



Australian Government

Department of Sustainability, Environment, Water, Population and Communities

FUNDING AGREEMENT

Biodiversity Fund

Commonwealth of Australia as represented by
the Department of Sustainability, Environment,
Water, Population and Communities
ABN 34 190 894 983 (**Department**)

MALENY DISTRICT GREEN HILLS FUND
ABN 86 071 444 123 (**Recipient**)

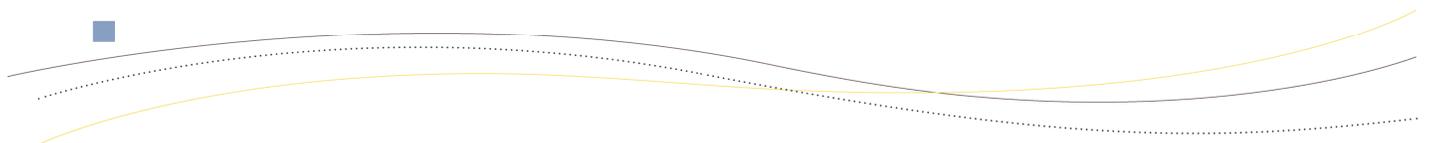


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Details

Parties

Commonwealth of Australia as represented by the Department of Sustainability, Environment, Water, Population and Communities ABN 34 190 894 983
(Department).

MALENY DISTRICT GREEN HILLS FUND ABN 86 071 444 123 **(Recipient)**.

Recitals

- A. The Department is undertaking the Biodiversity Fund **(Program)** to support land managers to undertake projects that establish, restore, protect or manage biodiverse carbon stores.
- B. The Program Objectives are to:
 - (a) help maintain ecosystem function and increase ecosystem resilience to climate change; and
 - (b) increase and improve the management of biodiverse carbon stores across the country.
- C. The Recipient has been approved to receive funding from the Australian Government to carry out the Project on the terms and conditions set out in this Agreement. In particular, the Australian Government is providing the Funds to the Recipient to assist with Revegetate Obi Obi Creek providing connectivity between areas of biodiversity.
- D. In consideration of the Australian Government providing the Funds to the Recipient, the Recipient has agreed to perform the Project in accordance with the terms and conditions of this Agreement.

Operative provisions

1. Capitalised terms

In this Agreement, capitalised terms are as defined at clause 22.

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 Project;
- (b) it has, or is able to obtain, the written consent of any organisation that it will partner with or represent on the Project, including traditional owners;
- (c) it has not received funding through other initiatives or programs for substantially the same activities to be undertaken for the Project;
- (d) it has no overdue reports or acquittals, under any contractual or statutory arrangement for funding with the Department or any other Australian Government agency;
- (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;
- (g) any Funds it receives under this Agreement will not be used to conduct Business As Usual Activities; and
- (h) 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 and in the Recipient's Application Form.

4. Conduct of the Project

4.1 Obligation to perform the Project

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

- (a) consistently with, and in furtherance of, the Program Objectives;
- (b) within the Project Period;
- (c) in accordance with all applicable Laws;
- (d) so as to meet the Milestones (by achieving the criteria for completion of the relevant Milestone specified in the Milestone Schedule, if any) and other Project Plan requirements, and where no Milestones or Project Plan requirements are specified, promptly and without delay;
- (e) so as to deliver the Project Outcomes and meet all reporting requirements, in accordance with the requirements of this Agreement;
- (f) if requested by the Department, by engaging with one or more:
 - (i) Established Corridor Groups; and / or
 - (ii) Similar Projects,

to maximise Project outcomes and ensure alignment of the Project with existing work being undertaken by an Established Corridor Group or Groups or future work to be undertaken by a Similar Project or Projects; and
- (g) otherwise in accordance with the provisions of this Agreement.

4.2 Project Plan

- (a) Prior to commencing the Project and within the timeframe specified in the Milestone Schedule, the Recipient must submit a draft Project Plan for the Department's approval.
- (b) The draft Project Plan must:
 - (i) be substantially in the form of the template provided by the Department;
 - (ii) detail the activities, linked to Project Outcomes, to be undertaken at each stage of the Project;
 - (iii) detail, and provide documents (including satellite images, fixed-point photographs, maps, etc.) clearly identifying the proposed location and condition of the Site, as relevant;
 - (iv) if necessary, include a threat management plan outlining activities to manage threats associated with pests, disease, fire, climate change and other significant events, and appropriate treatments as required;
 - (v) detail how the Recipient will deliver the Project in accordance with this Agreement; and
 - (vi) be consistent with all timeframes arising under this Agreement and identify how they will be met.
- (c) Unless the Recipient is otherwise notified by the Department, the Department will reject or approve the draft Project Plan within 40 Business Days of submission by the Recipient under clause 4.2(a). Where the draft Project Plan is rejected, the Recipient must continue to submit a draft Project Plan, including any necessary amendments until the Department approves a draft Project Plan.
- (d) Once a draft Project Plan is approved by the Department, it will become the final Project Plan (subject to any agreed changes in accordance with clause 4.2(e)).

- (e) The Recipient must perform the Project in accordance with the Project Plan and must not make any amendments to the Project Plan, unless approved in writing by the Department.
- (f) For the avoidance of doubt, the Department's approval of the Project Plan does not in any way limit the Recipient's responsibility for the performance of its obligations under the Agreement and any consequences of that performance.

4.3 Project Budget

- (a) Subject to clause 4.3(b), the Recipient must:
 - (i) perform the Project; and
 - (ii) only spend the Funds,in accordance with the Project Budget, unless approved in writing by the Department.
- (b) The Recipient may transfer the Funds between categories of expenditure items within the Project Budget, without the consent of the Department, provided that such transfer does not exceed:
 - (i) 10 per cent of the relevant expenditure item specified in the Project Budget for a financial year from which the amount of Funds is being transferred; or
 - (ii) \$50,000, if the amount in clause 4.3(b)(i) is greater than \$50,000.
- (c) For the avoidance of doubt, the Department's approval of the Project Budget or any amendment to the Project Budget does not in any way limit the Recipient's obligations under this Agreement.

4.4 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.

4.5 Appointment of subcontractors

- (a) Where the Recipient engages another party to deliver or assist in the delivery of any components of the Project, the Recipient must enter into a contract with that party and that contract must be consistent with the terms of this Agreement.
- (b) The Recipient is responsible for the performance of the Recipient's responsibilities under this Agreement regardless of whether the Recipient has subcontracted any of its obligations.

- (c) The Recipient must not enter into a subcontract under this Agreement with a subcontractor that is currently named as not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).
- (d) If requested, the Recipient must promptly provide to the Department a copy of any contract relating to the Project and / or any Material relating to the engagement of the subcontractor.

4.6 Liaison

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

4.7 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 Project.
- (b) If the Recipient anticipates any delay in performing its obligations under this Agreement, it must notify the Department of that delay:
 - (i) if an unforeseen event has or is likely to occur, in accordance with clause 17; or
 - (ii) otherwise in accordance with clause 19.2.

4.8 Exclusions for emergency situations

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

4.9 Review of multi-year Projects

- (a) Subject to clause 7.3, this clause 4.9 applies only if the Project Period is longer than three years.
- (b) Within 40 Business Days of the third anniversary of the Commencement Date the Recipient must provide to the Department a Review Report which must include, but need not be limited to, the following information:
 - (i) an assessment of the Project to date;
 - (ii) an updated Project Plan; and
 - (iii) an updated Project Budget.
- (c) If requested by the Department, the Recipient must provide any additional information to enable the Department to undertake its review.
- (d) The Department will assess the Review Report and determine whether the Project continues to represent value for money. The Department will inform the Recipient, in writing, of the outcome of its review.
- (e) If the Department determines the Project no longer represents value for money the Department may, in its absolute discretion, and on giving 20 Business Days notice:

- (i) reduce the amount of the Funds;
- (ii) reduce the scope of the Project; or
- (iii) terminate this Agreement under clause 19.1.

4.10 Terms of engagement with Established Corridor Groups and Similar Projects

- (a) If the Department makes a request of the Recipient in accordance with clause 4.1(f), the Recipient must engage with the Established Corridor Group or Similar Project to optimise the outcomes achieved through the Project.
- (b) The Recipient must participate, as reasonably required by the Department, in meetings and other activities intended to bring together the Recipient and the relevant Established Corridor Group and / or Similar Project, in accordance with clause 9.8.
- (c) For the avoidance of doubt, any request by the Department that the Recipient engage with an Established Corridor Group or a Similar Project 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.

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 Project to the satisfaction of the Department and in accordance with the terms of this Agreement, until the Recipient remedies its non-performance;
 - (iii) the 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 the Project Budget and information provided in the Reports, that the full payment is not properly required by the Recipient to carry out the Project or because of Project surpluses or underspends; or
 - (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 obligation has been complied with.
- (c) Notwithstanding any other clause of this Agreement, if the Recipient has received any Funds, the Recipient is not entitled to spend those Funds if the Department has notified the Recipient that one or more of the circumstances

specified in clauses 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 Project and performing this Agreement;
- (b) must not be used to cover the cost of any activities completed prior to the execution of this Agreement;
- (c) must not, unless agreed by the Department in writing, be used to cover the cost of any activities commenced but not yet completed prior to the execution of this Agreement;
- (d) are not to be applied towards administrative and other general costs of the Recipient unless any such costs are approved in writing by the Department or expressly included in the Project Budget;
- (e) must not, unless the prior written approval of the Department has been obtained, be used in a manner which is inconsistent with the Project Budget;
- (f) subject to clause 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 set out in Schedule 2 for the purposes of the Project; and
- (g) may form part of an existing security held over the Recipient's assets provided a priority agreement is entered into between the Department, the Recipient and the Recipient's financier or holder of the existing security. The priority agreement must be on terms acceptable to the Department and must not allow the financier or holder of the existing security priority to the Funds.

5.3 Amount of Funds capped

The amount of Funds to be contributed by the Department in relation to the Project will not exceed the maximum amount of Funds specified in Item 3.1 of Schedule 2.

5.4 No liability for Department

The Department accepts no liability for:

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

5.5 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 required by the Department, ensure that the account referred to in clause 5.5(a) is:
 - (i) established solely for the purposes of this Agreement; and
 - (ii) separate from the Recipient's other operational accounts; and
- (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.

5.6 Repayment of Funds

If:

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

the Department may by written notice to the Recipient:

- (c) require the Recipient to repay that part of the Funds, and the Recipient must repay to the Department the amount set out in the notice, within 40 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.

5.7 Failure to repay Funds

At the Department's absolute discretion, and without prejudice to any other rights available to the Department under this Agreement or at Law or in equity, if the Recipient fails to repay the Funds in accordance with a notice issued under clause 5.6(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 5.7(a), will then be recoverable by the Department as a debt due from the Recipient.

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) Unless otherwise indicated, any consideration for a supply made under this Agreement is exclusive of any GST imposed on the supply.
- (b) Subject to clause 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 setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- (c) No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

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) if the Recipient is registered for GST supply proof of its GST status, as and when requested by the Department.
- (b) If the Recipient does not have an ABN the Recipient may lodge with the Department a completed 'Statement by a Supplier' form claiming an exemption for lodging an ABN. The Recipient should seek advice from the Australian Taxation Office regarding the 'Statement by a Supplier' form if needed.
- (c) If the Recipient does not provide either an ABN or a completed 'Statement by a Supplier' form, then the Department will withhold from the payment an amount of 46.5 per cent or such other amount as determined by the Australian Taxation Office from time to time.

6.5 Recipient Created 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 Department will issue Recipient Created Tax Invoices and any adjustment notes for taxable supplies by the Recipient to the Department under this Agreement within 28 days of determining the value of the taxable supplies in question.
- (d) The Recipient must not issue tax invoices or adjustment notes for taxable supplies by the Recipient to the Department under this Agreement.

7. Other contributions

7.1 Other contributions

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

$$R = OC - AC$$

Where:

$$R = \text{The refund amount;}$$

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

OC = The total aggregate amount of Recipient's Contributions and Other Contributions specified in Item 4 of Schedule 2.

- (f) The Department may, in its absolute discretion:
- (i) reduce the amount of the Funds in accordance with clause 7.1(d)(v) by; or
 - (ii) require the Recipient to refund the Department, in accordance with clause 7.1(e),
- 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 Project including income derived under the Carbon Farming Initiative as a result of the Project (other than Funds provided under this Agreement or contributions already identified in the Project Budget);
- (b) if requested by the Department, promptly provide to the Department copies of any written arrangements entered into, or proposed to be entered into, in respect of such other funding or contributions; and
- (c) ensure that the terms on which any other funding or contributions are provided to the Recipient for, or in connection with, the Project are not inconsistent with the terms of this Agreement and do not in any way limit or affect the Recipient's ability to comply strictly with its obligations, or the Department's ability to exercise its rights, under this Agreement.

7.3 Notification may trigger review

- (a) A notification by the Recipient under clause 7.2 may trigger a review of the Project by the Department in accordance with the provisions of clause 4.9, even if the Project Period is less than three years.
- (b) If requested by the Department, the Recipient must provide a Review Report on the notification under clause 7.2 to the Department within 40 Business Days of the request, including but not limited to the information listed in clause 4.9(b).

8. Assets

8.1 Purchasing of Assets

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

9. Records, Reports and acquittals

9.1 Records and accounts

The Recipient must:

- (a) keep comprehensive and accurate accounts and records of its use of the Funds, that can be separately identified from other accounts and records of the Recipient; and
- (b) retain the accounts and records referred to in this clause 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 Project including progress against the Milestones and the achievement of the Project 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 Project so as to enable:

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

9.5 Reports

- (a) Without limiting the Recipient's other obligations under this Agreement, the Recipient must provide to the Department the Reports specified in Item 5 of Schedule 2 (substantially in the form of the template provided by the Department from time to time) at the times specified in Item 5 of Schedule 2.
- (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 its direction, within 40 Business Days of receiving the Department's direction or within such longer period (if any) 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 Audits

- (a) The Recipient must prepare an annual Report (including Financial Information) at the end of each financial year in which the Recipient has received, expended or retained Funds pursuant to this Agreement.
- (b) The Recipient must engage 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 Project

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 Project or Program in achieving the Program Objectives. Such participation may, where required by the Department, include:

- (a) attending relevant conferences, forums and meetings in which evaluations and analysis are being undertaken;
- (b) allowing third parties access to undertake analysis and evaluation of the Program and the Project; and
- (c) making records and other information (including Reports) available to third parties for the purposes of evaluation and analysis.

10. Access to premises and records

10.1 Access to premises and Assets

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

- (a) access and inspect the Recipient's premises and the Site to the extent relevant to the performance of this Agreement (including to conduct Site audits to assess progress against the Project Plan and Project Budget); and
- (b) access and inspect any Assets, wherever they may be located.

10.2 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) 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;
 - (ii) 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
 - (iii) require assistance in respect of any inquiry into or concerning the Project, the Program or this Agreement. For the purpose of this clause 10.2(a)(iii), 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 10.2.

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. Project Material and Intellectual Property Rights

11.1 Intellectual Property Rights in Project Material

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

11.2 Licensing of Project 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 Project Material, including the Reports, for any non-commercial purpose.

11.3 Project Material

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

11.4 Intellectual Property Rights warranties

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

11.5 Department Material

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

11.6 Moral Rights

- (a) To the extent permitted by law, the Recipient must, unless otherwise agreed by the Department in writing, ensure that each person who:
 - (i) has been involved in the performance of the Project; and
 - (ii) is or will be the author of any Project Material (including the Reports) that is to be licensed to the Department in accordance with this clause 11,provides a written consent to the Department permitting the Department (including its Personnel) to conduct any act which would otherwise infringe the Moral Rights held by that person.
- (b) The consent provided under clause 11.6(a) must be consistent with the Department being able to conduct any act it is licensed to conduct under this Agreement.

12. Acknowledgement and Project Events

12.1 Acknowledgement

- (a) The Recipient must acknowledge, in the required form as set out in Item 6 of Schedule 2, the support it has received from the Australian Government:
 - (i) in all publications, promotional and advertising Materials, signs or plaques displayed at the location where the Project is undertaken;
 - (ii) in all activities by it or on its behalf in relation to the Project;
 - (iii) if requested by the Department, with any products, processes or inventions developed as a result of the Project;

- (iv) at any Project 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 Schedule 2 to the Department 10 Business Days prior to publication or announcement of the event specified in clause 12.1(a).
 - (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.
 - (d) Notwithstanding the Department's review or proposal of a revised form of words in accordance with this clause, the Recipient will at all times remain responsible for the content and accuracy of publications and announcements.

12.2 Project Events

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

12.3 Announcements

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

13. Confidential Information

13.1 Confidential Information not to be disclosed

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

13.2 Exceptions to obligations

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

- (a) disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement related activities;
- (c) disclosed by the Department to the responsible Minister;

- (d) disclosed by the Department, in response to a request by a House or a Committee of the Parliament of the Commonwealth;
- (e) shared by the Department within the Department's organisation, or with another Australian Government agency, where this serves the Australian Government's legitimate interests;
- (f) authorised or required by Law, including under this Agreement, under a licence or otherwise, to be disclosed; or
- (g) in the public domain otherwise than due to a breach of this clause 13.

13.3 Obligations on disclosure

Where a party discloses Confidential Information to another person:

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

13.4 No reduction in privacy obligations

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

14. Personal Information

14.1 When does this clause apply?

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

14.2 Other definitions relating to Personal Information

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

14.3 Recipient's obligations about Personal Information

The Recipient must:

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

14.4 Subcontractors

The Recipient must ensure that any subcontract entered into by it in relation to 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 Recipient's obligations

On and from the Commencement Date, the Recipient:

- (a) indemnifies the Department and continues to indemnify the Department against, all:
 - (i) Losses suffered or incurred by the Department, including as the result of any claim made in relation to:
 - (A) loss of or damage to third party property; or
 - (B) the injury, illness or death of a third party;
 - (ii) loss of or damage to the Department's property; or
 - (iii) 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:
 - (iv) any act or omission by the Recipient (including any of its Personnel) in connection with this Agreement;
 - (v) any breach by the Recipient (including any of its Personnel) of its obligations or warranties under this Agreement;
 - (vi) 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
 - (vii) the use by the Department of the Project Material, including the Intellectual Property and Moral Rights comprised in the Project Material;
and
- (b) releases the Department from:
 - (i) 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
 - (ii) all liability of the Department arising out of this Agreement.

15.2 Proportional reduction of liability

The Recipient's liability to indemnify and release the Department under clause 15.1 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.

15.3 Department's right to be indemnified is additional to other rights

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

16. Insurance

16.1 Obligation to take out and maintain insurance

- (a) 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) on execution of this Agreement, workers' compensation and public liability insurances as specified in Item 7 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. Unforeseen events

17.1 Occurrence of unforeseen event

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

17.2 Notice of unforeseen event

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

17.3 Termination

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

17.4 Consequences of termination

If this Agreement is terminated under clause 17.3:

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

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

18. Dispute resolution

18.1 Dispute resolution

- (a) Subject to clause 18.2, the parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement, which has not been resolved by informal discussion, until the procedure provided by this clause 18 has been followed.
 - (b) The parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:
 - (i) the party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
 - (ii) the parties will try to resolve the dispute through direct negotiation, including by referring the matter to persons who have the authority to intervene and direct some form of resolution; and
 - (iii) if within 40 Business Days from the date of the notice issued under clause 18.1(b)(i):
 - (A) there is no resolution of the dispute;
 - (B) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (C) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 20 Business Days of the submission, or within such further extended time as the parties may agree to extend 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 Project Outcomes;
- (d) the Department is satisfied, following a review under clause 4.9, that the Project no longer represents value for money;
- (e) the Department is satisfied on reasonable grounds that any statement, representation or warranty made by the Recipient is incorrect or incomplete in a way which would have affected the original decision to approve the Funds for the Project;
- (f) 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 Project;
- (g) 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;
- (h) there is an Insolvency Event;
- (i) the Recipient breaches any term or condition of any other funding agreement between the Recipient and an Australian Government agency; or
- (j) the Recipient, by notice in writing given to the Department, withdraws from this Agreement,

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

19.2 Potential Default

- (a) For the purposes of this clause **Potential Default** means any event, thing or circumstance which does not fall within the scope of clause 17 and which likely would:
 - (i) result in delay in meeting any requirement of the Project Plan;
 - (ii) result in the Recipient not being able to achieve a Milestone within the timeframe specified in accordance with 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, in its notice:
 - (i) the nature of and reason for the Potential Default;
 - (ii) how the Recipient proposes to rectify the Potential Default;

- (iii) the date on which the Recipient proposes that the Potential Default will be rectified; and
 - (iv) any expected impact that the Potential Default may have on the Project Budget or on the ability to comply with timeframes in the Milestone Schedule or Project 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 Project.
- (d) On receipt of a Notice of Potential Default the Recipient must remedy the Potential Default or, where the Potential Default is not capable of being remedied, prepare a plan for the Department's approval of the actions that the Recipient proposes to take to deal with the impact of the Potential Default (**Potential Default Plan**).
- (e) If 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 Project and amount of the Funds immediately.
- (b) Upon receipt of a notice of termination or reduction from the Department pursuant to this clause, the Recipient must:
- (i) cease carrying out the Project to the extent specified in the notice;
 - (ii) take all available steps to minimise any Losses resulting from that termination or reduction; and
 - (iii) continue carrying out those parts of the Project not affected by the notice.
- (c) Where there has been a termination under this clause 19.3, the Department will only be liable for:
- (i) costs properly incurred in relation to the Project under this Agreement before the effective date of termination; and
 - (ii) reasonable costs incurred by the Recipient and directly attributable to the termination.
- (d) Where there has been a reduction in the scope of the Project, the Department's liability to the Recipient for payment of the Funds will, unless

there is an agreement in writing to the contrary, be reduced in accordance with the reduction in the Project.

- (e) The Department will not be liable to pay any costs referred to under this clause in an amount which would, in addition to any amounts paid or due, or becoming due, to the Recipient under this Agreement, together exceed the maximum amount of Funds specified in Item 3.1 of Schedule 2.
- (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. General provisions

21.1 Survival of provisions

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

- (a) any rights of either party against the other which:
 - (i) accrued prior to the time of termination or expiry; or
 - (ii) otherwise relate to or may arise at any future time from any breach of non-observance of obligations under this Agreement which arose prior to the time of termination or expiry; and
- (b) the provisions of this Agreement which by their nature survive expiry or termination, including:
 - (i) clause 5 (Funds);
 - (ii) clause 9 (Records, Reports and Acquittals);
 - (iii) clause 10 (Access to premises and records);
 - (iv) clause 13 (Confidential Information);
 - (v) clause 14 (Personal Information);
 - (vi) clause 15 (Indemnity and release);
 - (vii) clause 16 (Insurance);
 - (viii) clause 19.3(c) (Liability of the Department);
 - (ix) clause 19.4 (Dealing with Funds on termination);
 - (x) clause 21.12 (Relationship); and
 - (xi) clause 22 (Definitions and interpretation).

21.2 Varying this Agreement

- (a) Subject to the exceptions outlined in clause 21.2(b), this Agreement may only be varied in writing signed by each party.
- (b) Variations to the Project Plan and Project Budget may be made in accordance with clauses 4.2 and 4.3 respectively.

21.3 Approvals and consents

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

21.4 Assignment and novation

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

21.5 Costs

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

21.6 Counterparts

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

21.7 No merger

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

21.8 Entire agreement

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

21.9 Further action

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

21.10 Severability

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

21.11 Waiver

Waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

21.12 Relationship

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

21.13 Disclosure of information

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

21.14 Governing law and jurisdiction

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

22. Definitions and interpretation

22.1 Definitions

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

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| ABN | has the same meaning as it has in section 41 of the <i>A New Tax System (Australian Business Number) Act 1999</i> (Cth). |
| Accounting Standards | the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia. |
| Advisers | (a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers. |
| Agreement | this agreement between the Department and the Recipient, as amended from time to time in accordance with clause 21.2, and includes its Schedules and any Annexures. |
| Agreement Details | the details set out in Schedule 1. |
| Agreement Period | the period specified in clause 2. |
| Application Form | the form the Recipient submitted to the Department to apply for funding for the Project, under the Program. |
| Asset | 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 or more, excluding GST. |
| Audit | an audit carried out by a Qualified Accountant in accordance with the Auditing Standards. |
| Auditor-General | 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. |
| Auditor's Report | has the same meaning it has in the Auditing Standards. |
| Auditing Standards | has the same meaning as it has in sections 9 and 336 of the <i>Corporations Act 2001</i> (Cth), and refers to the auditing standards made by the Australian Auditing and |

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| | Assurance Standards Board. |
| Business As Usual Activities | acts or undertakings which the Recipient would undertake or would be required to undertake regardless of the Project. |
| Business Day | in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place. |
| Carbon Farming Initiative | the program through which carbon credits are provided under the <i>Carbon Credits (Carbon Farming Initiative) Act 2011</i> (Cth). |
| Commencement Date | the date this Agreement is executed by the parties or, if executed on separate days, the date on which this Agreement is executed by the last party to do so. |
| Commonwealth | the Commonwealth of Australia. |
| Completion Date | the day after the Recipient has done all that it is required to do under clauses 4 (Conduct of the Project), 5 (Funds) and 9 (Records, Reports and acquittals) of this Agreement to the satisfaction of the Department. |
| Confidential Information | information that is by its nature confidential; and (a) is designated by a party as confidential; or (b) a party knows or ought to know is confidential, but does not include: (c) information which is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation. |
| Conflict of Interest | any circumstance in which the Recipient or any of the Recipient's Personnel has an interest (whether financial or non-financial) or an affiliation that is affecting, will affect, or could be perceived to affect, the Recipient's ability to perform the Project, or its obligations under this Agreement, fairly and independently. |
| Department | the Commonwealth Department of Sustainability, Environment, Water, Population and Communities or any other agency that administers this Agreement from time to time. |
| Department Material | any Material provided to the Recipient by the Department. |
| Department Representative | the person identified in Item 2 of the Agreement Details. |
| Electronic Communication | has the same meaning as in the <i>Electronic Transactions Act 1999</i> (Cth). |

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| Established Corridor Group | a group recognised by the Department as undertaking land management work that, restores, protects or manages biodiverse carbon stores in a established wildlife corridor proximate to the Project and the Site at any given time. |
| Financial Information | <p>information relating to the Recipient's receipt, retention and expenditure of the Funds including, at a minimum:</p> <p>(a) a balance sheet, an income statement and a cash flow statement in relation to the Funds;</p> <p>(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 financial year during the Agreement Period;</p> <p>(c) a detailed statement of revenue and expenditure in relation to the Funds received and receivable by the Recipient under this Agreement, which must include a definitive statement as to whether the Recipient's financial accounts in relation to the Funds are complete and accurate, and a statement of the balance of the bank account referred to in clause 5.5; and</p> <p>(d) notes, comprising a summary of significant accounting policies and other explanatory notes that are relevant to the Funds,</p> <p>prepared in accordance with the Accounting Standards for the relevant financial year and audited by a Qualified Accountant.</p> |
| Freedom of Information Commissioner | 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. |
| Funds | the amount payable by the Department to the Recipient under this Agreement. |
| GST Act | the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth). |
| Information Commissioner | 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. |
| Insolvency Event | <p>in respect of a party means:</p> <p>(a) if the party:</p> <p style="padding-left: 40px;">(i) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors; or</p> |

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

Intellectual Property Rights

all intellectual property rights, including the following rights:

- (a) copyright, patents, rights in circuit layouts, trade marks, designs, trade secrets, know how, domain names and any right to have Confidential Information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered.

Interest

means interest calculated at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points.

Item

an item in a Schedule to this Agreement.

Law

any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government.

LEADR

the dispute resolution association with that name and the Australian Business Number 69 008 651 232.

Losses

liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party).

| | |
|-----------------------------|--|
| Material | any software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights. |
| Milestone | any fixed date to be met by the Recipient in performing any of its obligations under this Agreement, as specified in the Milestone Schedule. |
| Milestone Schedule | means the Milestone schedule set out in the table in Schedule 3. |
| Moral Rights | 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). |
| NRM Region | the natural resource management region identified by the Commonwealth within the boundaries of which the Site is located. |
| Ombudsman | 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. |
| Other Contributions | the other contributions specified in the Project Budget. |
| Personal Information | information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion. |
| Personnel | in relation to a party, any natural person who is an employee, officer, agent or professional adviser of that party or, in the case of the Recipient, of a subcontractor. |
| Privacy Act | the <i>Privacy Act 1988</i> (Cth). |
| Privacy Commissioner | 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. |
| Program | the program referred to in Recital A of this Agreement. |
| Program Objectives | the program objectives described in the Recitals. |
| Project | the project described in Item 1 of Schedule 2. |

| | |
|--------------------------------------|---|
| Project Budget | the budget included in the Project Plan detailing how the Recipient will spend the Funds, and identifying the Recipient's Contributions and Other Contributions (if any) to the Project and the proposed expenditure of such amounts for the purposes of conducting the Project and otherwise performing obligations under this Agreement as amended from time to time in accordance with clause 4.3. |
| Project Event | any promotional event conducted by the Recipient relating to the Project, including celebration of Funds, all openings, ceremonies or other public events to mark the completion of any aspect of the Project and all other openings, ceremonies or public events which are related to the Project. |
| Project Material | any Material created by the Recipient for the purpose of or as a result of performing its obligations under this Agreement. |
| Project Outcomes | the project outcomes described in Item 1.3 of Schedule 2. |
| Project Period | the period specified in Item 2 of Schedule 2. |
| Project Plan | the project plan detailing how the Recipient will conduct and complete the Project in accordance with this Agreement, including timeframes for completion of various stages of the Project as amended from time to time in accordance with clause 4.2. |
| Qualified Accountant | a person who is: <ul style="list-style-type: none"> (a) a member of the Institute of Chartered Accountants in Australia or of CPA Australia; and (b) independent of the Recipient. |
| Recipient | the party specified in Item 3 of the Agreement Details and includes its Personnel. |
| Recipient Created Tax Invoice | has the same meaning given to that term in the GST Act. |
| Recipient Representative | the person identified in Item 4 of the Agreement Details. |
| Recipient's Contributions | the recipient contributions specified in the Project Budget. |
| Reports | the reports that the Recipient is required to produce and provide to the Department in accordance with clause 9 and the Review Report. |
| Review Report | the report that the Recipient is required to produce and provide to the Department in accordance with clause 4.9. |

| | |
|------------------------|---|
| Schedule | a schedule to this Agreement. |
| Similar Project | any project being funded under the Program which has outcomes similar to the Project Outcomes and which may better achieve the Program Objectives by working cooperatively with the Recipient, as determined by the Department. |
| Site | the site where the Project will be undertaken and that is identified in Item 5 of the Agreement Details. |

22.2 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) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to AUD, A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to the time in the place where the obligation is to be performed;
- (g) 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;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) if the Recipient is a trustee, the Recipient enters this Agreement personally and in its capacity as trustee and:
 - (i) any warranties given under this Agreement are given in both capacities; and
 - (ii) warrants that it has the power to perform its obligations under this Agreement;
- (j) 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;
- (k) 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;

- (l) 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;
- (m) 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
- (n) 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.

22.3 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) Schedule 2;
- (e) the Project Budget;
- (f) the Project Plan; and
- (g) documents incorporated by reference in this Agreement.

Schedule 1 – Agreement Details

| Item No. | Description | Clause reference | Details |
|----------|----------------------------------|------------------|--|
| 1. | Department details | 22.1 | Commonwealth of Australia as represented by the Department of Sustainability, Environment, Water, Population and Communities ABN 34 190 894 983 |
| 2. | Department Representative | 22.1 | Position: Director, Biodiversity Fund Phone: 1800 008 678 Email: biodiversityfund@environment.gov.au |
| 3. | Recipient details | 22.1 | MALENY DISTRICT GREEN HILLS FUND ABN 86 071 444 123 |
| 4. | Recipient Representative | 22.1 | Name: Ms Sue Mihovilovich Position: Project Officer Phone: 0422 952 098 Email: sue@sue-m.co |
| 5. | Site details | 22.1 | NRM Region: Burnett Mary Latitude: - 26.7595 Longitude: 152.8579 If applicable, a Map of the Site is provided at Annexure A. |
| 6. | Confidential Information | 13 | Department's Confidential Information: Not applicable. Recipient's Confidential Information: Not applicable. |
| 7. | Insurance | 16 | On execution of this Agreement: (a) to the extent required by Law, workers' compensation insurance in respect of the Recipient's liability for any loss or claim by a person employed or otherwise engaged, or deemed to be employed or otherwise engaged, by the Recipient in connection with the Project; and (b) public liability insurance covering legal liability (including liability assumed under contract) for |

| Item No. | Description | Clause reference | Details |
|----------|----------------------------|------------------|---|
| | | | loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Project for an insured amount of \$10 million per occurrence and not less than \$20 million in aggregate. |
| 8. | Address for notices | 20.1 | <p>Department:</p> <p>Position: Director, Biodiversity Fund</p> <p>The Department of Sustainability, Environment, Water, Population and Communities</p> <p>Postal address: GPO Box 787, Canberra, ACT, 2601</p> <p>Physical address: 33 Allara St, Canberra, ACT, 2601</p> <p>Email: biodiversityfund@environment.gov.au</p> <p>Recipient:</p> <p>Name: Mr Steven Lang</p> <p>Position: President</p> <p>Postal address: PO Box 662 MALENY QLD 4552</p> <p>Physical address: PO Box 662 MALENY QLD 4552</p> <p>Email: letters@stevenlang.com.au</p> |

Schedule 2 – Project particulars

1. Project (clause 4)

1.1 Project title

Revegetate Obi Obi Creek bank providing connectivity between areas of biodiversity.

1.2 Project description

Obi Obi Creek is the main watercourse on the Maleny Plateau and a major tributary of the iconic Mary River. The proposed revegetation site has, at present, no native riparian cover. The site is the missing link for connecting significant corridors of remnant and recently established vegetation, including endangered gallery rainforest RE 12.3.1 and listed wetlands VMA REC 12.3.8. Green Hills will work collaboratively with Sunshine Coast Council, Barung Landcare, Lake Baroon Catchment Care, SEQ Water, Unity Water and the local community to fence, protect and revegetate this 6 ha of waterway habitat using species consistent with those in the gallery rainforest.

1.3 Project Outcomes

Over three years the project will have:

- prepared the ground, planted and maintained 6 ha of restored riparian rainforest in a strip 1.5 km long by 40 m wide on the northern bank of the Obi Obi Creek, the main watercourse in the region
- eliminated several hectares of lantana, blackberry (WONs) and other invasive woody weeds – notably privet and camphor laurel but also pine.
- created an area of significantly increased biodiversity (planting trees from the recommended revegetation list of 58 species provided in the report prepared for SCC by Stringybark Consulting)
- fenced 1.5km of the Obi Obi Creek bank
- provided connectivity between the Obi Obi Corridor and Unity Water's site
- provided connectivity between the downstream corridor and the corridor through the township of Maleny
- improved water quality by slowing run-off in a high rainfall area (2.4 m per annum)
- provided habitat for the 27 recognised rare or endangered species already identified on-site
- continued and enhanced a fauna monitoring program operated by Barung Landcare and Sunshine Coast University (funded by Caring for Country)
- provided bank stabilisation
- slowed water movement within the Obi Obi Creek itself

- created increased capacity and awareness through co-operative ventures between government agencies and community organisations, including tree-plants, public meetings and our regular bush care group
- increased the resilience of the entire Blackall Range to respond to changes in climate
- provided habitat for migratory birds adjacent to areas already recognised as of significance
- developed an ongoing maintenance program
- have planned and developed a risk management plan to mitigate against fire

1.4 Project activities

Green Hills, Sunshine Coast Council, Lake Baroon Catchment Care, SEQ Water and Barung Landcare, will each contribute to funding for the project. We will:

- fence 6 ha of riparian buffer zone on the northern bank of the Obi Obi Creek
- undertake invasive weed removal
- undertake ground preparation
- raise community awareness, with specific targeting of young people, through the establishment of local and wider area networks and promotional activities
- build the capacity of our existing bushcare group, currently a regular rotating group of 25 volunteers committed to landscape repair
- identify appropriate native species through consultation with the Terrestrial Rehabilitation Plan developed for Council by Stringybark Consulting (this document lists 58 appropriate species for the area)
- create a tree planting plan
- arrange community tree plants
- arrange for contractors and volunteers to do in-fill planting
- provide continued weed control for ten years after the end of the project in partnership with Council
- work together to develop a risk and maintenance plan against fire, weed and pest infestation in conjunction with owners and stewards of interconnecting areas
- undertake detailed survey and monitoring programs in conjunction with SEQ Water, Unity Water, Barung Landcare and Sunshine Coast University for water quality and fauna
- document the work in photo, aerial photo-mapping and video form and establish a statistical base of activities (trees planted, survival rates, growth rates, etc.)

- document project methodologies for the use by other groups
- establish links with other localities on migratory bird paths.

1.5 Ongoing Project maintenance

Sunshine Coast Council (SCC) have pledged a contribution to the project of \$10,000 per annum for 3 years in capital expenditure, as well as \$8,000 per annum in in-kind labour. It is also SCC's commitment to maintain the site for the 10 years after the project finishes. Green Hills has an already established monthly bushcare group with a regular rotating membership of 25 volunteers who provide 2 hours each per month for maintenance, weed control and in-fill planting. The focus of this group is the MCP and the proposed site presents an opportunity for continued work. The project budget includes \$3,000 p/a p/ha for maintenance. The site will receive 6 visits p/a for maintenance during the first two years after planting. Every square metre will be checked. Trees will be planted in rows to permit mowing. Visits will be reduced in number over the ensuing years, from 6 p/a to 3 p/a down to 1 p/a after overstorey is achieved. The aim is to plant self-sustaining, resilient forest. Fire Regime Green Hills is very aware of the pressures which may come to be exerted on our environment. We note the report by Tim Low 'Climate Change and Queensland Biodiversity.' We note, however, that the Blackall Range is a very high rainfall area and that a 20% variation in rainfall, either way, would be unlikely either to wash away the vegetation on the site, or cause it to burn. The species recommended for planting are predominantly rainforest, there are unlikely to be many eucalypts planted. The topography of the site is such that, on one side of the 1.5km strip, there is the major watercourse for the region, on the other SCC will construct a walking trail through an 8m wide easement. (budgetted for 2012-13) This will act as a fire trail, allowing access for all sorts of risk management.

2. Project Period

The Project Period commences on the Commencement Date and ends on 30 June 2014.

3. Funds (clause 5)

3.1 Maximum amount of Funds

The maximum amount of Funds payable by the Department under this Agreement will be \$175,000.00 (exclusive of GST) or the lesser amount required to complete the Project.

3.2 Payment

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

3.4 Annual allocation of Funds

| Annual allocation of Funds | | | | | | |
|----------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| | 2011/12 (GST exclusive) | 2012/13 (GST exclusive) | 2013/14 (GST exclusive) | 2014/15 (GST exclusive) | 2015/16 (GST exclusive) | 2016/17 (GST exclusive) |
| Department Funds | \$32,700.00 | \$16,350.00 | \$125,950.00 | Nil | Nil | Nil |
| | | | | | TOTAL (GST exclusive) | \$175,000.00 |

4. Recipient Contributions and Other Contributions (clause 7)

- (a) The total amount of the Recipient's Contributions and / or Other Contributions is \$124,500(exclusive of GST) and must be paid in accordance with the Project Budget.
- (b) The types and values of the Recipient's Contributions and the sources, types and values of the Other Contributions must be fully set out in the Project Budget.

5. Reports (clause 4.9 and 9)

The Recipient must provide the following Reports:

- (a) mid-year Reports;
- (b) annual Reports, comprising:
 - (i) performance information, as specified in Item 5.4; and
 - (ii) Financial Information as specified in Item 5.5; 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 Project.
- (b) The Recipient must report on Indigenous participation and employment:
 - (i) within 40 Business Days of the Commencement Date;
 - (ii) in each Report; and
 - (iii) in the final Report.

5.3 Mid-year Reports

- (a) The Recipient must provide the Department with mid-year Reports, substantially in the form of the template provided by the Department.
- (b) The Recipient must provide each mid-year Report within 40 Business Days after the end of each calendar year.
- (c) The mid-year Report must include but need not be limited to, the following information for each Reporting period:
 - (i) Project performance information including:
 - (A) details of work undertaken and tasks (including Milestones) completed in the Reporting period and the amount of Funds expended during the Reporting period;
 - (B) details of progress against the Project Plan, including monitoring, evaluation and reporting activities specified in the Project Plan; and
 - (C) a discussion and statement as to whether the timeframes and Milestones for the Project (and specifically during the Report period) are being met and an explanation of any delays that have occurred, including the reasons for those delays and the action the Recipient proposes to take to address the delay and the expected effects (if any) the delay will have on the Project (including subsequent Milestones and the overall completion of the Project); and
 - (ii) a statement as to whether the Project is proceeding within the Project Budget, and if it is not, an explanation of why the Project Budget is not being met and the action the Recipient proposes to take to address this.

5.4 Annual Reports

- (a) The Recipient must provide the Department with an annual Report, substantially in the form of the template provided by the Department.
- (b) The Recipient must provide:
 - (i) the annual Report within 40 Business Days after the end of each financial year; and
 - (ii) the Financial Information required under Item 5.5 of this Schedule within 60 Business Days after the end of each financial year.
- (c) The annual Report must include but need not be limited to, the following Project performance information:
 - (i) a description of actual performance against the Milestones;
 - (ii) a detailed description of work undertaken during the six months before the end of the financial year;
 - (iii) details of progress against the Project Plan, including monitoring, evaluation and reporting activities specified in the Project Plan; and
 - (iv) a discussion and statement as to whether the timeframes and Milestones for the Project (and specifically during the Report period) are being met and an explanation of any delays that have occurred, including the reasons for those delays and the action the Recipient proposes to take to address the delay and the expected effects (if any)

the delay will have on the Project (including subsequent Milestones and the overall completion of the Project).

5.5 Financial Information

Within 60 Business Days of:

- (a) the end of each financial year in which the Recipient has received, expended or retained Funds pursuant to this Agreement; and
- (b) if requested by the Department, the earlier termination of this Agreement; the Recipient must provide to the Department:
- (c) 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; and
 - (ii) all terms and conditions of the Agreement were complied with; and
- (d) the Auditor's Report on the Financial Information.

5.6 Final Report

- (a) The Recipient must provide the Department with a final Report, substantially in the form of the template provided by the Department.
- (b) The Recipient must provide a final Report within 40 Business Days after the end of the Project Period or 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 Project;
 - (ii) a description of the Recipient's activities during the entire Project Period;
 - (iii) details of progress against the Project Plan, including monitoring, evaluation and reporting activities specified in the Project Plan; and
 - (iv) a discussion of the benefits and outcomes of the Project as a whole; and
 - (v) an evaluation of the Project including discussion of how successful the Project was in achieving the Program's Objectives.

6. Acknowledgement (clause 12)

The Recipient must acknowledge the provision of the Funds by the Australian Government:

- (a) at a minimum, in the following way:
 - "The Revegetate Obi Obi Creek providing connectivity between areas of biodiversity is supported through funding from the Australian Government's Clean Energy Future Biodiversity Fund."*; or
- (b) in any other form required by the Department.

Schedule 3 – Milestone Schedule

| No. | Milestone description | Milestone date | Amount (excluding GST) |
|-----|---|--|------------------------|
| 1 | Signing of Agreement by the Department | Commencement Date | \$32,700.00 |
| 2 | Delivery of draft Project Plan to the Department, including Project Budget | Within 20 days of the Commencement Date | Not applicable |
| 3 | Acceptance of final Project Plan, including the Project Budget, by the Department | | Not applicable |
| 4 | Payment of Recipient's Contributions | In accordance with the Project Budget | Not applicable |
| 5 | Payment of Other Contributions | In accordance with the Project Budget | Not applicable |
| 6 | Delivery of 2012/13 Mid-year Report to the Department | Within 40 Business Days after the end of each calendar year | Not applicable |
| 7 | Acceptance of 2012/13 Mid-year Report by the Department | | \$16,350.00 |
| 8 | Delivery of 2012/13 Annual Report to the Department | In accordance with the timeframes specified in Item 5.4(b) of Schedule 2 | Not applicable |
| 9 | Acceptance of 2012/13 Annual Report by the Department | | \$62,975.00 |
| 10 | Delivery of 2012/13 Financial Information to the Department | In accordance with the timeframes specified in Item 5.5 of Schedule 2 | Not applicable |
| 11 | Acceptance of 2012/13 Financial Information by the Department | | Not applicable |
| 12 | Delivery of 2013/14 Mid-year Report to the Department | Within 40 Business Days after the end of each calendar year | Not applicable |

| No. | Milestone description | Milestone date | Amount (excluding GST) |
|-----|---|--|------------------------|
| 13 | Acceptance of 2013/14 Mid-year Report by the Department | | \$62,975.00 |
| 14 | Delivery of Final Report to the Department | Within 40 Business Days after the end of the Project Period or the earlier termination of this Agreement | Not applicable |
| 15 | Acceptance of Final Report by the Department | | Not applicable |

Execution page

EXECUTED as an agreement

SIGNED by MALENY DISTRICT GREEN
HILLS FUND 86 071 444 123 in
accordance with section 127 of the
Corporations Act 2001 (Cth) by

Name of Director / Company Secretary
(print)

Name of witness (print)

Signature of Director / Company
Secretary

Signature of witness

Date

Date

SIGNED for and on behalf of the
Commonwealth of Australia as
represented by the **Department of
Sustainability, Environment, Water,
Population and Communities** 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

Annexure A – Map
