

# PART C – Programme specific terms and conditions

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Programme: Protecting National Historic Sites Programme 2015-2016

## 23. Definitions

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

<b>Application Form</b>	the form the Recipient submitted to the Department to apply for funding for the Project, under the Programme.
<b>Asset</b>	any item of tangible property, including software, purchased or leased either wholly or in part with the use of the Funds with a useful life of three years or more and a value at the time of acquisition of \$1,000 or more, excluding GST.
<b>Business As Usual Activities</b>	acts or undertakings which the Recipient would undertake or would be required to undertake regardless of the Project.
<b>Financial Information</b>	For a Recipient that: <ul style="list-style-type: none"><li>(a) is not an individual, a completed financial statement (substantially in the form of the template provided by the Department), signed by the Chief Executive Officer and Chief Financial Officer (or their equivalents) of the Recipient, certifying that:<ul style="list-style-type: none"><li>(i) the Funds have been used for the purpose for which they were provided; and</li><li>(ii) all terms and conditions of the Agreement were complied with.</li></ul></li><li>(b) is an individual:<ul style="list-style-type: none"><li>(i) a completed financial statement (substantially in the form of the template provided by the Department) prepared by a Qualified Accountant and signed by the Recipient, certifying that:<ul style="list-style-type: none"><li>(A) the Funds have been used for the purpose for which they were provided; and</li><li>(B) all terms and conditions of the Agreement were complied with; and</li></ul></li><li>(ii) a statutory declaration signed by the Recipient stating that:<ul style="list-style-type: none"><li>(A) the Funds have been used for the purpose for which they were provided; and</li><li>(B) all terms and conditions of the Agreement have been complied with.</li></ul></li></ul></li></ul>
<b>NRM Region</b>	the natural resource management region identified by the Commonwealth within the boundaries of which the Site is located.
<b>Programme</b>	the Protecting National Historic Sites Programme.

<b>Programme Outcomes</b>	To deliver outcomes that improve the conservation, preservation and access to Australia's National Heritage List places recognised for their historic heritage values, and improve engagement with these places, and improve awareness of the values the places were listed for.
<b>Project Budget</b>	the budget specified in Part A detailing how the Recipient will spend the Funds, and identifying the Recipient's Contributions and Other Contributions (if any) to the Project and the proposed expenditure of such amounts for the purposes of conducting the Project and otherwise performing its obligations under this Agreement as amended from time to time in accordance with clause 26(a).
<b>Project Generated Income</b>	any income earned or generated by the Recipient from its use of the Funds, including interest earned from the investment of the Funds.
<b>Project Plan</b>	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 25.
<b>Site</b>	the site where the Project will be undertaken and that is identified in the Agreement Details in Part A.

## 24. Project obligations

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

## 25. Project Plan

- (a) 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 (if any);
  - (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 where the Project will be performed, as relevant;
  - (iv) detail how the Recipient will deliver the Project in accordance with this Agreement; and
  - (v) 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 the relevant timeframe specified in the Milestone Schedule. 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 agreed by the Department in writing).
  - (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 this Agreement and any consequences of that performance.

## 26. Project Budget

- (a) Subject to clause 26(b), the Recipient must:
  - (i) perform the Project; and
  - (ii) only spend the Funds,in accordance with the Project Budget, unless approved in writing by the Department.
- (b) 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 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.
- (c) Where required under clause 35.4, if the Recipient is an individual, the Recipient may use up to \$500 of the Funds towards preparation of a financial statement by a Qualified Accountant. For the avoidance of doubt, any costs over \$500 which are incurred by the Recipient in engaging a Qualified Accountant to prepare a financial statement must be borne by the Recipient.
- (d) For the avoidance of doubt, the Department's approval of the Project Budget or any amendment to the Project Budget does not in any way limit the Recipient's obligations under this Agreement.

## 27. Management of Funds

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

## **28. Appointment of subcontractors**

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

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

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

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

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

## **30. Other contributions**

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

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

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

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

$$R = OC - AC$$

Where:

R = The refund amount;

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

OC = The total aggregate amount of Recipient's Contributions and Other Contributions specified in Part A.

- (f) The Department may, in its absolute discretion, reduce the amount of the Funds required to be repaid by the Recipient in accordance with clause 30.1(e) to an amount lower than the amount determined by the formula prescribed in clause 30.1(e).

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

The Recipient must:

- (a) promptly notify the Department in writing of the amount and source of any additional funding or other contributions for the Project (other than Funds provided under this Agreement or contributions already identified in the Project Budget);
- (b) if requested by the Department, promptly provide to the Department copies of any written arrangements entered into, or proposed to be entered into, in respect of such other funding or contributions; and

- (c) ensure that the terms on which any other funding or contributions are provided to the Recipient for, or in connection with, the Project are not inconsistent with the terms of this Agreement and do not in any way limit or affect the Recipient's ability to comply strictly with its obligations, or the Department's ability to exercise its rights, under this Agreement.

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

- (a) On notification by the Recipient under clause 30.2 and if requested by the Department, the Recipient must provide to the Department a report within 40 Business Days of the request, including but not limited to the following information:
  - (i) an assessment of the Project to date;
  - (ii) an updated Project Plan; and
  - (iii) an updated Project Budget.
- (b) If requested by the Department, the Recipient must provide any additional information and data to enable the Department to undertake its review.
- (c) The Department will assess the report and any additional information and data submitted under this clause 30.3 and determine whether the Project continues to represent value for money. The Department will inform the Recipient, in writing, of the outcome of its review.
- (d) If the Department determines the Project no longer represents value for money the Department may, in its absolute discretion, and on giving 20 Business Days notice:
  - (i) reduce the amount of the Funds;
  - (ii) reduce the scope of the Project; or
  - (iii) terminate this Agreement under clause 19.1(g).

## **31. Assets**

The Recipient must not use the Funds towards the purchase of Assets.

## **32. Project Generated Income**

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

## **33. Announcement documentation**

- (a) The Recipient must submit any Material containing the required acknowledgment specified in clause 34 to the Department 10 Business Days prior to publication or announcement of the event.

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

## 34. Acknowledgement

- (a) All Projects must acknowledge the provision of Funds by the Department through the Programme in all promotional activities, including but not limited to:
  - (i) Project Events and announcements, whether at the national, state, local (at all stages of the Project);
  - (ii) media releases and media activities, including newspaper and radio interviews;
  - (iii) public relations activities including workshops, forums and conferences;
  - (iv) display materials such as banners, posters and on-ground Project signs;
  - (v) publications such as reports, books, case studies, information kits and fact sheets;
  - (vi) websites; and
  - (vii) social media posts.
- (b) The Recipient must acknowledge the provision of the Funds by the Department:
  - (i) at a minimum, in the following way:  
*"The [insert Project title] is supported through funding from the Australian Government's Protecting National Historic Sites Programme."*; or
  - (ii) in any other form required by the Department.

## 35. Reports

### 35.1 Required reports

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

- (a) reporting of Indigenous participation and employment, as specified in clause 35.2;
- (b) progress reports and a final report, as specified in clause 35.3; and
- (c) financial reports, as specified in clause 35.4.

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

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

## **35.3 Progress reports and final report**

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

## **35.4 Financial reports**

Unless otherwise explicitly approved by the Department in writing and within the relevant timeframe specified in the Milestone Schedule, the Recipient must provide to the Department:

- (a) the Financial Information; and
- (b) a report on the amounts of Project Generated Income earned, the uses made of these, and any remaining amounts of Project Generated Income for the relevant financial year.

# **36. Project review**

## **36.1 Significant change in circumstances**

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

## **36.2 Review report**

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



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

### **36.3 Project review**

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