

# LONG FORM FUNDING AGREEMENT

in relation to research  
under the National  
Environmental Science  
Programme 2 (**NESP 2**) –  
[INSERT HUB] [INSERT  
AGREEMENT ID]

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Commonwealth of Australia as represented by  
the Department of Agriculture, Water and the  
Environment

ABN 34 190 894 983 (**Department**)

[INSERT LEGAL NAME]

ABN [INSERT] (**Recipient**)

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# Details

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## Parties

1. Commonwealth of Australia as represented by the **Department of Agriculture, Water and the Environment** ABN 34 190 894 983 (**Department**).
2. **[INSERT]** ABN **[INSERT]** (**Recipient**).

## Recitals

- A. The Department is undertaking the National Environmental Science Program 2 (**Program**) to further improve our understanding of Australia's environment through collaborative research that delivers accessible results and informs decisions, and to invest in applied environmental science to support decision-makers from across the Australian community, including Indigenous communities, to achieve positive environmental, social and economic outcomes.
- B. The Recipient has been approved to receive funding from the Department to carry out the Activity on the terms and conditions set out in this Agreement. In particular, the Department is providing the Funds to the Recipient to assist with **[INSERT DETAILS OF HUB SPECIFIC OBJECTIVES]**.
- C. In consideration of the Department providing the Funds to the Recipient, the Recipient has agreed to perform the Activity in accordance with the terms and conditions of this Agreement.

# Operative provisions

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## 1. Definitions and interpretation

### 1.1 Definitions

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

<b>ABN</b>	has the same meaning as it has in section 41 of the <i>A New Tax System (Australian Business Number) Act 1999</i> (Cth).
<b>Accounting Standards</b>	the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.
<b>Activity</b>	the activity described in the Activity Particulars.
<b>Activity Budget</b>	the budget detailing how the Recipient will spend the Funds, and identifying the Recipient's Contributions and Other Contributions to the Activity and the proposed expenditure of such amounts, for the purposes of conducting the Activity and otherwise performing obligations under this Agreement, at Attachment C to the Research Plan for the relevant calendar year and Final Report, as amended from time to time in accordance with clause 4.3(a) and 4.3(b).
<b>Activity Event</b>	any promotional event conducted by the Recipient relating to the Activity, including celebration of Funds, all openings, ceremonies or other public events to mark the completion of any aspect of the Activity and all other openings, ceremonies or public events which are related to the Activity.
<b>Activity Generated Income</b>	any income earned or generated by the Recipient from its use of the Funds, including interest earned from the investment of the Funds, but does not include income earned or generated from the use of the Assets.
<b>Activity Material</b>	any Material, including Research Outputs, created by the Recipient for the purpose of or as a result of performing its obligations under this Agreement.
<b>Activity Outcomes</b>	the activity outcomes described in Item 1.3 of the Activity Particulars.
<b>Activity Particulars</b>	Schedule 2 of this Agreement.
<b>Activity Period</b>	the period specified in Item 2 of the Activity Particulars.

<b>Advisers</b>	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
<b>Agreement</b>	this agreement between the Department and the Recipient, as amended from time to time in accordance with clause 22.2, and including its Schedules and any Annexures.
<b>Agreement Details</b>	Schedule 1.
<b>Agreement Period</b>	the period specified in clause 2.
<b>Annexure</b>	an annexure to this Agreement.
<b>Asset</b>	any item of tangible property purchased or leased either wholly or in part with the use of the Funds with a value at the time of acquisition of \$5,000.00 or more, excluding GST.
<b>Audit</b>	an audit carried out by a Qualified Accountant in accordance with the Auditing Standards.
<b>Auditing Standards</b>	has the same meaning as it has in sections 9 and 336 of the <i>Corporations Act 2001</i> (Cth), and refers to the auditing standards made by the Australian Auditing and Assurance Standards Board but does not include compliance with a requirement in the Auditing Standards for the Qualified Accountant to be independent of the Recipient.
<b>Auditor-General</b>	the office established under the <i>Auditor-General Act 1997</i> (Cth) and includes any other person that may, from time to time, perform the functions of that office.
<b>Auditor's Report</b>	has the same meaning it has in the Auditing Standards.
<b>Business Day</b>	in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place.
<b>Commencement Date</b>	the date this Agreement is executed by the parties or, if executed on separate days, the date on which this Agreement is executed by the last party to do so.
<b>Commercial Purpose</b>	includes selling, letting for hire, or by way of trade, offering or exposing for sale or hire any article embodying the Research Outputs or Existing Material or any product or service derived from or incorporating the Research Outputs or Existing Material.
<b>Commonwealth</b>	the Commonwealth of Australia.

<b>Completion Date</b>	the day after the Recipient has done all that it is required to do under clauses 4 (Conduct of the Activity), 5 (Funds) and 9 (Records, Reports and acquittals) of this Agreement to the satisfaction of the Department (in its absolute discretion).
<b>Communication and Media Officer</b>	person specified as Communication and Media Officer in Item 7 of the Activity Particulars.
<b>Communication Strategy</b>	refers to the Communication Strategy specified at clause 4.13(d) which describes how the Recipient and its Research Organisations will communicate knowledge (including Research Outputs) with end-users.
<b>Confidential Information</b>	<p>in respect of the Department, information that is by its nature confidential; and:</p> <p>(a) is designated by the Department as confidential; or</p> <p>(b) a party knows or ought to know is confidential, but does not include information which is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation.</p> <p>In respect of the Recipient, information that:</p> <p>(c) is designated by the Recipient as confidential with an explanation as to why the information should be treated as confidential;</p> <p>(d) is commercially sensitive; and</p> <p>(e) would cause unreasonable harm to the Recipient or someone else if it is was disclosed,</p> <p>but does not include information which is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation.</p>
<b>Conflict of Interest</b>	any circumstance in which the Recipient, the Recipient's Research Organisations, or any of their 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 Activity, or its obligations under this Agreement, fairly and independently.
<b>Cross-Hub Senior Governance Committee</b>	the Cross-Hub Senior Governance Committee as described in Item 9 of the Activity Particulars.
<b>Data Wrangler</b>	person specified as Data Wrangler in Item 7 of the Activity Particulars.
<b>Department</b>	the Commonwealth Department of Agriculture, Water and the Environment or any other agency that administers this Agreement from time to time.

<b>Department Material</b>	any Material provided to the Recipient by the Department.
<b>Department Representative</b>	the person identified in Item 2 of the Agreement Details or such other person as is notified by the Department from time to time.
<b>Depreciation</b>	has the same meaning as it has in Australian Accounting Standard AASB 116 <i>Property, Plant and Equipment</i> .
<b>Dispose</b>	means to sell, mortgage or encumber, lease or sublease, license or sublicense, assign or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts.
<b>Electronic Communication</b>	has the same meaning as in the <i>Electronic Transactions Act 1999 (Cth)</i> .
<b>Emerging Priority</b>	means emerging Commonwealth priorities in environmental science research and application as notified by the Department from time to time.
<b>Emerging Priority Funds</b>	has the meaning given in clause 4.4.
<b>Existing Material</b>	<p>any Material, other than Activity Material or Third Party Material, which is created before the Commencement Date and was made available by a party for the purpose of this Agreement, on or following the Commencement Date, and includes:</p> <ol style="list-style-type: none"> <li>a) error corrections or translations to that Material; and</li> <li>b) modifications or derivatives of that Material where such modification or derivative work cannot be used without infringing the Intellectual Property Rights in the underlying Material.</li> </ol>

<b>Financial Information</b>	<p>information relating to the Recipient's receipt, retention and expenditure of the Funds including, at a minimum:</p> <ul style="list-style-type: none"> <li>(a) an income and expenditure statement (including a detailed statement reflecting the expenditure categories specified in clause 4.2(j)) in relation to the Funds, including any Activity Generated Income;</li> <li>(b) a statement identifying any Funds paid by the Department to the Recipient under this Agreement that were not spent or committed by the end of the relevant calendar year during the Agreement Period;</li> <li>(c) a detailed statement of revenue and expenditure in relation to the Funds received and receivable by the Recipient under this Agreement (including any Activity Generated Income), which must include a definitive statement as to whether the Recipient's financial accounts in relation to the Funds are complete and accurate, and a statement of the balance of the bank account referred to in clause 5.6; and</li> <li>(d) notes, comprising a summary of significant accounting policies and other explanatory notes that are relevant to the Funds,</li> </ul> <p>prepared in accordance with the Accounting Standards for the relevant calendar year and audited by a Qualified Accountant.</p>
<b>Force Majeure Event</b>	<p>circumstances beyond a party's 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 or its subcontractors only) including but not limited to acts of God, national emergency, natural disasters, pandemics, epidemics, terrorism, acts of war, riots and strikes outside that party's organisation, where these circumstances could not have been prevented, overcome or remedied the exercise of a standard of care and diligence consistent with a prudent person undertaking the party's obligations under the Agreement.</p>
<b>Freedom of Information Commissioner</b>	<p>the office of that name established under the <i>Australian Information Commissioner Act 2010</i> (Cth) and includes any other person that may, from time to time, perform the functions of that office.</p>
<b>Funds</b>	<p>the amount specified in Item 3.1 of the Activity Particulars that is payable by the Department to the Recipient in accordance with this Agreement.</p>
<b>GST Act</b>	<p>means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth), as updated and amended from time to time.</p>

<b>Hub</b>	refers to the Recipient and Research Organisations as a single unit completing work related to the Activity under the Program.
<b>Hub Leader</b>	person specified as Hub Leader in Item 7 of the Activity Particulars.
<b>Hub Steering Committee</b>	the Hub Steering Committee as described in Item 8 of the Activity Particulars.
<b>Information Commissioner</b>	the office of that name established under the <i>Australian Information Commissioner Act 2010</i> (Cth) and includes any other person that may, from time to time, perform the functions of that office.
<b>Indigenous Facilitator</b>	person specified as Indigenous Facilitator in Item 7 of the Activity Particulars.
<b>Indigenous Strategy</b>	refers to the Indigenous Strategy specified at clause 4.15 which describes the Recipient's approach to facilitating Indigenous participation in the Activities.
<b>Insolvency Event</b>	<p>in respect of a party means:</p> <p>(a) if the party:</p> <ul style="list-style-type: none"> <li>(i) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors; or</li> <li>(ii) suffers any execution against its assets which has or will have an adverse effect on its ability to perform this Agreement; or</li> </ul> <p>(b) if the party is an incorporated entity:</p> <ul style="list-style-type: none"> <li>(i) being insolvent; or</li> <li>(ii) an administrator, liquidator, provisional liquidator, receiver, manager or controller under the <i>Corporations Act 2001</i> (Cth) being appointed to the party; or</li> <li>(iii) an order being made for the winding up of the party; or</li> </ul> <p>(c) if the party is an individual:</p> <ul style="list-style-type: none"> <li>(i) being bankrupt; or</li> <li>(ii) entering into a scheme of arrangement with creditors; or</li> <li>(iii) a mortgagee's or a chargee's agent being appointed.</li> </ul>
<b>Intellectual Property Rights</b>	<p>all intellectual property rights, including the following rights:</p> <p>(a) copyright, patents, rights in circuit layouts, trade marks, designs, trade secrets, know how, domain</p>

	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,
	whether or not such rights are registered or capable of being registered.
<b>Interest</b>	means interest calculated at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) plus 20 basis points.
<b>Item</b>	an item in a Schedule to this Agreement.
<b>Knowledge Broker</b>	person specified as Knowledge Broker in Item 7 of the Activity Particulars.
<b>Knowledge Brokering and Data Management Strategy</b>	refers to the Knowledge Brokering and Data Management Strategy specified at clause 4.14 which describes how the Recipient and its Research Organisations will share knowledge (including Research Outputs) between researchers and its end-users and manage data.
<b>Law</b>	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.
<b>Losses</b>	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).
<b>Material</b>	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, and the subject matter of any category of Intellectual Property Rights.
<b>Milestone</b>	any obligation to be performed by the Recipient under this Agreement by a fixed date specified in the Milestone Schedule.
<b>Milestone Schedule</b>	Schedule 3 of this Agreement.
<b>Mission</b>	a collaborative network of researchers across the Hub and other hubs that are part of the Program, focused on the [INSERT] theme.
<b>Mission Leader</b>	person specified as Mission Leader in Item 7 of the Activity Particulars.

<b>Monitoring and Evaluation Plan</b>	refers to the plan described at subclause 9.9.
<b>Moral Rights</b>	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
<b>NESP Data Management and Accessibility Guidelines</b>	the current version of the NESP Data Management and Accessibility Guidelines available on the Department's website.
<b>Ombudsman</b>	the office of that name established under the <i>Ombudsman Act 1976</i> (Cth) and includes any other person that may, from time to time, perform the functions of that office.
<b>Other Contributions</b>	the contributions specified in Item 4.1 of the Activity Particulars.
<b>Personal Information</b>	information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
<b>Personnel</b>	in relation to a party, any natural person who is an employee, officer, agent or professional adviser (including Adviser) of that party or, in the case of the Recipient, of a subcontractor.
<b>Privacy Act</b>	the <i>Privacy Act 1988</i> (Cth).
<b>Privacy Commissioner</b>	the office of that name established under the <i>Australian Information Commissioner Act 2010</i> (Cth) and includes any other person that may, from time to time, perform the functions of that office.
<b>Program</b>	the Program referred to in the Recitals.
<b>Program Guidelines</b>	the National Environmental Science Programme 2 Guidelines located at <a href="http://www.environment.gov.au/nesp">www.environment.gov.au/nesp</a> , or such other website notified by the Department from time to time.
<b>Program Objectives</b>	the Program Objectives described in Item 14 of the Activity Particulars.
<b>Qualified Accountant</b>	a person who is a member of the Institute of Chartered Accountants in Australia or of CPA Australia; and (a) independent of, and not a related entity of, the Recipient; or

	(b) where the Recipient has sought and received prior written approval from the Department—not independent of the Recipient but not involved in the performance of the Activity.
<b>Recipient</b>	the party specified in Item 3 of the Agreement Details, and where the context permits includes its Personnel.
<b>Recipient Created Tax Invoice</b>	has the same meaning given to that term in the GST Act.
<b>Recipient Representative</b>	the person identified in Item 4 of the Agreement Details, or such other person as is notified by the Recipient from time to time.
<b>Recipient's Contributions</b>	the contributions specified in Item 4.1 of the Activity Particulars.
<b>Recipient's Financial Report</b>	the reports and information specified in clause 5.5.
<b>Reports</b>	the reports that the Recipient is required to produce and provide to the Department in accordance with clause 9.
<b>Research Organisation</b>	an Australian organisation or institution established to undertake research or whose objectives include the undertaking of research, engaged in undertaking Activities for the Recipient for the purposes of the Program.
<b>Research Outputs</b>	refers to any Activity Material, other than progress reports, Financial Information contained in reports, Confidential Information and Personal Information (as defined by the Privacy Act).
<b>Research Plan</b>	the project plan detailing how the Recipient will conduct and complete the Activity in accordance with this Agreement, including the Activity Budget and timeframes for completion of various stages of the Activity in the relevant calendar year as provided and amended from time to time in accordance with clause 4.2, and where Research Plan 2021 is attached at Annexure A of this Agreement.
<b>Schedule</b>	a schedule to this Agreement.
<b>Specified Personnel</b>	the personnel (whether the Recipient's officers, employees or subcontractors), or people with specific skills, specified in Item 7 of the Activity Particulars as persons required to undertake the Activity or any part of the work constituting the Activity.
<b>Third Party Material</b>	any Material created by a third party that is: <ul style="list-style-type: none"> <li>(a) included, embodied in or attached to the Activity Material; or</li> </ul>

- (b) used for the purpose of, or as a result of, the Recipient's performance of its obligations under this Agreement.

## 1.2 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 an item, clause, paragraph, schedule or annexure is to a clause or paragraph or item 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;
- (f) a reference to AUD, A\$, \$A, dollar or \$ is to Australian currency;
- (g) a reference to time is to the time in the place where the obligation is to be performed;
- (h) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) if the Recipient is a trustee, the Recipient enters this Agreement personally and in its capacity as trustee and:
  - (i) any warranties given under this Agreement are given in both capacities; and
  - (ii) the Recipient warrants that it has the power to perform its obligations under this Agreement;
- (k) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and

- (o) to the extent that the parties have not completed any Item in a Schedule that Item will be taken to be 'not applicable' for the purpose of this Agreement, unless otherwise stated.

### **1.3 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) clauses 1 to 22 of this Agreement;
- (b) the Agreement Details;
- (c) the Milestone Schedule;
- (d) the Research Plan for the relevant calendar year (if any);
- (e) the Activity Particulars;
- (f) the Activity Budget for the relevant calendar year (if any); and
- (g) documents incorporated by reference in this Agreement.

## **2. Agreement Period**

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

## **3. Warranties and representations**

### **3.1 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 Activity;
- (b) it has, or is able to obtain, the written consent of any organisation that it will partner with or represent on the Activity, including its Research Organisations and traditional owners (if relevant);
- (c) it has not received funding through other initiatives or programs for substantially the same activities to be undertaken for the Activity;
- (d) it has no overdue reports or acquittals, under any contractual or statutory arrangement for funding with the Department or any other Commonwealth agency as far as its Specified Personnel are aware;
- (e) it has full power and authority to enter into, perform and observe its obligations under this Agreement;
- (f) the execution, delivery and performance of this Agreement has been duly and validly authorised by the Recipient; and
- (g) 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.

### **3.2 Recipient acknowledgement**

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

## **4. Conduct of the Activity**

### **4.1 Obligation to perform the Activity**

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

- (a) consistently with, and in furtherance of, the Program Objectives;
- (b) within the Activity Period;
- (c) in accordance with the Activity Budget for the relevant calendar year;
- (d) in accordance with all applicable Laws;
- (e) so as to meet the Milestones (by achieving the criteria for completion of the relevant Milestone specified in the Milestone Schedule, if any), other Research Plan for the relevant calendar year requirements, any other time period requirements in this Agreement, and where no Milestones or Research Plan requirements are specified, promptly and without delay;
- (f) so as to deliver the Activity Outcomes and meet all reporting requirements, in accordance with the requirements of this Agreement; and
- (g) otherwise in accordance with the provisions of this Agreement.

### **4.2 Research Plans**

- (a) Within the timeframe specified in the Milestone Schedule, the Recipient must submit a draft Research Plan for the following calendar year for the Department's approval.
- (b) The draft Research Plan must:
  - (i) be substantially in the form of the template provided by the Department (if any);
  - (ii) detail the research, linked to Activity Outcomes, to be undertaken at each stage of the Activity;
  - (iii) detail how the Recipient will deliver the Activity in accordance with this Agreement;
  - (iv) provide specific details of the research and the delivery of the Activity that will be undertaken in the following calendar year;
  - (v) be consistent with all timeframes arising under this Agreement and identify how they will be met; and
  - (vi) be prepared in consultation with the Department and end-users, the Hub Steering Committee and the Cross-Hub Senior Governance Committee; and
  - (vii) be endorsed by the Hub Steering Committee prior to submission to the Department.

- (c) Unless the Recipient is otherwise notified by the Department, the Department will reject or approve the draft Research Plan within 40 Business Days of submission by the Recipient under clause 4.2(a). Where the draft Research Plan is rejected, the Recipient must continue to submit a draft Research Plan, including any necessary amendments until the Department approves the draft Research Plan.
- (d) Following the receipt of comments by the Department on the draft Research Plan, the Recipient must resubmit the plan for approval within 20 Business Days from receipt of the comments. The resubmitted draft Research Plan must be endorsed by the Hub Steering Committee prior to submission to the Department.
- (e) Once a draft Research Plan is approved by the Department, it will become the final Research Plan for the following calendar year (subject to any agreed changes agreed by the Department in writing).
- (f) The Recipient must perform the Activity in accordance with the Research Plan in the following calendar year and must not make any amendments to the Research Plan, unless approved in writing by the Department.
- (g) For the avoidance of doubt, the Department's approval of a Research Plan does not in any way limit the Recipient's responsibility for the performance of its obligations under this Agreement and any consequences of that performance.
- (h) The parties must review the Research Plans if notified, in writing, by the Department.
- (i) Following any review undertaken in accordance with clause 4.2(h), the Department may in consultation with the Recipient, direct the Recipient to amend a Research Plan and shall give written notice of those amendments to the Recipient. The Recipient agrees to amend the Research Plan in accordance and upon receipt by the Recipient of such notice.
- (j) The Activity Budget at Attachment C of the Research Plan must distribute the Funds into four main expenditure categories as follows, within the limits specified below:
  - (i) applied science, decision tools and practical management options;
  - (ii) knowledge capture;
  - (iii) communication; and
  - (iv) administration,

where at least 70 percent of the Funds are allocated to applied science, decision tools and practical management options, between 10 and 20 percent of the Funds are allocated to knowledge capture, between 5 and 10 percent of the Funds are allocated to communication and between 5 and 10 percent of the Funds are allocated to administration.
- (k) The Activity Budget must indicate the Funds that will be spent in each calendar year.

### **4.3 Activity Budget**

- (a) Subject to clause 4.3(b), the Recipient must:

- (i) perform the Activity; and
  - (ii) only spend the Funds,  
in accordance with the Activity Budget in the Research Plan for the calendar year, and must not make any amendments to the Activity Budget in the Research Plan for the calendar year unless approved in writing by the Department.
- (b) The Recipient may transfer the Funds between categories of expenditure items within the Activity Budget in the Research Plan for the relevant calendar year, without requiring approval from the Department, provided that the Recipient:
- (i) notifies the Department in advance;
  - (ii) ensures that the resulting transfer does not exceed the maximum percentage of the Funds as allowed for each expenditure category, as specified in clause 4.2(j); and
  - (iii) ensures the Emerging Priority Funds are retained for the calendar year, as specified in clause 4.4.
- (c) For the avoidance of doubt, the Department's approval of the Activity Budget or any amendment to the Activity Budget does not in any way limit the Recipient's obligations under this Agreement.

#### **4.4 Emerging Priority Funds**

- (a) The Recipient must ensure that 10 percent of the total Funds being spent each calendar year (regardless of the expenditure category) are set aside in the Activity Budget to ensure the Recipient can respond to:
- (i) Emerging Priorities; and
  - (ii) the engagement of further subcontractors to undertake activities related to the Emerging Priorities,
- (being the **Emerging Priority Funds**).
- (b) The Emerging Priority Funds must only be spent by the Recipient in accordance with this clause 4.4.
- (c) From time to time after the Commencement Date, the Department may give notice to the Recipient of Emerging Priorities.
- (d) On receiving notice of Emerging Priorities, the Recipient must promptly:
- (i) prepare a plan for undertaking activities related to the Emerging Priorities that includes details of the Emerging Priority Funds that will be spent when undertaking the activities (**Emerging Priorities Plan**);
  - (ii) submit the Emerging Priorities Plan to the Department for approval; and
  - (iii) use reasonable endeavours to appoint additional subcontractors to ensure the Hub has relevant expertise to respond to the Emerging Priorities and implementing the Emerging Priorities Plan (including any subcontractors nominated by the Department as having relevant expertise to respond to the Emerging Priorities).
- (e) Unless the Recipient is otherwise notified by the Department, the Department will reject or approve the Emerging Priorities Plan in writing within 10 Business Days of submission by the Recipient under clause 4.4(d). Where the Emerging

Priorities Plan is rejected, the Recipient must continue to submit the Emerging Priorities Plan, including any necessary amendments until the Department approves the Emerging Priorities Plan.

- (f) The Department's approval of the Emerging Priority Plan constitutes approval to amend the Research Plan and Activity Budget for the relevant calendar year in accordance with clauses 4.2(f) and 4.3(a) to include the activities in the Emerging Priority Plan.
- (g) The Department's approval of the Emerging Priorities Plan does not in any way limit the Recipient's responsibility for the performance of its obligations under this Agreement and any consequences of that performance.

#### **4.5 Management of Conflicts of Interest**

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

#### **4.6 Specified Personnel**

- (a) The Recipient must nominate Specified Personnel for the following roles:
  - (i) a Hub Leader whose role is to lead the undertaking of the Activity for the Recipient;
  - (ii) a Mission Leader whose role is to lead the Hub's Mission for the Recipient;
  - (iii) an Indigenous Facilitator whose role is to facilitate strong partnerships, collaboration and engagement with Indigenous Australians;
  - (iv) a Data Wrangler whose role is to provide specialised knowledge and skills in knowledge capture;
  - (v) a Knowledge Broker whose role is to provide specialised knowledge and skills in translating specialist scientific knowledge in different contexts and
  - (vi) a Communication and Media Officer whose role is to help ensure that information is targeted to the correct audience,  
for the Hub.
- (b) The Recipient must:
  - (i) ensure that the Specified Personnel nominated for the roles listed at clause 4.6(a) perform all work identified to be undertaken by that role in relation to the Activity in accordance with this Agreement;
  - (ii) ensure that all other Specified Personnel perform work in relation to the Activity in accordance with this Agreement;

- (iii) ensure that when Specified Personnel are unavailable for a short term period of not more than 6 months (or as otherwise agreed by the Department), including but not limited to periods of leave or fieldwork, the Specified Personnel brief other Personnel to act on the work they are taking in relation to the Activity and the role they are performing in relation to the Activity in accordance with this Agreement;
  - (iv) ensure the Department is notified of the unavailability of the Specified Personnel for the short term period and the contact details of the relevant Personnel who has been briefed to act in their absence; and
  - (v) where required to do so by the Department, promptly provide information to the Department regarding the qualifications and / or performance of any Personnel of the Recipient in relation to the Activity.
- (c) If Specified Personnel are unable to perform the work as required under this clause 4.6, the Recipient agrees to notify the Department immediately.
  - (d) The Recipient agrees, at the request of the Department acting in its absolute discretion, to remove Personnel from work in relation to the Activity.
  - (e) If clause 4.6(c) or clause 4.6(d) applies, the Recipient will provide replacement Personnel acceptable to the Department at no additional cost and at the earliest opportunity.

#### **4.7 Appointment of subcontractors**

- (a) The Recipient must not enter into a subcontract in relation to the Activity without the Department's prior written approval. In giving approval, the Department may do so on such terms and conditions as the Department thinks fit.
- (b) Any subcontractors approved by the Department at the Commencement Date, and any terms and conditions relating to their use, are identified in Item 5 of the Agreement Details.
- (c) Despite any approval given by the Department, the Recipient is responsible for the performance of the Recipient's responsibilities under this Agreement regardless of whether the Recipient has subcontracted any of its obligations.
- (d) In respect of all subcontracts entered into for the Activity, the Recipient must ensure that:
  - (i) the subcontract facilitates compliance by the Recipient with its obligations under this Agreement;
  - (ii) the subcontract will not conflict with or detract from the rights and entitlements of the Department under this Agreement;
  - (iii) the other party to the subcontract is financially viable, has the necessary relevant expertise and the appropriate types and amounts of insurance to perform the work in relation to the Activity;
  - (iv) the subcontract contains all the relevant terms of this Agreement including those relating to warranties, subcontracting, access to premises and records, intellectual property, privacy, confidentiality, work health and safety, indemnities and termination and in particular that the Recipient has or will secure itself a right to terminate the subcontract on terms no less favourable than those accorded to the Department by clause 19, in the event of this Agreement being terminated. The

Recipient must also ensure that the subcontract contains relevant details of the Research Plan 2021 (and / or subsequent Research Plans as relevant), as updated from time to time; and

- (v) the other party to the subcontract acknowledges that it may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976* (Cth) and subject to investigation by the Ombudsman under the *Ombudsman Act 1976* (Cth), and that the Department will not be liable for the cost of any such investigation by the Ombudsman in connection with the subject matter of the subcontract or the subject matter of this Agreement.
- (e) The Recipient must not enter into a subcontract under this Agreement with a subcontractor that is currently named as not complying with the *Workplace Gender Equality Act 2012* (Cth).
- (f) If requested, the Recipient must promptly provide to the Department a copy of any subcontract or other contract relating to the Activity.
- (g) For the purposes of this Agreement, a 'subcontractor' includes a Research Organisation and a 'subcontract' includes an agreement between the Recipient and a Research Organisation.

#### **4.8 Liaison**

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

#### **4.9 Delay**

- (a) Without limiting its obligations under clause 4.1, the Recipient must take all reasonable steps to minimise delay in undertaking or completing the Activity, and ensure that its Research Organisations take all reasonable steps to minimise delay in undertaking or completing the Activity.
- (b) If the Recipient anticipates any delay in performing its obligations under this Agreement, it must notify the Department of that delay:
  - (i) if a Force Majeure Event has or is likely to occur, in accordance with clause 17; or
  - (ii) otherwise in accordance with clause 19.2.

#### **4.10 Hub Steering Committee**

- (a) The Recipient must establish a Hub Steering Committee whose membership, role and responsibilities are specified in Item 8 of the Activity Particulars.
- (b) The Recipient agrees to liaise with and report regularly to, and must ensure that Research Organisations liaise and report regularly to, the Hub Steering Committee established under this clause 4.10.

#### **4.11 Cross-Hub Senior Governance Committee**

- (a) The Recipient must ensure the Hub Leader and Mission Leader participate in the establishment and activities of a Cross-Hub Senior Governance Committee whose membership, role and responsibilities are specified in Item 9 of the Activity Particulars.
- (b) The Recipient agrees to liaise with and report regularly to, and must ensure that its Research Organisations liaise and report regularly to, the Cross-Hub Senior Governance Committee.

#### **4.12 Agreement with Research Organisations**

- (a) The Recipient may only engage a Research Organisation to undertake a part of the Activity if:
  - (i) subject to clause 4.12(b), the Research Organisation has been listed as a subcontractor at Item 5 of the Agreement Details;
  - (ii) the Research Organisation has the capacity to enter into a legally binding agreement with the Recipient;
  - (iii) the activities of the Research Organisation (and the Funds to be provided to the Research Organisation) are identified in an Activity Budget, a Research Plan or otherwise approved by the Department; and
  - (iv) the Research Organisation is able to manage and monitor the receipt and expenditure of Funds in accordance with the financial management requirements equivalent to those applying to the Recipient under this Agreement.
- (b) The Research Organisation is not required to be listed as a subcontractor at Item 5 of the Agreement Details if the Recipient decides to engage a Research Organisation to undertake a part of the Activity after the Commencement Date and the Department has approved the engagement of the Research Organisation under clause 4.7.
- (c) Where this Agreement requires the Recipient to ensure that a Research Organisation complies with the requirements of this Agreement in respect of the part of the Activity undertaken by the Research Organisation, the Recipient is required to:
  - (i) enter into a legally binding contract with the Research Organisation, subject to clause 4.7 and this clause 4.11, and which:
    - (A) contains provisions necessary to require the Research Organisation to comply with those requirements; and
    - (B) requires the Research Organisation to repay to the Recipient any Funds that remain in the Research Organisation's possession and that are unspent or uncommitted at:
      1. the end of the Research Organisation's involvement in the Activity; or
      2. the earlier termination of this Agreement or the termination of the agreement between the Research Organisation and the Recipient.

- (d) The Recipient must notify the Department of any non-compliance by the Recipient or the Research Organisation with the legally binding contract between them.

#### **4.13 Communication Strategy**

- (a) Within the timeframe specified in the Milestone Schedule, the Recipient must develop a draft Communication Strategy for communicating the Activity under the Agreement for the Department's approval.
- (b) The draft Communication Strategy must:
  - (i) be integrated as part of the Department's overarching and Program level communications strategies;
  - (ii) clearly articulate how the Hub's outputs, outcomes and impact align with the overarching Program Objectives;
  - (iii) align with the Hub's Research Plans;
  - (iv) reflect the obligations on the Recipient in this Agreement related to communications, including but not limited to the obligations in clause 12;
  - (v) be prepared in collaboration with the Department;
  - (vi) comply with any Departmental principles and requirements for communication of the Activity (as notified from time to time), where Departmental requirements may include the use of specific templates provided by the Department when preparing communication materials;
  - (vii) outline the activities to be undertaken by the Communication and Media Officer, which must include working with the Recipient, researchers, and other stakeholders to ensure knowledge generated from the Activity (including the Research Outputs) is targeted to the correct audience to maximise the impact of the knowledge;
  - (viii) outline communication strategies for how the Hub will communicate knowledge (including Research Outputs) with end-users across government, industry and communities, and how these strategies will be implemented by Hub Leaders, researchers and the Communication and Media Officer;
  - (ix) provide for regular engagement between the Communication and Media Officer, researchers, the Department and Departmental Personnel in program management and media, to manage communications including in relation to Activity Events and high-profile publication of Research Outputs; and
  - (x) be prepared (including any amendments or changes) in consultation with, and endorsed by, the Hub Steering Committee.
  - (i) the Recipient must ensure that activities in the Communication Strategy are funded, including the activities of the Communication and Media Officer.
- (c) Unless the Recipient is otherwise notified by the Department, the Department will reject or approve the draft Communication Strategy within 40 Business Days of submission by the Recipient under clause 4.13(a). Where the draft Communication Strategy is rejected, the Recipient must continue to submit draft Communication Strategies, including any necessary amendments until the Department approves the draft Communication Strategy.

- (d) The Recipient must implement the approved Communication Strategy and must not make any amendments to the Communication Strategy, unless approved in writing by the Department.
- (e) The Department may, at its discretion, request additional amendments to the Communication Strategy at any time. The Recipient must amend the Communication Strategy as requested by the Department.
- (f) For the avoidance of doubt, the Department's approval or request for amendment of the Communications Strategy does not in any way limit the Recipient's responsibility for the performance of its obligations under this Agreement and any consequences of that performance.
- (g) The Communication Strategy will contribute to a broader communications strategy for the Program. The Recipient must participate in the development of the broader communications strategy for the Program, as required by the Department from time to time.

#### **4.14 Knowledge Brokering and Data Management Strategy**

- (a) Within the timeframe specified in the Milestone Schedule, the Recipient must develop a draft Knowledge Brokering and Data Management Strategy for transferring knowledge (including the Research Outputs) generated under the Agreement and managing data for the Department's approval.
- (b) The draft Knowledge Brokering and Data Management Strategy must:
  - (i) align with the Hub's Research Plans;
  - (ii) be prepared in collaboration with the Department;
  - (iii) comply with any Departmental requirements for transfer of knowledge about the Research Outputs (as notified from time to time);
  - (iv) describe how the Hub will transfer knowledge between researchers and end-users across government, industry and communities;
  - (v) outline the activities to be undertaken by the Data Wrangler and Knowledge Broker, where:
    - (A) the Data Wrangler's activities must include working with the Recipient, researchers, the Department and other stakeholders to translate data and information into relevant databases and tools and to help integrate Research Outputs into national information repositories, digital systems and decision-support tools; and
    - (B) the Knowledge Broker's activities must include working with the Recipient, the Department and other stakeholders to lead the integration of the Research Outputs into practice and producing end-user friendly products that make research and data easily accessible and adoptable.
  - (vi) outline Hub knowledge transfer strategies and how these strategies will be implemented by Hub Leaders, researchers, Data Wrangler and Knowledge Broker;
  - (vii) outline the process for the Data Wrangler and researchers to integrate Research Outputs into national information repositories, digital systems and decision-support tools;

- (viii) outline the process for the Knowledge Broker and researchers to assist decision-makers to define the questions they need answered by science, and then help to translate the science into practice;
  - (ix) include legacy systems to ensure the ongoing availability of Research Outputs beyond the Agreement Period for end-users;
  - (x) include activities that bring researchers, policy makers and environmental managers together to facilitate evidence-based decision-making; and
  - (xi) be prepared (including any amendments or changes) in consultation with, and endorsed by, the Hub Steering Committee.
- (c) The Recipient must ensure that activities in the Knowledge Brokering and Data Management Strategy are funded, including the appointment and activities of the Data Wrangler and the Knowledge Broker.
- (d) Unless the Recipient is otherwise notified by the Department, the Department will reject or approve the draft Knowledge Brokering and Data Management Strategy within 40 Business Days of submission by the Recipient under clause 4.14(a). Where the draft Knowledge Brokering and Data Management Strategy is rejected, the Recipient must continue to submit a draft Knowledge Brokering and Data Management Strategy, including any necessary amendments until the Department approves the draft Knowledge Brokering and Data Management Strategy.
- (e) The Recipient must implement the approved Knowledge Brokering and Data Management Strategy, and must not make any amendments to the Knowledge Brokering and Data Management Strategy, unless approved in writing by the Department.
- (f) The Department may, at its discretion, request additional amendments to the Knowledge Brokering and Data Management Strategy at any time. The Recipient must amend the Knowledge Brokering and Data Management Strategy as requested by the Department.
- (g) For the avoidance of doubt, the Department's approval or request for amendment of the Knowledge Brokering and Data Management Strategy does not in any way limit the Recipient's responsibility for the performance of its obligations under this Agreement and any consequences of that performance.

#### **4.15 Indigenous Strategy**

- (a) The Recipient must develop an Indigenous Strategy and implement this Indigenous Strategy, as updated from time to time, for facilitating Indigenous participation in the Activities undertaken by the Recipient.
- (b) The Indigenous Strategy must:
- (i) outline the activities to be undertaken by the Indigenous Facilitator;
  - (ii) facilitate partnerships with Indigenous communities;
  - (iii) outline how Indigenous research and decision-making needs will be incorporated into the Recipient's Research Plans;
  - (iv) outline how consultation will be undertaken with Indigenous groups who have an active interest in the areas where Activities will take place

(including obtaining Indigenous groups consent prior to undertaking the Activities where appropriate);

- (v) facilitate appropriate participation by Indigenous groups when undertaking the Activities;
  - (vi) provide for investment in Indigenous research capability (including, where appropriate, Indigenous research capability in remote communities) when undertaking the Activities; and
  - (vii) foster and develop skills transfer, knowledge sharing and increased cultural awareness between the Recipient, Research Organisations and Indigenous groups.
- (c) The Recipient must ensure that the activities in the Indigenous Strategy and the role of Indigenous Facilitator are funded.
- (d) The Recipient must consult with the Indigenous Facilitator, the cross-hub Indigenous Facilitation Network, and relevant Departmental committees in the preparation of the Indigenous Strategy.

#### **4.16 Indigenous Facilitation Network**

- (a) The Recipient must ensure the Indigenous Facilitator participates in the establishment and activities of a cross-hub Indigenous Facilitation Network whose membership, role and responsibilities are specified in Item 11 of the Activity Particulars.

## **5. Funds**

### **5.1 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 Activity to the satisfaction of the Department and in accordance with the terms of this Agreement, until the Recipient remedies its non-performance;
  - (iii) the Department has insufficient Program funding available at the time the payment is due to the Recipient;
  - (iv) there is an Insolvency Event;
  - (v) the Department has become entitled to terminate this Agreement under clause 19.1;
  - (vi) the Department forms the opinion, on reasonable grounds, having regard to an Activity Budget and information provided in the Reports, that the full payment is not properly required by the Recipient to carry out the Activity or because of Activity surpluses or underspends;

- (vii) 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 provision has been complied with; or
  - (viii) the Recipient has notified the Department of (or if the Department identifies) non-compliance by a Research Organisation with any terms or obligations in any agreement between the Recipient and the Research Organisation.
- (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 5.1(b)(i) to 5.1(b)(vii) (inclusive) applies, unless the Department agrees in writing otherwise.

## **5.2 Use of the Funds**

Funds provided under this Agreement:

- (a) must only be used for the purposes of carrying out the Activity and performing obligations under this Agreement;
- (b) must not be used to cover the cost of any activities completed prior to the Commencement Date;
- (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 Commencement Date;
- (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 an Activity Budget in the relevant main expenditure category;
- (e) must not, unless the prior written approval of the Department has been obtained, be used in a manner which is inconsistent with an Activity Budget;
- (f) subject to clause 5.2(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 5.2(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 Activity; 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.

## **5.3 Carry Over of Funds**

- (a) Where Funds (including the Emerging Priority Funds) have been included in an Activity Budget for a calendar year but were not used by the Recipient in that calendar year, they may be re-allocated in an Activity Budget in Research Plans for the following calendar years.

- (b) The re-allocation of Funds (including the Emerging Priority Funds) must comply with the requirements in clauses 4.3 and 4.4.

#### **5.4 Amount of Funds capped**

The amount of Funds to be contributed by the Department in relation to the Activity will not exceed the maximum amount of Funds specified in Item 3.1 of the Activity Particulars.

#### **5.5 No liability for Department**

The Department accepts no liability for:

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

#### **5.6 Management of Funds**

The Recipient must:

- (a) ensure that the Funds are held in an account in the Recipient's name and which the Recipient solely controls, with a deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia;
- (b) if specified in Item 3.3 of the Activity Particulars, ensure that the account referred to in clause 5.6(a) is:
  - (i) established solely for the purposes of this Agreement; and
  - (ii) separate from the Recipient's other operational accounts;
- (c) identify the receipt and expenditure of the Funds separately within the Recipient's accounts and records so that the Funds are identifiable at all times; and
- (d) ensure that in any subcontract with Research Organisations that the same requirements under this clause 5.6 apply.

#### **5.7 Repayment of Funds**

If:

- (a) on expiry or on any earlier termination of this Agreement, any or all of the Funds:
  - (i) have not been spent or committed in accordance with this Agreement; or
  - (ii) cannot, by reconciliation between the accounts and records maintained by the Recipient and an Activity 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.

## **5.8 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, common law or in equity, if the Recipient fails to repay the Funds in accordance with a notice issued under clause 5.7(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 5.8(a), will then be recoverable by the Department as a debt due from the Recipient.

## **5.9 Activity Generated Income**

The Recipient must treat Activity Generated Income in accordance with the Department's written direction and, in the case of interest earned on the Funds acknowledges that, the Department will require either:

- (a) return of the interest amount to the Department;
- (b) that the interest is applied to Activity expenses or costs where such application is consistent with an Activity Budget; or
- (c) offset of payment of Funds against the interest amount.

# **6. Taxes, duties and government charges**

## **6.1 Definitions**

In this clause 6, **consideration**, **GST**, **input tax credits**, **tax invoice** and **taxable supply** have the meaning given to those terms in the GST Act.

## **6.2 Liability for taxes, duties and government charges**

Subject to this clause 6, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement must be borne by the Recipient.

## **6.3 GST**

- (a) If specified in Item 6 of the Agreement Details, and on the basis that the Funding paid under this Agreement is:
  - (i) of a non-commercial, funding nature;
  - (ii) paid to a 'government related entity' for GST Act purposes; and
  - (iii) sourced from an appropriation,

the parties rely on section 9-17(3) of the GST Act in determining that the payment of Funding is not consideration and that no GST is payable in respect of payment of Funding under this Agreement. **[Note to Applicants: to be confirmed]**

- (b) Unless otherwise indicated, any consideration for a supply made under this Agreement is exclusive of any GST imposed on the supply.
- (c) Subject to clauses 6.3(a) and 6.5, 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.
- (d) 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.

#### **6.4 ABN**

- (a) Subject to clause 6.4(b), the Recipient warrants that it has an ABN, which it has correctly quoted to the Department. The Recipient must:
  - (i) immediately notify the Department of any changes to the Recipient's GST status or ABN; and
  - (ii) supply proof of its GST status, as and when requested by the Department.
- (b) If the Recipient does not have an ABN the Recipient may lodge with the Department a completed 'Statement by a Supplier' form claiming an exemption for lodging an ABN. The Recipient should seek advice from the Australian Taxation Office regarding the 'Statement by a Supplier' form if needed.
- (c) If the Recipient does not provide either an ABN or a completed 'Statement by a Supplier' form, then the Department will withhold from the payment an amount of 46.5 percent or such other amount as determined by the Australian Taxation Office from time to time.

#### **6.5 Tax Invoice**

- (a) This clause 6.5 applies where the Recipient is registered for GST.
- (b) The Recipient and the Department acknowledge that they are registered for GST and that they will notify each other if they cease to be registered for GST.
- (c) The Recipient will issue tax invoices and any adjustment notes for taxable supplies made by the Recipient to the Department under this Agreement within 20 Business Days of the Department approving the Milestone for which there is a payment of the Funds associated.

### **7. Other contributions**

#### **7.1 Recipient's Contributions and Other Contributions**

- (a) It is a condition precedent to a payment of the Funds under this Agreement that:
  - (i) the Recipient must provide the Recipient's Contributions referable to the payment;

- (ii) if requested by the Department, the Recipient must provide the Department with written evidence that the persons specified in a Research Plan will provide the Other Contributions, including the amounts to be provided, the due dates for each of these amounts and the terms and conditions of the provision of the Other Contributions; and
  - (iii) the basis on which the Other Contributions are to be provided is satisfactory to the Department.
- (b) The Recipient must ensure that the terms on which any other funding or contributions are provided to the Recipient for, or in connection with, the Activity are not inconsistent with the terms of this Agreement and do not in any way limit or affect the Recipient's ability to comply strictly with its obligations, or the Department's ability to exercise its rights, under this Agreement.
- (c) The Recipient must promptly notify the Department if the total value of the Recipient's Contributions or Other Contributions reduces, or if such a reduction is anticipated.
- (d) If:
  - (i) the Department receives notice under clause 7.1(c);
  - (ii) the Recipient does not provide the Recipient's Contributions or provide them in time to enable completion of the Activity; or
  - (iii) the Recipient is not able to obtain the Other Contributions or obtain them in time to enable completion of the Activity,
 then the Department may, in its absolute discretion:
  - (iv) suspend payment of the Funds or an instalment of the Funds until the Recipient's Contributions are provided or the Other Contributions are received;
  - (v) reduce the amount of the Funds, adopting the formula in clause 7.1(e), where R = the reduced amount; or
  - (vi) terminate this Agreement in accordance with clause 19.1.
- (e) If, on expiry of the Agreement or any earlier termination of this Agreement, the Recipient's Contributions and / or the Other Contributions have not been provided in full, the Department may (without limiting its rights) require the Recipient to refund to the Department within 20 Business Days of a written notice from the Department, an amount of Funds calculated in accordance with the following formula:

$$R = OC - AC$$

Where:

R = The refund amount;

AC = The total aggregate amount of contributions actually made as Recipient's Contributions and / or Other Contributions for the Activity pursuant to this Agreement; and

OC = The total aggregate amount of the Recipient's Contributions and Other Contributions specified in Item 4 of the Activity Particulars.

- (f) The Department may, in its absolute discretion reduce the amount of the Funds required to be repaid by the Recipient in accordance with clause 7.1(e) to an amount lower than the amount determined by the formula prescribed in clause 7.1(e).

## **7.2 Notification of additional other contributions**

The Recipient must:

- (a) promptly notify the Department in writing of the amount and source of any additional funding or other contributions for the Activity (other than Funds provided under this Agreement or contributions already identified in Item 4 of the Activity Particulars);
- (b) if requested by the Department, promptly provide to the Department copies of any written arrangements entered into, or proposed to be entered into, in respect of such additional funding or other contributions; and
- (c) ensure that the terms on which any additional funding or other contributions are provided to the Recipient for, or in connection with, the Activity are not inconsistent with the terms of this Agreement and do not in any way limit or affect the Recipient's ability to comply strictly with its obligations, or the Department's ability to exercise its rights, under this Agreement.

## **8. Assets**

### **8.1 Purchasing of Assets**

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

### **8.2 Use of Assets**

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

### **8.3 Obligations in relation to Assets**

The Recipient must:

- (a) not Dispose of any Asset, or deal with any Asset other than in accordance with this Agreement, without having obtained the prior written approval of the Department, which will not be unreasonably withheld;
- (b) maintain all Assets in good working order;
- (c) be fully responsible for, and bear all risks arising in relation to, the use or Disposal of any Asset;
- (d) maintain a register of all Assets, recording the date of purchase or lease, the purchase or lease price, Asset description, Asset location, the proportion of the

Funds used to create or acquire the Asset, the value of the Asset, the estimated life of the Asset, rate of depreciation of the Asset and (where approved under clause 8.3(a)) details of Disposal of the Asset, including the sale price; and

- (e) as and when requested, provide copies of the register of Assets to the Department.

#### **8.4 Disposal of Assets**

The Recipient must obtain prior written approval from the Department before Disposing of an Asset under clause 8.3(a). If, at the time of the Disposal, the Asset has not been fully Depreciated the Recipient must, at the option of the Department:

- (a) pay to the Department within 20 Business Days of the date of the Disposal, an amount equal to the proportion of the value of the Asset following Depreciation that is equivalent to the proportion of the purchase price of the Asset that was funded from the Funds;
- (b) pay to the Department within 20 Business Days of the date of the Disposal, the proceeds of the Disposal, less an amount equal to the sum of the Recipient's proportionate contribution to the purchase price of the Asset and the Recipient's reasonable costs of Disposal of the Asset;
- (c) use the amount payable to the Department under clause 8.4(a) or 8.4(b) (as the case may be) for a purpose (as is determined by the Department), and in accordance with conditions, approved in writing by the Department; or
- (d) continue to use the Asset in accordance with any conditions notified by the Department.

#### **8.5 Interest**

If the Recipient fails to make a payment or use the amount as required by clause 8.4(a), 8.4(b) or 8.4(c) (as the case may be):

- (a) the Recipient must pay the Department Interest on the relevant amount from the date it was due, for the period it remains unpaid; and
- (b) the relevant amount, and Interest owed under clause 8.5(a) will be recoverable by the Department as a debt due from the Recipient.

### **9. Records, Reports and acquittals**

#### **9.1 Records and accounts**

The Recipient must:

- (a) keep comprehensive and accurate accounts and records of the Activity and 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 9 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.

## 9.2 Recipient must keep records

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

## 9.3 Provision of records to the Department

The Recipient must:

- (a) deliver information 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 and other Material (including Reports) to the Department in accordance with the timeframes specified in this Agreement and otherwise promptly upon demand.

## 9.4 Financial records

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

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

## 9.5 Reports

- (a) Without limiting the Recipient's other obligations under this Agreement, the Recipient must provide to the Department the Reports in accordance with Item 5 of the Activity Particulars, 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.

## 9.6 Additional Reports

- (a) The Department may at any time, and from time to time, during the Agreement Period, require the Recipient to provide reports and other information in addition to the reports required under clause 9.5 (**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:
  - (i) format;
  - (ii) content;
  - (iii) information and substantiating documentation to be submitted; and
  - (iv) auditing or certification (if any),for that additional Report.
- (c) The Recipient must comply with a direction of the Department under this clause 9.6 by submitting the requested additional Report which complies with all requirements of the Department as set out in the Department's 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.

## **9.7 Annual Progress Report and Audit of Financial Information**

- (a) The Recipient must prepare an Annual Progress Report (including Financial Information) each calendar year in which the Recipient has received, expended or retained Funds pursuant to this Agreement.
- (b) The Recipient must engage, at its cost, a Qualified Accountant to Audit the Financial Information of the Recipient and to prepare an Auditor's Report.

## **9.8 Participation in evaluations and analysis of the Activity**

- (a) The Recipient must participate, at its own cost and as reasonably required by the Department, in studies, evaluations and other activities intended to analyse the success of the Activity or Program in achieving the Program Objectives. Such participation may, where required by the Department, include:
  - (i) attending relevant conferences and forums in which evaluations and analysis are being undertaken;
  - (ii) allowing third parties access to sites where the Activity takes place to undertake analysis and evaluation of the Program and the Activity; and
  - (iii) making records and other information (including Reports) available to third parties for the purposes of evaluation and analysis.
- (b) This clause 9.8 applies for the duration of the Agreement Period and for a period of one year from the termination or expiry of this Agreement.

## **9.9 Monitoring and Evaluation Plan**

The Department will provide to the Recipient a Monitoring and Evaluation Plan, developed in consultation with the Recipient, which describes how the Recipient (and where relevant its Research Organisations) will:

- (a) monitor and evaluate the ongoing performance of the Activity; and
- (b) assist the Department in its monitoring and evaluation activities in relation to the Activity.

The Recipient must implement the Monitoring and Evaluation Plan and where relevant ensure compliance by its Research Organisations.

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

### **10.1 Access to records and Materials**

- (a) The Recipient acknowledges and agrees that the Department and any persons nominated by the Department may, at reasonable times and on giving reasonable notice to the Recipient:
  - (i) access and inspect the Recipient's premises to the extent relevant to the performance of this Agreement (including to conduct site audits to assess progress against a Research Plan and Activity Budget);
  - (ii) access and inspect any Assets, wherever they may be located;

- (iii) require the Recipient (including its Personnel) to provide records, documents and information relevant to the performance of this Agreement in a data format and storage medium accessible by the Department;
  - (iv) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Recipient (including its Personnel) relevant to the performance of this Agreement; and
  - (v) require assistance in respect of any inquiry into or concerning the Activity, the Program or this Agreement. For the purpose of this clause 10.1(a)(v), an inquiry includes any administrative or statutory review, audit or investigation (whether within or external to the Department), any request for information directed to the Department, any judicial or quasi-judicial inquiry, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) The Recipient must promptly comply with all requirements of the Department under this clause 10.1.

## **10.2 Access to hardware and software**

The Recipient must provide the Department (including its Personnel) with access to the Recipient's computer hardware and software to the extent necessary for the Department to exercise its rights under clause 10.1, and must provide the Department with any reasonable assistance requested by it to use that hardware and software.

## **10.3 Costs**

- (a) Subject to clause 10.3(b), each party must bear its own costs of any inspections, reviews, audits and inquiries conducted pursuant to this clause 10.
- (b) If an audit, inspection, review or inquiry conducted pursuant to this clause 10 identifies a breach by the Recipient of this Agreement, the Department may recover its costs of conducting that inspection, review, audit or inquiry as a debt due from the Recipient.

## **10.4 Auditor-General, Ombudsman and Commissioners**

Without limiting clauses 10.1 and 10.2, the Department's rights under clauses 10.1 and 10.2 apply equally to the Auditor-General, the Ombudsman, the Information Commissioner, the Privacy Commissioner, the Freedom of Information Commissioner or their delegates, for the purpose of each performing their functions or activities (as the case may be).

## **10.5 Application of this clause**

- (a) The Recipient must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 10.
- (b) This clause 10 applies for the duration of the Agreement Period and for a period of seven years from the termination or expiry of this Agreement.

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

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

All Intellectual Property Rights in the Activity Material created by the Recipient will vest, upon creation, in the Recipient.

### **11.2 Licensing of Activity Material**

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 Activity Material including the Reports, for any non-Commercial Purpose.

### **11.3 Activity 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 Activity Material then in existence to the Department in an agreed format, or as otherwise directed by the Department.

### **11.4 Intellectual Property Rights warranties**

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

### **11.5 Department Material**

- (a) Intellectual Property Rights and title to Department Material remains vested at all times in the Department.
- (b) 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.
- (c) The Department grants to the Recipient a royalty-free, world-wide, non-exclusive licence (including a right of sublicense to subcontractors) to use, reproduce, adapt and modify the Department Material solely for the purposes of the Activity.

### **11.6 Moral Rights**

- (a) To the extent permitted by Law, common law and equity, the Recipient must, unless otherwise agreed by the Department in writing, use their best endeavours to ensure that each person who:
  - (i) has been involved in the performance of the Activity; or
  - (ii) is or will be the author of any Activity Material (including the Reports) that is to be licensed to the Department in accordance with this clause 11,

provides a written consent to the Department permitting the Department (including its Personnel) to conduct any act which would otherwise infringe the Moral Rights held by that person.

- (b) The consent provided under clause 11.6(a) must be consistent with the Department being able to conduct any act it is licensed to conduct under this Agreement.

### **11.7 Licence of Research Outputs, Existing Material and Third Party Material**

- (a) In addition to the licence in clause 11.2, the Recipient must make available or procure the making available of, all the Research Outputs and any Existing Material and Third Party Material that is incorporated in the Research Outputs under the Creative Commons Attribution Licence (CC BY).
- (b) The Recipient may grant to any person a non-exclusive licence to use, reproduce, adapt and exploit the Intellectual Property Rights in Research Outputs, Existing Material and Third Party Material incorporated in the Research Outputs, for any Commercial Purpose on terms to be agreed in each case. If the Recipient proposes to charge a royalty as part of such a licence after the Commencement Date, it must, prior to granting a licence under this clause 11.7(b), reach agreement with the Department on the terms of such licence and the apportioning of royalty payments to reflect the Department's financial contribution to the development of the Research Outputs.
- (c) The Recipient must provide Third Party Material necessary or appropriate to perform its obligations under this Agreement.
- (d) If the Recipient cannot obtain the licence for any Third Party Material, the Recipient must:
  - (i) notify the Department of the best alternative licence terms for that Third Party Material and not use that Third Party Material unless the Department consents to those terms; and
  - (ii) if the Department does not consent to those terms, notify the Department of any comparable Third Party Material and comply with its obligations under this clause 11.7 in respect of comparable Third Party Material.

### **11.8 Publication of Research Outputs**

- (a) The Recipient will plan the publication of Research Outputs in collaboration with the Department from an early stage to ensure that the publication is aligned with the Program Objectives.
- (b) The Recipient must make all Research Outputs, and Existing Material incorporated in the Research Outputs, publicly available on appropriate institutional repositories and websites, and ensure that:
  - (i) the websites and institutional repositories are approved in writing by the Department;
  - (ii) the Department is notified and a concise summary of the material to be released is provided to the Department at least 10 Business Days before its release. If the material or any part of it can't be made available on the websites:

- (A) the Department must be notified and the material must be made available by other means agreed by the Department; and
- (B) a notice must also be placed on the websites identifying how and where the material can be obtained;
- (iii) there is no charge for providing the material or making it available and the material is publicly and easily accessible.
- (c) The Recipient must ensure publication of Research Outputs also complies with the data and accessibility requirements in the NESP Data Management and Accessibility Guidelines.

## **11.9 Peer-Reviewed publications**

- (a) If the Recipient grants a licence or an assignment of Intellectual Property Rights to the publisher of a peer-reviewed journal, book or similar publication in relation to the publication of an article on the Activity (other than a Report) in a peer-reviewed publication, the Recipient is still required to comply with clauses 11.7 to 11.8.
- (b) Publication in accordance with clause 11.8 must occur within 12 months of publication of the article in the peer-reviewed publication.

## **12. Acknowledgements, Activity Events and engagements**

### **12.1 Acknowledgements**

- (a) The Recipient must acknowledge, in the required form as set out in Item 6 of the Activity Particulars, the support it has received from the Department:
  - (i) in all publications, presentation material (including slide presentations at conferences), promotional and advertising materials, signs or plaques displayed at the location where the Activity is undertaken;
  - (ii) in all activities undertaken by it or on its behalf in relation to the Activity, including for the avoidance of doubt those activities undertaken by its Research Organisations and other subcontractors;
  - (iii) if requested by the Department, with any products, processes or inventions developed as a result of the Activity;
  - (iv) at any Activity Event; and
  - (v) otherwise at the times and in the manner as the Department directs from time to time.
- (b) The Recipient must submit any documentation containing the required acknowledgment under Item 6 of the Activity Particulars to the Department 5 Business Days prior to publication or announcement of the event.
- (c) If the Department requires amendments to a proposed form of words of a publication or announcement, the Recipient must make the required amendment before allowing the words to be published or announced.
- (d) Notwithstanding the Department's review or proposal of a revised form of words in accordance with this clause 12.1, the Recipient will at all times remain responsible for the content and accuracy of documentation, publications and announcements.

## **12.2 Activity Events**

- (a) The Recipient must:
  - (i) notify the Department of all Activity Events at least 10 Business Days prior to the Activity Event;
  - (ii) invite representatives of the Department to all Activity Events; and
  - (iii) ensure that the official proceedings in each Activity Event allows for the Minister, the Minister's representative or 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 Activity Event.

## **12.3 Recipient Announcements**

- (a) The Recipient must notify the Department, and must ensure that Research Organisations and other subcontractors notify the Department, 10 Business Days before the Recipient, Research Organisation or other subcontractor makes 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.
- (b) The Recipient, Research Organisation or other subcontractor must, where practicable, work with the Department to revise and develop the public announcement where the Department requests that the public announcement is revised and developed.

## **12.4 Departmental Announcements**

Subject to clauses 13 and 14, the Department reserves the right to publicly disclose information about the Program, the Hub, the Activity and the Agreement in any publications, presentation material (including slide presentations at conferences), promotional and advertising materials, unless otherwise specified in this Agreement.

## **12.5 Media Engagement**

- (a) The Recipient must notify the Department, and must ensure that Research Organisations and other subcontractors notify the Department, as soon as reasonably possible and in any event within 1 Business Day after any approach by the media (including traditional online, and social news media) for comment on matters related to the Program, the Hub, the Activity and this Agreement, and provide details of the approach.

## **12.6 Political Engagement**

- (a) The Recipient must notify the Department, and must ensure that Research Organisations and other subcontractors notify the Department, 15 Business Days prior to any proposed political engagement (including engagement with members of Commonwealth, State and Territory Parliaments or Local Government councils or political parties) on matters related to the Program, the Hub, the Activity and this Agreement, and provide details of the approach 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 clause 13.1 will not be taken to have been breached to the extent that Confidential Information is:

- (a) disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement related activities;
- (c) disclosed by the Department to the Department's employees or contractors, to facilitate research, assessment, monitoring and analysis of the Program and Activities as part of the Department's programs and activities;
- (d) disclosed by the Department to the responsible Minister or Parliamentary Secretary;
- (e) disclosed by the Department, in response to a request by a House or a Committee of the Parliament of the Commonwealth;
- (f) disclosed by the Department to the Auditor-General, the Ombudsman, the Information Commissioner, the Privacy Commissioner, the Freedom of Information Commissioner or their delegates in response to a request;
- (g) shared by the Department within the Department's organisation, or with another Australian Government agency and their employees and contractors, where this serves the Australian Government's legitimate interests (including but not limited to including government administration, research or service delivery);
- (h) shared by the Department with State, Territory or Local Government agencies in the form of Program reports and consultations;
- (i) authorised or required by Law, including under this Agreement, under a licence or otherwise, to be disclosed; or
- (j) in the public domain otherwise than due to a breach of this clause 13.2.

### **13.3 Obligations on disclosure**

- (a) Where a party discloses Confidential Information to another person:
  - (i) pursuant to clauses 13.2(a), 13.2(b), 13.2(c) or 13.2(g), the disclosing party must:
    - (A) notify the receiving person that the information is Confidential Information; and

- (B) not provide the information unless the receiving person agrees to keep the information confidential; or
  - (ii) pursuant to clauses 13.2(c), 13.2(e), 13.2(f) and 13.2(h), the disclosing party must notify the receiving party that the information is Confidential Information.
- (b) If required by the Department, the Recipient must ensure that the receiving person provides a written undertaking relating to the non-disclosure of the Confidential Information in a form acceptable to the Department.

#### **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 Activity.

#### **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 Activity or otherwise performing its obligations under this Agreement, use or disclose that Personal Information only for the purposes of this Agreement;
- (b) comply with the APPs as if the Recipient were an agency under the Privacy Act; and
- (c) otherwise comply with the Privacy Act.

#### **14.4 Subcontractors**

The Recipient must ensure that any subcontract entered into by it in relation to this Agreement 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:
  - (i) loss of or damage to third party property; or
  - (ii) 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 Activity Material, including the Intellectual Property and Moral Rights comprised in the Activity Material.

## **15.2 Release**

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, on and from the Commencement Date.

## **15.3 Proportional reduction of liability**

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

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

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

## **16. Insurance**

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

- (a) 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) as at the Commencement Date, workers' compensation and public liability insurances as specified in Item 8 of the Agreement Details.
- (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 insurance policies and certificates of currency 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 a Force Majeure Event.

### **17.2 Notice of Force Majeure Event**

When a Force Majeure Event arises or is reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of the Force Majeure Event to the other party as soon as possible, identifying the effect they will have on its performance of this Agreement.

### **17.3 Minimisation of Force Majeure Event**

- (a) An Affected Party must make all reasonable efforts to minimise the effects of the Force Majeure Event on its performance of this Agreement.
- (b) Where the Affected Party is the Recipient, the Recipient must comply with any reasonable direction of the Department related to the undertaking of the Activities that is designed to minimise or mitigate the effect of the Force Majeure Event.

### **17.4 Termination**

If non-performance or diminished performance by the Affected Party due to a Force Majeure Event continues for a period of more than 25 consecutive Business Days, the other party may terminate this Agreement immediately by giving the Affected Party written notice.

### **17.5 Consequences of termination**

If this Agreement is terminated under clause 17.4:

- (a) each party will bear its own costs and neither party will incur further liability to the other; and
- (b) where the Recipient is the Affected Party, it will be entitled to payment for work performed or expenses properly incurred prior to the date of intervention of the circumstances described in clause 17.1.

## **18. Dispute resolution**

### **18.1 Dispute resolution**

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

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

Clause 18.1 does not apply where:

- (a) either party commences legal proceedings for urgent interlocutory relief;
- (b) action is taken by the Department under, or purportedly under, clauses 5 (Funds), 10 (Access to premises and records) or 19 (Suspension or termination); or
- (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the Law by the Recipient.

### **18.3 Obligations continue**

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

## **19. Suspension or termination**

### **19.1 Termination for default**

If:

- (a) the Recipient repeatedly fails to comply with any timeframe under this Agreement;
  - (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 Activity Outcomes;
  - (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 Activity;
  - (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 Funds for the Activity;
  - (f) the Department is satisfied on reasonable grounds that a report (including a Report) given by the Recipient is significantly misleading, or substantially incomplete or inaccurate;
  - (g) there is an Insolvency Event (and where such termination is permitted by Law in the circumstances of the Insolvency Event); or
  - (h) the Recipient breaches any material term or condition of any other funding agreement between the Recipient and an Australian Government agency,
- the Department may by written notice to the Recipient, require the Recipient to immediately suspend dealings with the Funds (in whole or in part), and / or terminate this Agreement in its entirety.

### **19.2 Potential Default**

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

- (iii) the date on which the Recipient proposes that the Potential Default will be rectified; and
  - (iv) any expected impact that the Potential Default may have on an Activity Budget or on the ability to comply with timeframes in the Milestone Schedule or a Research Plan.
- (c) If the Department becomes aware of a Potential Default either through the receipt of notice from the Recipient under clause 19.2(b) or by any other means, the Department may provide the Recipient with a written notice setting out the nature of the Potential Default (**Notice of Potential Default**), any extension of time permitted and any requirements the Department has in relation to the rectification of the Potential Default or reduction in scope of the Activity.
- (d) On receipt of a Notice of Potential Default the Recipient must remedy the Potential Default or, where the Potential Default is not capable of being remedied, prepare a plan for the Department's approval of the actions that the Recipient proposes to take to deal with the impact of the Potential Default (**Potential Default Plan**).
- (e) If the Department is not satisfied with the Potential Default Plan or the Recipient subsequently fails to comply with the Potential Default Plan, the Department may by written notice to the Recipient, require the Recipient to immediately suspend dealings with the Funds (in whole or in part) and / or terminate this Agreement in its entirety.
- (f) No action taken by the Department pursuant to this clause 19.2 will:
  - (i) relieve the Recipient from, or alter or affect, the Recipient's liabilities or responsibilities whether under this Agreement or otherwise according to Law; or
  - (ii) prejudice the Department's rights against the Recipient whether under this Agreement or otherwise according to Law.

### **19.3 Termination for convenience**

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

- (d) Where there has been a reduction in the scope of the Activity, 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 Activity.
- (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 Item 3.1 of the Activity Particulars.
- (f) The Recipient will not be entitled to compensation for loss of prospective profits.
- (g) The termination of this Agreement under this clause 19.3 does not discharge any right that a party may have for any prior breach of this Agreement.

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

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

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

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

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

### **20.1 Service of notices**

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

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

## 20.2 Effective on receipt

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

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, 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. Work, Health and Safety

### 21.1 Definitions

- (a) In this clause 21:
  - (i) **Notifiable Incident** has the meaning given in section 4 of the WHS Act;
  - (ii) **Regulator** means Comcare;
  - (iii) **WHS Act** means the *Work Health and Safety Act 2011* (Cth) and any corresponding WHS law within the meaning of section 4 of the WHS Act;
  - (iv) **WHS Entry Permit Holder** has the meaning given in the WHS Act;
  - (v) **WHS Laws** means the WHS Act and WHS Regulations; and
  - (vi) **WHS Regulations** means the regulations made under the WHS Act.

### 21.2 Management and control

- (a) The Recipient accepts that it has full management and control of its workplace and associated activities in carrying out its obligations under this Agreement for the purpose of discharging the duties imposed under WHS Laws, and will fulfil these obligations unless relieved of this responsibility by notice in writing from the Department or the Department Representative.
- (b) The Recipient accepts it has full management and control over ensuring that the relevant Research Organisation, and the activities of that Research Organisation, whether or not operating as a Hub as a single unit with the Research Organisation, complies with the Research Organisation's obligations under WHS Laws, and will fulfil this obligation unless relieved of this responsibility by notice in writing from the Department or the Department Representative.
- (c) The Recipient accepts that the Department's and the Department Representative's role is limited to the administration of the Agreement, the overseeing of funding for the completion of Milestones, overarching approval of and compliance with the Research Plan, and various assurance activities connected to these activities. The Department and the Department Representative exercise no day-to-day management or control over the Activity and how it is conducted.

### **21.3 Compliance with Laws and Department policies**

- (a) The Recipient must in carrying out its obligations under this Agreement, comply, and ensure that its Personnel, contractors, subcontractors and the relevant Research Organisation(s) 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 the WHS Laws in respect of work health and safety.
- (b) The Recipient must, in carrying out its obligations under this Agreement, comply, and ensure that its Personnel, contractors, subcontractors and the relevant Research Organisation(s) comply, with any of the Commonwealth's policies as notified referred to, or made available, by the Commonwealth to the Recipient in writing.
- (c) The Recipient must, in carrying out its obligations under this Agreement, comply, and ensure that its Personnel, contractors, subcontractors and the relevant Research Organisation(s) comply, with its duty under WHS Laws to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter.
- (d) The Recipient must, in carrying out its obligations under this Agreement, ensure all contracts, subcontracts, sub-subcontracts, and agreements with the relevant Research Organisation(s) include enforceable provisions equivalent to the obligations of the Recipient in this clause 21.

### **21.4 Compliance with Ethical Research Practices**

The recipient must ensure all Activities conform (and ensure Research Organisations activities conform) to the principles outlined in the following (or their successor documents):

- (a) National Health and Medical Research Council / Australian Research Council / Universities Australia, Australian Code for the Responsible Conduct of Research (2018);
- (b) As applicable, National Health and Medical Research Council, the Australian Code for the Care and Use of Animals for Scientific Purposes (2013) and any other codes on animal research produced by the National Health and Medical Research Council;
- (c) As applicable, National Health and Medical Research Council / Australian Research Council / Universities Australia, National Statement on Ethical Conduct in Human Research (2007) (updated 2018); and
- (d) As applicable, Australian Institute of Aboriginal and Torres Strait Islander Studies, Guidelines for Ethical Research in Australian Indigenous Studies (2012).

If there is any conflict between a successor document and its predecessor, then the successor document prevails to the extent of any inconsistency. The Department reserves the right to terminate this Agreement, in accordance with clause 19 should there be identified a significant breach of the principles describe in this clause 21.4.

### **21.5 Notifiable Incidents and contraventions**

- (a) If the Recipient is required by the WHS Act to report a Notifiable Incident to the Regulator arising out of the Activity:

- (i) at the same time, or as soon as is possible in the circumstances, the Recipient must give notice of such incident, and a copy of any written notice provided to the Regulator, to the Department; and
  - (ii) the Recipient must provide to the Department, within such time as is specified by the Department, a report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future.
- (b) The Recipient must inform the Department of the full details of:
- (i) any suspected contravention of the WHS Laws relating to the Activity, within 24 hours of becoming aware of any such suspected contravention;
  - (ii) any cessation or direction to cease work relating to the Activity, 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 Activity 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 officers, under the WHS Laws, within 24 hours of becoming aware of any such proceedings, decision or request.
- (c) The Recipient must ensure the relevant Research Organisation is required to give notice to the Recipient in the event of a Notifiable Incident on the same terms as the above.

## **21.6 Department's premises**

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.

## **21.7 Reimbursement**

The Recipient acknowledges that it will meet its obligations under this clause 21 solely at its own cost and expense, and without charge to or reimbursement from the Department (or the Commonwealth).

# **22. General provisions**

## **22.1 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:
  - (i) clause 1 (Definitions and interpretation);
  - (ii) clause 5 (Funds);
  - (iii) clause 9 (Records, Reports and acquittals);
  - (iv) clause 10 (Access to premises and records);
  - (v) clause 11 (Activity Material and Intellectual Property Rights);
  - (vi) clause 13 (Confidential Information);
  - (vii) clause 14 (Personal Information);
  - (viii) clause 15 (Indemnity and release);
  - (ix) clause 16 (Insurance);
  - (x) clause 19.3(c) (Liability of the Department);
  - (xi) clause 19.4 (Dealing with Funds on termination or suspension); and
  - (xii) clause 22.12 (Relationship).

## **22.2 Varying this Agreement**

- (a) Subject to the exceptions outlined in clause 22.2(b), this Agreement may only be varied by agreement in writing between the parties.
- (b) Variations to a Research Plan and Activity Budget may be made in accordance with clauses 4.2 and 4.3 respectively.

## **22.3 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.

## **22.4 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.

## **22.5 Costs**

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

## **22.6 Counterparts**

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

## **22.7 No merger**

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

## **22.8 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.

## **22.9 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.

## **22.10 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.

## **22.11 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.

## **22.12 Relationship**

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors 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.

## **22.13 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.

## **22.14 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.

## Schedule 1 – Agreement Details

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Item No.	Description	Clause reference	Details
1.	<b>Department details</b>	1.1	Commonwealth of Australia as represented by the Department of Agriculture, Water and the Environment ABN 34 190 894 983
2.	<b>Department Representative</b>	1.1	Position: Director, Science Partnerships Phone: (02) 6274 1111 Email: research@environment.gov.au
3.	<b>Recipient details</b>	1.1	[INSERT] ABN [INSERT]
4.	<b>Recipient Representative</b>	1.1	Name: [INSERT] Position: [INSERT] Phone: [INSERT] Email: [INSERT]
5.	<b>Subcontractors</b>	4.7	[INSERT]
6.	<b>GST</b>	6.3(a)	[INSERT]
7.	<b>Confidential Information</b>	13	Department's Confidential Information: To be agreed between the parties in writing. Recipient's Confidential Information: To be agreed between the parties in writing.

Item No.	Description	Clause reference	Details
8.	<b>Insurance</b>	16	<p>As at the Commencement Date:</p> <ul style="list-style-type: none"> <li>(a) to the extent required by Law, workers' compensation insurance in respect of the Recipient's liability for any loss or claim by a person employed or otherwise engaged, or deemed to be employed or otherwise engaged, by the Recipient in connection with the Activity; and</li> <li>(b) public liability insurance covering legal liability (including liability assumed under contract) for loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Activity for an insured amount of \$10 million per occurrence and not less than \$20 million in aggregate.</li> </ul>
9.	<b>Address for notices</b>	20.1	<p><b>Department:</b></p> <p>Position: Director, Science Partnerships Section  Department of Agriculture, Water and the Environment  Postal address: GPO Box 787, Canberra, ACT, 2601  Physical address:  John Gorton Building, King Edward Terrace, Parkes, ACT, 2600  Email: <a href="mailto:research@environment.gov.au">research@environment.gov.au</a></p> <p><b>Recipient:</b></p> <p>Name: [INSERT]  Position: [INSERT]  Postal address: [INSERT]  Physical address: [INSERT]  Email: [INSERT]</p>

# Schedule 2 – Activity Particulars

---

## 1. Activity (clause 4)

### 1.1 Activity title [ACTIVITY ID - INSERT]

[INSERT] Hub

### 1.2 Activity description

Research to support the [INSERT]

### 1.3 Activity Outcomes

The Recipient will work with the Department to develop a comprehensive list of Activity Outcomes, reflected in the Research Plans and the Monitoring and Evaluation Plan.

As stated in the [INSERT] Hub research scope, Activity Outcomes include;

- [INSERT].

The Activities also include supporting the Mission focused on the [INSERT] theme.

As stated in the [INSERT] cross-cutting Mission scope, Activity Outcomes include;

- [INSERT]

## 2. Activity Period

- (a) Subject to clause 2(b), the Activity Period commences on the Commencement Date and ends no later than 30 June 2027.
- (b) The Department may, at its sole option, offer the Recipient an extension of the Activity Period of up to an additional one year by giving notice to the Recipient not less than 40 Business Days prior to 30 June 2027.
- (c) If the Recipient accepts the Department's offer to extend the Activity Period the Department and Recipient will implement the terms and conditions of this Agreement to continue the undertaking of the Activity until the end of the extended Activity Period pursuant to clause 2(b).

## 3. Funds (clause 5)

### 3.1 Maximum amount of Funds

The maximum amount of Funds payable by the Department under this Agreement will be \$[INSERT] (exclusive of GST) or the lesser amount required to complete the Activity.

### 3.2 Payment

The Funds will be paid at the times and in the manner specified in the Milestone Schedule.

### 3.3 Bank account

The Recipient [INSERT - is / is not] required to comply with clause 5.6(b) and establish a separate bank account for the Funds.

## **4. Other Contributions (clause 7)**

### **4.1 Recipient's Contributions and Other Contributions**

- (a) This Item is a mandatory requirement for the Recipient to perform. The Recipient's failure to provide Recipient's Contributions and to procure Other Contributions will be regarded as a fundamental breach of this Agreement.
- (b) The minimum Recipient's Contributions and Other Contributions is calculated at one hundred (100) percent of the funds (exclusive of GST) paid by the Department under this Agreement. Recipient's Contributions and Other Contributions must be detailed in the:
  - (i) Research Plans;
  - (ii) Annual Progress Reports;
  - (iii) Final Report; and
  - (iv) Final Financial Information.
- (b) The following principles apply to the provision of the Recipient's Contributions and Other Contributions:
  - (i) all Recipient's Contributions and Other Contributions but must be directly attributable to or related to the Activities;
  - (ii) the Recipient's Contributions and Other Contributions may consist of cash and in-kind resources contributions;
  - (iii) access to large capital items provided as in-kind resources contributions must be valued proportionally to their use for the Activity and based on the running costs and depreciation of the capital item;
  - (iv) The following items are ineligible to be Recipient's Contributions and Other Contributions:
    - (A) expenses for activities that Recipients, Research Organisations or other members of the Hub have already undertaken;
    - (B) expenses for activities that Recipients, Research Organisations or other members of the Hub will undertake after the Agreement Period;
    - (C) contributions of data.

## **5. Reports (clause 9)**

### **5.1 Overview**

The Recipient must provide the following Reports:

- (a) Annual Progress Reports, comprising:
  - (i) performance information, as specified in Item 5.3(b); and
  - (ii) Financial Information, as specified in Item 5.5;
- (b) an Interim Report, comprising:
  - (i) performance information, as specified in Item 5.4; and
- (c) a Final Report.

## **5.2 Reporting of Indigenous participation and employment**

- (a) Where relevant, the Recipient must report on the number of Indigenous people either directly employed or subcontracted, and / or engaged as volunteers in the Activity.
- (b) The Recipient must report on Indigenous participation and employment:
  - (i) within 40 Business Days of the Commencement Date;
  - (ii) in the Annual Progress Report; and
  - (iii) in the Final Report.

## **5.3 Annual Progress Reports**

- (a) By the due dates specified in the Milestone Schedule, the Recipient must submit to the Department:
  - (i) an Annual Progress Report for the preceding calendar year, substantially in the form of the template provided by the Department (if any); and
  - (ii) the Recipient's Financial Report required under Item 5.5 for the preceding calendar year.
- (b) The Annual Progress Report must include but need not be limited to, the following Activity performance information:
  - (i) a description of actual performance against the Milestones;
  - (ii) a detailed description of work undertaken during the 12 months of the preceding calendar year;
  - (iii) details of progress against the Research Plan for the preceding calendar year, including monitoring, evaluation and reporting activities specified in the Research Plan;
  - (iv) details of Funds spent against the Activity Budget for the preceding calendar year and any proposed carry over of funds;
  - (v) details of progress against any Emerging Priority Plan approved by the Department in the preceding calendar year and details of Emerging Priority Funds spent; and
  - (vi) a discussion and statement as to whether the timeframes and Milestones for the Activity 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).
- (c) The Annual Progress Report must be provided in final draft form to, and endorsed by, the Hub Steering Committee.
- (d) Unless the Recipient is otherwise notified by the Department, the Department will reject or accept the Annual Progress Report within 40 Business Days of submission by the Recipient under clause 5.3(a). Where the Annual Progress Report is rejected, the Recipient must continue to submit an Annual Progress Report, including any necessary amendments until the Department approves the Annual Progress Report.
- (e) A publicly available version of the accepted Annual Progress Report must be made available on the Hub website following acceptance by the Department.

## 5.4 Interim Report

- (a) By the due date specified in the Milestone Schedule, the recipient must submit an Interim Report to the Department, substantially in the form of the template provided by the Department (if any).
- (b) The Interim Report must include, but need not be limited to, the following Activity performance information:
  - (i) a description of actual performance against the Milestones;
  - (ii) details of progress against the Research Plan for the relevant period;
  - (iii) details of Funds spent against the Activity Budget for the relevant period and any proposed carry over of funds;
  - (iv) details of progress against any Emerging Priority Plan approved by the Department in the relevant period and details of Emerging Priority Funds spent; and
  - (v) a discussion and statement as to whether the timeframes and Milestones for the Activity are being met, and an explanation of any delays and the action the Recipient proposes to take to address the delay and the expected effort (if any) the delay will have on the Activity (including subsequent Milestones and overall completion of the Activity).
- (c) The Interim Report must be provided in final draft form to, and endorsed by, the Hub Steering Committee.
- (d) Unless the Recipient is otherwise notified by the Department, the Department will reject or accept the Interim Report within 40 Business Days of submission by the Recipient under clause 5.4(a). Where the Interim Report is rejected, the Recipient must continue to submit an Interim Report, including any necessary amendments until the Department approves the Interim Report.

## 5.5 Financial Reporting

- (a) By the due dates specified in the Milestone Schedule, for each preceding calendar year in which the Recipient has received, expended or retained Funds pursuant to this Agreement; and
  - (b) if requested by the Department, under the earlier termination of this Agreement;
- the Recipient must provide to the Department:
- (c) the Financial Information and a statement of the Recipient's Contributions and Other Contributions;
  - (d) a certificate signed by a representative of the Recipient with the authority to make representations on behalf of the Recipient stating whether:
    - (i) the Funds have been used for the purpose for which they were provided;
    - (ii) the Recipient's Contributions and Other Contributions have been provided and used for the purposes of the Activity; and
    - (iii) all terms and conditions of this Agreement were complied with; and
  - (e) the Auditor's Report on the Financial Information, being the **Recipient's Financial Report**.

## 5.6 Final Report

- (a) The Recipient must submit a Final Report to the Department, substantially in the form of the template provided by the Department (if any).
- (b) The Recipient must provide the Final Report by the earlier of:
  - (i) the due date specified in the Milestone Schedule;
  - (ii) the end of the Activity Period; or
  - (iii) the earlier termination of this Agreement.
- (c) The Final Report must include, but need not be limited to, the following:
  - (i) details of the operation, mechanisms and processes employed by the Recipient to conduct the Activity;
  - (ii) a description of the Recipient's activities during the entire Activity Period;
  - (iii) details of progress against the Research Plans, including monitoring, evaluation and reporting activities specified in the Research Plans;
  - (iv) details of any Emerging Priority Plans and activities taken in accordance with those Emerging Priority Plans;
  - (v) a discussion of the benefits and outcomes of the Activity as a whole;
  - (vi) an evaluation of the Activity including discussion of how successful the Activity was in achieving the Program's Objectives;
  - (vii) details of the Activity Budgets for the entire Activity Period; and
  - (viii) a statement showing the Financial Information, Recipient and Other Contributions for 2026 and any other information reasonably requested by the Department.
- (d) The Final Report must be provided in final draft form to, and endorsed by, the the Hub Steering Committee.
- (e) Unless the Recipient is otherwise notified by the Department, the Department will reject or accept the Final Report within 40 Business Days of submission by the Recipient under clause 5.6(a). Where the Final Report is rejected, the Recipient must continue to submit a Final Report, including any necessary amendments until the Department approves the Final Report.
- (f) A publicly available version of the accepted Final Report must be made available on the Hub website following acceptance by the Department.

## 6. Acknowledgement (clause 12)

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

- (a) at a minimum, in the following way:
  - (i) "The [INSERT] Hub is supported through funding from the Australian Government's National Environmental Science Programme 2"; and
  - (ii) though the inclusion of the appropriate Departmental logo in accordance with the guidelines for use of that logo (as provided by the Department from time to time); or
- (b) in any other form required by the Department.

## 7. Specified Personnel (clause 4.6)

The following person or persons must complete the following parts of the activity:

Name	Current Position	Organisation	Hub Role	FTE % Assigned to the Hub Activity
[INSERT]	[INSERT]	[INSERT]	Hub Leader	[INSERT]
[INSERT]	[INSERT]	[INSERT]	Mission Leader	[INSERT]
[INSERT]	[INSERT]	[INSERT]	Indigenous Facilitator	[INSERT]
[INSERT]	[INSERT]	[INSERT]	Knowledge Broker	[INSERT]
[INSERT]	[INSERT]	[INSERT]	Data Wrangler	[INSERT]
[INSERT]	[INSERT]	[INSERT]	Communication and Media Officer	[INSERT]
[INSERT]	[INSERT]	[INSERT]	[INSERT]	[INSERT]

## 8. Hub Steering Committee (clause 4.10)

### 8.1 Roles and Responsibilities

The Recipient will establish a Hub Steering Committee which will be run by the Recipient in a collaborative manner with the Department. The purpose of the Hub Steering Committee is to support the Hub Leader by performing the following roles and responsibilities:

- (a) to provide strategic direction for the activities and research conducted by the Hub;
- (b) to ensure the alignment of research activity to the policy needs and interest of the Department and other key stakeholders;
- (c) to connect the Hub's research questions, activities and outputs to relevant research activity and policy initiatives outside the Department;
- (d) to oversee the development and implementation of Research Plans, including the review, endorsement and amendment of Research Plans, as required;
- (e) to direct and endorse the development, and delivery of the Annual Progress Reports (including Financial Information), Interim Report, Final Report and any other reporting, monitoring and evaluation requirements under this Agreement. However, the Departmental representative on the Hub Steering Committee will not endorse any Financial Information included in the Annual Progress Reports, Interim Report, Final Report and any other reporting, monitoring and evaluation requirements.

### 8.2 Membership

The Hub Steering Committee will include the following members:

- (a) an independent chairperson;

- (b) key Hub Personnel;
- (c) The Indigenous Facilitator;
- (d) a representative from the Department (to be notified by the Department from time to time);
- (e) key end-users within the Department and/or other portfolio agencies; and
- (f) other key end users and stakeholders.

Membership of the Hub Steering Committee will be discussed and agreed by the Recipient and the Department. However, in the event of a disagreement, the Department will decide on membership of the Hub Steering Committee.

### **8.3 Implementation**

The Recipient will have formed the Hub Steering Committee, and have available a Terms of Reference, including (but not limited to) roles and responsibilities outlined in Item 8.1, by the due date specified in the Milestone Schedule.

## **9. Cross-Hub Senior Governance Committee (clause 4.11)**

### **9.1 Roles and Responsibilities**

The Cross-Hub Senior Governance Committee will be established and run by the Hub and the other hubs in collaboration with the Department. The responsibilities of the Cross-Hub Senior Governance Committee are:

- (a) to have oversight of the activities of the Recipient, its Research Organisations and the Activities at the Program level and across all hubs;
- (b) to agree mission deliverables and identifying further opportunities for cross-hub collaboration through the missions; and
- (c) to settle and monitor the Program's strategic direction;
- (d) to ensuring responsiveness to shifting priorities addressing hub-specific issues unable to be resolved by individual hub steering committees.

The Cross-Hub Senior Governance Committee will meet bi-annually.

### **9.2 Membership**

Membership of the Cross-Hub Senior Governance Committee will include:

- (a) hub leaders, including the Hub Leader from the Recipient's Hub;
- (b) mission leaders, including the Mission Leader from the Recipient's Hub;
- (c) a representative from the Indigenous Facilitation Network; and
- (d) senior Departmental executives (as notified by the Department from time to time).

### **9.3 Implementation**

The Recipient must ensure that activities of the Hub Leader and Mission Leader and (if relevant) the Indigenous Facilitation Network representative in relation to the Cross-Hub Senior Governance Committee are funded, including but not limited to attendance at bi-annual meetings.

**[Note to Applicants: To be updated based on Applicant responses]**

## **10. Communication Strategy (clause 4.13)**

By the due date specified in the Milestone Schedule, the Recipient will develop a draft Communication Strategy consistent with clause 4.13.

## **11. Knowledge Brokering and Data Management Strategy (clause 4.14)**

By the due date specified in the Milestone Schedule, the Recipient will develop a draft Knowledge Brokering and Data Management Strategy consistent with clause 4.14.

## **12. Indigenous Strategy (clause 4.15)**

By the due date specified in the Milestone Schedule, the Recipient will develop an Indigenous Strategy consistent with clause 4.15.

## **13. Indigenous Facilitation Network (clause 4.16)**

### **13.1 Roles and Responsibilities**

The cross-hub Indigenous Facilitation Network will be established and run by the Indigenous Facilitators from the hubs, who will liaise with the Department as necessary. The responsibilities of the cross-hub Indigenous Facilitation Network are:

- (a) to ensure Indigenous participation in the Activities;
- (b) to have oversight of key performance indicators and targets in the Indigenous Strategy for each hub;
- (c) to assist in the identification of Indigenous research needs within and across hubs; and
- (d) to connect and support Indigenous researchers in undertaking the Activities.

### **13.2 Membership**

Membership of the Indigenous Facilitation Network will include the Indigenous Facilitator from each hub, including the Hub.

One Indigenous Facilitator in the Indigenous Facilitation Network will be nominated by the Indigenous Facilitation Network to be the representative on the Cross-Hub Senior Governance Committee (where this nomination may be updated from time to time).

### **13.3 Implementation**

The Recipient must ensure that activities of the Indigenous Facilitator under this Agreement are funded, including their participation in the Indigenous Facilitation Network.

**[Note to Applicants: To be updated based on Applicant responses]**

## **14. Program Objectives (clause 1.1)**

The Program objectives are to support applied environmental science research that:

- a. is end user focused and addresses the needs of the Australian Government and other stakeholders in developing evidence-based policy and improving

- management of the Australian environment, including Australia's unique environmental assets
- b. involves collaborative partnerships between public and private sector stakeholders as well as Indigenous communities to maximise benefits for all Australians and their local environments
  - c. is innovative and internationally recognised
  - d. enhances Australia's practical environmental research capacity
  - e. develops human capital within the science community and soft infrastructure through:
    - i. investments in Indigenous research capability, including in remote communities;
    - ii. investments in early to mid-career researchers; and
    - iii. fostering partnerships between researchers, end-users and local communities to establish trust and promote open engagement across different stakeholder groups
  - f. is collaborative and builds critical mass by drawing on multiple disciplines, research institutions and organisations to address challenging research questions
  - g. produces meaningful results accessible to government, industry and the community including:
    - i. through the use of national information repositories to ensure research outputs are easily accessible to all stakeholders and reusable to support multiple future end-user requirements; and
    - ii. transitioning new collection, monitoring and modelling capabilities from research to practical management tools
  - h. includes synthesis and analysis of existing knowledge
  - i. builds relationships between scientists and policy-makers to encourage collaborative problem solving on environmental issues.

## Schedule 3 – Milestone Schedule

No.	Milestone description	Milestone date	Amount (excluding GST)
1	Signing of Agreement by the Department	Commencement Date	[\$[INSERT]]
2	Delivery of a draft Terms of Reference for the Hub Steering Committee to the Department.	Within 60 days of the Commencement Date	Not applicable
3	Department's acceptance of the Final Terms of Reference for the Hub Steering Committee		[\$[INSERT]]
4	Delivery of draft Research Plan 2021 to the Department	Within 80 days of the Commencement Date	Not applicable
5	Acceptance of final Research Plan 2021 by the Department		[\$[INSERT]]
6	Delivery of draft Communication Strategy, draft Knowledge Brokering Strategy and Indigenous Strategy to the Department	[INSERT - anticipated November 2020]	Not applicable
7	Acceptance of the final Communication Strategy and final Knowledge Brokering Strategy by the Department		[\$[INSERT]]
8	Delivery of draft Research Plan 2022 to the Department	[INSERT - anticipated September 2021]	Not applicable
9	Acceptance of final Research Plan 2022 by the Department		[\$[INSERT]]
10	Delivery of Annual Progress Report 1 and the Recipient's Financial Report to the Department (period covered 1 Jan – 31 Dec 2021)	[INSERT - anticipated April 2022]	Not applicable
11	Acceptance of Annual Progress Report 1 and the Recipient's Financial Report by the Department		[\$[INSERT]]

No.	Milestone description	Milestone date	Amount (excluding GST)
12	Delivery of draft Research Plan 2023 to the Department	[INSERT - anticipated September 2022]	Not applicable
13	Acceptance of final Research Plan 2023 by the Department		[\$[INSERT]]
14	Delivery of Annual Progress Report 2 and the Recipient's Financial Report to the Department (period covered 1 Jan – 31 Dec 2022)	[INSERT - anticipated April 2021]	Not applicable
15	Acceptance of Annual Progress Report 2 and the Recipient's Financial Report by the Department		[\$[INSERT]]
16	Delivery of draft Research Plan 2024 to the Department	[INSERT - anticipated September 2023]	Not applicable
17	Acceptance of final Research Plan 2024 by the Department		[\$[INSERT]]
18	Delivery of Annual Progress Report 3 and the Recipient's Financial Report to the Department (period covered 1 Jan – 31 Dec 2023)	[INSERT - anticipated April 2024]	Not applicable
19	Acceptance of Annual Progress Report 3 and the Recipient's Financial Report by the Department		[\$[INSERT]]
20	Delivery of draft Research Plan 2025 to the Department	[INSERT - anticipated September 2024]	Not applicable
21	Acceptance of final Research Plan 2025 by the Department		[\$[INSERT]]

No.	Milestone description	Milestone date	Amount (excluding GST)
22	Delivery of Annual Progress Report 4 and the Recipient's Financial Report to the Department (period covered 1 Jan – 31 Dec 2024)	[INSERT - anticipated April 2025]	Not applicable
23	Acceptance of Annual Progress Report 4 and the Recipient's Financial Report by the Department		[\$[INSERT]]
24	Delivery of draft Research Plan 2026 to the Department	[INSERT - anticipated September 2025]	Not applicable
25	Acceptance of final Research Plan 2026 by the Department		[\$[INSERT]]
26	Delivery of Annual Progress Report 5 and the Recipient's Financial Report to the Department (period covered 1 Jan – 31 Dec 2025)	[INSERT - anticipated April 2026]	Not applicable
27	Acceptance of Annual Progress Report 5 and the Recipient's Financial Report by the Department		[\$[INSERT]]
28	Delivery of Interim Report to the Department (period covered 1 Jan 2026 – 31 Aug 2026)	[INSERT - anticipated April 2027]	Not applicable
29	Acceptance of Interim Report by the Department		[\$[INSERT]]
30	Delivery of Final Report to the Department	[INSERT - anticipated June 2027]	Not applicable
31	Acceptance of Final Report by the Department		[\$[INSERT]]

No.	Milestone description	Milestone date	Amount (excluding GST)
32	Delivery of final Recipient's Financial Report for the entire Activity Period, showing that no funds remain unspent is provided to and accepted by the Department	60 Days after the acceptance of the Final Report by the Department.	Not applicable
33	Acceptance of Recipient's Financial Report by the Department		Not applicable

# Execution page

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## EXECUTED as an agreement

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

\_\_\_\_\_  
Name of authorised representative (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**SIGNED** for and on behalf of **[INSERT LEGAL NAME]**, ABN **[INSERT]** by a duly authorised representative who warrants that they have the authority to sign this Agreement on behalf of **[INSERT LEGAL NAME]**

in the presence of:

\_\_\_\_\_  
Name of authorised representative (print)

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# Annexure A – Research Plan 2021

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