

PART B – Standard terms and conditions

1. Definitions

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

ABN	has the same meaning as it has in section 41 of the <i>A New Tax System (Australian Business Number) Act 1999</i> (Cth).
Aboriginal Tradition	has the same meaning as it has in section 3 of the <i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i> (Cth).
Accounting Standards	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.
Agreement	this agreement between the Department and the Recipient comprising Parts A, B and C, as amended from time to time in accordance with clause 21.2, and includes any annexures.
Agreement Period	the period specified in clause 3.
Audit	an audit carried out by a Qualified Accountant in accordance with the Auditing Standards.
Auditor's Report	has the same meaning it has in the Auditing Standards.
Auditing Standards	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.
Business Day	in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place.
Commencement Date	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.
Commonwealth Completion Date	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.
Electronic Communication	has the same meaning as in the <i>Electronic Transactions Act 1999</i> (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 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.

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).

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).

Intellectual Property Rights

all intellectual property rights, including the following rights:

- (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;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

Interest

whether or not such rights are registered or capable of being registered. means interest calculated at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) plus 20 basis points.

Item

an Item in Part A.

Law

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.

Losses

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).

Material

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.
Milestone	any fixed date to be met by the Recipient in performing any of its obligations under this Agreement, as specified in the Milestone Schedule.
Milestone Schedule	the Milestone schedule set out in Part A.
Other Contributions	third party monetary contributions, if any, specified in Part A.
Part A	Part A to this Agreement, comprising terms and conditions specific to the Project.
Part B	Part B to this Agreement of the version stated in Part A, comprising standard terms and conditions.
Part C	Part C to this Agreement of the version stated in Part A, comprising terms and conditions specific to the Programme.
Personal Information	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.
Personnel	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.
Privacy Act	the <i>Privacy Act 1988</i> (Cth).
Programme	the programme defined in Part C.
Programme Outcomes	the Programme outcomes defined in Part C.
Project	the project described in Part A.
Project Activities	the Project activities described in Part A.
Project Budget	the Project budget, if any, defined in Part C.
Project Event	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.
Project Material	any Material that is: <ul style="list-style-type: none"> (a) created by the Recipient for the purpose of, or as a result of, the Recipient's performance of its obligations under this Agreement; or (b) Third Party Material.
Project Outcomes	the Project outcomes described in Part A.
Project Period	the period during which the Project is to take place, as specified in Part A.
Qualified Accountant	a person who is: <ul style="list-style-type: none"> (a) a member of the Institute of Chartered Accountants in Australia or of CPA Australia; and (b) unless otherwise agreed in writing by the Department, independent of the Recipient.
Recipient	the party specified as such in the Agreement Details in Part A.
Recipient's Contributions	the recipient's monetary contributions, if any, specified in Part A.
Secret and Sacred Material	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.
Third Party Material	Material created by a third party that is: <ul style="list-style-type: none"> (a) created or used for the purpose of, or as a result of, the Recipient's performance of its obligations under this Agreement; or (b) included, embodied in or attached to Project Material created by the Recipient.
Traditional Owner(s)	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, programmes 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 and the execution, delivery and performance of this Agreement has been duly and validly authorised by the Recipient; and
- (e) 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) within the Project Period and in accordance with the Project Budget;
- (b) 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;
- (c) consistently with and so as to deliver the Project Outcomes and Project Activities, and meet all reporting requirements, in accordance with the requirements of this Agreement; and
- (d) otherwise in accordance with the provisions of this Agreement and all applicable Laws.

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 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 take such steps as the Department may reasonably require to resolve or otherwise deal with that Conflict of Interest.

5.3 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 Programme 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(i) to 6.1(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 any debts incurred or owing by the Recipient (including to its Personnel), Project Budget or cost overruns, or 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 have not been spent or committed in accordance with this Agreement or 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(b), 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 of a non-commercial, funding nature, paid to a 'government related entity' for GST Act purposes (**Government Related Entity**) and 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 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 immediately notify the Department of any changes to the Recipient's GST status or ABN and 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 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 and information regarding the qualifications and / or performance of any Personnel of the Recipient in relation to the Project) 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 all revenue and expenditure related to the Project to be identified in the Recipient's accounts, the preparation of the Financial Information and 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. Audit and access

9.1 Right to conduct audits

- (a) The Department or a representative may conduct audits relevant to the performance of the Recipient's obligations under this Agreement.
- (b) 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:
 - (c) access and inspect the Recipient's premises and any Assets, wherever they may be located, to the extent relevant to the performance of this Agreement; and
 - (d) 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.
- (e) The Recipient must provide the Department with any reasonable assistance requested by the Department in relation to the exercise of

its rights under this clause 9, and any inquiry into or concerning the Project or this Agreement including 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.

9.2 Auditor-General, Ombudsman and Commissioners

Without limiting clause 9.1, the Department's rights under clause 9.1 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).

9.3 General

- (a) Each party must bear its own costs of any inspections, reviews, audits and enquiries conducted pursuant to this clause 9.
- (b) 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.
- (c) 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 section 4 of 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 or 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:
- (b) 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
- (c) 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.
- (d) 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.

Department in an agreed format, or as otherwise directed by the Department.

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 Item 2.7 of Part A.
- (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:
- (c) 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
- (d) 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

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 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 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.

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 in all publications, promotional and advertising Materials, signs or plaques displayed at the location where the Project is undertaken, at any Project Event and 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 invite representatives of the Department to all Project Events and ensure that the official proceedings in each

Project Event allow 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, employees or internal management Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement, or enable effective management or auditing of Agreement related activities;
- (b) to the extent that a party is a government agency or organisation, disclosed by that party to its responsible Minister or in response to a request by a House or a Committee of its Parliament;
- (c) shared by the Department within the Department's organisation, or with another Australian Government agency, where this serves the Australian Government's legitimate interests;
- (d) authorised or required by Law, including under this Agreement, under a licence or otherwise, to be disclosed; or
- (e) 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) or (c), the disclosing party must notify the receiving

person that the information is Confidential Information and not provide the information unless the receiving person agrees to keep the information confidential: or

- (b) pursuant to clause 13.2(b), 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 **Australian Privacy Principles** (or **APPs**) 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; and
- (b) comply with the APPs as if the Recipient were an agency under the Privacy Act and 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 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.

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.

- (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 inability to continue to perform the Project or 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.

18. Dispute resolution

18.1 Dispute resolution

The parties must endeavour to resolve any dispute under this Agreement by mediation or other dispute resolution method before they commence legal proceedings, except for:

- (a) proceedings for urgent interlocutory relief;
- (b) action 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..

18.2 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 18.2(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.

19.2 Potential Default

- (a) The Recipient must notify the Department immediately and provide details of any event or circumstance which does not fall within the scope of clause 17 and which is likely to result in a delay to the performance of the Project, a Milestone not being achieved within the timeframe specified in the Milestone Schedule, or 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 comply with any reasonable directions of the Department and cooperate with the Department in order to avoid an actual breach or event of default under this Agreement occurring.

- (c) No action taken by the parties, or directed by the Department, under this clause 19.2 will relieve the Recipient from, or alter or affect, the Recipient's liabilities or responsibilities, or the Department's rights, under this Agreement or according to Law.

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;

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 cease carrying out the Project to the extent specified in the notice, take all available

steps to minimise any Losses resulting from that termination or reduction and 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 costs properly incurred in relation to the Project under this Agreement before the effective date of termination and 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

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.

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, on the second Business Day after the date of posting (or 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 (Audit and access), 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 21.12 (Relationship).

21.2 Varying this Agreement

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

21.3 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.

21.4 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.

21.5 Costs

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

21.6 Counterparts

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

21.7 No merger

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

21.8 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.

21.9 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.

21.10 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.

21.11 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.

21.12 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.

21.13 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.

21.14 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:
- (k) any warranties given under this Agreement are given in both capacities; and
- (l) warrants that it has the power to perform its obligations under this Agreement;
- (m) 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;
- (n) 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;
- (o) 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;
- (p) 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
- (q) 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.