expiry or on any earlier termination of this Agreement, any or all of the Funds:
  - (i) have not been spent or committed in accordance with this Agreement; or
  - (ii) cannot, by reconciliation between the accounts and records maintained by the Recipient and the Project Budget, be shown, to the reasonable satisfaction of the Department, to have been spent or committed in accordance with this Agreement; or
- (b) at any time the Department forms the reasonable opinion that any Funds have been used, spent or committed by the Recipient other than in accordance with this Agreement,

the Department may by written notice to the Recipient:

- (c) require the Recipient to repay that part of the Funds, and the Recipient must repay to the Department the amount set out in the notice, within 20 Business Days of receipt of the notice;

- (d) deduct an equivalent amount from the Funds payable to the Recipient pursuant to this Agreement or from any other amounts payable to the Recipient under any other agreement with the Department; or
- (e) require the Recipient to use all or part of those Funds as the Department in its sole and unfettered discretion sees fit.

## 6.6 Failure to repay Funds

At the Department's absolute discretion, and without prejudice to any other rights available to the Department under this Agreement or at Law or in equity, if the Recipient fails to repay the Funds in accordance with a notice issued under clause 6.5(c):

- (a) the Department may require the Recipient to pay the Department Interest on the amount set out in the notice from the date it was due, for the period it remains unpaid; and
- (b) the amount set out in the notice, and Interest owed under clause 6.6(a), will then be recoverable by the Department as a debt due from the Recipient.

## 7. Taxes, duties and government charges

### 7.1 Definitions

In this clause 7, **consideration**, **GST**, **input tax credits**, **tax invoice**, **recipient created tax invoice** and **taxable supply** have the meaning given to those terms in the GST Act.

### 7.2 Liability for taxes, duties and government charges

Subject to this clause 7, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement must be borne by the Recipient.

### 7.3 GST status

- (a) If the Funds paid under this Agreement are:
  - (i) of a non-commercial, funding nature;
  - (ii) paid to a 'government related entity' for GST Act purposes (**Government Related Entity**); and
  - (iii) sourced from an appropriation,the parties rely on section 9-17(3) of the GST Act in determining that the payment of Funds is not consideration and that no GST is payable in respect of payment of Funds under this Agreement.
- (b) The Recipient must notify the Department if, after the Commencement Date, it becomes a Government Related Entity or ceases to be a Government Related Entity.

### 7.4 Payment of GST

- (a) Unless otherwise indicated, any consideration for a supply made under this Agreement is exclusive of any GST imposed on the supply.
- (b) Subject to clauses 7.3(a) and 7.6, if one party (the **supplier**) makes a taxable supply to the other party (the **recipient**) under this Agreement, the recipient must pay without set-off an additional amount to the supplier equal to the GST imposed on the supply in question.

- (c) No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

## **7.5 ABN**

- (a) Subject to clause 7.5(b), the Recipient warrants that it has an ABN, which it has correctly quoted to the Department. The Recipient must:
  - (i) immediately notify the Department of any changes to the Recipient's GST status or ABN; and
  - (ii) supply proof of its GST status, as and when requested by the Department.
- (b) If the Recipient does not have an ABN the Recipient may lodge with the Department a completed 'Statement by a Supplier' form claiming an exemption for lodging an ABN. The Recipient should seek advice from the Australian Taxation Office regarding the 'Statement by a Supplier' form if needed.
- (c) If the Recipient does not provide either an ABN or a completed 'Statement by a Supplier' form, then the Department will withhold from the payment an amount of 46.5 per cent or such other amount as determined by the Australian Taxation Office from time to time.

## **7.6 Recipient created tax invoice**

- (a) Subject to clause 7.7, the Department will issue recipient created tax invoices and any adjustment notes for taxable supplies by the Recipient to the Department under this Agreement within 20 Business Days of determining the value of the taxable supplies in question.
- (b) The Recipient must not issue tax invoices or adjustment notes for taxable supplies by the Recipient to the Department under this Agreement.

## **7.7 Invoice**

- (a) Where clause 7.3(a) applies or the Recipient is not registered for GST, the Department will issue an invoice to the Recipient within 20 Business Days of determining the relevant amount due.
- (b) The Recipient must not issue invoices to the Department under this Agreement.

# **8. Records, reports and acquittals**

## **8.1 Records and accounts**

The Recipient must:

- (a) keep comprehensive and accurate accounts and records of its use of the Funds, that can be separately identified from other accounts and records of the Recipient; and
- (b) retain the accounts and records referred to in this clause 8 for the Agreement Period and a further period of seven years from the expiry or termination of this Agreement or such longer period as may be required by Law.

## **8.2 Recipient must keep records**

The Recipient must keep comprehensive records of the conduct of the Project including progress against the Milestones and the achievement of the Project Outcomes and Project Activities.

### **8.3 Provision of records to the Department**

The Recipient must:

- (a) deliver information, data and other Material (including reports) produced under or in connection with this Agreement and otherwise as reasonably required by the Department; and
- (b) provide all information, data and other Material (including reports) to the Department in accordance with the timeframes specified in this Agreement and otherwise promptly upon demand.

### **8.4 Financial records**

The Recipient must keep financial records relating to the Project so as to enable:

- (a) all revenue and expenditure related to the Project to be identified in the Recipient's accounts;
- (b) the preparation of the Financial Information; and
- (c) the Audit of those records.

### **8.5 Reports**

- (a) Without limiting the Recipient's other obligations under this Agreement, the Recipient must provide to the Department the reports (if any) in accordance with Part C, and substantially in the form of the template specified by the Department from time to time (if any).
- (b) If the Department notifies the Recipient that a report submitted is not to the Department's satisfaction, the Recipient must make the required amendments and resubmit the report to the Department.

### **8.6 Additional Reports**

- (a) In addition to the reports required under clause 8.5, the Department may at any time, and from time to time, during the Agreement Period, require the Recipient to provide reports and other information (**Additional Reports**).
- (b) Where the Department requires an Additional Report, it will issue a direction in writing to the Recipient requiring an Additional Report to be provided and specifying the Department's requirements in relation to the format, content, information and substantiating documentation to be submitted, and auditing or certification (if any), for that Additional Report.
- (c) The Recipient must comply with a direction of the Department under this clause 8.6 by submitting the requested Additional Report which complies with all requirements of the Department as set out in its direction, within the period of time in the direction, or such longer time period as the parties agree in writing.
- (d) The Recipient will be liable for its own costs associated with complying with a direction to submit an Additional Report.

## **9. Access to premises and records**

### **9.1 Access to records and Materials**

- (a) The Recipient acknowledges and agrees that the Department and any persons nominated by the Department may, at reasonable times and on giving reasonable notice to the Recipient:

- (i) access and inspect the Recipient's premises to the extent relevant to the performance of this Agreement (including to conduct site audits to assess progress of the Project);
  - (ii) access and inspect any Assets, wherever they may be located;
  - (iii) require the Recipient (including its Personnel) to provide records, documents and information relevant to the performance of this Agreement in a data format and storage medium accessible by the Department;
  - (iv) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Recipient (including its Personnel) relevant to the performance of this Agreement; and
  - (v) require assistance in respect of any inquiry into or concerning the Project, the Program or this Agreement. For the purpose of this clause 9.1(a)(v), an inquiry includes any administrative or statutory review, audit or investigation (whether within or external to the Department), any request for information directed to the Department, any judicial or quasi-judicial inquiry, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) The Recipient must promptly comply with all requirements of the Department under this clause 9.1.

## **9.2 Access to hardware and software**

The Recipient must provide the Department (including its Personnel) with access to the Recipient's computer hardware and software to the extent necessary for the Department to exercise its rights under clause 9.1, and must provide the Department with any reasonable assistance requested by it to use that hardware and software.

## **9.3 Exclusion for Secret and Sacred Material**

- (a) For the purpose of clauses 9.1 and 9.2, the Recipient is not required to provide the Department or any persons nominated by the Department, with access to any:
- (i) records, documents and information relevant to the performance of this Agreement; or
  - (ii) documentation, books and records, however stored, in the custody or under the control of the Recipient (including its Personnel) relevant to the performance of this Agreement,
- that principally comprises Secret and Sacred Material.
- (b) Wherever possible, the Recipient must provide the information in clause 9.3(a) in a format that will provide the greatest level of information to the Department without disclosing Secret and Sacred Material.

## **9.4 Costs**

- (a) Subject to clause 9.4(b), each party must bear its own costs of any inspections, reviews, audits and inquiries conducted pursuant to this clause 9.
- (b) If an audit, inspection, review or inquiry conducted pursuant to this clause 9 identifies a breach by the Recipient of this Agreement, the Department may recover its costs of conducting that inspection, review, audit or inquiry as a debt due from the Recipient.



## 9.5 Auditor-General, Ombudsman and Commissioners

Without limiting clauses 9.1 and 9.2, the Department's rights under clauses 9.1 and 9.2 apply equally to the Auditor-General, the Ombudsman, the Information Commissioner, the Privacy Commissioner, the Freedom of Information Commissioner or their delegates, for the purpose of each performing their functions or activities (as the case may be).

## 9.6 Application of this clause

- (a) The Recipient must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 9.
- (b) This clause 9 applies for the duration of the Agreement Period and for a period of seven years from the termination or expiry of this Agreement.

# 10. Work, health and safety

## 10.1 Definitions

In this clause 10:

- (a) **corresponding WHS law** has the meaning given in the WHS Act;
- (b) **Regulator** means an authority referred to in a WHS Law as the relevant authority for occupational health and safety complaints, queries or investigations;
- (c) **WHS Act** means the *Work Health and Safety Act 2011 (Cth)*;
- (d) **WHS Law** means the WHS Act and any corresponding WHS law;
- (e) **WHS entry permit holder** has the meaning given in the WHS Act; and
- (f) **WHS Regulations** means the regulations made under the WHS Act.

## 10.2 Compliance with laws and policies

- (a) The Recipient must, in carrying out its obligations under this Agreement, comply, and use reasonable endeavours to ensure that its subcontractors comply, with the provisions of all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority including those arising under a WHS Law in respect of occupational health and safety.
- (b) The Recipient must, in carrying out its obligations under this Agreement, comply, and use reasonable endeavours to ensure that its subcontractors comply, with any of the Commonwealth's work, health and safety policies as notified, referred to, or made available, by the Commonwealth to the Recipient in writing.

## 10.3 Notifiable incidents and contraventions

- (a) If the Recipient is required by a WHS Law to report to a Regulator an incident arising out of the Project:
  - (i) at the same time, or as soon as is possible in the circumstances, the Recipient must give notice of such incident, and a copy of any written notice provided to a Regulator, to the Department; and
  - (ii) the Recipient must provide to the Department, within such time as is specified by the Department, a report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future.

- (b) The Recipient must inform the Department of the full details of:
  - (i) any suspected contravention of a WHS Law relating to the Project, within 24 hours of becoming aware of any such suspected contravention;
  - (ii) any cessation or direction to cease work relating to the Project, due to unsafe work, immediately upon the Recipient being informed of any such cessation or direction;
  - (iii) any workplace entry by a WHS entry permit holder, or an inspector, to any place where the Project is being performed or undertaken, within 24 hours of becoming aware of any such workplace entry; and
  - (iv) any proceedings against the Recipient or its officers, or any decision or request by the Regulator given to the Recipient or its Personnel, under a WHS Law, within 24 hours of becoming aware of any such proceedings, decision or request.

#### **10.4 Department's premises**

The Recipient must, when using the Department's premises or facilities, comply with all reasonable directions and procedures relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by the Department or as might reasonably be inferred from the use to which the premises or facilities are being put.

### **11. Project Material and Intellectual Property Rights**

#### **11.1 Intellectual Property Rights in Project Material**

- (a) Subject to clause 11.1(b), all Intellectual Property Rights in the Project Material created by the Recipient will vest, upon creation, in the Recipient.
- (b) This Agreement does not affect the ownership of the Intellectual Property Rights in any Third Party Material.

#### **11.2 Licensing of Project Material under a Creative Commons Licence**

- (a) The Recipient must make, or must procure for the making of, all Project Material (excluding Secret and Sacred Material) available under a perpetual Creative Commons Attribution Licence (CC-BY 3.0) with the exception of the Project Material specified at Part A Item 2.7.
- (b) For the purpose of this Agreement, the Creative Commons Attribution Licence (CC-BY 3.0) is the form of licence detailed at <http://creativecommons.org.au/>.

#### **11.3 Licensing of Project Material generally**

Notwithstanding any other provision of this Agreement, the Recipient grants, or must procure for, the Department a perpetual, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, modify, adapt, communicate, publish, broadcast and exploit the Project Material (excluding Secret and Sacred Material) for any non-commercial purpose.

#### **11.4 Third Party Material**

- (a) The Recipient must provide Third Party Material necessary or appropriate to perform its obligations under this Agreement.
- (b) If the Recipient cannot obtain the licences as described in clauses 11.2 and 11.3 for any Third Party Material, the Recipient must:

- (i) notify the Department of the best alternative licence terms for that Third Party Material and not use that Third Party Material unless the Department consents to those terms; and
- (ii) if the Department does not consent to those terms, notify the Department of any comparable Third Party Material and comply with its obligations under this clause 11.4 in respect of comparable Third Party Material.

### **11.5 Project Material copies**

On termination or expiry of this Agreement, or earlier if requested by the Department, the Recipient must promptly deliver a copy of all Project Material then in existence to the Department in an agreed format, or as otherwise directed by the Department.

### **11.6 Intellectual Property Rights warranties**

- (a) The Recipient warrants that anything done by the Recipient in the course of the Project, including in developing the reports, will not infringe the Intellectual Property Rights or Moral Rights of any person.
- (b) The Recipient further warrants that the Department or its sublicensees will not, at any time, be infringing the Intellectual Property Rights or Moral Rights of any person when undertaking an activity allowed for under this Agreement or using Project Material (excluding Secret and Sacred Material) in a manner consistent with the licences granted, or to be granted, to the Department under this clause 11.

### **11.7 Department Material**

Intellectual Property Rights and title to Department Material remains vested at all times in the Department. The Department grants to the Recipient a royalty-free, world-wide, non-exclusive licence (including a right of sublicense to subcontractors) to use, reproduce and modify the Department Material solely for the purposes of the Project. The Recipient must ensure that all Department Material is used strictly in accordance with any conditions or restrictions specified by the Department from time to time.

### **11.8 Moral Rights**

- (a) To the extent permitted by Law, the Recipient must, where requested by the Department in writing, use best endeavours to ensure that each person who:
  - (i) has been involved in the performance of the Project; or
  - (ii) is or will be the author of any Project Material (including the reports) that is to be licensed to the Department in accordance with this clause 11,provides a written consent to the Department permitting the Department (including its Personnel) to conduct any act which would otherwise infringe the Moral Rights held by that person.
- (b) The consent provided under clause 11.8(a) must be consistent with the Department being able to conduct any act it is licensed to conduct under this Agreement.

## **12. Acknowledgement and Project Events**

### **12.1 Acknowledgement**

- (a) The Recipient must acknowledge, in the required form as set out in Part C, the support it has received from the Department:

- (i) in all publications, promotional and advertising Materials related to or developed as a result of the Project;
  - (ii) on any signs or plaques displayed at the location where the Project is undertaken;
  - (iii) in all activities undertaken by it or on its behalf in relation to the Project;
  - (iv) if requested by the Department, with any products, processes or inventions developed as a result of the Project;
  - (v) at any Project Event; and
  - (vi) otherwise at the times and in the manner as the Department directs from time to time.
- (b) If requested by the Department, the Recipient must provide a copy of any publication, promotional or advertising Material related to or developed as a result of the Project to the Department, in the format and within the timeframe requested by the Department.
  - (c) The Recipient must ensure that any Material containing the required acknowledgement specified in Part C does not include any immoral, misleading, offensive, political or defamatory material.

## **12.2 Project Events**

- (a) The Recipient must:
  - (i) invite representatives of the Department to all Project Events; and
  - (ii) ensure that the official proceedings in each Project Event allows for a Department representative to speak.
- (b) Once any arrangement has been confirmed in relation to clause 12.2(a), the Recipient must, as soon as practicable, notify the Department in writing of any change to the Project Event.

## **12.3 Announcements**

The Recipient must notify the Department, before making a public announcement in connection with this Agreement or any transaction contemplated by it except if the announcement is required by Law or a regulatory body (including a relevant stock exchange), and provide a copy of the announcement to the Department.

# **13. Confidential Information**

## **13.1 Confidential Information not to be disclosed**

- (a) Subject to clause 13.2, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- (b) In giving written consent to the disclosure of Confidential Information, the Department may impose such conditions as it thinks fit, and the Recipient must comply with these conditions.

## **13.2 Exceptions to obligations**

The obligations on the parties under this clause 13 will not be taken to have been breached to the extent that Confidential Information is:

- (a) disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;

- (b) disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement related activities;
- (c) to the extent that a party is a government agency or organisation, disclosed by that party to its responsible Minister;
- (d) to the extent that a party is a government agency or organisation, disclosed by that party, in response to a request by a House or a Committee of its Parliament;
- (e) shared by the Department within the Department's organisation, or with another Australian Government agency, where this serves the Australian Government's legitimate interests;
- (f) authorised or required by Law, including under this Agreement, under a licence or otherwise, to be disclosed; or
- (g) in the public domain otherwise than due to a breach of this clause 13.

### **13.3 Obligations on disclosure**

Where a party discloses Confidential Information to another person:

- (a) pursuant to clauses 13.2(a), (b) or (e), the disclosing party must:
  - (i) notify the receiving person that the information is Confidential Information; and
  - (ii) not provide the information unless the receiving person agrees to keep the information confidential; or
- (b) pursuant to clauses 13.2(c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information.

### **13.4 No reduction in privacy obligations**

Nothing in this clause 13 derogates from any obligation which either party may have either under the Privacy Act as amended from time to time, or under this Agreement, in relation to the protection of Personal Information.

## **14. Personal Information**

### **14.1 When does this clause apply?**

This clause 14 applies only if the Recipient deals with Personal Information when it conducts the Project.

### **14.2 Other definitions relating to Personal Information**

In this clause 14, the terms **agency** and **Information Privacy Principles** (or **IPPs**) have the same meaning as they have in section 6 of the Privacy Act, and **subcontract** has the same meaning it has in section 95B(4) of the Privacy Act.

### **14.3 Recipient's obligations about Personal Information**

The Recipient must:

- (a) if it obtains Personal Information while conducting the Project or otherwise performing its obligations under this Agreement, use or disclose that Personal Information only for the purposes of this Agreement;
- (b) comply with the IPPs as if the Recipient were an agency under the Privacy Act; and
- (c) otherwise comply with the Privacy Act.

#### **14.4 Subcontractors**

The Recipient must ensure that any subcontract entered into by it in relation to the Project places the same obligations about Personal Information on the subcontractor as this clause 14 places on the Recipient.

### **15. Indemnity and release**

#### **15.1 Indemnity**

The Recipient indemnifies the Department and continues to indemnify the Department against, all:

- (a) Losses suffered or incurred by the Department, including as the result of any claim made in relation to loss of or damage to third party property or, the injury, illness or death of a third party;
- (b) loss of, or damage to, the Department's property; or
- (c) Losses suffered or incurred by the Department in dealing with any claim against the Department, including legal costs and expenses on a solicitor / own client basis and the cost of time spent, resources used, or disbursements paid by the Department,

arising from:

- (d) any act or omission by the Recipient (including any of its Personnel) in connection with this Agreement;
- (e) any breach by the Recipient (including any of its Personnel) of its obligations or warranties under this Agreement;
- (f) any use or disclosure by the Recipient (including its Personnel) of Personal Information or Confidential Information (or both, as the case may be) held or controlled in connection with this Agreement; or
- (g) the use by the Department of the Project Material in accordance with this Agreement, including the Intellectual Property and Moral Rights comprised in the Project Material.

#### **15.2 Release**

On and from the Commencement Date, the Recipient releases the Department from:

- (a) all claims, actions, demands and proceedings which it may have, or claim to have, or but for this release might have had, against the Department arising out of this Agreement or in any way connected with the performance of this Agreement; and
- (b) all liability of the Department arising out of this Agreement.

#### **15.3 Proportional reduction of liability**

The Recipient's liability to indemnify and release the Department under clauses 15.1 and 15.2 will be reduced proportionately to the extent that any negligent or unlawful act or omission, or wilful misconduct on the part of the Department (including its officers and employees) contributed to the relevant Loss.

#### **15.4 Department's right to be indemnified is additional to other rights**

The Department's right to be indemnified under clause 15.1 is in addition to, and not exclusive of, any other right, power, or remedy provided by Law or in equity, but the Department is not entitled to be compensated in excess of the amount of the relevant Loss.

## **16. Insurance**

### **16.1 Obligation to take out and maintain insurance**

- (a) As at the Commencement Date, the Recipient must take out or have taken out for the period specified in clause 16.1(b) or clause 16.1(c) (as the case may be) the insurances as specified in the Agreement Details in Part A.
- (b) If the Recipient takes out a 'claims made' policy, which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Recipient must maintain the policy (or a policy in like terms) during the Agreement Period and for a period of seven years on and from the expiry or the early termination of this Agreement.
- (c) If the Recipient takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Recipient must maintain the policy during the Agreement Period.
- (d) The Recipient must ensure that any subcontract entered into by the Recipient in relation to this Agreement places on the subcontractor, in respect of the subcontractor's activities, the same or similar obligations about insurances, as this clause 16 places on the Recipient.

### **16.2 Copies of insurance**

The Recipient must, on request, promptly provide to the Department any relevant certificates of currency of insurance for inspection.

## **17. Force majeure events**

### **17.1 Occurrence of force majeure event**

A party (**Affected Party**) is excused from performing its obligations under this Agreement to the extent it is prevented by circumstances beyond its reasonable control (other than a lack of Recipient's Contributions or Other Contributions for any reason or any strike, lockout or labour disputes in respect of the Recipient only), including but not limited to acts of God, natural disasters, acts of war, riots and strikes outside that party's organisation.

### **17.2 Notice of force majeure event**

When the circumstances described in clause 17.1 arise or are reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on its performance of this Agreement.

### **17.3 Termination**

If non-performance or diminished performance by the Affected Party due to the circumstances under clause 17.1 continues for a period of more than 30 consecutive days, the other party may terminate this Agreement immediately by giving the Affected Party written notice.

### **17.4 Consequences of termination**

If this Agreement is terminated under clause 17.3:

- (a) each party will bear its own costs and neither party will incur further liability to the other; and

- (b) where the Recipient is the Affected Party, it will be entitled to payment for work performed or expenses properly incurred prior to the date of intervention of the circumstances described in clause 17.1.

## **18. Dispute resolution**

### **18.1 Dispute resolution**

- (a) Subject to clause 18.2, the parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which has not been resolved by informal discussion, until the procedure provided by this clause 18 has been followed.
- (b) The parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:
  - (i) the party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
  - (ii) the parties will try to resolve the dispute through direct negotiation, including by referring the matter to persons who have the authority to intervene and direct some form of resolution; and
  - (iii) if within 40 Business Days from the date of the notice issued under clause 18.1(b)(i):
    - (A) there is no resolution of the dispute;
    - (B) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
    - (C) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 20 Business Days of the submission, or within such further extended time as the parties may agree in writing before the expiration of the 20 Business Days,then, either party may commence legal proceedings.

### **18.2 When clause 18.1 does not apply**

Clause 18.1 does not apply where:

- (a) either party commences legal proceedings for urgent interlocutory relief;
- (b) action is taken by the Department under, or purportedly under, clauses 6 (Funds), 9 (Access to premises and records) or 19 (Suspension or termination); or
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the Law by the Recipient.

### **18.3 Obligations continue**

- (a) Despite the existence of a dispute, both parties must continue to perform their respective obligations under this Agreement, unless a direction is issued in accordance with clause 18.3(b).
- (b) If directed and notified in writing by the Department to do so, the Recipient must cease performing the obligations of the Recipient under this Agreement which are specified in the Department's notice until the Department issues a further written notice to the Recipient directing it to resume performance of those obligations.



## 19. Suspension or termination

### 19.1 Termination for default

If:

- (a) the Recipient fails to comply with any timeframe under this Agreement on three or more occasions;
- (b) the Recipient fails to remedy its failure to comply with any term or condition of this Agreement within 10 Business Days of receiving a notice (or such longer period as the Department may at its sole and unfettered discretion specify in the notice) from the Department requiring the Recipient to do so;
- (c) the Recipient fails to successfully deliver any of the Project Outcomes or Project Activities;
- (d) the Department is satisfied on reasonable grounds that any statement, representation or warranty made by the Recipient is incorrect or incomplete in a way which would have affected the original decision to approve the Funds for the Project;
- (e) the Recipient is unable to provide the Recipient's Contributions or the Other Contributions which would have affected the original decision to approve the provision of the Funds by the Department for the Project;
- (f) the Department is satisfied on reasonable grounds that a report given by the Recipient is significantly misleading, or substantially incomplete or inaccurate;
- (g) the Department is satisfied on reasonable grounds that, following a Project review (if any is provided for in Part C), the Project no longer represents value for money;
- (h) there is an Insolvency Event;
- (i) the Recipient breaches any term or condition of any other funding agreement between the Recipient and an Australian Government agency; or
- (j) the Recipient, by notice in writing given to the Department, indicates its:
  - (i) inability to continue to perform the Project; or
  - (ii) intention to withdraw from the Project,

the Department may by written notice to the Recipient, require the Recipient to immediately suspend dealings with the Funds (in whole or in part), and/or terminate this Agreement in its entirety.

### 19.2 Potential Default

- (a) For the purposes of this clause **Potential Default** means any event, thing or circumstance which does not fall within the scope of clause 17 and which likely would:
  - (i) result in delay in meeting any requirement of the performance of the Project;
  - (ii) result in the Recipient not being able to achieve a Milestone within the timeframe specified in the Milestone Schedule; or
  - (iii) give rise to a right of termination pursuant to clause 19.1 with the giving of notice or the passage of time.
- (b) The Recipient must notify the Department immediately upon becoming aware of a Potential Default and must include the following information, substantially in the form of the template provided by the Department (if any), in its notice:

- (i) the nature of and reason for the Potential Default;
  - (ii) how the Recipient proposes to rectify the Potential Default;
  - (iii) the date on which the Recipient proposes that the Potential Default will be rectified; and
  - (iv) any expected impact that the Potential Default may have on the Project Budget or on the ability to comply with timeframes in the Milestone Schedule.
- (c) If the Department becomes aware of a Potential Default either through the receipt of notice from the Recipient under clause 19.2(b) or by any other means, the Department may provide the Recipient with a written notice setting out the nature of the Potential Default (**Notice of Potential Default**) any extension of time permitted and any requirements the Department has in relation to the rectification of the Potential Default or reduction in scope of the Project.
- (d) On receipt of a Notice of Potential Default the Recipient must remedy the Potential Default or, where the Potential Default is not capable of being remedied, prepare a plan for the Department's approval of the actions that the Recipient proposes to take to deal with the impact of the Potential Default (**Potential Default Plan**).
- (e) If:
- (i) the Recipient does nothing in response to the Notice of Potential Default;
  - (ii) the Department is not satisfied with the Potential Default Plan; or
  - (iii) the Recipient subsequently fails to comply with the Potential Default Plan,
- the Department may by written notice to the Recipient, require the Recipient to immediately suspend dealings with the Funds (in whole or in part) and/or terminate this Agreement in its entirety.
- (f) No action taken by the Department pursuant to this clause 19.2 will:
- (i) relieve the Recipient from, or alter or affect, the Recipient's liabilities or responsibilities whether under this Agreement or otherwise according to Law; or
  - (ii) prejudice the Department's rights against the Recipient whether under this Agreement or otherwise according to Law.

### **19.3 Termination for convenience**

- (a) The Department may, at any time by notice, terminate this Agreement or reduce the scope of the Project and amount of the Funds immediately.
- (b) Upon receipt of a notice of termination or reduction from the Department pursuant to this clause, the Recipient must:
  - (i) cease carrying out the Project to the extent specified in the notice;
  - (ii) take all available steps to minimise any Losses resulting from that termination or reduction; and
  - (iii) continue carrying out those parts of the Project not affected by the notice.
- (c) Where there has been a termination under this clause 19.3, the Department will only be liable for:

- (i) costs properly incurred in relation to the Project under this Agreement before the effective date of termination; and
  - (ii) reasonable costs incurred by the Recipient and directly attributable to the termination.
- (d) Where there has been a reduction in the scope of the Project, the Department's liability to the Recipient for payment of the Funds will, unless there is an agreement in writing to the contrary, be reduced in accordance with the reduction in the Project.
  - (e) The Department will not be liable to pay any costs referred to under this clause in an amount which would, in addition to any amounts paid or due, or becoming due, to the Recipient under this Agreement, together exceed the maximum amount of Funds specified in Part A.
  - (f) The Recipient will not be entitled to compensation for loss of prospective profits.
  - (g) The termination of this Agreement under this clause 19.3 does not discharge any right that a party may have for any prior breach of this Agreement.

#### **19.4 Dealing with Funds on termination or suspension**

- (a) On termination of this Agreement, or for the duration of any suspension of dealings with the Funds, the Recipient must only deal with the Funds in accordance with the directions of the Department and must cease all other dealings with the Funds. The directions of the Department may be given at any time after the termination or during any period of suspension. If the Department does not provide any directions the Recipient must not deal with the Funds.
- (b) The Department may end the suspension of dealings with the Funds by written notice to the Recipient, subject to such preconditions (including variations to this Agreement) which the Department may require.
- (c) The Department will not be obliged to pay any part of the Funds to the Recipient during any period of suspension of dealings with the Funds or, subject to clause 19.3, after the termination of this Agreement.

#### **19.5 Deemed termination for convenience**

If a purported termination for cause by the Department under clauses 19.1 or 19.2 is determined by a competent authority not to be properly a termination for cause, then that termination by the Department will be deemed to be a termination for convenience under clause 19.3, which termination has effect from the date of the notice of termination referred to in clause 19.1 or 19.2 (as the case may be), and the Recipient's sole rights in such circumstances will be only those set out in clause 19.3.

## **20. Notices and other communications**

### **20.1 Service of notices**

A party giving notice or notifying under this Agreement must do so in English and in writing or by Electronic Communication:

- (a) directed to the other party's contact person at the other party's address (as set out in the Agreement Details and as varied by any notice); and
- (b) hand delivered or sent by prepaid post or Electronic Communication to that address.

## **20.2 Effective on receipt**

A notice given in accordance with clause 20.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post:
  - (i) on the second Business Day after the date of posting if sent to or from an Australian capital city from the same or another capital city;
  - (ii) on the fourth Business Day after the date of posting if not sent to or from an Australian capital city; or
  - (iii) on the seventh Business Day after the date of posting if posted to or from a place outside Australia; or
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth),

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

## **21. General provisions**

### **21.1 Survival of provisions**

Termination or expiry of this Agreement for any reason does not extinguish or otherwise affect:

- (a) any rights of either party against the other which:
  - (i) accrued prior to the time of termination or expiry; or
  - (ii) otherwise relate to or may arise at any future time from any breach of non-observance of obligations under this Agreement which arose prior to the time of termination or expiry; and
- (b) the provisions of this Agreement which by their nature survive expiry or termination, including clause 1 (Definitions), clause 6 (Funds), clause 8 (Records, reports and acquittals), clause 9 (Access to premises and records), clause 13 (Confidential Information), clause 14 (Personal Information), clause 15 (Indemnity and release), clause 16 (Insurance), clause 19.3(c) (Liability of the Department), clause 19.4 (Dealing with Funds on termination or suspension), and clause 21.13 (Relationship).

### **21.2 Ownership of Agreement**

All copyright and other Intellectual Property Rights contained in this Agreement remain the property of the Department.

### **21.3 Varying this Agreement**

Subject to any Program specific variations permitted under Part C, this Agreement may only be varied in writing signed by each party.

### **21.4 Approvals and consents**

Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

## **21.5 Assignment and novation**

- (a) A party may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the other party.
- (b) The Recipient must obtain the Department's written consent before there is a change in control of the Recipient.

## **21.6 Costs**

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

## **21.7 Counterparts**

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

## **21.8 No merger**

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

## **21.9 Entire agreement**

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

## **21.10 Further action**

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

## **21.11 Severability**

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

## **21.12 Waiver**

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 any written waiver.

## **21.13 Relationship**

- (a) The parties must not represent themselves, and must ensure that their Personnel do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Agreement does not create a relationship of employment, agency or partnership between the parties.

## **21.14 Disclosure of information**

Notwithstanding any other provision of this Agreement, the Department may disclose information about this Agreement, including Personal Information, required to be reported by the Department.

## 21.15 Governing law and jurisdiction

This Agreement is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

## 22. Interpretation

In this Agreement, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by 'for example' or similar expressions;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time and any schedules, appendices or annexures to that document or instrument;
- (f) a reference to AUD, A\$, \$A, dollar or \$ is to Australian currency;
- (g) a reference to time is to the time in the place where the obligation is to be performed;
- (h) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) if the Recipient is a trustee, the Recipient enters this Agreement personally and in its capacity as trustee and:
  - (i) any warranties given under this Agreement are given in both capacities; and
  - (ii) warrants that it has the power to perform its obligations under this Agreement;
- (k) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and
- (o) to the extent that the parties have not completed any Item in Part A that Item will be taken to be 'not applicable' for the purpose of this Agreement, unless otherwise stated.

## PART C – Program specific terms and conditions

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### Program: Caring for our Country Target Area Grants: 2013-2014

#### 23. Definitions

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

|                                     |   |
|-------------------------------------|---|
| <b>Application Form</b>             | the form the Recipient submitted to the Department to apply for funding for the Project, under the Program.   |
| <b>Asset</b>                        | any item of tangible property, including software, purchased or leased either wholly or in part with the use of the Funds with a value at the time of acquisition of \$5,000 or more, excluding GST.  |
| <b>Business As Usual Activities</b> | acts or undertakings which the Recipient would undertake or would be required to undertake regardless of the Project.   |
| <b>Carbon Farming Initiative</b>    | the program through which carbon credits are provided under the <i>Carbon Credits (Carbon Farming Initiative) Act 2011</i> (Cth).   |
| <b>Depreciation</b>                 | has the same meaning as it has in Australian Accounting Standard AASB 116 <i>Property, Plant and Equipment</i> .  |
| <b>Dispose</b>                      | to sell, mortgage or encumber, lease or sublease, license or sublicense, assign or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts.  |
| <b>MERI</b>                         | Monitoring, Evaluation, Reporting and Improvement, as detailed in the MERI Strategy.  |
| <b>MERI Strategy</b>                | the <i>Monitoring, Evaluation, Reporting and Improvement Strategy – Caring for our Country and the Biodiversity Fund</i> available at <a href="http://www.nrm.gov.au">www.nrm.gov.au</a> .  |
| <b>NRM Region</b>                   | the natural resource management region identified by the Commonwealth within the boundaries of which the Site is located.   |
| <b>Program</b>                      | Caring for our Country Target Area Grants: 2013-2014.   |
| <b>Program Outcomes</b>             | to deliver against the five-year outcomes and contribute to the achievement of the three strategic objectives of the Sustainable Environment stream of Caring for our Country, as set out in the <i>Sustainable Environment stream: Target Area Grants 2013-14 Applicant Guidelines</i> . |
| <b>Project Budget</b>               | the budget specified in Part A detailing how the Recipient will spend the Funds, and identifying the Recipient's Contributions and Other Contributions (if any) to the  |



Project and the proposed expenditure of such amounts for the purposes of conducting the Project and otherwise performing its obligations under this Agreement as amended from time to time in accordance with clause 26(a).

|                                 |   |
|---------------------------------|---|
| <b>Project Generated Income</b> | any income earned or generated by the Recipient from its use of the Funds, including interest earned from the investment of the Funds, but does not include income earned or generated from the use of the Assets.  |
| <b>Project MERI Plan</b>        | the plan detailing how the Recipient will conduct and complete the Project, including relevant monitoring and evaluation activities to be undertaken, in accordance with this Agreement and the MERI Strategy, including timeframes for completion of various stages of the Project as amended from time to time in accordance with clause 25(e). |
| <b>Site</b>                     | the site where the Project will be undertaken and that is identified in the Agreement Details in Part A.  |

## 24. Project obligations

In consideration of the provision of the Funds, the Recipient must perform the Project in accordance with the provisions of this Agreement.

## 25. Project MERI Plan

- (a) Within the relevant timeframe specified in the Milestone Schedule, the Recipient must submit a draft Project MERI Plan for the Department's approval.
- (b) The draft Project MERI Plan must:
  - (i) comply with the MERI Strategy, including by detailing how the Project will be monitored and evaluated;
  - (ii) be substantially in the form of the applicable template provided by the Department;
  - (iii) further detail the Project Activities, to be undertaken at each stage of the Project, and how they will lead to achievement of the Project Outcomes;
  - (iv) detail how the Funds allocated for monitoring and reporting activities will be spent;
  - (v) detail how the Recipient will deliver the Project in accordance with this Agreement; and
  - (vi) be consistent with all timeframes arising under this Agreement and identify how they will be met.
- (c) Unless the Recipient is otherwise notified by the Department, the Department will reject or approve the draft Project MERI Plan within 40 Business Days of submission by the Recipient under clause 25(a). Where the draft Project MERI Plan is rejected, the Recipient must continue to submit a draft Project MERI Plan, including any necessary amendments until the Department approves a draft Project MERI Plan.

- (d) Once a draft Project MERI Plan is approved by the Department, it will become the final Project MERI Plan (subject to any agreed changes in accordance with clause 25(e)).
- (e) The Recipient must perform the Project in accordance with the final Project MERI Plan. The Project MERI Plan must be reviewed as part of the mid-year progress report (as a minimum) and updated to reflect any changes. All changes to the Project MERI Plan must be approved in writing by the Department.
- (f) For the avoidance of doubt, the Department's approval of the Project MERI Plan does not in any way limit the Recipient's responsibility for the performance of its obligations under the Agreement and any consequences of that performance.

## 26. Project Budget

- (a) Subject to clause 26(b), the Recipient must:
  - (i) perform the Project; and
  - (ii) only spend the Funds,in accordance with the Project Budget, unless approved in writing by the Department.
- (b) Subject to clause 26(b)(ii), the Recipient may transfer the Funds between categories of expenditure items within the Project Budget, without the consent of the Department, provided that such transfer does not exceed:
  - (i) 10 per cent of the relevant expenditure item specified in the Project Budget for a financial year from which the amount of Funds is being transferred; or
  - (ii) \$50,000, if the amount in clause 26(b)(i) is greater than \$50,000.
- (c) The Recipient must not use more than a combined total of fifteen per cent of the Funds for Project administration and monitoring and reporting activities, including the preparation of the Project MERI Plan.
- (d) For the avoidance of doubt, the Department's approval of the Project Budget or any amendment to the Project Budget does not in any way limit the Recipient's obligations under this Agreement.

## 27. Management of Funds

- (a) The Recipient must:
  - (i) ensure that the Funds are held in an account in the Recipient's name and which the Recipient solely controls, with a deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia; and
  - (ii) identify the receipt and expenditure of the Funds separately and any interest accrued on the Funds within the Recipient's accounts and records so that the Funds are identifiable at all times.
- (b) Notwithstanding clause 27(a)(i), the Department may, following the Commencement Date and by written notice, require the Recipient to ensure that the account referred to in clause 27(a)(i) is:
  - (i) established solely for the purposes of this Agreement; and
  - (ii) separate from the Recipient's other operational accounts.

## **28. Appointment of subcontractors**

- (a) Where the Recipient engages another party to deliver or assist in the delivery of any components of the Project, the Recipient must enter into a contract with that party and that contract must be consistent with the terms of this Agreement.
- (b) The Recipient is responsible for the performance of the Recipient's responsibilities under this Agreement regardless of whether the Recipient has subcontracted any of its obligations.
- (c) The Recipient must not enter into a subcontract under this Agreement with a subcontractor that is not compliant with the *Workplace Gender Equality Act 2012* (Cth).
- (d) If requested, the Recipient must promptly provide to the Department a copy of any contract relating to the Project and/or any Material relating to the engagement of the subcontractor.

## **29. Participation in evaluations, analysis and scientific monitoring**

### **29.1 Evaluation and analysis of the Project**

The Recipient must participate, as reasonably required by the Department, in studies, evaluations and other activities intended to analyse the success of the Project or Program in achieving the Program Outcomes. Such participation may, where required by the Department, include but not be limited to:

- (a) attending relevant conferences and forums in which evaluations and analysis are being undertaken;
- (b) allowing third parties access to the Site to undertake analysis, evaluation and monitoring of the Program and the Project;
- (c) making data, records and other information (including reports) available to third parties for the purposes of evaluation and analysis; and
- (d) participating in other monitoring and evaluation activities as requested by the Department.

## **30. Other contributions**

### **30.1 Recipient Contributions and Other Contributions**

- (a) It is a condition precedent to the payment of the Funds under this Agreement that:
  - (i) the Recipient must provide the Recipient's Contributions;
  - (ii) if requested by the Department, the Recipient must provide the Department with written evidence that the persons specified in the Project Budget will provide the Other Contributions, including the amounts to be provided, the due dates for each of these amounts and the terms and conditions of the provision of the Other Contributions; and
  - (iii) the basis on which the Other Contributions are to be provided is satisfactory to the Department.
- (b) The Recipient must ensure that the terms on which any other funding or contributions are provided to the Recipient for, or in connection with, the Project are not inconsistent with the terms of this Agreement and do not in any way limit or affect the Recipient's ability to comply strictly with its

obligations, or the Department's ability to exercise its rights, under this Agreement.

- (c) The Recipient must promptly notify the Department if the total amount of the Recipient's Contributions or Other Contributions reduces, or if such a reduction is anticipated.
- (d) If:
- (i) the Department receives notice under clause 30.1(c);
  - (ii) the Recipient does not provide the Recipient's Contributions or provide them in time to enable completion of the Project; or
  - (iii) the Recipient is not able to obtain the Other Contributions or obtain them in time to enable completion of the Project,
- then the Department may, in its absolute discretion:
- (iv) suspend payment of the Funds or an instalment of the Funds until the Recipient's Contributions are provided or the Other Contributions are received;
  - (v) reduce the amount of the Funds, adopting the formula in clause 30.1(e), where R = the reduced amount; or
  - (vi) terminate this Agreement in accordance with clause 19.
- (e) If, on expiry of the Agreement Period or any earlier termination of this Agreement, the Recipient's Contributions and / or the Other Contributions have not been provided in full, the Department may (without limiting its rights) require the Recipient to refund to the Department within 20 Business Days of a written notice from the Department, an amount of Funds calculated in accordance with the following formula (up to an amount that does not exceed the total amount of the Funds):
- $$R = OC - AC$$
- Where:
- R = The refund amount;
  - AC = The total aggregate amount of contributions actually made as Recipient's Contributions and / or Other Contributions for the Project pursuant to this Agreement; and
  - OC = The total aggregate amount of Recipient's Contributions and Other Contributions specified in Part A.
- (f) The Department may, in its absolute discretion, reduce the amount of the Funds required to be repaid by the Recipient in accordance with clause 30.1(e) to an amount lower than the amount determined by the formula prescribed in clause 30.1(e).

## **30.2 Notification of additional other contributions**

The Recipient must:

- (a) promptly notify the Department in writing of the amount and source of any additional funding or other contributions for the Project including income derived under the Carbon Farming Initiative as a result of the Project (other than Funds provided under this Agreement or contributions already identified in the Project Budget);

- (b) if requested by the Department, promptly provide to the Department copies of any written arrangements entered into, or proposed to be entered into, in respect of such other funding or contributions; and
- (c) ensure that the terms on which any other funding or contributions are provided to the Recipient for, or in connection with, the Project are not inconsistent with the terms of this Agreement and do not in any way limit or affect the Recipient's ability to comply strictly with its obligations, or the Department's ability to exercise its rights, under this Agreement.

### **30.3 Notification may trigger review**

- (a) On notification by the Recipient under clause 30.2 and if requested by the Department, the Recipient must provide to the Department a report within 40 Business Days of the request, including but not limited to the following information:
  - (i) an assessment of the Project to date;
  - (ii) an updated Project MERI Plan; and
  - (iii) an updated Project Budget.
- (b) If requested by the Department, the Recipient must provide any additional information and data to enable the Department to undertake its review.
- (c) The Department will assess the report and any additional information and data submitted under this clause and determine whether the Project continues to represent value for money. The Department will inform the Recipient, in writing, of the outcome of its review.
- (d) If the Department determines the Project no longer represents value for money the Department may, in its absolute discretion, and on giving 20 Business Days notice:
  - (i) reduce the amount of the Funds;
  - (ii) reduce the scope of the Project; or
  - (iii) terminate this Agreement under clause 19.1(g).

## **31. Assets**

### **31.1 Purchasing of Assets**

- (a) The Recipient must not use the Funds towards the purchase of Assets unless the Asset is identified in the Project Budget or the Recipient has obtained the prior written approval of the Department, which may be subject to any conditions the Department may, in its absolute discretion, impose.
- (b) An item which is not an Asset but is purchased by the Recipient using the Funds must only be purchased if the Recipient can show that the item is to be used in undertaking the Project.

### **31.2 Use of Assets**

The Recipient must not use Assets for any purpose other than the performance of the Project unless it has obtained the prior written approval of the Department, which will not be unreasonably withheld.

### **31.3 Obligations in relation to Assets**

The Recipient must:

- (a) not Dispose of any Asset, or deal with any Asset other than in accordance with this Agreement, without having obtained the prior written approval of the Department, which will not be unreasonably withheld;
- (b) maintain all Assets in good working order;
- (c) insure any Asset for its full replacement value;
- (d) be fully responsible for, and bear all risks arising in relation to, the use or Disposal of any Asset;
- (e) maintain a register of all Assets, recording the date of purchase or lease, the purchase or lease price, Asset description, Asset location, the proportion of the Funds used to create or acquire the Asset, the value of the Asset and (where approved under clause 31.3(a)) details of Disposal of the Asset, including the sale price; and
- (f) as and when requested, provide copies of the register of Assets to the Department.

### **31.4 Disposal of Assets**

- (a) At any time, the Recipient must obtain the prior written approval from the Department before Disposing of an Asset.
- (b) If, at the time of the Disposal, the Asset has not been fully Depreciated the Recipient must, within 10 Business Days of the Disposal, seek the Department's direction as to whether the Recipient must:
  - (i) pay to the Department, on or before a date to be directed by the Department, an amount equal to the proportion of the value of the Asset following Depreciation that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funds;
  - (ii) pay to the Department, on or before a date to be directed by the Department, the proceeds of the Disposal, less an amount equal to the sum of the proportionate contribution to the purchase price of the Asset that was not funded from the Funds and the Recipient's reasonable costs of Disposal of the Asset; or
  - (iii) use the amount payable to the Department under clause 31.4(b)(i) or (ii) (as the case may be) for a purpose (as directed by the Department), and in accordance with conditions, approved in writing by the Department.
- (c) Within 40 Business Days after the end of the Project Period or the earlier termination of the Agreement, the Recipient must provide to the Department a proposal setting out which one of the three following ways the Recipient would like each Asset to be dealt with:
  - (i) the Recipient will Dispose of the Asset at fair market value and comply with clause 31.4(b);
  - (ii) the Recipient will pay to the Department, on or before a date to be directed by the Department, an amount equal to the proportion of the value of the Asset following Depreciation that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funds; or
  - (iii) the Recipient will continue to use the Asset for purposes and on conditions to be reasonably directed by the Department.

- (d) The Department will consider the proposal submitted by the Recipient under clause 31.4(c) and direct the Recipient as to the way in which the Recipient must deal with each Asset.
- (e) The Recipient must fully implement the Department's directions under clause 31.4(d) to the satisfaction of the Department within 40 Business Days of the date of the direction.

### **31.5 Interest**

- (a) If the Recipient fails to make a payment or use the amount as required by clauses 31.4(b)(i), (ii) or (iii) or clause 31.4(c)(ii) (as the case may be), the Recipient must pay the Department:
  - (i) Interest on the relevant amount from the date it was due, for the period it remains unpaid; and
  - (ii) the relevant amount.
- (b) Interest owed under clause 31.5(a)(i) will be recoverable by the Department as a debt due from the Recipient.

## **32. Project Generated Income**

- (a) Subject to clause 32(b), the Recipient must treat Project Generated Income in accordance with the Department's written direction.
- (b) Unless otherwise directed by the Department in writing, the Recipient must apply any interest earned from the investment of the Funds to Project expenses or costs. The Recipient acknowledges that, the Department may, at its absolute discretion:
  - (i) authorise the use of Project Generated Income to maximise Project Outcomes;
  - (ii) require the return of the interest amount to the Department; or
  - (iii) offset future payment(s) of Funds against the interest amount.

## **33. Announcement documentation**

- (a) The Recipient must submit any Material containing the required acknowledgment specified in clause 34 to the Department 10 Business Days prior to publication or announcement of the event.
- (b) If the Department requires amendments to a proposed form of words of a publication, announcement or any Material, the Recipient must make the required amendment before allowing the words to be published or announced.
- (c) Notwithstanding the Department's review or proposal of a revised form of words in accordance with this clause, the Recipient will at all times remain responsible for the content and accuracy of published or announced Material.
- (d) The Department reserves the right to require any Material published or announced in breach of this clause 33 be fully withdrawn or retracted at the Recipient's cost.
- (e) Where Funds are granted to the Recipient to produce any publication, the Recipient must provide the Department with 45 hardcopies and one electronic copy of the publication unless the Department advises otherwise.

## 34. Acknowledgement

The Recipient must acknowledge the provision of the Funds by the Department:

- (a) at a minimum, in accordance with the *Caring for our Country Recognition Guidelines* available at <http://www.nrm.gov.au/resources/publications/c4oc/recognition-guidelines.html>; or
- (b) in any other form required by the Department.

## 35. Reports

### 35.1 Required reports

The Recipient must provide the following reports substantially in the form of any relevant template(s) provided by the Department:

- (a) reporting of Indigenous participation and employment, as specified in clause 35.2;
- (b) pre-end-of-financial-year project status notices, as specified in clause 35.3;
- (c) progress reports and a final report, as specified in clause 35.4; and
- (d) financial reports, as specified in clause 35.5.

### 35.2 Reporting of Indigenous participation and employment

Where relevant, the Recipient must report on the number of Indigenous people either directly employed or subcontracted, and / or engaged as volunteers in the Project, in each progress report and in the final report.

### 35.3 Pre-end-of-financial-year project status notice

Each pre-end-of-financial-year project status notice must be in the form of an email (or other form of writing approved by the Department) and contain the following information:

- (a) Project ID;
- (b) name of the Recipient as stated in this Agreement;
- (c) Project Name;
- (d) name and position of person authorising the notice;
- (e) date of the notice;
- (f) name and contact details of the contact person for more information; and
- (g) a declaration to the following effect:

*"I advise that, as at 31 May [insert year], the Milestones for the above-named Project, scheduled within the [insert financial year] Financial Year, will / will not [delete one] be able to be completed on, or before, 30 June [insert year]. Confirmation of this will be provided as part of the scheduled reports due after 30 June [insert year]."*

### 35.4 Progress reports and final report

- (a) The Recipient must submit progress reports and a final report in accordance with the MERI Strategy and the Project MERI Plan, as specified in the Milestone Schedule and to the satisfaction of the Department.
- (b) Each progress report and the final report must include reporting of Indigenous participation and employment as required by clause 35.2.



## **35.5 Financial reports**

- (a) Preparation of financial reports requires the Recipient to engage, at its cost, a Qualified Accountant to Audit the Financial Information of the Recipient and to prepare an Auditor's Report.
- (b) Unless otherwise explicitly approved by the Department in writing and within the relevant timeframe specified in the Milestone Schedule, the Recipient must provide to the Department:
  - (i) the Financial Information;
  - (ii) a certificate signed by a representative of the Recipient with the authority to make representations on behalf of the Recipient stating whether:
    - (A) the Funds have been used for the purpose for which they were provided; and
    - (B) all terms and conditions of the Agreement were complied with;
  - (iii) a report on the amounts of Project Generated Income earned, the uses made of these, and any remaining amounts of Project Generated Income for the relevant financial year; and
  - (iv) the Auditor's Report on the Financial Information.

## **36. Project review**

### **36.1 Significant change in circumstances**

- (a) Without limiting clauses 19.2, 19.3 and 21.5 of this Agreement, the Recipient must promptly notify the Department in writing of any significant changes to its organisational structure, resources, or circumstances, where such changes:
  - (i) affect the boundaries of the Site or the scope of the Project Outcomes; and / or
  - (ii) have the potential to alter the Recipient's ability to perform its obligations under this Agreement or the Project MERI Plan.
- (b) Upon receipt of notification under clause 36.1(a), the Department may:
  - (i) direct the Recipient to suspend its dealings with the Funds immediately; and / or
  - (ii) conduct a review of the Project to assess whether the Project continues to represent value for money.

### **36.2 Review report**

- (a) The Department may request the Recipient to submit a report to assist with the review. The Recipient must submit the report within 20 Business Days of the Department's request.
- (b) Unless otherwise agreed to in writing by the Department, the report must include, but need not be limited to, the following information:
  - (i) the nature of the Recipient's change in organisational structure, resources, or circumstances;
  - (ii) an assessment of the Project to date;
  - (iii) most recent copies of any Project Material;
  - (iv) an updated Project MERI Plan; and
  - (v) an updated Project Budget.

- (c) If requested by the Department, the Recipient must provide any additional information to enable the Department to undertake its review under this clause 36.

### **36.3 Project review**

- (a) The Department will inform the Recipient, in writing, of the outcome of its review under this clause 36.
- (b) If the Department determines the Project no longer represents value for money, the Department may, in its absolute discretion and on giving 20 Business Days notice:
  - (i) reduce or increase the amount of the Funds; and/or
  - (ii) reduce or broaden the scope of the Project; or
  - (iii) terminate this Agreement under clause 19.1(g).