



Australian Government

**Department of Sustainability, Environment,
Water, Population and Communities**

FUNDING AGREEMENT

FUNDING AGREEMENT IN RELATION TO **^DETAILS^**

Department of Sustainability, Environment, Water, Population and Communities
ABN 34 190 894 983

^Recipient Name^

^Recipient ABN^ ^Recipient ACN^

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FUNDING AGREEMENT

Parties

This Agreement is made between and binds the following parties:

1. Commonwealth of Australia (**Commonwealth**) represented for the purposes of this Agreement by the **Department of Sustainability, Environment, Water, Population and Communities** ABN 34 190 894 983 of John Gorton Building, Environment entrance, King Edward Terrace, Parkes ACT 2600, Australia (**Department**).
2. **^Recipient Name^ ^Recipient ACN^ ^Recipient ABN^
^Recipient Address^ (Recipient)**

Context

- A. The Department is committed to the **^insert name and brief description of Program^**.
- B. The Activity will help achieve the goals of the Program.
- C. The Department has agreed to provide Funding to the Recipient to support the carrying out of the Activity.
- D. The Recipient agrees to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Agreement.

Operative provisions

In consideration of the mutual promises contained in this Agreement, the parties to this Agreement agree as follows:

1. Interpretation

1.1. Definitions

1.1.1. In this Agreement, unless the context indicates otherwise:

- | | |
|----------------------------------|--|
| Activity | means the activity described in Item A [Program and Activity], which aims to fulfil one or more of the Objectives of the Program, and includes the provision of Activity Material; |
| Activity Generated Income | means any income earned or generated by the Recipient from its use of the Funding or Other Contributions including: <ol style="list-style-type: none">a. interest earned from the investment of the Funding or Other Contributions;b. where the proceeds of insurance paid to the |

Recipient to replace an Asset exceed the amount actually paid by the Recipient to replace the Asset; and

- c. any income received by the Recipient as a result of its use of an Asset that reflects the proportion of the total cost of acquiring the Asset that was met by the Funding;

Activity Material

means any Material:

- a. created for the purpose of this Agreement;
- b. provided or required to be provided to the Department under the Agreement; or
- c. derived at any time from the Material referred to in paragraphs a or b;

Activity Period

means the period specified in Item A [Program and Activity] during which the Activity must be completed;

Agreement

means this document and includes any Schedules and Annexures;

Annexure

means any annexure to Schedule 1;

Approved Auditor

means a person who is:

- a. registered as a company auditor under the *Corporations Act 2001* (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia;
- b. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the Recipient or of a related body corporate (the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the *Corporations Act 2001* (Cth)); and
- c. not the Recipient's Qualified Accountant.

Asset

means any item of property, purchased, leased, hired, financed, created (except in the case of Intellectual Property Rights) or otherwise brought into existence either wholly or in part with use of the Funding, which has a value of over \$5,000 exclusive of GST, but excludes Intellectual Property Rights;

Auditor-General

means the office established under the *Auditor-General Act 1997* (Cth) and includes any other entity that may, from time to time, perform the functions of that office;

Australian Accounting Standards	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth);
Australian Auditing Standards	refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth);
Budget	refers to a budget for expenditure of the Funding, the Recipient Contributions and Other Contributions for the purposes of conducting the Activity or performing obligations under this Agreement, as stipulated in Item D [Budget];
Business Day	means in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place;
Commonwealth	means the Commonwealth of Australia;
Commonwealth Material	means any Material: <ul style="list-style-type: none"> a. provided by the Department to the Recipient for the purposes of this Agreement; or b. derived at any time from the Material referred to in paragraph a, and does not include Activity Material;
Completion Date	means the day after the Recipient has done all that it is required to do under clauses 2 [Activity], 4 [Management of Funding] and 9 [Reporting] of this Agreement to the satisfaction of the Department;
Confidential Information	means: <ul style="list-style-type: none"> a. the information described in Item N [Confidential Information]; and b. information that the parties agree in writing after the Date of this Agreement is confidential information for the purposes of this Agreement;
Constitution	means (depending on the context): <ul style="list-style-type: none"> a. a company's constitution, which (where relevant) includes rules and any amendments that are part of the company's constitution; or b. in relation to any other kind of body: <ul style="list-style-type: none"> i. the body's charter, rules or memorandum; or ii. any instrument or law constituting or defining

the constitution of the body or governing the activities of the body or its members;

Date of this Agreement	means the date written on the execution page of this Agreement, or if no date or more than one date is written there, then the date on which the Agreement is signed by the last party to do so;
Department	means the Commonwealth represented by and acting through the Department of Sustainability, Environment, Water, Population and Communities (or any other Commonwealth department or agency that is, from time to time, responsible for the administration of this Agreement) and includes, where the context permits, the officers, delegates, employees and agents, and successors of the Department;
Depreciated	means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;
Director	means any of the following: <ol style="list-style-type: none">a person appointed to the position of a director or alternate director and acting in that capacity for a body corporate within the meaning of the <i>Corporations Act 2001</i> (Cth) regardless of the name given to their position;a member of the governing committee of an Aboriginal and Torres Strait Islander corporation under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth);a member of the committee of an organisation incorporated pursuant to State or Territory laws relating to the incorporation of associations; ora member of the board, committee or group of persons (however described) that is responsible for managing or overseeing the affairs of the body corporate;
Dispose	means to sell, licence, lease or sublease, 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 and 'Disposal' means the method of so disposing;
Existing Material	means all Material in existence prior to the Date of this Agreement: <ol style="list-style-type: none">incorporated in;

	<ul style="list-style-type: none"> b. supplied with, or as part of; or c. required to be supplied with, or as part of, the Activity Material;
Financial Year	means each period from 1 July to the following 30 June occurring during the Activity Period, or any part of such a period occurring at the beginning or end of the Activity Period;
Funding or Funds	means the amount or amounts (in cash or kind) payable by the Department under this Agreement as specified in Item B [Funding and Payment], and includes Activity Generated Income;
GST	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Guidelines	refers to the guidelines for the Program, if any, as described in Item A [Program and Activity];
Intellectual Property Rights	<p>includes:</p> <ul style="list-style-type: none"> a. all copyright (including rights in relation to phonograms and broadcasts); b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts; and c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; <p>but does not include:</p> <ul style="list-style-type: none"> d. Moral Rights; e. the rights of performers; or f. rights in relation to Confidential Information;
Interest	means interest calculated at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 base points on a daily compounding basis;
Material	means any thing in relation to which Intellectual Property Rights arise;
Milestone	means a stage of completion of the Activity as set out in Item A [Program and Activity];
Moral Rights	<p>includes the following rights of an author of copyright Material:</p> <ul style="list-style-type: none"> a. the right of attribution of authorship; b. the right of integrity of authorship; and

	c. the right not to have authorship falsely attributed;
Objectives	means the objectives described in Item A [Program and Activity];
Other Contributions	means financial or in-kind resources (with in-kind resources valued at cost) other than the Funding or the Recipient Contributions, which are specified in Item C.2 [Other Contributions] and are to be used by the Recipient to perform the Activity;
Personnel	means a party's officers, employees, agents, contractor staff or professional advisers engaged in, or in relation to, the performance or management of this Agreement;
Principles	refers to the principles of the Program, if any, as described in Item A [Program and Activity];
Privacy Act	refers to the <i>Privacy Act 1998</i> (Cth);
Privacy Commissioner	means the Office of the Privacy Commissioner established under the Privacy Act and includes any other entity that may, from time to time, perform the functions of that Office;
Program	means the part of the Department's operations specified in Item A [Program and Activity] under which the Department is able to provide the Funding to the Recipient;
Qualified Accountant	means a person who is a member of the Institute of Chartered Accountants in Australia or of CPA Australia;
Recipient	means ^insert name and ACN, ARBN or ABN of Recipient^ and includes officers, employees, agents, volunteers and subcontractors, and successors of the Recipient;
Recipient Contributions	means the financial or in-kind resources (with in-kind resources valued at cost), other than the Funding or Other Contributions, which are specified in Item C.1 [Recipient Contributions] and are to be used by the Recipient to perform the Activity;
Records	includes documents, information and data stored by any means and all copies and extracts of the same;
Report	means Activity Material that is provided to the Department for reporting purposes as stipulated in clause 9 and Item E [Reporting];
Schedule	refers to the schedule to this Agreement and may include Annexures and incorporate other documents

	by reference;
Specified Acts	means any of the following classes or types of acts or omissions by or on behalf of the Department: <ul style="list-style-type: none"> a. using, reproducing, adapting or exploiting all or any part of the Activity Material, with or without attribution of authorship; b. supplementing the Activity Material with any other Material; or c. using the Activity Material in a different context to that originally envisaged, but does not include false attribution of authorship;
Specified Personnel	means the Recipient's Personnel specified in Item J as Personnel required to undertake all or any part of the Activity;
Term	refers to the period described in clause 1.4;
Third Party Interest	means any legal or equitable right, interest, power or remedy in favour of any person other than the Department or the Recipient in connection with the Agreement, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest; and
Undepreciated	in relation to the value of an Asset, means the value of the Asset which has not been Depreciated.

1.2. Interpretation

1.2.1. In this Agreement, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;

- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to the Schedule (or an attachment), is a reference to the Schedule (or an attachment) to the Agreement, including as amended or replaced from time to time by agreement in writing between the parties;
- i. a reference to an Item is a reference to an Item in the Schedule;
- j. the Schedule and any attachments form part of the Agreement;
- k. if any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of the Schedule (and attachments if any), the terms and conditions of the clauses prevail;
- l. if any conflict arises between any part of the Schedule and any part of an attachment, the Schedule prevails; and
- m. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction of Agreement

- 1.3.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this Agreement is void or otherwise unenforceable then it will be severed and the rest of the Agreement remains in force.
- 1.3.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Duration of Term

- 1.4.1. The Term of this Agreement commences on the Date of the Agreement and, unless terminated earlier, it expires on the Completion Date.

1.5. Debt and Interest

- 1.5.1. The Recipient agrees to pay any amount owed or payable to the Department or which the Department is entitled to recover from the Recipient, under this Agreement, including any Interest, without prejudice to any other rights available to the Department under the Agreement, under statute, at law or in equity, at the discretion of the Department, as a debt due to the Department by the Recipient without further proof of the debt by the Department being necessary.

- 1.5.2. If the Department notifies the Recipient that an amount is to be refunded or repaid to the Department and the amount is not refunded or repaid within 20 Business Days, or as otherwise notified by the Department, the Recipient agrees to pay Interest, unless the Department notifies the Recipient otherwise, on the amount outstanding after the expiry of the date it was due, until the amount is paid in full.
- 1.5.3. In respect to any obligation the Recipient may have under this Agreement to pay the Department any Interest, the Recipient agrees that the Interest represents a reasonable pre-estimate of the loss incurred by the Department.

2. Activity

2.1. Conduct of Activity

- 2.1.1. The Recipient must carry out the Activity:
- a. to achieve the Objectives;
 - b. within the Activity Period;
 - c. in accordance with this Agreement (including any applicable Principles and Guidelines); and
 - d. diligently, effectively and to a high standard.
- 2.1.2. Where the Department is satisfied that the Recipient does not have the capacity to adequately:
- a. manage the Funding; or
 - b. undertake the Activity in accordance with this Agreement,
- the Department may by written notice immediately:
- c. suspend, reduce or cease the release of Funding to the Recipient; and/or
 - d. require the Recipient to refund some or all of the Funding to the Department.

2.2. Liaison and monitoring

- 2.2.1. The Recipient agrees to:
- a. liaise with and provide information to the Department as reasonably notified by the Department; and
 - b. comply with all of the Department's reasonable requests, directions, or monitoring requirements.

2.2.2 Each of the parties may nominate, from time to time, a person who has authority to receive and sign notices and written communications for each of them under this Agreement and accept any request or direction in relation to the Activity.

2.3. Subcontractors

2.3.1. The Recipient agrees not to subcontract the performance of any obligations under this Agreement without the Department's prior written approval. In giving written approval, the Department may do so on such terms and conditions as the Department thinks fit. Any subcontractors approved by the Department at the Date of this Agreement, and any terms and conditions relating to their use, are identified in the Item H [Subcontracting]. If the Recipient proposes to replace an approved subcontractor, the Recipient must also obtain the Department's approval for the proposed change under this clause 2.3.

2.3.2. The Recipient is fully responsible for the performance of the Recipient's obligations under this Agreement regardless of whether the Recipient has subcontracted any of its obligations.

2.3.3. The Recipient agrees, in any subcontract placed with a subcontractor, to reserve a right of termination to take account of the Department's rights of termination under clause 17 [Termination or reduction in scope of Agreement], and the Recipient agrees to make use of that right in the event of a termination or revocation by the Department.

2.3.4. The Recipient must not enter into a subcontract under this Agreement with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).

2.4. Specified Personnel

2.4.1. The Recipient agrees that the Specified Personnel will perform work in relation to the Activity in accordance with this Agreement.

2.4.2. If Specified Personnel are unable to perform the work as required under this clause 2.4, the Recipient agrees to notify the Department immediately.

2.4.3. The Recipient agrees, at the request of the Department acting in its absolute discretion, to remove Personnel (including Specified Personnel) from work in relation to the Activity.

2.4.4. If clause 2.4.2 or clause 2.4.3 applies, the Recipient will provide replacement Personnel acceptable to the Department at no additional cost and at the earliest opportunity.

- 2.4.5. If the Recipient is unable to provide acceptable replacement Personnel, the Department may terminate this Agreement in accordance with the provisions of clause 17.2 [Termination for fault].

2.5. Review

- 2.5.1. The Recipient agrees to:
- a. provide all reasonable assistance required by the Department;
 - b. respond to all of the Department's reasonable requests; and
 - c. provide any information the Department reasonably requires,
- in relation to conducting a review and final evaluation of the Program.

2.6. Steering Committee

- 2.6.1. The Department may require the establishment of a steering committee whose establishment, membership, role and responsibilities are specified in Item Q [Steering Committee].
- 2.6.2. The Recipient agrees to liaise with and report regularly to any steering committee established under this clause 2.6.

3. Payment

3.1. Making of payment

- 3.1.1. Subject to sufficient funds being available for the Program, and compliance by the Recipient with this Agreement, the Department agrees to provide the Recipient with the Funding at the times and in the manner specified in Item B [Funding and Payment].
- 3.1.2. Without limiting the Department's rights, the Department may suspend any payment in whole or in part until the Recipient has performed its obligations under this Agreement.

4. Management of Funding

4.1. Use of Funding

- 4.1.1. The Recipient agrees to spend the Funding only for the Activity in accordance with this Agreement.
- 4.1.2. The Recipient agrees to do all things necessary to ensure that all payments from the Funding that the Recipient makes to third parties (including subcontractors) are correctly made and properly authorised and that the Recipient maintains proper and diligent control over the incurring of all liabilities.

4.2. Keeping of Funding

4.2.1. The Recipient agrees to:

- a. ensure that the Funding is held in an account in the Recipient's name and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia;
- b. unless otherwise specified in Item B.1.4, ensure that the account referred to in clause 4.2.1a is:
 - i. established solely for the purposes of the Activity;
 - ii. separate from the Recipient's other operational accounts; and
 - iii. an account that complies with any other requirements specified in the Schedule;
- c. notify the Department, prior to the receipt of any Funding, of details sufficient to identify the account;

Note: Paragraphs d. and e. are optional and should be used where a separate bank account is required to hold the Funds. If you don't require these paragraphs, then delete the words and put 'Reserved' against the paragraph letters.

- d. if requested by the Department, provide written notification to the authorised deposit-taking institution at which the account is established that the Funding is held for the purposes of the Activity, and provide a copy of that notification to the Department;
- e. on notification from the Department, provide the Department and the authorised deposit-taking institution with a written authority for the Department to obtain any details relating to any use of the account;
- f. if the account changes, notify the Department within 10 Business Days of the change occurring, provide the Department with details of the new account;
- g. unless the Recipient is a sole director company or an individual, ensure that as a minimum, two signatories, who have the Recipient's authority to do so, are required to operate the account; and
- h. identify the receipt and expenditure of the Funding separately within the Recipient's accounts and Records so that the Funding is identifiable at all times.

4.3. Financial Records

4.3.1. The Recipient agrees to keep financial accounts and Records relating to the Activity so as to enable:

- a. all receipts and payments related to the Activity to be identified and reported in accordance with this Agreement;
- b. unless otherwise notified by the Department, the preparation of financial statements in accordance with Australian Accounting Standards including:
 - i. an income and expenditure statement for the Financial Year to date compared with the Budget; and
 - ii. a register of the Assets created, acquired, written-off or Disposed of during the Financial Year to date compared with the Budget;
- c. the audit of those accounts and Records in accordance with Australian Auditing Standards; and
- d. the identification of all the Recipient's taxation liabilities and payments.

4.4. Use as security

- 4.4.1. Except with the prior written approval of the Department, the Recipient agrees not to use any of the following 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:
- a. the Funding;
 - b. this Agreement or any of the Department's obligations under the Agreement; or
 - c. any Assets or Intellectual Property Rights in Activity Material.

4.5. Refunds

- 4.5.1. If, at any time during the Term or as at the Completion Date or earlier termination of this Agreement the Department determines that:
- a. the Recipient has an amount of Funding that it has not spent or legally committed for expenditure in accordance with the Agreement; or
 - b. Funding has not been spent in accordance with the Agreement,
- then at the discretion of the Department the Recipient agrees to refund this amount to the Department. This amount must be refunded within 20 Business Days of a notice from the Department, dealt with as notified by the Department, or the Department may reduce further payments of Funding to the Recipient by up to this amount.
- 4.5.2. If at the completion of the Activity Period the Recipient has remaining Funding (which does not include any Funding legally committed for expenditure in accordance with this Agreement and which fall for payment thereafter) and wishes to retain that Funding, the Recipient agrees to seek the Department's

written consent to retain the Funding and use it for purposes agreed by the Department.

- 4.5.3. If the Department does not agree to the Recipient retaining the Funding under clause 4.5.2, the Recipient agrees to return the Funding to the Department within 20 Business Days of the Department's notice requiring the Recipient to return the Funding.

4.6. Budget

- 4.6.1. The Recipient agrees to only spend the Funding in accordance with the Budget.

4.7. Budget flexibility

- 4.7.1. The Recipient may transfer Funding between categories of expenditure items within the Budget subject to the following limitations:
- a. the Recipient must seek the prior written approval of the Department for any transfer that exceeds 10% of the total Budget for the Financial Year in which the transfer would occur; and
 - b. the total amount of transfers in a Financial Year must not, except with the written approval of the Department, exceed 20% of the total Budget for that Financial Year.
- 4.7.2. Any Activity Generated Income that is not included in the Budget may only be spent in accordance with the prior written approval of the Department.

4.8. No additional Funding

- 4.8.1. The Department is not responsible for the provision of additional money to meet any expenditure in excess of the Funding. The Recipient accepts responsibility for the provision of any additional funds that may be required to complete the Activity.

4.9. Other government funding

- 4.9.1. Unless otherwise agreed by the Department in writing, no Funding will be paid for the conduct of an Activity where the Recipient receives funding for the same or a similar activity from the Department or another Commonwealth, State, Territory or local government.

Note: If the Recipient is funded solely by governments, clause 4.9.1 can be reserved.

- 4.9.2. The Recipient agrees to inform the Department in writing within 20 Business Days of entering into any arrangement (whether contractual or statutory) under

which the Recipient is entitled to receive funding from the Commonwealth or a State, Territory or local government for the same or a similar activity.

- 4.9.3. Any payments under this Agreement may be suspended by the Department:
- a. if the Recipient breaches an arrangement (whether contractual or statutory) under which it receives any funding (other than the Funding) from the Commonwealth;
 - b. if the Recipient has amounts to be repaid or unacquitted moneys under any arrangement (whether contractual or statutory) with the Department; or
 - c. if a Report provided by the Recipient is not accurate or complete or indicates that the Recipient currently has unspent Funding.
- 4.9.4. Notwithstanding such suspension of any payments, the Recipient agrees to continue to perform any obligations under this Agreement, unless the Department agrees otherwise in writing.

5. Taxes, duties and government charges

Note: If the Recipient is a government related entity and the Payment is specifically covered by an appropriation – you should use the GST exclusive funding Deed Unless otherwise indicated, the Recipient must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

- 5.1.1. The Funds paid by the Department under this Agreement includes an amount on account of GST imposed on any supplies made by the Recipient to the Department under this Agreement that are taxable supplies within the meaning of the GST Act.
- 5.1.2. The Recipient must give the Department a tax invoice in accordance with the GST Act in relation to any taxable supply made by the Recipient to the Department under this Agreement prior to payment of any Funds by the Department.
- 5.1.3. If no taxable supplies are made by the Recipient to the Department under this Agreement, the Recipient on receipt of a written demand from the Department must promptly pay back to the Department the amount on account of GST included in the Funds.
- 5.1.4. 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.
- 5.1.5. If requested by the Department, the Recipient must provide evidence of its GST status.

6. Recipient Contributions and Other Contributions

6.1. Recipient Contributions

- 6.1.1. The Recipient agrees to provide the Recipient Contributions for the Activity. The Recipient Contributions must not include any amount that has been provided to the Recipient by a Commonwealth, State, Territory or local government.
- 6.1.2. If the Recipient does not provide the Recipient Contributions or provide them in time to enable completion of the Activity, then the Department may:
- a. suspend payment of the Funding or an instalment of the Funding (as the case may be) until the Recipient Contributions are provided; or
 - b. terminate this Agreement in accordance with clause 17.2 [Termination for fault].

6.2. Other Contributions

- 6.2.1. Unless otherwise specified in Item C [Recipient Contributions and Other Contributions], it is a condition precedent to the payment of Funding under this Agreement that:
- a. the Recipient agrees to provide the Department with satisfactory written evidence that the persons identified in Item C.2 [Other Contributions] 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
 - b. the basis on which these Other Contributions are to be provided is satisfactory to the Department.
- 6.2.2. The Recipient agrees that the written evidence required by clause 6.2.1.a. will be provided to the Department within 20 Business Days of the Date of this Agreement, failing which the Department may terminate this Agreement in accordance with clause 17.2 [Termination for fault].
- 6.2.3. If the Recipient is not able to obtain Other Contributions or obtain them in time to enable completion of the Activity, then the Department may:
- a. suspend payment of the Funding or an instalment of the Funding until the Other Contributions are received; or
 - b. terminate this Agreement in accordance with clause 17.2 [Termination for fault].
- 6.2.4. The Recipient agrees to notify the Department within 10 Business Days of entering into any arrangement under which the Recipient is entitled to receive any additional monetary or in-kind contributions in respect of the Activity that are not identified as Other Contributions in Item C.2 [Other Contributions]. Any

such additional contribution that the Recipient becomes entitled to receive after the Date of this Agreement constitutes Other Contributions for the purposes of the Agreement (and Schedule 1 is deemed to be varied accordingly) on the date on which the Recipient notifies the Department of that contribution under this clause 6.2.4.

7. Assets

7.1. No acquisition of Asset

7.1.1. You must not use the Funding to acquire or create any Asset.

OR

7.1. Acquisition of Assets

7.1.1. The Recipient agrees not to use the Funding to acquire or create any Asset, apart from those detailed in the Item F [Assets], without obtaining the Department's prior written approval. Approval may be given subject to any conditions the Department may impose.

7.2. Ownership of Assets

7.2.1. Unless it is specified in Item F [Assets] that the Department or a third party own the Asset or the Department provides written consent to a third party owning the Asset, then the Recipient must ensure that it owns any Asset acquired with the Funding.

7.3. Terms applicable to Assets

7.3.1. If the Department owns the Asset, clauses 7.6, 7.8.2 and 7.9 do not apply.

7.3.2. If the Asset is owned by a third party then the Recipient agrees to ensure that the terms of the lease, hire or finance arrangement are consistent with this clause 7 [Assets], except for clauses 7.6, 7.7, 7.8 and 7.9.

7.4. Use of Assets

7.4.1. During the Activity Period the Recipient agrees to use any Asset in accordance with this Agreement and for the purposes of the Activity.

7.5. Recipient's responsibilities for Assets

7.5.1. Throughout the Term, the Recipient agrees to:

- a. not encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 7 [Assets], without the Department's prior written approval;

- b. hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- c. maintain all Assets in good working order;
- d. maintain all appropriate insurances for all Assets to their full replacement cost noting the Department's interest, if any, in the Asset under the Agreement;
- e. if required by law, maintain registration and licensing of all Assets;
- f. be fully responsible for, and bear all risks relating to, the use or Disposal (where approved by the Department) of all Assets;
- g. maintain an Assets register in the form and containing the details as described in Item F [Assets]; and
- h. as and when requested by the Department, provide copies of the Assets register to the Department.

7.6. Sale or Disposal of Assets during Term

7.6.1. If the Recipient Disposes of an Asset during the Term, the greater of the following proportions must be accounted for as Activity Generated Income and used for the Activity:

- a. the proportion of the sale proceeds from the Asset; or
- b. the proportion of the Undepreciated value of the Asset,

that is equivalent to the proportion of the cost of the Asset that was funded from the Funding.

7.7. Loss, damage, etc of Assets

7.7.1. If any of the Assets are lost, damaged or destroyed, the Recipient agrees to promptly reinstate the Assets including from the proceeds of the insurance, and this clause 7 [Assets] continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance, which reflects the proportion of the cost of the Asset that was funded from the Funding, must be notified to the Department and accounted for as Activity Generated Income and used for the Activity.

7.8. Dealing with Asset

7.8.1. On expiry of the Activity Period or earlier termination of the Term, the Department may require the Recipient to deal with an Asset as the Department may, at the sole discretion of the Department, notify the Recipient.

- 7.8.2. Subject to clause 7.8.1, if on expiry of the Activity Period or the earlier termination of this Agreement, an Asset has not been fully Depreciated, the Department may, by written notice, require the Recipient to:
- a. pay to the Department within 20 Business Days of the expiry of the Activity Period or earlier termination of the Agreement, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the cost of the Asset that was funded from the Funding;
 - b. sell the Asset for the best price reasonably obtainable and pay to the Department within 20 Business Days of the sale the proportion of the proceeds of the sale that is equivalent to the proportion of the cost of the Asset (less an amount equal to the reasonable Disposal costs incurred by the Recipient) that was funded from the Funding; or
 - c. continue to use the Asset for the purposes, and in accordance with any conditions, notified by the Department.

7.9. Failure to make payment

- 7.9.1. Amounts payable to the Department under clause 7.8.2 form part of the Funding and are recoverable as such.

8. Records

8.1. Keeping Records

- 8.1.1. The Recipient must create and maintain full and accurate accounts and Records of the conduct of the Activity including, without limitation, all:
- a. progress against the Milestones;
 - b. receipt and use of Funding;
 - c. Other Contributions (if any);
 - d. Recipient Contributions (if any);
 - e. creation, acquisition and Disposal of Assets; and
 - f. creation, acquisition and Disposal of any Intellectual Property Rights in the Activity Material or Existing Material.

8.2. Retention of Records

- 8.2.1. The Recipient agrees to create and maintain records and accounts under clause 8.1.1 and retain them for a period of no less than 7 years after the end of the Activity Period.

9. Reporting

9.1. Progress and Final Reports

- 9.1.1. The Recipient agrees to provide to the Department written Reports of the Recipient's progress in undertaking the Activity, as well as a final report for the Activity, in the manner specified in Item E [Reporting].

9.2. Financial Reports

- 9.2.1. Within 60 Business Days after:

- a. the completion of each Financial Year in which a payment of Funding is made or used by the Recipient, or the Recipient contributes Recipient Contributions or receives any Other Contributions, except the Financial Year in which subparagraph b applies; and
- b. the expiry of the Activity Period, completion of the Activity or the termination or expiry of this Agreement, whichever is the earlier,

the Recipient agrees to provide to the Department:

- c. audited financial statements prepared in accordance with Australian Accounting Standards in respect of the Funding, Recipient Contributions and the Other Contributions (if any) (separately and in the context of the Recipient's overall financial position), which must include a definitive statement as to whether the financial information for the Activity represents the financial transactions fairly and is based on proper accounts and Records;
- d. a statement of the balance of the Recipient's account referred to in clause 4.2.1.a, or, where the Recipient is not required to keep a separate account, the balance of the Funds;
- e. a written statement of how much money the Recipient needs to meet current liabilities under legal commitments entered into by the Recipient pursuant to this Agreement;
- f. a copy of a letter to the Recipient from the Approved Auditor, or a report from the Approved Auditor, including:
 - i. specific comment on the adequacy of financial controls being maintained by the Recipient;
 - ii. specific comment on the Recipient's financial position as it relates to any issues affecting the Recipient's ability to repay surplus Funding or complete the Activity with available Funding;
 - iii. specific comment on the Recipient's ability to meet the Recipient's taxation liabilities and any costs associated with any court or tribunal orders made against the Recipient or involving the Recipient;

- iv. specific comment on the Recipient's compliance with the Recipient's obligations to pay superannuation entitlements;
 - v. where there are any qualifications or limitations on the audit, an outline of the reason(s) for the qualifications or limitations and the remedial action recommended;
 - vi. an itemised list of fees paid to Directors, stating how much was paid, to whom, when and what travel costs were involved; and
- g. any other requirements specified in Item E.4.1.

9.2.2. Information required to be provided under clauses 9.1 and 9.2 must be accompanied by a statement that:

- a. all Funding, Other Contributions and Recipient Contributions received were spent for the purpose of the Activity and in accordance with this Agreement, and that the Recipient has complied with the Agreement;
- b. salaries and allowances paid to persons involved in the Activity are in accordance with any applicable award or agreement in force under any relevant law on industrial or workplace relations;
- c. unless the Activity Period has expired or the Agreement has been terminated, the unspent portion of the Funding (if any) is available for use within the next Reporting period;
- d. the financial information is presented in accordance with any other financial Reporting requirements the Department may notify to the Recipient;
- e. where an Asset has been created or acquired with the Funding, that clauses 7.5.1.d and 7.5.1.g have been complied with in respect to the Asset; and
- f. at the time the Report or financial statement is provided to the Department, the Recipient is able to pay all the Recipient's debts as and when they fall due and the Recipient has sufficient resources to discharge all the Recipient's debts at the end of the current Financial Year.

9.3. Audit and certification

9.3.1. The audited statement referred to in clause 9.2.1.c and the statement referred to in clause 9.2.2, must also contain the requirements, if any, described in Item E.4.2.

9.4. Use of Approved Auditor and Qualified Accountant

9.4.1. The audited statement referred to in clause 9.2.1.c must be prepared by an Approved Auditor and must comply with the Australian Auditing Standards, and the statements referred to in clauses 9.2.1.c, 9.2.1.d and 9.2.1.e must be prepared by a Qualified Accountant who, if notified by the Department, must also be a person acceptable to the Department.

9.5. Certification

9.5.1. The statement referred to in clause 9.2.2 must be provided:

- a. if the Recipient is an incorporated body, by the Recipient's Chairperson, Chief Executive Officer, Chief Financial Officer or a person authorised by the Recipient to execute documents and legally bind the Recipient by their execution. Satisfactory evidence of the authorisation is to be provided to the Department before the statement is made;
- b. if the Recipient is an unincorporated association or partnership, by:
 - i. a majority of the members; or
 - ii. a person or persons authorised by a majority of the members to act on behalf of the members in accordance with the Recipient's Constitution. Satisfactory evidence of the authorisation is to be provided to the Department before the statement is made;
- c. if the Recipient is a joint venture, the chief executive officer or chief financial officer of each joint venturer must certify the one statement; or
- d. if the Recipient is an individual, by that individual.

10. Commonwealth Material

10.1. Ownership

10.1.1. Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in the Department but the Department grants the Recipient a licence to use, reproduce, adapt and exploit that Material only for the purposes of this Agreement and in accordance with any conditions or restrictions specified in the Schedule or that the Department may notify to the Recipient.

10.2. Possession of Commonwealth Material

10.2.1. Upon the expiration of the Completion Date or earlier termination of the Agreement, the Recipient may retain all Commonwealth Material remaining in the Recipient's possession, unless otherwise notified by the Department.

10.3. Maintain Commonwealth Material

10.3.1. The Recipient agrees to keep safely Commonwealth Material provided to the Recipient for the purposes of this Agreement.

11. Intellectual property

11.1. Ownership

11.1.1. Subject to this clause 11 [Intellectual property], Intellectual Property Rights in Activity Material vest immediately in the Recipient.

11.1.2. Clause 11.1.1 does not affect the position between the Recipient and a third party.

11.2. Licence of Activity Material

11.2.1. The Recipient grants to the Department a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit Intellectual Property Rights in the Activity Material for any purpose.

11.3. Licence of Existing Material

11.3.1. This clause 11 [Intellectual property] does not affect the ownership of any Intellectual Property Rights in any Existing Material, which is specified in the Schedule. The Recipient, however, agrees to grant to the Department or procure a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Existing Material for any purpose.

11.4. Dealing with Intellectual Property Rights

11.4.1. The Recipient:

- a. agrees, if requested by the Department to do so, to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 11 [Intellectual property]; and
- b. warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Activity Material and the Existing Material in accordance with this clause 11 [Intellectual property].

11.5. Consent to Specified Acts

11.5.1. Where the Recipient is a natural person and the author of the Activity Material, the Recipient consents to the performance of the Specified Acts by the Department or any person claiming under or through the Department and agrees to comply with clauses 11.5.2.b and 11.5.2.c.

11.5.2. In any other case, the Recipient agrees:

- a. to obtain from each author of any Activity Material a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts by the Department or any person claiming under or through the Department;
- b. to obtain from each author of any Existing Material a written consent to the Specified Acts (whether occurring before or after the consent is given)

which extends directly or indirectly for the Department's benefit in relation to the Department's licensed use of such material; and

- c. upon request, to provide the executed original of each such consent to the Department.

12. Confidential Information

12.1. Confidential Information not to be Disclosed

- 12.1.1. Subject to clause 12.3, 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.

12.2. Written undertakings

- 12.2.1. The Recipient must, on request by the Department at any time, arrange for:

- a. its Personnel; or
- b. any person with a Third Party Interest,

to give a written undertaking in a form acceptable to the Department relating to the use and non disclosure of the Department's Confidential Information.

12.3. Exceptions to obligations

- 12.3.1. The obligations on the parties under this clause 12 [Confidential Information] will not be breached to the extent that Confidential Information:

- a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
- b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
- c. is disclosed by the Department to the responsible Minister;
- d. is disclosed by the Department, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by the Department within the Department's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
- f. is authorised or required by law to be disclosed; or
- g. is in the public domain otherwise than due to a breach of this clause 12 [Confidential Information].

- 12.3.2. Where a party discloses Confidential Information to another person pursuant to clauses 12.3.1.a - 12.3.1.e, the disclosing party must notify the receiving person that the information is confidential.

12.3.3. In the circumstances referred to in clauses 12.3.1.a, 12.3.1.b and 12.3.1.e, the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential.

12.3.4. The Recipient agrees to secure all Confidential Information against loss and unauthorised access, use, modification or disclosure.

12.4. Period of confidentiality

12.4.1. The obligations under this clause 12 [Confidential Information] will continue, notwithstanding the expiry or termination of this Agreement:

- a. in relation to an item of information described in Item N [Confidential Information] – for the period set out in respect of that item; and
- b. in relation to any item of information agreed after the Date of this Agreement to be Confidential Information – for the period agreed by the parties in writing in respect of that item.

12.5. No reduction in privacy obligations

12.5.1. This clause 12 [Confidential Information] does not detract from any of the Recipient's obligations under the Privacy Act or under clause 13 [Privacy] in relation to the protection of Personal Information (as defined in clause 13.1.1).

13. Privacy

13.1. Interpretation and application

13.1.1. In this clause 13 [Privacy]:

Information has the same meaning as it has in the Privacy Act; and
Privacy Principle
Personal Information has the same meaning as it has in the Privacy Act.

13.1.2. This clause applies only where the Recipient deals with Personal Information when, and for the purpose of, conducting the Activity.

13.2. Obligations of Recipient in relation to privacy

13.2.1. The Recipient agrees, in conducting the Activity:

- a. not to do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of an Information Privacy Principle; and
- b. to comply with any directions, guidelines, determinations or recommendations of the Department, to the extent that they are consistent with the Information Privacy Principles.

- 13.2.2. The Recipient agrees to notify the Department immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 13 [Privacy].

14. Acknowledgement and publicity

14.1. Acknowledgement of support

- 14.1.1. Unless or until notified by the Department, the Recipient agrees, in all publications, promotional and advertising materials, public announcements and activities by the Recipient or on the Recipient's behalf in relation to the Activity, or any products, processes or inventions developed as a result of the Activity, to acknowledge the financial and other support the Recipient has received from the Australian Government, in the manner set out in Item I [Acknowledgement and publicity], or as otherwise approved by the Department prior to its use.

14.2. Right to publicise Funding

- 14.2.1. The Department reserves the right to publicise and report on the awarding of Funding to the Recipient. The Department may do (but is not limited to doing) this by including the Recipients' name, the amount of the Funding given to the Recipient, the title and a brief description of the Activity in media releases, general announcements about the Funding, annual reports or through any other means as determined by the Department.

14.3. Copies of publications

- 14.3.1. Where the Recipient has been provided with Funding to produce any publication, a copy of the publication must be provided to the Department, if notified by the Department.

14.4. No restriction on advocacy activities

- 14.4.1. The Department confirms that, subject to clause 14.4.2:
- a. no right or obligation arising under this Agreement should be interpreted as limiting the Recipient's ability to enter into public debate or criticism of the Commonwealth or its agencies, employees, servants or agents;
 - b. the Department does not require the Recipient to obtain advance approval of any involvement by the Recipient in public debate or advocacy activities; and
 - c. the Department will only exercise its rights under clause 2.4 on reasonable grounds relating to the performance of the Activity.
- 14.4.2. Nothing in this clause 14.4 limits or derogates from the Recipient's obligations under clauses 12 and 13.

15. Indemnity

15.1. General indemnity

- 15.1.1. The Recipient indemnifies (and agrees to keep indemnified) the Department against any:
- a. cost or liability incurred by the Department or the Department's Personnel;
 - b. loss of or damage to property of the Department; or
 - c. loss or expense incurred by the Department in dealing with any claim against it, 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 or the Recipient's Personnel, in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense;
- e. any breach by the Recipient of the Agreement;
- f. use or Disposal of the Assets; or
- g. the use by the Department of the Activity Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights or Moral Rights in the Activity Material or Existing Material.

15.2. Reduction of scope

- 15.2.1. The Recipient's liability to indemnify the Department under this clause 15 [Indemnity] will be reduced proportionally to the extent that any act or omission involving fault on the part of the Department or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

15.3. Preservation of other rights

- 15.3.1. The right of the Department to be indemnified under this clause 15 [Indemnity] is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Department is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

15.4. Meaning of 'fault'

- 15.4.1. In this clause 15 [Indemnity], 'fault' means any negligent or unlawful act or omission or wilful misconduct.

16. Dispute resolution

16.1. Procedure for dispute resolution

- 16.1.1. The parties agree that a dispute arising under this Agreement will be dealt with as follows:
- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
 - b. within 5 Business Days each party will nominate a representative not having any prior involvement in the dispute;
 - c. the representatives will try to settle the dispute by direct negotiation between them;
 - d. failing settlement within a further 10 Business Days, the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
 - e. the parties will co-operate fully with any process instigated under clause 16.1.1 d in order to achieve a speedy resolution; and
 - f. if a resolution is not reached within a further 20 Business Days, either party may commence legal proceedings.

16.2. Costs

- 16.2.1. Each party will bear its own costs of complying with this clause 16 [Dispute resolution], and the parties will bear equally the cost of any third person engaged under clause 16.1.1.d.

16.3. Application of clause

- 16.3.1. This clause 16 [Dispute resolution] does not apply to:
- a. legal proceedings by either party for urgent interlocutory relief; or
 - b. action by the Department under or purportedly under clauses 3 [Payment], 4 [Management of Funding], 17 [Termination or reduction in scope of Agreement] or 24.1.

16.4. Performance of obligations

- 16.4.1. Despite the existence of a dispute, the Recipient will (unless requested in writing by the Department not to do so) continue to perform the Recipient's obligations under this Agreement.

17. Termination or reduction in scope of Agreement

17.1. Termination for convenience

- 17.1.1. The Department may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of the Agreement immediately.
- 17.1.2. The Recipient agrees, on receipt of a notice of termination or reduction, to:
- a. stop or reduce the performance of the Recipient's obligations as specified in the notice;
 - b. take all available steps to minimise loss resulting from that termination or reduction;
 - c. continue work on any part of the Activity not affected by the notice; and
 - d. immediately return to the Department any Funding in accordance with clause 17.1.3.d, or otherwise deal with any Funding held by the Recipient as directed by the Department.
- 17.1.3. In the event of termination under clause 17.1.1, the Department:
- a. will be liable only for payments due and owing to the Recipient under the payment provisions of the Agreement as at the date of the notice;
 - b. will be liable to reimburse any reasonable costs incurred by the Recipient and directly attributable to the termination of the Agreement;
 - c. will not be liable to pay amounts under 17.1.3. a and 17.1.3. b which would, added to any payments already paid to the Recipient under this Agreement, together exceed the Funding set out in Item B [Funding and Payment];
 - d. will be entitled to recover from the Recipient any part of the Funding which:
 - i. has not been legally committed for expenditure by the Recipient in accordance with the Agreement and payable by the Recipient as a current liability by the date that the notice of termination is received; or
 - ii. has not, in the Department's opinion, been spent by the Recipient in accordance with the Agreement.
- 17.1.4. In the event of a reduction in the scope of the Agreement under clause 17.1.1:
- a. the Department will be liable to reimburse any reasonable costs incurred by the Recipient and directly attributable to the reduction in scope; and
 - b. the Department's liability to pay any part of the Funding will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Activity.
- 17.1.5. The Department's liability to pay any compensation under or in relation to this clause 17.1 [Termination or reduction in scope of Agreement] is subject to:

- a. the Recipient's compliance with this clause 17.1 [Termination or reduction in scope of Agreement]; and
 - b. the Recipient's substantiation of any amount claimed under clause 17.1.3.b.
- 17.1.6. The Recipient will not be entitled to compensation for loss of prospective profits or loss of any benefits that would otherwise have been conferred on the Recipient.

17.2. Termination for fault

- 17.2.1. The Department may by notice, terminate this Agreement immediately (but without prejudice to any right of action or remedy which either party has or may have) if:
- a. the Recipient fails to fulfil, or is in breach of any of its obligations under this Agreement, and the Department considers that this failure or breach is not capable of remedy;
 - b. the Recipient fails to fulfil, or is in breach of any of its obligations under this Agreement, and does not rectify the omission or breach within 10 Business Days of receiving a notice from the Department to do so;
 - c. the Recipient is unable to pay all its debts as and when they become due and payable;
 - d. the Recipient has applied to come under, received a notice requiring it to show cause why it should not come under, or has otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in legislation of the States and Territories pertaining to incorporated associations or in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or an order has been made for the purpose of placing the Recipient under external administration;
 - e. being an individual, the Recipient becomes bankrupt or enters into a scheme of arrangement with creditors;
 - f. in relation to the Agreement, the Recipient breaches any law of the Commonwealth, or of a State or Territory;
 - g. the Department is satisfied that any statement made in the Recipient's application for Funding is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding; or
 - h. the Department exercises any other specific right of termination under the Agreement.
- 17.2.2. Where the Department terminates this Agreement under clause 17.2.1 the Department:

- a. will be liable only for payments due and owing to the Recipient under the payment provisions of the Agreement as at the date of the notice; and
- b. will be entitled to recover from the Recipient any part of the Funding which:
 - i. has not been legally committed for expenditure by the Recipient in accordance with the Agreement and is not payable by the Recipient as a current liability by the date that the notice of termination is received; or
 - ii. has not, in the Department's opinion, been spent by the Recipient in accordance with the Agreement.

17.3. Preservation of other rights

- 17.3.1. Clause 17.2 does not limit or exclude any of the Department's other rights under this Agreement.

18. Delay

18.1. Recipient to minimise delay

- 18.1.1. The Recipient must take all reasonable steps to minimise delay in completion of the Activity.
- 18.1.2. If the Recipient becomes aware that it will be delayed in progressing or completing the Activity in accordance with this Agreement, the Recipient must immediately notify the Department in writing of the cause and nature of the delay. The Recipient is to detail in the notice the steps it will take to contain the delay.
- 18.1.3. In the event of a delay, the Department may at its sole option:
 - a. notify the Recipient in writing of a period of extension to complete the Activity and vary this Agreement accordingly;
 - b. notify the Recipient in writing of reduction in the scope of the Activity and any adjustment to the Funds for the Recipient to complete the reduced Activity and vary this Agreement accordingly; or
 - c. terminate this Agreement under clause 17.2 or take such other steps as are available under this Agreement.
- 18.1.4. Unless the Department takes action under clause 18.1.3, the Recipient is required to comply with the time frame for progressing and completing the Activity as set out in this Agreement.
- 18.1.5. If the Recipient does not notify the Department of any delay in progressing or completing the Activity in accordance with clause 18.1.2, the Department may, at its sole discretion, terminate this Agreement under clause 17.2.

19. Reserved

20. Occupational Health and Safety

20.1. Use of the Department's premises

20.1.1. The Recipient agrees, when using the Department's premises or facilities, to 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.

20.1.2. If conduct of the Activity requires the Recipient to carry out any Building Work, the Recipient must:

- a. maintain accreditation under the Scheme; and
- b. comply with all conditions of Scheme accreditation.

20.1.3. Subject to the exclusions specified in the *Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005*, the Recipient must ensure that all of its subcontracts valued at \$3 million or more and requiring Building Work related to the Activity:

- a. are notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity; and
- b. contain a requirement that the contractor:
 - i. is accredited under the Scheme;
 - ii. maintains Scheme accreditation for the life of the contract; and
 - iii. must comply with all conditions of the Scheme accreditation.

21. Animal ethics

21.1. Approval and compliance

21.1.1. Where the Activity involves the use and care of living non-human vertebrate animals or tissue for scientific purposes, the Recipient must obtain review of and approval for such scientific purposes from a recognised animal ethics committee operating under the Australian Code of Practice for the Care and Use of Animals for Scientific Purposes.

21.1.2. The Recipient agrees to provide the Department with a certificate of compliance with the appropriate guidelines prior to the commencement of any such scientific activities.

21.1.3. The Department reserves the right to terminate this Agreement in accordance with clause 17 [Termination or reduction in scope of Agreement] should the certificate referred to in clause 21.1.2 not be properly provided.

- 21.1.4. The Recipient agrees to comply with any legislation, regulations, guidelines and/or codes of practice relating to animal welfare in force in the States or Territories where the Activity is to be carried out.

22. Corporate Governance

22.1. Constitution

- 22.1.1. The Recipient agrees to provide a copy of the Recipient's Constitution to the Department upon notification by the Department.
- 22.1.2. The Recipient agrees to inform the Department whenever there is a change in the Recipient's Constitution, structure or management.
- 22.1.3. The Recipient agrees not to employ, engage or elect any person who would have a role in the Recipient's management, financial administration or, if stated in Item L [Corporate Governance], the performance of the Activity if:
- a. the person is an undischarged bankrupt;
 - b. there is in operation a composition, deed of arrangement or deed of assignment with the person's creditors under the law relating to bankruptcy;
 - c. the person has suffered final judgment for a debt and the judgment has not been satisfied;
 - d. subject to Part VIIC of the *Crimes Act 1914* (Cth), the person:
 - i. has been convicted of an offence within the meaning of paragraph 85ZM (1) of that Act unless:
 - i. that conviction is regarded as spent under paragraph 85ZM(2) (taking into consideration the application of Division 4 of Part VIIC);
 - ii. the person was granted a free and absolute pardon because the person was wrongly convicted of the offence; or
 - iii. the person's conviction for the offence has been quashed;
 - e. that person is or was a Director or occupied an influential position in the management or financial administration of an organisation that had failed to comply with funding requirements of the Commonwealth; or
 - f. the person is otherwise prohibited from being a member or Director or employee or responsible officer of the Recipient's organisation under the relevant local government legislation.
- 22.1.4. Where a person falls or is discovered as falling within any of clauses 22.1.3.a to 22.1.3.f while employed or engaged by the Recipient, or after being elected as an officer of the Recipient, the Recipient will be in breach of clause 22.1.3 if the Recipient does not:

- a. transfer the person to a position which does not have a role in the Recipient's management, financial administration or, if stated in Schedule 1, the performance of the Activity; or
- b. terminate the employment or engagement of the person or remove the person from office,

as the case may be and immediately notify the Department of the Recipient's action.

22.1.5. If the Recipient advises the Department that the Recipient considers such termination action would be a breach of a statutory provision binding on the Recipient, the Department will take the Recipient's view into account in deciding what action to take as a result of the breach.

22.1.6. If the Recipient is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), in the event that the Recipient's public officer receives a notice from the Registrar of Aboriginal Corporations calling upon the Recipient to show cause why an administrator should not be appointed, the Recipient agrees to notify the Department within 5 Business Days of the date of receipt of such a notice.

22.1.7. If the Recipient is registered under the *Corporations Act 2001* (Cth), in the event that the Recipient applies to come under, receives a notice requiring the Recipient to show cause why the Recipient should not come under, receives a notice or an application from any other person for the Recipient to come under or has otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* or an order has been made for the purpose of placing the Recipient under external administration, the Recipient agrees to notify the Department within 5 Business Days of the date of the making or receipt of such a notice or application or the making of such an order.

23. Notices

23.1. Format, addressing and delivery

23.1.1. A notice under this Agreement is only effective if it is in writing, and dealt with as follows:

- a. *if given by the Recipient to the Department* - addressed to the Department at the address specified in Item M [Notice] or as otherwise notified by the Department; or
- b. *if given by the Department to the Recipient* - given by the Department and addressed (and marked for attention) as specified in Item M [Notice] or as otherwise notified by the Recipient.

23.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand;
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

23.2. When notice is effective

23.2.1. A notice is deemed to be effected:

- a. *if delivered by hand* - upon delivery to the relevant address;
- b. *if sent by post* - upon delivery to the relevant address; or
- c. *if transmitted electronically* - upon actual receipt by the addressee.

23.2.2. A notice received after 5.00 pm, or on a weekend or public holiday in the place of receipt, is deemed to be effected on the next Business Day in that place.

24. General Provisions

24.1. Audit and access

24.1.1. The Recipient agrees:

- a. to give the Department, or any persons authorised in writing by the Department, access to premises where obligations under this Agreement are being carried out; and
- b. to permit those persons to inspect and take copies of any Material relevant to this Agreement.

24.1.2. The rights referred to in clause 24.1.1. are subject to:

- a. the Department providing reasonable prior notice;
- b. the reasonable security procedures in place at the premises; and
- c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.

24.1.3. The Auditor-General and the Privacy Commissioner are persons authorised for the purposes of clause 24.1.1.

24.1.4. This clause 24.1 does not detract from the statutory powers of the Auditor-General or the Privacy Commissioner.

24.2. Insurance

24.2.1. The Recipient agrees:

- a. to effect and maintain the insurance specified in Item G [Insurance]; and

b. on request, to provide proof of insurance acceptable to the Department.

24.2.2. This clause 24.2 continues in operation for so long as any obligations remain in connection with this Agreement.

24.3. Conflict of interest

24.3.1. In this clause 24.3:

Conflict means any matter, circumstance, interest or activity involving or affecting the Recipient, its Personnel or subcontractors which may or may appear to impair the ability of the Recipient to perform the Activity diligently and independently.

24.3.2. The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the Date of this Agreement no Conflict exists or is likely to arise in the performance of the Recipient's obligations under the Agreement.

24.3.3. If during the Term a Conflict arises, the Recipient agrees to:

- a. notify the Department immediately;
- b. make full disclosure to the Department of all relevant information relating to the Conflict; and
- c. take any steps the Department reasonably requires to resolve or otherwise deal with that Conflict.

24.4. Relationship of parties

24.4.1. The Recipient is not by virtue of this Agreement an officer, employee, partner or agent of the Department, nor does the Recipient have any power or authority to bind or represent the Department.

24.4.2. The Recipient agrees:

- a. not to misrepresent its relationship with the Department; and
- b. not to engage in any misleading or deceptive conduct in relation to the Activity.

24.5. Waiver

24.5.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right.

24.5.2. A single or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

24.6. Variation of Agreement

- 24.6.1. Except for action the Department is expressly authorised to take elsewhere in this Agreement, no variation of this Agreement is binding unless it is agreed in writing and signed by both parties.

24.7. Assignment

- 24.7.1. The Recipient cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the Department's prior written approval.

24.8. Survival

- 24.8.1. The operation of clauses 2.5 [Review], 7 [Assets], 8 [Records], 11 [Intellectual property], 12 [Confidential Information], 13 [Privacy], 15 [Indemnity], 16 [Dispute resolution], 24.2 [Insurance] and any other provision which expressly or by implication from its nature is intended to continue to survive the expiration or earlier termination of this Agreement shall survive the expiration or earlier termination of this Agreement.

- 24.8.2. Clauses 14 [Acknowledgement and publicity] and 24.1 apply for the Term and for a period of 7 years from the date of expiration or earlier termination of the Agreement.

24.9. Compliance with legislation and policies

- 24.9.1. The Recipient agrees to comply with any provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority applicable to its performance of this Agreement.

- 24.9.2. The Recipient agrees, in carrying out its obligations under this Agreement, to comply with any of the Department's policies as notified, referred or made available by the Department to the Recipient (including by reference to an internet site), including those listed in Item K [Compliance with policies].

24.10. Applicable law and jurisdiction

- 24.10.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

- 24.10.2. The parties submit to the jurisdiction of the courts of that Territory.

SCHEDULE 1 PARTICULARS

A. Program and Activity

(Recital A, clauses 1.1.1 and 2.1.1)

The Program, Program goals and how the Activity seeks to achieve Program goals, by reference to outcomes and outputs where possible.

A.1. Program

^insert description of the Program^

^insert link or attach any applicable Guidelines or Principles^

A.2. Activity

A.2.1. The Activity Period commences on the Date of this Agreement and ends on ^insert date which provides sufficient time for completion of all Milestones and Reports^.

A.2.2. The Objectives of the Activity are [insert].

A.2.3. In performing the Activity, the Recipient is required to... ^insert detailed description of the Activity including the applicable Milestones^

Milestone

Date

Milestone 1:

Milestone 2:

Milestone 3:

Milestone 4

A.2.4. The Recipient shall, provide a copy of any Activity Material that the Department requests to the Department in a form specified by the Department.

B. Funding and Payment

(clauses 1.1.1, 3.1, 4)

B.1.1. The total Funding for the Activity is \$^insert amount^ which represents \$^insert amount^, the amount of Funding to be provided by the Commonwealth for the Activity, and \$^insert amount^, being the total GST payable in accordance with clause 5. Subject to the terms of this Agreement (including this Item B), the Funding will be paid as follows:

Payment Number and type	Timing of Payment	Amount (including GST)	Amount of GST included in each payment
1. Initial payment	Signing of the Agreement	\$	\$
2. Progress	Completion of Milestone 1 (including provision of progress Report 1)	\$	\$
3. Final	Completion of Milestones 2 and 3 (including provision of progress Reports 2 and 3)	\$	\$

B.1.2. Each payment of Funds specified in Item B.1.1 is subject to:

- a. the Recipient having completed the part of the Activity (including any Milestone) that is a condition of the payment to the satisfaction of the Department;
- b. the Recipient having provided all Reports that were due on or prior to the payment date; and
- c. where a taxable supply is made, the Recipient having provided a correct and complete tax invoice to the Department, or where no taxable supply is made, the Recipient providing an invoice to the Department.

B.1.3. Subject to the terms of this Agreement (including this Item B), the Department will make a payment of Funds to the Recipient within 20 Business Days of the conditions in Item B.1.2 being satisfied.

B.1.4. The Recipient is not required to comply with clause 4.2.1b and establish a separate bank account for the Funds.

C. Recipient Contributions and Other Contributions

(clause 6)

C.1. Recipient Contributions

C.1.1. Recipient Contributions are specified in the following table on a GST-exclusive basis.

Recipient Contributions

Recipient Contribution**Due Date****C.2. Other Contributions**

C.2.1. The Other Contributions for the Activity are specified in the following table.

Table - Other Contributions

Item	GST exclusive amount of each Other Contribution	Due date for each Other Contribution
-------------	--	---

D. Budget

(clauses 4.6 and 4.7)

Expenditure Item	Funding	Recipient Contributions	Other Contributions	Total Cost
e.g. Assets				

D.1.1. The Recipient shall provide a detailed draft budget for each Financial Year of the Activity Period (other than those covered by the Budgets already included in this Item D of the Schedule) for the consideration and acceptance of the Department two (2) months prior to the beginning of that Financial Year.

D.1.2. Payment of Funds for these years is subject to the terms of this Agreement and acceptance by the Department of the draft budget for the Financial Year.

D.1.3. If the Department accepts a draft budget it will become the Budget for the relevant Financial Year of the Activity Period and be deemed to be incorporated into this Item 4 of the Schedule as at the date the Department notifies the Recipient that the draft budget is approved.

E. Reporting

(clauses 1.1.1, 9)

E.1.1. The Recipient must provide, in accordance with clause 9 [Reporting] and this Item E [Reporting], four types of report:

- a. progress Reports (which will include some financial information);

- b. financial Reports (as indicated in clause 9);
- c. a final Report; and
- d. other Reports (but only if requested by the Department).

E.2. Progress Reports

E.2.1. The Recipient must provide the Department with progress Reports at the following times: [insert dates or the Department may wish to specify that a progress Report is required as part of each Milestone ^].

E.2.2. Each progress Report must include, but need not be limited to, the following information for the Reporting period:

- a. the Recipient's name;
- b. the names of all the Recipient's subcontractors;
- c. the full Activity title;
- d. the amount of Funding payable under the Agreement;
- e. the Reporting period (being the part of the Activity Period to which the Report relates);

financial information

- f. financial information (prepared by a Qualified Accountant who, if notified by the Department, must also be a person acceptable to the Department) including the following supporting documentation:
 - i. an income and expenditure statement for the Activity for the Financial Year to date compared with the Budget, this must include details of the receipt and expenditure of the Funds, the Recipients Contributions and Other Contributions including a statement on the amount and use of all Activity Generated Income;
 - ii. a schedule of the Assets created, acquired written-off or Disposed of during the Financial Year to date compared with the Budget;
 - iii. if requested by the Department, a list, and amounts, of debtors and creditors (if the financial statements are prepared on a cash basis) or the amount of accruals and pre-payments (if the financial statements are prepared on an accrual basis) in respect of the Activity;
 - iv. the balance of the account referred to in clause 4.2.1b (if required to keep a separate account), or the balance of the Funding;
 - v. a statement of how much money the Recipient needs to meet current liabilities under legal commitments entered into it pursuant to this Agreement;

- vi. if requested by the Department, quarterly completed business activity statements as required by the Australian Taxation Office, where applicable; and
 - vii. a statement as to whether the Activity is proceeding within Budget, and if it is not, an explanation of why the Budget is not being met and the action the Recipient proposes to take to address this.
- g. Activity performance information including:
- i. a description of actual performance against the Objectives;
 - ii. detailed description of work undertaken during the period to which the report relates;
 - iii. a discussion and statement as to whether the timeframes and Milestones for the Activity (and specifically during the Report period) are being met and an explanation of any delays that have occurred, including the reasons for those delays and the action the Recipient proposes to take to address the delay and the expected effects (if any) the delay will have on the Activity (including subsequent Milestones and the overall completion of the Activity).

E.3. **Final Report**

E.3.1. The final Report must be a stand-alone document that can be used for public information dissemination purposes. The final Report is due on **[^insert date that the final Report is required^]** or within 30 days of the earlier termination of this Agreement.

E.3.2. The final Report must: **[^insert the additional information the recipient is required to include in the final Report. See the following examples^]**.

- a. discuss in detail the operation, mechanisms and processes employed by the Recipient to perform the Activity and achieve the Objectives;
- b. describe the Recipient's activities during the entire Activity Period;
- c. discuss in detail the conduct, benefits and outcomes of the Activity as a whole and the Activity's results and findings; and
- d. evaluate the Activity and include a detailed discussion as to whether the Objectives of the Activity were achieved, and if not, an explanation of why any Objectives were not met. **[^insert any additional criteria against which the recipient is required to evaluate the Activity^]**.
- e. **[^State any other information relevant to the Activity that the recipient is required to include in the final Report^].**

E.3.3. The Recipient must also include in the final Report a discussion of any other matters, relating to the evaluation of the Activity, which the Department notifies the Recipient is required to be included in the final Report. Any such

requirement will be notified to the Department at least 20 Business Days before the final Report is due.

E.4. Financial Reports

E.4.1. The Recipient must also include the following financial information in the financial reports required under clause 9.2:

a. [insert additional financial information]

E.4.2. Pursuant to clause 9.3.1, the audited statement referred to in clause 9.2.1.c and the statement referred to in clause 9.2.2 must also contain the following requirements:

a. [insert additional requirements]

E.5. Other Reports

E.5.1. Throughout the Activity Period, the Department may require the Recipient to provide ad hoc Reports concerning:

- a. any significant developments concerning the Activity; and
- b. any significant delays or difficulties encountered in performing the Activity in accordance with the Agreement.

E.5.2. The Recipient must provide any such ad-hoc Reports within the timeframe notified by the Department.

F. Assets

(clauses 1.1.1 and 7)

F.1.1. [E.g. The Recipient must for the Term of this Agreement maintain an Asset register in the following form and containing the following information:]

Asset number	Description of Asset	Creation, acquisition or total lease cost	Date of creation, acquisition or lease	Term of lease or other arrangement	Location of Asset	Method of, and date, which Asset was written off or Disposed of

G. Insurance

(clause 24.2)

G.1.1. The Recipient must maintain:

- 1. workers compensation insurance as required by law where the Organisation carries out activities under this Agreement;

2. public liability insurance to the value of at least \$10 million per claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be;
 3. insurance over any Asset acquired pursuant to clause 7 of this Agreement for its full replacement value; and
 4. professional indemnity insurance for an amount of not less than \$1,000,000 (one million dollars).
- a. public liability insurance to the value of at least \$10 million for each and every claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be; and
 - b. insurance against any loss or damage to an Asset for its full replacement cost including where relevant the costs of demolition and removal of debris and the cost of architects, engineers and other consultants.

H. Subcontracting
(clause 2.3)

H.1.1.

I. Acknowledgement and publicity
(clause 14)

- I.1.1. The Recipient must acknowledge the provision of the Funding by the Australian Government represented by the Department of Sustainability, Environment, Water, Population and Communities in the following way [^insert^].

J. Specified Personnel
(clauses 1.1.1 and 2.4)

- J.1.1. The following person or persons with the following skills must complete the following parts of the Activity: [^insert^]

K. Compliance with policies
(clause 24.9)

- K.1.1. The Recipient must comply with the following policies in carrying out the Activity:

L. Corporate Governance
(clause 22)

M. Notice
(clause 23.1)

M.1.1. The Department's details are as follows:

[^specify name, position, address, telephone, fax and e-mail^]

M.1.2. The Recipient's details are as follows:

[^specify name, position, address, telephone, fax and e-mail^]

N. Confidential Information
(clause 12)

N.1. Department's Confidential Information

N.1.1. Agreement Provisions/Schedules/Attachments

Item	Period of Confidentiality
<i>^insert relevant items^</i>	

N.1.2. Agreement related material

Item	Period of Confidentiality
<i>^insert relevant items^</i>	

N.2. Recipient's Confidential Information

N.2.1. Agreement Provisions/Schedules/Attachments

Item	Period of Confidentiality
<i>^insert relevant items^</i>	

N.2.2. Agreement related material

Item	Period of Confidentiality
<i>^insert relevant items^</i>	

O. Existing Material
(clause 11.3)

O.1.1.

Note: Describe any Existing Material, i.e. Material existing prior to the Date of this Agreement in which Intellectual Property Rights are either owned by the Recipient or owned by a third party but which the Recipient has a licence to use.

P. Commonwealth Material
(clause 10)

P.1.1.

Q. Steering Committee
(clause 2.6)

Q.1.1.

Signatures

This Funding Agreement is made on ^day(numeric) month(name) year(numeric) in full^.

SIGNED for and on behalf of)
Department of Sustainability,)
Environment, Water, Population and)
Communities by:)
)

^Name of signatory^

Signature

In the presence of:

^Name of witness^

Signature of witness

SIGNED for and on behalf of by:)
)
)

^Name of signatory^

Signature

In the presence of:

^Name of witness^

Signature of witness