

Natural Resources Investment Program 2018-2022

TraNsfoRM! Innovation

Project Deed of Agreement

Insert Agreement ID

The State of Queensland as represented by the
Department of Natural Resources, Mines and Energy

and

Insert name of Delivery Organisation



CONTENTS

CLAUSE	DESCRIPTION	PAGE NO
1	TERM OF THIS AGREEMENT	2
2	CONDUCT OF THE PROJECT	2
3	FUNDS MANAGEMENT, GST, ACCOUNTING & RECORDS	3
4	PAYMENT OF FUNDS	3
5	PAYMENTS	4
6	FUNDS ALLOCATION, EXPENDITURE, CARRY-OVER, TRANSFER & REFUND	4
7	REPORTS AND REGISTERS	4
8	WORK PLAN AND MILESTONES	5
9	PROJECT LOCATION DATA AND PROJECT DATA	5
10	REPORTS AND WORK PLAN	5
11	INTERIM PERFORMANCE REPORT	6
12	BI-ANNUAL MILESTONE PERFORMANCE REPORT	6
13	ANNUAL AUDITED FINANCIAL STATEMENTS	7
14	FINAL REPORT	7
15	ACCEPTANCE OF ACTIVITIES AND REPORTS	7
16	INSPECTION MONITORING AND EVALUATION	8
17	INTELLECTUAL PROPERTY	8
18	MORAL RIGHTS	10
19	CONFIDENTIAL INFORMATION	10
20	PRIVACY AND PERSONAL INFORMATION	11
21	PUBLICATIONS PROMOTIONS AND BRANDING	11
22	TERMINATION, WITHHOLDING, SUSPENSION OR REDUCTION	12
23	INDEMNITY	14
24	CONTRACTORS	15
25	INSURANCE	16
26	CONFLICT OF INTEREST	16
27	DISPUTE RESOLUTION	17
28	FURTHER ASSURANCES	17
29	CONTINUOUS IMPROVEMENT	18
31	ENTIRE AGREEMENT	18
32	VARIATION OF THIS AGREEMENT	18
33	RESERVATION OF RIGHTS	18
34	SEVERABILITY	18
35	CLAUSES TO SURVIVE TERMINATION	18
36	NOTICES	18
37	COUNTERPARTS	19
38	JURISDICTION	19
39	DEFINITIONS	19
40	INTERPRETATION	24

THIS DEED of AGREEMENT is made

BETWEEN

STATE OF QUEENSLAND as represented by the DEPARTMENT OF NATURAL RESOURCES, MINES AND ENERGY (ABN 59 020 847 551).

(“DNRME”)

AND **insert DELIVERY ORGANISATION** (XXXX ACN: xx **ABN** xx) of **ADDRESS**.

(“DO”)

BACKGROUND

- A. DNRME administers the Natural Resources Investment Program (the **Program**), with *TraNsfoRM!* Innovation being a component of the Program.
- B. *TraNsfoRM!* Innovation projects will develop new and more efficient processes, technologies, activities and tools that contribute to improving the management and condition of Queensland’s land and water assets.
- C. Under the Program, and as part of *TraNsfoRM!* Innovation, DNRME has agreed to provide the Funds to the DO for undertaking the Project.

IT IS AGREED AS FOLLOWS

1 TERM OF THIS AGREEMENT

The Term is from the Commencement Date until the Completion Date.

2 CONDUCT OF THE PROJECT

- 2.1 The DO must undertake the Project and perform the Activities:
 - (a) in accordance with this Agreement (which includes the Guidelines) and all relevant legislation relating to its good, proper and accountable conduct, regulation, management, administration, accounting and service delivery; and
 - (b) using the Funds so as to achieve:
 - (i) the Outputs for each Milestone Period;
 - (ii) the Milestones; and
 - (iii) the Outcomes.
- 2.2 The DO must develop a Communication Plan within 3 months of the Commencement Date and maintain the Communication Plan for the life of the Project.
- 2.3 The DO is responsible for and must ensure that it has all the Rights required to perform the Project.
- 2.4 The DO represents and warrants that as at the Commencement Date no Allegation is pending, taking place or has been made against the DO.
- 2.5 The DO must not during the Term do anything or become involved in any situation which would constitute or lead to an Allegation.
- 2.6 The DO must take all reasonable steps to minimise the risks of an Allegation including by developing and implementing a Control Plan by the Commencement Date.
- 2.7 The Control Plan must provide for:

- (a) the detection, investigation, minimisation and prevention of conduct that would constitute or form the basis for an Allegation; and
 - (b) Continuous Improvement risk management (Allegation prevention/minimisation) procedures.
- 2.8 The DO must within five (5) Business Days notify in writing DNRME of:
- (a) any matter that affects, or is likely to affect, the DO performing its obligations under this Agreement, and in doing so must comply with the requirements of clause 28 of this Agreement;
 - (b) DO's eligibility to continue receiving the Funds; and
 - (c) any Allegation and any report made under clause 2.9.
- 2.9 If the DO is aware of an Allegation, then the DO must report the Allegation to a relevant authority, including where the seriousness of the Allegation warrants reporting to the Queensland Police Service or Australian Federal Police.

3 FUNDS MANAGEMENT, GST, ACCOUNTING & RECORDS

- 3.1 The Funds are:
- (a) the maximum amount that may be provided by DNRME to the DO for the Project; and
 - (b) inclusive of GST in accordance with the GST Law.
- 3.2 The DO acknowledges that DNRME has no obligation to provide the DO with funding or assistance of any kind:
- (a) in excess of the Funds; or
 - (b) beyond the Term.
- 3.3 The DO is solely responsible for:
- (a) obtaining the Rights and meeting all Compliance Costs;
 - (b) acquiring and/or providing any additional funds, materials or equipment in excess of the Funds required in carrying out or completing the Project; and
 - (c) paying its employees' and Contractors' lawful fees, wages and entitlements in their undertaking of the Project.
- 3.4 The DO must record all Project transactions in its general ledger on an accrual accounting basis.
- 3.5 The DO must keep the Records for a period of six (6) years after the Completion Date at its usual place of business to be provided to DNRME on written request.

4 PAYMENT OF FUNDS

- 4.1 Payment of Funds under clause 5 to the DO is subject to:
- (a) Payment 1—receipt of this Agreement signed by both Parties in accordance with clause 37 requirements;
 - (b) subsequent Payments:
 - (i) achieving the Milestones and Outcomes for each relevant Milestone Period;
 - (ii) submission and approval of Reports for each relevant period by the Due Dates as per requirements in clauses 8 to 14; and
 - (iii) approval by DNRME of the Budget preceding such Payments.
 - (c) the DO providing a Correctly Rendered Tax Invoice (for each Payment);
 - (d) the DO complying with this Agreement; and

- (e) continuing State allocation of the Funding to DNRME sufficient for its proper administration and management of the Program and funding of the Projects.

5 PAYMENTS

- 5.1 Subject to DO compliance with clause 4 DNRME may at its sole discretion:
 - (a) make Payments within fourteen (14) days of receipt of a Correctly Rendered Tax Invoice; and
 - (b) determine the subsequent Payment amounts, in accordance with the approved Budget and Work Plan.
- 5.2 For the avoidance of doubt, DNRME has no obligation to determine that all of the Funding is available to the DO during the Term.

6 FUNDS ALLOCATION, EXPENDITURE, CARRY-OVER, TRANSFER & REFUND

- 6.1 The DO must:
 - (a) account for all Funds received including interest earned on the Funds;
 - (b) use the Funds allocated and approved by DNRME for the performance of the Project;
 - (c) not transfer or redirect any of the Funds unless approved by DNRME in writing in response to an DO notification received prior to the Completion Date; and
 - (d) not carry-over Unspent Funds to other Projects or Activities.
- 6.2 The DO must recover:
 - (a) any Unspent Funds from its Contractors; and
 - (b) any amount of Funds improperly used by the DO, its Contractors or its employees, and must repay to DNRME the unrecoverable portion of the Unspent Funds, within ten (10) Business Days of being notified to do so by DNRME, failing which such funds will be recoverable as a liquidated debt due to DNRME.
- 6.3 Within twenty-eight (28) days from termination or expiry of this Agreement, or from the date of a DNRME notification to the DO, the DO must provide to DNRME, an electronic funds transfer of any Unspent Funds to DNRME's nominated account.
- 6.4 The DO shall only use Funds specifically allocated for Capital Assets as approved in the Project Budget and submitted with:
 - (a) the Application; or
 - (b) the Bi-Annual Milestone Performance Report in subsequent years.
- 6.5 The DO shall maintain a Capital Assets Register throughout the Term, details of which must be included in the Bi-Annual Milestone Performance Reports and Final Report.
- 6.6 Unless otherwise directed by DNRME, Capital Assets shall be the property and responsibility of the DO (and insured by the DO for their full market value), and must be used for performance of the Project and advancement of the Program.
- 6.7 Any sale of the Capital Asset during the Term may only be done with DNRME prior approval and the sale proceeds must be used for advancement of the Project and Program.

7 REPORTS AND REGISTERS

- 7.1 Reports are to be provided electronically as directed by and in the manner specified by DNRME. Other Reports, Registers, documents and information in relation to the DO's operations, as DNRME reasonably requires, must be provided within the timeframes required by DNRME.
- 7.2 If the DO fails to provide a Report or Register required by DNRME within the required timeframe, then DNRME may withhold or suspend payments of the Funds under clause 22.

- 7.3 DNRME may, by notice in writing to the DO, issue any reasonable direction in respect of a Report or Register, which the DO must provide, specifying one or more of the following:
- (a) a format for the Report;
 - (b) information the DO is to include in the Report; and
 - (c) the person who is to certify that information contained in the Report is accurate.
- 7.4 Where DNRME issues a direction under above clauses 7.1 and 7.3, the DO must comply with the direction in preparing the Report or details of the Register to which the direction relates, any expense incurred in the preparation of the Report or Register is borne by the DO.

8 WORK PLAN AND MILESTONES

- 8.1 The DO must submit a Work Plan to DNRME for each Project using the Work Plan Template in accordance with clause 10.1.
- 8.2 The Work Plan must:
- (a) include all relevant information and attachments as prescribed by DNRME;
 - (b) include the proposed Milestones and Outcomes for each Project, in the format required by DNRME from time to time; and
 - (c) be submitted annually for review and approval by the PCG or DNRME.
- 8.3 The DO must provide to DNRME the Outcomes and Milestones information referred to in 8.2(b):
- (a) in conformity with the Application;
 - (b) including any amendments or further information reasonably requested by DNRME to be provided by the DO within the time notified by DNRME; and
 - (c) for approval by the PCG or DNRME.

9 PROJECT LOCATION DATA AND PROJECT DATA

- 9.1 The DO must:
- (a) in accordance with clauses 8, 10 and 12, report on all Project Location Data and Project Data annually as identified within the Work Plan and Bi-Annual Milestone Performance Report due on 21 July each year during the Term, in formats prescribed by DNRME; and
 - (b) provide any further Project Location Data and Project Data or related information or formatting for the purposes of this Agreement when requested by DNRME.

10 REPORTS AND WORK PLAN

- 10.1 The DO must submit to DNRME the following Reports using the Reporting Templates and Work Plan Template by the Due Dates:
- (a) Work Plan (including proposed Milestones and Outcomes) for each Project annually by the 21 January each year during the Term as set out in Schedule 3;
 - (b) Budget forecast for each Project annually by the 21 January each year during the Term;
 - (c) Quarterly Financial Report due ten (10) Business Days after 30 September and 31 March each year during the Term. Remaining Quarterly Financial Reports will be due with the Bi-Annual Milestone Performance Reports as per clauses 10.1(d), 10.1(e) and 12;
 - (d) Bi-Annual Milestone Performance Report including Quarterly Financial Report by 21 January each year during the Term;
 - (e) Bi-Annual Milestone Performance Report including Quarterly Financial Report by 21 July each year during the Term;

- (f) Annual Audited Financial Statements by 15 September each year following the end of a Financial Year during the Term; and
- (g) Final Report within twenty-eight (28) days after Project Completion Date.

with DNRME's acceptance of such Reports being subject to clause 15 of this Agreement.

10.2 The DO must:

- (a) complete each Report to DNRME's satisfaction; and
- (b) to the extent that a Report contains Personal Information, obtain all written consents necessary for the DO and DNRME to use and disclose the Reports for purposes related to the Project and its subject matter, and for DNRME's internal purposes.

10.3 Where the Project is funded for only part of a particular reporting period or the reporting period is for a particular Payment Period (e.g. if the Commencement Date or the Completion Date does not coincide with the start or end date of a reporting period), the Report must contain information relevant only to that part of the reporting period.

11 INTERIM PERFORMANCE REPORT

The DO shall within fourteen (14) days of written notice from DNRME provide an Interim Performance Report on Funds expenditure and Milestone progress and achievements.

12 BI-ANNUAL MILESTONE PERFORMANCE REPORT

12.1 General Requirements

The DO must include in each Bi-Annual Milestone Performance Report:

- (a) information on the progress towards, and achievement of Activities, Milestones and Outcomes, as well as identifying Project delivery issues and any recommended enhancements or improvements;
- (b) Quarterly Financial Report;
- (c) reasons for any incomplete Activities and Milestones;
- (d) submissions to DNRME of any revised timetable and alternative Milestone recommendations (including for an incomplete Activity or Milestone under above sub-clause (c) for DNRME approval); and
- (e) a certificate signed by the DO's chief executive officer (or similar senior officer) that the Capital Assets, IP Register, Contractors and Conflicts of Interest Registers under clauses 7, 17, 24, and 26 are current.

12.2 Additional Requirements

Unless otherwise instructed by DNRME, the DO must include in the Bi-Annual Milestone Performance Report due 21 July each year during the Term:

- (a) a list certified by the DO's chief executive officer (or similar senior officer) of the landholders, landcare groups, community organisations, industry groups, local councils, volunteers and Indigenous organisations ("Participants") participating in the Project, including:
 - (i) business name, address and work site (including lot-on-plan) details;
 - (ii) Funds received by each of the Participants for Project Activities and expenditure for the Bi-Annual period; and
 - (iii) each Participant's Contract Project Activities, performance and engagement, over the preceding Financial Year.
- (b) a narrative section including:

- (i) information on Project performance, engagement, events and incidents, (including those that were unexpected, surprising or unforeseen), and Milestone progress, over the preceding 12 months; and
- (ii) forward looking details and recommendations.
- (c) provision of Project Location Data and Project Data, case studies and photographic images (including photo-point monitoring images) of Project Activities; and
- (d) a Capital Asset Report.

13 ANNUAL AUDITED FINANCIAL STATEMENTS

13.1 The DO must submit Annual Audited Financial Statements to DNRME by the Due Date.

13.2 The Annual Financial Statements must include:

- (a) a financial statement on an accrual basis showing all revenue including interest, gain or loss, and expenditure for each Project during the relevant Financial Year including separate lists of Funding, payments and/or grants made to Contractors and Participants for each Project;
- (b) adopting the Australian accounting standard AASB 124 Related Party Disclosures (from time to time in effect) as one of the accounting standards in preparation of the financial statements and notes;
- (c) an auditor's report signed by an Independent Auditor expressing opinion on whether the financial statements and the lists of payments referred to in clause 13.2(a) present a true and fair view of the financial performance of each Project;
- (d) a certificate signed by the DO's chief executive officer (or similar senior officer) certifying that the DO has expended the Funds for the delivery of the Milestones in accordance with this Agreement; and
- (e) audited end of year financial statements for the DO.

14 FINAL REPORT

14.1 The DO must include in the Final Report:

- (a) Milestones and Outcomes performance reporting for the Project (including each and every Project);
- (b) all items in clauses 12.1 and 12.2 to be reported on for the whole of the Project from the Commencement Date until the Project Completion Date; and
- (c) any other information reasonably requested by DNRME.

14.2 Where the DO provides a Final Report under clause 14.1 a Bi-Annual Milestone Performance Report is not required if such Bi-Annual Milestone Performance Report would have otherwise been due within the six month period preceding the due date for the Final Report.

15 ACCEPTANCE OF ACTIVITIES AND REPORTS

15.1 Subject to clause 15.2, DNRME will notify acceptance or non-acceptance of a Report within thirty (30) days of DNRME's decision on the Report, failing which DNRME is deemed to have accepted the Report.

15.2 If DNRME notifies the DO in relation to a non-conforming or late Report, including where DNRME requests the DO to provide further information or a Report revision or resubmission, then the DO shall comply with the request within the time period contained in the notice or as further directed by DNRME.

15.3 Funds may (at DNRME's sole discretion) be withheld by DNRME until the DO complies with clause 15.2.

15.4 Withholding payment of the Funds by DNRME under clause 15.3 does not release the DO from the requirements of continuing to perform the Project.

- 15.5 DNRME may conditionally accept the DO performance of the Activities contained in the Report where the Activities have not been properly, substantially or completely performed, by giving the DO a notice that:
- (i) includes a statement that DNRME accepts the performance of the Activities subject to certain conditions which the DO must satisfy; and
 - (ii) specifies the rectification work to be performed by the DO, and the conditions which the DO must satisfy within the time period stated in the notice.
- (a) If the DO does not perform the rectification work or satisfy the conditions within the time frame specified in the notice, DNRME may (at its absolute discretion):
- (i) set a new date for the performance and completion of the rectification work and the satisfying of the conditions; and
 - (ii) withhold or suspend payment of Funds or terminate the Contract under clause 22.2.

16 INSPECTION MONITORING AND EVALUATION

- 16.1 For the purposes of confirming or seeking further information regarding the matters set out in this Agreement, DNRME and/or its nominated Representatives may, on a minimum of fourteen (14) days written notice, visit the DO's premises and Project field sites.
- 16.2 The DO shall as part of its engagement with a Participant in performing the Project do the following:
- (a) provide reasonable assistance, cooperation support and contribution to DNRME in any review undertaken by or involving DNRME of the Program, the Participant's involvement in the Project as part of the overall undertaking of the Project by the DO; and
 - (b) ensure all necessary Participants' (including landholders') approvals are in place for the purposes of the DO performing the Project and where DNRME notifies its intention of visiting Project field sites under clause 16.1.
- 16.3 DNRME may monitor, evaluate and report on the DO Project delivery, performance of Activities and use of Funds as part of the overall Program and Project review and the DO for this purpose shall work co-operatively with DNRME in accordance with clause 28.
- 16.4 For the purposes of clause 16.3:
- (a) DNRME may nominate an external evaluator and the DO will, upon request, provide DNRME and the external evaluator with relevant information;
 - (b) the DO shall co-operate with DNRME with respect to any requested additional information including information on Project priorities, Continuous Improvement, Control Plan, and Milestones priority setting and expenditure; and
 - (c) DNRME may at reasonable times on fourteen (14) days written notice, inspect and audit the DO's Records, accounts and supporting documents for the performance of the Project.
- 16.5 Following the Project evaluation undertaken in accordance with clause 16.3, if DNRME forms the view (including in accordance with the PCG's recommendation or approval) that an Output, Outcome or Milestone or the Funds allocation for the delivery and/or completion of that Output, Outcome or Milestone, should be varied it may do so by written notice to the DO.

17 INTELLECTUAL PROPERTY

- 17.1 All Project IP vests in full in the DO.
- 17.2 The DO must ensure that where a Representative creates any significant or commercially valuable Project IP that they as soon as possible after its creation, ensure its protection (prior to any publication) noting it on an IP Register to be maintained by the DO during the Term.

- 17.3 The DO will ensure its Representatives performing the Project assign the Project IP they create to the DO and the DO will provide terms to that effect in any agreement with its Contractors under clause 24.
- 17.4 The DO grants to DNRME a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (and right of sub-licence) to use, reproduce, communicate, adapt and exploit the Project IP and access any required Project generated Materials for any purpose.
- 17.5 Where the DO (or its Representative) (the “Providing Party”) provides Existing IP it does so for performing the Project subject to any restrictions the Providing Party may notify to the other Party at the time of the supply of the Existing IP.
- 17.6 Where Existing IP is necessary for use or exploitation of the Project IP, then where the Providing Party is:
- (a) the DO, the DO grants a permanent, irrevocable, royalty free, non- exclusive licence (and right of sub-licence) to DNRME; and
 - (b) the DO’s Representative, the DO will ensure that its Representative grants a permanent, irrevocable, royalty free, non-exclusive licence (and right of sub-licence) to DNRME.
- to enable Project IP use and exploitation in accordance with this Agreement.
- 17.7 The DO warrants (and the DO will ensure that its Representative warrants) that to the best of its knowledge and belief that the grant of any rights under this Agreement for Existing Material IP or Project IP will not infringe any third party IP rights or Moral Rights.
- 17.8 Improvements to the Project IP made by the DO, its Representatives or DNRME are owned by the DO and the provisions of this clause 17 apply to such improvements.
- 17.9 The DO (and the DO will ensure that its Representatives):
- (a) assigns its rights, title and interest in the Project IP as required to give effect to this clause 17; and
 - (b) acknowledge that all Project IP coming into existence in the future will vest in the DO from the date of its creation and no additional documentation is necessary to complete the assignment made under this clause 17.
- 17.10 The DO warrants that:
- (a) it has the right to assign the Project IP in accordance with clause 17.9(a) of this Agreement; and
 - (b) the assignment referred to in clause 17.9(a) includes all of the Project IP created by its Representatives.
- 17.11 The DO may, at its cost, apply for, maintain and prosecute protection for the Project IP (including the Existing IP to the extent that it is incorporated in the Project IP) in its own name and in any manner it elects.
- 17.12 As stated in the Guidelines the intention of *TrANsfoRM!* Innovation is to develop new and more efficient processes, technologies, activities and/or tools to deliver landscape outcomes, that could become publically available at minimal or no cost to other users, but the DO may Commercialise the Project IP (including any Existing IP incorporated into Project IP) in any manner without the consent of DNRME, but must:
- (a) notify DNRME of its intention to Commercialise the Project IP (including any Existing IP incorporated into the Project IP);
 - (b) enter into:
 - (i) negotiations in good faith with DNRME regarding the distribution of the Net Commercialisation Proceeds which takes into account DNRME’s contribution to the development of the Project IP; and
 - (ii) an agreement with DNRME concerning such distribution.

17.13 Any failure by the Parties to negotiate or agree in accordance with clause 17.12 is subject to resolution under clause 27.

18 MORAL RIGHTS

It is a prerequisite before any DO personnel or Contractor generates Project IP that they provide a Moral Rights consent where required to enable both the DO and DNRME to exercise their Project IP rights under clause 17.

19 CONFIDENTIAL INFORMATION

19.1 Subject to clause 19.3, a Party in receipt of Confidential Information (the Receiver) from the other Party (the Discloser) must only use the information for the performance of this Agreement and undertaking the Project and not disclose it to any person for any other purpose without prior written consent of the Discloser.

19.2 The Receiver must take all reasonable precautions to prevent unauthorised access to and use of Confidential Information.

19.3 A party may disclose the other party's Confidential Information:

- (a) with the other party's prior written consent (including any consent specified in this Agreement);
- (b) to a professional adviser, financial adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
- (c) to any of its Representatives who are bound to keep the information confidential and to whom it is necessary to disclose the information;
- (d) to comply with the law, or a requirement of a regulatory body (including any relevant stock exchange);
- (e) to the extent necessary to enforce its rights or defend a claim or action under this Agreement; and
- (f) where that disclosing party is DNRME where the disclosure is for a purpose under this Agreement:
 - (i) to the responsible Minister administering DNRME and their personal and departmental advisers;
 - (ii) in response to a request by the Parliament or a Committee of the Parliament of the State of Queensland;
 - (iii) at the request of any Commonwealth department, Queensland Government department, agency, authority or Minister; or
 - (iv) where disclosure is required to be made in accordance with established governmental policies, procedures or for public accountability purposes.

19.4 If a Party becomes aware of a suspected or actual breach of this clause 19, the Party will immediately notify the other Party and take reasonable steps required to prevent or stop the suspected or actual breach.

19.5 The Parties acknowledge and accept that damages will be an inadequate remedy for a breach of this clause 19.

19.6 The Receiver will return or destroy (at the Discloser's discretion) material containing Confidential Information when it is no longer required by the Receiver for the purpose of performing this Agreement, or when otherwise directed by the Discloser.

19.7 The DO must make every reasonable effort to ensure that its Representatives are aware of and comply with the obligations of confidentiality in this clause 19.

19.8 DNRME may, at any time, require the DO to arrange for its Representatives engaged in the performance of the Project or an Activity, to give written undertakings in a form reasonably required by DNRME relating to the non-disclosure of Confidential Information under this clause 19.

20 PRIVACY AND PERSONAL INFORMATION

This clause 20 applies where this Agreement amounts to a “service arrangement” under the *Information Privacy Act 2009* (Qld) (the Information Privacy Act).

20.1 The DO:

- (a) must only use Personal Information for the performance of the Project in accordance with the Information Privacy Act;
- (b) must comply with DNRME reasonable directions regarding Project related Personal Information collection for DNRME’s Program monitoring, evaluation and reporting purposes;
- (c) if it collects or has access to Personal Information in order to undertake the Project, the DO must:
 - (i) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act* in relation to the discharge of its obligations under this Agreement (including its obligations regarding Reports), as if the DO was DNRME;
 - (ii) ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
 - (iii) not use Personal Information other than for the purposes of undertaking the Activity, unless required or authorised by law;
 - (iv) not disclose Personal Information without the consent of DNRME, unless required or authorised by law;
 - (v) not transfer Personal Information outside of Australia without the consent of DNRME;
 - (vi) fully co-operate with DNRME to enable DNRME to respond to applications for access to, or amendment of a document containing an individual’s Personal Information and to privacy complaints;
 - (vii) comply with such other privacy and security measures as DNRME reasonably advises the DO in writing from time to time; and
 - (viii) must immediately notify DNRME on becoming aware of any breach of clause 20.1(c).
- (d) on DNRME request must obtain from its Representatives engaged for the purposes of this Agreement, an executed deed of privacy in a form acceptable to DNRME; and
- (e) must immediately notify DNRME on becoming aware of any breach of this clause 20.

21 PUBLICATIONS PROMOTIONS AND BRANDING

21.1 Subject to clause 21.2 and 21.3, the DO shall, unless otherwise directed by DNRME prior to publication, apply the Creative Commons CC BY Attribution (Australia) licence (Version 3 (Australia) or Version 4 (International licence) available at <http://creativecommons.org.au/>) to the Reports and Project Data to be provided by the DO.

21.2 The DO may publish information relating to the Project, except to the extent information contained in the publication may:

- (a) disclose Intellectual Property, Confidential Information or Personal Information in breach of clauses 17, 19 or clause 20; or
- (b) prejudice Project IP or the performance of the Activities.

21.3 Promotion

- (a) The DO must, in all publications, and in all promotional, publicity (including speeches, media releases, conferences) and advertising Material (including print

advertisements, brochures, posters, newsletters, magazine articles, outdoor signage) or activities of any type undertaken by, or on behalf of, the DO relating to the Project or this Agreement:

- (i) comply with any promotion and guidelines issued by DNRME from time to time;
 - (ii) use badging and signage specified by DNRME;
 - (iii) acknowledge the financial and other support the DO has received from DNRME by using such attribution as notified by DNRME to the DO from time to time; and
 - (iv) deliver to DNRME (at DNRME's request and at the DO's own cost) copies of all promotional, publicity and advertising Material the DO has developed for the purposes of this Agreement, in accordance with DNRME's policies and procedures.
- (b) The DO must:
- (i) market and promote the Project and Program as required by DNRME;
 - (ii) deal with enquiries relating to its provision of services, in accordance with DNRME's policies and procedures; and
 - (iii) provide project information and material (for example a Project case study) for use by DNRME under clause 17.4 and this clause 21.

21.4 Logos and branding

- (a) The DO must not use DNRME's logo without obtaining DNRME's prior written approval.
- (b) If DNRME approves the use of DNRME's logo on a publication, the DO must:
 - (i) comply with DNRME's branding guidelines;
 - (ii) comply with any directions issued by DNRME;
 - (iii) ensure that DNRME's logo has prominence over and above other images, including any logo for the DO; and
 - (iv) ensure that DNRME's logo meets minimum size requirements and is not altered or distorted.

22 TERMINATION, WITHHOLDING, SUSPENSION OR REDUCTION

22.1 DNRME may, at any time, by written notice, terminate this Agreement (in whole or in part), reduce the Term or scope of the Agreement (in whole or in part) or withhold or suspend payment of all or part of the Funds for convenience, including:

- (a) for a Machinery of Government Change;
- (b) where State allocation of the Funding to DNRME ceases or is reduced;
- (c) where DNRME reasonably considers the Agreement, Project, Outcomes, Activities or Milestones do not, or are not likely to meet or fulfil, the Program's priorities and objectives; or
- (d) where a Force Majeure event or act renders the performance of the Agreement or a Project inappropriate impossible or impractical and that continues for a period of up to twenty-eight (28) days.

22.2 DNRME may by written notice to the DO:

- (a) withhold payments that would be made for any subsequent project agreement that may be agreed by DNRME where the DO, in the reasonable opinion of DNRME, fails to comply with its obligations under this Agreement (for example failure to submit a Final Report by the Due Date);

- (b) reduce the Term or scope of the Agreement (in whole or in part), suspend payment of all or part of the Funds for a period of time (conditionally or otherwise) as notified by DNRME; and
- (c) immediately terminate this Agreement (in whole or in part) for breach where the DO:
 - (i) is unable to pay its due debts, ceases to carry on business or becomes insolvent;
 - (ii) fails to carry out the Agreement (in whole or in part);
 - (iii) expends the Funds otherwise than in accordance with this Agreement;
 - (iv) changes any part of the Agreement or a Project without obtaining DNRME's prior written approval;
 - (v) does not provide any information or Reports as required by this Agreement or requested by DNRME;
 - (vi) fails to comply with the Guidelines and any relevant legislation;
 - (vii) fails to submit the Reports by the Due Dates in clause 10 and fails to do so within twenty-one (21) days from a notification from DNRME;
 - (viii) fails in the opinion of DNRME to comply with its obligations regarding Conflict of Interest, Reporting, Contractors, allocated Funds, and good governance (clause 2.1) and the DO fails to rectify non-performance within twenty one (21) days of notification by DNRME;
 - (ix) the DO makes a report under clause 2.9;
 - (x) amends its constitution or operations in a way that means the DO is no longer eligible for the Funding or is no longer able to comply with this Agreement;
 - (xi) otherwise breaches a term of this Agreement which is capable of being remedied and fails to remedy that breach within 21 days after receiving notice requiring it to do so;
 - (xii) becomes subject to any form of external administration; or
 - (xiii) enters into an arrangement with the DO's creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors or is wound up, voluntarily or involuntarily.

22.3 From the time of the receipt of a termination notice under clause 22.1 or 22.2 the DO:

- (a) must return any Unspent Funds by electronic transfer to DNRME (as directed by DNRME in the notice); and
- (b) must not commit Funds, enter into or extend any Contract, or enter into a transaction whereby Funds are not able to be returned to DNRME as Unspent Funds at the time of the notice.

22.4 If DNRME terminates this Agreement:

- (a) under clauses 22.1 or 22.2, the DO must:
 - (i) cease performing the Agreement (in whole or in part) and ensure any Contractor also ceases performance;
 - (ii) minimise loss resulting or that may result from the termination; and
 - (iii) protect the Project IP and Materials.
- (b) under clause 22.1 DNRME will, subject to clause 22.3, pay only the reasonable itemised costs (if any) that have been or will be incurred by the DO as a direct result of the termination of this Agreement (in whole or in part) and which the DO cannot

recoup or avoid and which would not otherwise have been incurred by the DO if the Agreement (in whole or in part) had continued until the expiry of the Term.

- 22.5 Where DNRME withholds payment under clause 22.2 (a) or reduces the scope or the Term of the Agreement (in whole or in part) under clause 22.1 or 22.2:
- (a) the DO must only continue to perform that part of the Agreement not affected by the reduction, as specified in the reduction notice;
 - (b) the DO must not commit Funds, enter into or extend any Contract, or enter into a transaction for that part of the Agreement affected by the reduction, as specified in the reduction notice whereby Funds are not able to be returned to DNRME as Unspent Funds at the time of the notice;
 - (c) DNRME may reduce the amount of the Funds in proportion to a reduction in scope, if specified in a notice given under clauses 22.1, 22.2 or by further notice;
 - (d) DNRME will for a reduction for convenience under clause 22.1:
 - (i) pay to the DO the Fund instalments that were due up to the date of the reduction;
 - (ii) pay to the DO the reasonable costs (if any) that have been or will be incurred by the DO as a direct result of the reduction of the Agreement (in whole or in part) scope and which the DO cannot recoup, mitigate or avoid and which would not otherwise have been incurred by the DO if the Funding amount had continued unaltered until the expiry of the Term; and
 - (iii) notify the DO as to any variation of the Funds in accordance with the reduced Project scope or Term.
- 22.6 Within twenty-eight (28) days from the date of termination (in whole or in part) under clauses 22.1 or 22.2 the DO is to submit:
- (a) Annual Audited Financial Statements;
 - (b) a Final Report up to the date of termination;
 - (c) all Project IP and Project Material notified by DNRME for the purpose of clause 17.3;
 - (d) a cheque or electronic transfer of any Unspent Funds; and
 - (e) all required Records, Project Data, Project IP assignments and Moral Rights consents.

23 INDEMNITY

- 23.1 The DO indemnifies DNRME against all costs, expenses, loss or damage DNRME may incur or sustain in relation to the DO's performance of this Agreement and all actions, proceedings, claims and demands which may be brought or made against it by any person due to or arising out of:
- (a) the DO's failure to perform its rights or obligations under this Agreement including the performance of the Project;
 - (b) any unlawful, wilful or negligent act or omission of the DO or its Representatives, consultants, visitors, invitees or licensees or of any other persons for whose acts or omissions the DO is vicariously liable;
 - (c) the death, injury, loss of or damage to the DO or those persons referred in above clause (b);
 - (d) any breach of this Agreement by the DO; and
 - (e) any infringement or alleged infringement of any Intellectual Property rights or Moral Rights in connection with the provision, creation or use of Existing IP or Project IP.

- 23.2 The DO's liability to indemnify DNRME under clause 23.1 is reduced to the extent that any negligent act or omission or breach of this Agreement by DNRME caused the loss or liability.
- 23.3 The indemnity under clause 23.1 is a continuing obligation separate and independent of each Party's other obligations and shall survive the expiration or the earlier termination of this Agreement.
- 23.4 Where the DO engages Contractors for the performance of the Project it does so entirely at its own risk and DNRME will not be liable for any loss, cost, damage, expense or other liability incurred or suffered by the DO in engaging any Contractor except as arising as a direct consequence of any deliberately wrongful or negligent act or omission of DNRME.
- 23.5 The DO releases to the full extent permitted by law, DNRME and its Representatives from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising from or in connection with the Project and/or this Agreement.
- 23.6 The liability of DNRME under or in connection with this Agreement is limited in aggregate to the amount of the Funds.
- 23.7 DNRME and its Representatives will not in any circumstances (including for negligence) be liable for any loss of revenue, loss of profit, loss of anticipated savings or business, loss of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of data or goodwill, loss of reputation or any indirect or consequential loss whether arising in contract, tort (including negligence) or otherwise, in connection with this Agreement.
- 23.8 The indemnity granted in clause 23.1 is in addition to and not exclusive of any other remedies DNRME may have against the DO at law.
- 23.9 It is not necessary for DNRME to incur expense or to make a payment before enforcing a right of indemnity conferred by this Agreement.

24 CONTRACTORS

- 24.1 The DO must:
- (a) enter into a written agreement (Contract) when it engages Contractors for the performance of the Project; and
 - (b) keep a Register of all Contractors and be able to provide a copy of each written subcontract to DNRME, if requested.
- 24.2 With respect to any Contractor engaged for the performance of the Project:
- (a) the DO is not relieved of its obligations under this Agreement;
 - (b) to the extent of the services provided and goods delivered by a Contractor in performing the Project, the DO must ensure that:
 - (i) each Contract has correspondingly substantially identical terms and conditions (as if the DO was DNRME and the Contractor was the DO under this Agreement);
 - (ii) each Contractor must be liable to account for Unspent Funds, revenue and expenditure on an accrual basis in the same manner as the DO under clause 6.1 of this Agreement; and
 - (iii) the term of the Contract does not exceed the Term of this Agreement.
 - (c) the DO must ensure provisions are in the Contract for the recovery of Unspent and misapplied Funds.
- 24.3 The DO must not under clause 24.2 Contract out to any Contractor (collectively or individually) what DNRME considers to be substantially all of the Project's Activities, Outcomes, and/or Milestones.

- 24.4 DNRME may exercise a right to step-in and step-out of a Contract in accordance with sub-clauses 24.5 to 24.10.
- 24.5 The DO shall ensure that each Contract has correspondingly substantially identical terms and conditions providing for DNRME's step-in and step-out rights as set out in this clause.
- 24.6 DNRME may by issuing a written notice to the DO exercise a right to step-in under this clause 24 in circumstances where in the reasonable opinion of DNRME it considers either the DO or its Contractor is in breach of a Project, Milestone, Funding, accounting reporting or other Project obligation under their Contract.
- 24.7 In the event that DNRME exercises its step-in right then for so long as and to the extent that DNRME exercises such rights, the DO acknowledges that in relation to the Contract DNRME may take such action as it considers reasonably necessary or appropriate, using the Funds allocated to the DO.
- 24.8 The DO must comply with any reasonable direction given by DNRME and shall ensure in its Contract with the Contractor that the Contractor has a corresponding obligation including for the temporary taking over by an entity nominated by DNRME of any or all of the Contract Project delivery items as specified in the step-in notice.
- 24.9 At such time that DNRME decides that the grounds for the exercise of its rights under clause 24.4 no longer exist, it shall give a step-out notice to the DO specifying the date on which the Contract is to recommence, and the DO shall ensure the Contractor complies with the terms of the step-out notice.
- 24.10 The step-in and step-out rights of DNRME under clause 24.4 are additional to and not in derogation of its suspending, reduction or termination rights under clause 22 of this Agreement.
- 24.11 With respect to any step-in or step-out notice or direction by DNRME, the DO:
- (a) is not relieved of its obligations under this Agreement;
 - (b) remains responsible for the Contractor's acts and omissions during the step-in and step-out period; and
 - (c) indemnifies DNRME against:
 - (i) all costs, expenses, loss or damage DNRME may incur or sustain as a result of DNRME exercising its step-in or step-out rights; and
 - (ii) for all actions, proceedings, claims and demands which may be brought or made against DNRME by any person due to or arising out of DNRME exercise of its step-in and step-out rights.

25 INSURANCE

- 25.1 The DO shall effect and maintain for itself insurances (and ensure similarly, that any Contractors effect and maintain) insurances of the types and for the periods as set out in Item 3 of Schedule 1 and, where relevant, for the minimum amounts specified.
- 25.2 The DO must produce a certificate or other evidence of compliance with this clause 25 on DNRME's request.

26 CONFLICT OF INTEREST

- 26.1 The DO warrants that, to the best of its knowledge and belief, after making diligent enquiries as at the date of signing this Agreement, it and its Representatives do not, and are not likely to have any Conflict of Interest in the performance of this Agreement.
- 26.2 If, during the Term, a Conflict of Interest arises or appears likely to arise, (including one concerning a Contractor) the DO must immediately give notice to DNRME and take all reasonable steps to minimise, remove or mitigate any actual, perceived or potential Conflict of Interest, or the risk of it, to DNRME's satisfaction.

- 26.3 The DO must maintain a Conflicts of Interest Register (including a record of each and how it was managed) and provide information on and relating to the Register every six (6) months as part of the Bi-Annual Milestone Performance Report requirements.
- 26.4 If DNRME is given notice of a Conflict of Interest pursuant to clause 26.2 or if DNRME otherwise identifies that a Conflict of Interest exists, DNRME may direct the DO as to how to manage the Conflict of Interest.
- 26.5 The DO must comply with any reasonable direction given by DNRME under clause 26.4 including where there is a Conflict of Interest in relation to a Representative or a Contractor of the DO, a DNRME direction to:
- (a) reduce or cease performance of the services and/or return any Unspent Funds the subject of the Conflict of Interest; or
 - (b) terminate this Agreement in accordance with clause 22.

27 DISPUTE RESOLUTION

- 27.1 The Parties will seek to resolve in good faith a dispute over any matter concerning performance or interpretation of this Agreement (excluding any term in this Agreement that gives to DNRME a right of consent, approval, veto or exercise of a right or power under a notification or a direction) as follows:
- (a) The Contact Officer for a party may notify the other in writing of the occurrence of a dispute (Dispute Notice) and the Contact Officers will try to resolve the dispute through negotiation.
 - (b) If the Contact Officers are unable to resolve the dispute within fifteen (15) Business Days from the receipt of the Dispute Notice, the dispute will be referred to:
 - (i) for the DO, the person holding the position of Chief Executive Officer (or equivalent); and
 - (ii) for DNRME, the Deputy Director-General or the Director-General of the Department, for resolution.
 - (c) If the dispute is not resolved within fifteen (15) Business Days after its referral to the representatives of each of the parties listed in clause 27.1(b), either party may refer the dispute to a mediator agreed by the parties and on terms agreed by the parties, with costs to be shared equally between the parties.
 - (d) If the parties cannot agree upon a mediator or terms, either party may request the President of the Queensland Law Society to nominate a mediator or settle terms.
- 27.2 Mediation will be conducted on terms as agreed by the Parties, or if the Parties are unable to agree, then on terms as directed by the appointed mediator.
- 27.3 The Parties shall subject to clause 19.3, treat all information in relation to the dispute and its resolution under clause 26.1 as Confidential Information and only disclose the information to its Representatives on a need to know basis for the purposes of complying with clause 27.1 and performing the Project.

28 FURTHER ASSURANCES

The DO shall work co-operatively with DNRME and provide assistance, cooperation, support and contribution to DNRME following a DNRME notification or request including providing relevant information and documentation:

- (a) that highlights Continuous Improvement strategies, procedures and recommendations for overcoming obstacles or impediments relevant to the performance of this Agreement;
- (b) for any review undertaken by or involving DNRME of the Program or the Project; and
- (c) for Project decisions on Milestone priority setting and expenditure.

29 CONTINUOUS IMPROVEMENT

The DO must develop and implement during the Term its Continuous Improvement processes to be used in performing this Agreement including when working with other Participants, Contractors and DNRME.

30 NO PARTNERSHIP

Nothing in this Agreement constitutes or evidences expressly or impliedly, a legal relationship of partnership, employment or joint venture between the Parties.

31 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and supersedes all communications, negotiations and arrangements, either oral or written, between the Parties with respect to its subject matter.

32 VARIATION OF THIS AGREEMENT

32.1 A variation to this Agreement, to bind the Parties must be in writing and signed by the Parties (at the chief or executive officer delegation level with authority to enter into contracts on behalf of the authorising Party).

32.2 Subject to clause 32.1 a variation may be in the form of Schedule 5, a deed, or other agreement including an email "PDF" letter agreement, appropriately signed.

For the purposes of notifications and approvals for a variation to this Agreement:

- (a) notifications and requests from the DO must be in writing and made at chief executive, director or other like delegation level with authority to enter contracts;
- (b) consent from DNRME may be conditional and may be subject as determined by DNRME and PCG; and
- (c) may require the parties to enter a signed variation agreement in accordance with this clause 32.

33 RESERVATION OF RIGHTS

Any payment to the DO by DNRME under clauses 4, 5 or 6 of this Agreement is not an admission or acceptance by DNRME that the DO has complied with this Agreement.

34 SEVERABILITY

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force and effect apart from such provision, which shall be deemed deleted.

35 CLAUSES TO SURVIVE TERMINATION

The following clauses will survive termination or expiration of this Agreement: clause 3.5 (Records); clauses 6.5 - 6.6 (Capital Assets); clause 10 (Reports and Work Plan); clause 17 (Intellectual Property); clause 18 (Moral Rights); clause 19 (Confidential Information); clause 20 (Privacy and Personal Information); clause 21 (Publications Promotions and Branding); clause 22 (Termination Withholding Suspension or Reduction); clause 23 (Indemnity); clause 25 (Insurance); clause 35 (Clauses to Survive Termination); and clause 38 (Jurisdiction).

36 NOTICES

36.1 Each Party's Contact Officer is the representative for receiving notices in relation to the performance of this Agreement.

36.2 Notices must be in writing and submitted either by hand, email or post to the address for each Party set out in Item 4 of Schedule 1.

36.3 A notice is taken to have been received by the addressee:

- (a) where sent by pre-paid post – on the fifth day after the date of posting;

- (b) where hand delivered – on delivery;
- (c) where sent by email – on the day that the sender’s information system records the email as being sent, unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee’s information system, but if the communication is taken to have been received on a day that is not a Business Day or later than 5.00 pm on a Business Day, the communication is taken to have been received at 9.00 am on the next Business Day.

37 COUNTERPARTS

- 37.1 This Agreement may be executed in counterpart each of which is taken to be an original and together constitutes a fully signed agreement by the Parties.
- 37.2 This Agreement is binding on the date that both Parties’ authorised signatories have executed this Agreement.
- 37.3 Communication of the executed Agreement or each counterpart may occur by post to each Parties address or electronically by email in a “PDF” format.

38 JURISDICTION

- 38.1 This Agreement shall be governed by and construed in accordance with the law of Queensland and the Parties submit to the jurisdiction of the courts of Queensland.

39 DEFINITIONS

“**Activity or Activities**” means all the actions, services and things done and to be done by the DO in performing the Project as provided in the Work Plan that result in the generation of the Outputs for the purposes of the achievement of the Milestones and Outcomes.

“**Agreement**” means the terms and conditions of this Agreement and the Schedules and includes the Guidelines, the Application, and the Work Plan and any other relevant document and information referred to in its terms and conditions and expressly incorporated and made part of this Agreement.

“**Allegation**” means any actual or pending allegation, claim, assertion, charge, litigation or, arbitration, proceeding or investigation, against the DO or its Representatives in connection with conduct relevant to matters set out in this Agreement, the Application and the Guidelines where the conduct: (i) constitutes in law or raises a reasonable suspicion of actionable fraud, corruption, misconduct, dishonesty or unlawful conduct; or (ii) in the reasonable opinion of DNRME, would reflect unfavourably upon the DNRME, the DO (in its Project capacity and role under this Agreement), the Program and/or the Project.

“**Application**” means the project applications (including all schedules and attachments) made by the DO and approved by DNRME and electronically stored by DNRME in eDOCs or some other electronic storage system.

“**Annual Audited Financial Statements**” means the reports to be provided by the DO under clause 13.

“**Bi- Annual Milestone Performance Report**” means the reports to be provided by the DO under clause 12 for the periods from 1 January to 30 June and 1 July to 31 December each year during the Term, subject to clause 10.3.

“**Budget**” means the initial budget submitted by the DO as part of the Application, as subsequently revised and provided to DNRME in accordance with clause 10.(b) of this agreement and approved by DNRME.

“**Business Days**” means between 9.00am and 5.00pm on a day other than a Saturday, Sunday or public holiday at the Customer’s address.

“**Capital Assets**” means any item of tangible or intangible property purchased either wholly or in part using the Funds, which has a value of over \$5,000 (GST inclusive).

“Capital Assets Register” means the register as provided in clause 6.5 specifying purchase costs and date, depreciated value and total amounts spent on Capital Assets for each Payment Period.

“Capital Assets Report” means a report covering original acquisition costs, annual and cumulative depreciation, evaluation or impairment, and sale proceeds on disposal, if applicable.

“Commencement Date” means the date on which the last of both parties signs this Agreement.

“Commercialise” means:

- (a) in relation to a product, to use, make, manufacture, have made or manufactured, sell, advertise, promote, distribute, hire or otherwise dispose of the product, or to keep it for the purpose of doing any of those things;
- (b) in relation to a method or process, to use the method or process or do any act referred to above in respect of a product resulting from such use; and
- (c) to license any third party to do any or all of the acts referred to in paragraphs (a) or (b).

“Commercialisation Costs” means costs reasonably incurred by a party with respect to the Commercialisation of Project IP and includes patent, trade mark, design, due diligence and legal costs and any other IP Rights application and registration costs.

“Commercialisation Proceeds” means all royalties, licence fees, and other direct monetary payments received by a party from the Commercialisation of Project IP.

“Communications Plan” means a document that will define: (i) what specific Information from the Project will be provided to the other Parties, Participants or members of the public; (ii) when the information will be delivered; and (iii) what communication channels will be used for delivery of information.

“Completion Date” means the earlier of the date of written acceptance by DNRME of the Final Report following the Project Completion Date or the Termination Date.

“Compliance Costs” means the fees and other costs for securing and maintaining the Rights and requisites.

“Commonwealth” means the Commonwealth of Australia.

“Confidential Information” means information that: (i) is by its nature confidential; (ii) is provided and designated confidential or (iii) a Party knows or ought to know is confidential; but does not include information that: (iv) is or becomes public knowledge other than by breach of this Agreement; (v) is in the possession of the receiving party without restriction as a result of a disclosure before the date of receipt; (vi) is independently developed or acquired by the receiving party; or (vii) is required to be disclosed by law, but only to the extent of that disclosure.

“Conflict of Interest” means having an interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with the DO’s ability to perform its obligations under this Agreement fairly, objectively and independently.

“Conflicts of Interest Register” means the register as provided in clause 26.

“Contact Officer” means the person or persons specified in Item 2 of Schedule 1 that each Party nominates (or where that person is unavailable or unable to act) an alternative or substitute person as notified by a Party to the other Party.

“Continuous Improvement” means any and all of the systems, strategies, procedures, standards, reviews, and measurable/ demonstrable optimisation efforts of the DO to improve its service delivery with a focus on increasing effectiveness and efficiency over time. It is not intended to require major capital investment.

“Contract” means a contract between the DO and a Contractor made in accordance with clause 24.

“Contractor” means any sub-contractor person or legal entity (including a River Improvement Trust, Landcare organisation, catchment management group, or not-for-profit community organisation) engaged by the DO under clause 24 to deliver services and/or goods as part of the Activities in achievement of Milestones as part of the Outcomes.

“Contractors Register” means the register as provided in clause 24.

“Control Plan” means the plan as provided in clause 2.6 – 2.7.

“Correctly Rendered Tax Invoice” means an invoice where: the amount claimed in the invoice is due for payment, is correctly calculated, is GST compliant and correctly refers to the relevant Milestones.

“DNRME” means the State of Queensland as represented by the Department of Natural Resources, Mines and Energy.

“DO” means the entity or where there is more than one, Parties to this Agreement, details of which are set out in Schedule 1 and includes its Representatives.

“Due Date” means the dates set out in clause 10. When a due date falls on a Saturday, Sunday or public holiday, the due becomes the next Business Day.

“eDOCS” means the electronic document and records management system used by DNRME.

“Existing Material” means all Material supplied by a Party and which is in existence prior to the Commencement Date or independently generated, acquired or owned by a Party other than in pursuance of the performance and exercise of rights and obligations under this Agreement.

“Existing IP” means Intellectual Property including in and to Existing Material which is in existence prior to the Commencement Date or independently generated or acquired by license or transfer other than as a result of the performance and exercise of rights and obligations under this Agreement.

“Final Report” means the report to be provided by the DO under clause 14.

“Financial Year” means the 12 consecutive month period beginning on 1 July and ending on 30 June.

“Force Majeure” means any event beyond the reasonable control of the party affected which occurs without fault or negligence of the affected party and includes: (i) acts of God; (ii) war, riot, insurrection, vandalism or sabotage; (iii) strike, lockout, ban, limitation of work or other industrial disturbance; and (iv) law, rule or regulation of any government or governmental agency and executive or administrative order or act of general or particular application.

“Funds” means the total (maximum) amount (GST inclusive) set out in Item 5 of Schedule 1 that are capable of being provided by DNRME to the DO and more particularly means those amounts for each Project as set out in Schedule 2 and more particularly determined as part of the approval of the Budget by DNRME.

“Funding” means the funding for the Program allocated by the State to DNRME for administration and management of the Program and funding of the Projects.

“Guidelines” Queensland Government Natural Resources Investment Program Guidelines 2018-22 (*TrANsfoRM!* Innovation) which the DO acknowledges having received from DNRME prior to the date of this Agreement.

“GST” means any tax, levy charge or impost imposed under any GST Law and includes GST within the meaning of the GST Act.

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) as amended.

“GST Law” means the GST Law as defined in the GST Act and includes any Act of the Parliament of Australia that imposes or deals with GST and ATO rulings that are in force and applicable.

“Independent Auditor” is a person who is member of the Institute of Chartered Accountants in Australia, the National Institute of Accountants, or CPA Australia, or who is registered as an auditor pursuant to the *Corporations Act 2001* (Cth) and is neither an employee of nor associated with the DO. Notwithstanding this definition, a DO which is a Queensland State Government Department may engage an auditor who is an employee of the State of Queensland.

“Intellectual Property” or **“IP”** means all intangible personal copyright, patent, design, trade mark, circuit layout, and Confidential Information (trade secret or know how) proprietary rights at law or by legislation. IP does not include Moral Rights.

“IP Register” means the register specified in clause 17.2.

“Interim Performance Report” means the report to be provided by the DO in accordance with clause 11.

“Machinery of Government Change (MoG)” means the changes to administrative and functional arrangements as a result of the creation or abolition of government departments and agencies as the result of a change of government following an election.

“Material” means all information, data, documents, technology, equipment and software, reports, tables, diagrams, models, discoveries, methods, and concepts (where reduced to a material form) irrespective of however held, recorded, stored or communicated by any means. Material does not include the Reports or Capital Assets.

“MERI Plan” means the Project Monitoring Data, evaluation reporting and improvement information contained in and as part of the Work Plan, and includes the project monitoring data details and all relevant attachments (map, program logic diagram and relevant tables) information and amendments provided in accordance with this Agreement.

“Milestones” means the milestones (to be set out as part of the Work Plan in accordance with clause 8.2(b) and approved by DNRME), to be delivered by the DO and which demonstrate progress towards meeting Outcomes and for the purpose of completing each Outcome. Progress towards achieving such Milestones are to be reported using the Reporting Template as prescribed by DNRME.

“Milestone Period” means the time periods for completion of Milestones as set out in the Work Plan.

“Moral Rights” means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship specified in Part IX of the *Copyright Act 1968* (Cth).

Net Commercialisation Proceeds means Commercialisation Proceeds received by a party with respect to Project IP less Commercialisation Costs.

“Program” means the Natural Resources Investment Program for the years 2018-2019 to 2021-2022 to support the State’s NRM priorities and DNRME approved projects (including this Project) to be undertaken under the Program in accordance with the Guidelines.

“NRM” means natural resource management as it is referred to and provided under the Program.

“NRM Region” means the region described in Schedule 1.

“Outcomes” means the outcomes to be delivered by the DO through performance of the Milestones and demonstrated through monitoring activities as described in the Work Plan and the MERI Plan. Outcomes are to be reported using the Reporting Template as prescribed by DNRME.

“Outputs” means the outputs including Materials to be delivered and the Activities as prescribed in the Work Plan to be performed by the DO as part of and for the purpose of

completing each Milestone and Outcome. Outputs are reported using the Work Plan Template.

“Participants” means those persons, groups, organisations and/or entities referred in clause 12.2(a).

“Parties” means DNRME and the DO and **“Party”** means either DNRME or the DO, as the context requires.

“Payment” refers to initial payment in the Payment Table in Schedule 2 and the subsequent payments to be determined as part of the Budget.

“Payment Period” means each period outlined in the Payment Table in Schedule 2.

“Payment Table” means the table in Schedule 2.

“Personal Information” means information that is personal in accordance with the *Information Privacy Act 2009* (Qld).

“Project” means each and every project identified in Item 8 of Schedule 1 by the subject of the Application and Budget approved by DNRME for Funds to be performed by the DO as part of the **Program** in accordance with this Agreement which includes the Guidelines.

“Project Completion Date” means the date for the delivery and / or performance of the final Milestone as specified in the Work Plan.

“Project Control Group or PCG” means the project control group that meets from time to time for noting, recommendations and approval purposes for Program monitoring evaluation and reporting, oversight of Projects, Payments, Milestone completion, Agreement variations and all other matters relating to the performance of this Agreement.

“Project Data” means the data (whether copyright IP or otherwise) identified in accordance with the Work Plan and as prescribed by DNRME.

“Project IP” means the Intellectual Property generated by the DO as a result of performing the Project and its Milestones. Project IP includes IP in and to Project Material and Copyright IP in the Reports and Project Data.

“Project Location Data” means the project location shape files as per the Work Plan.

“Project Material” means all Materials generated by the DO and its Contractors as a result of carrying out the Project.

“Quarterly Financial Report” means a report on all income and expenditure for a Project to be submitted to DNRME each quarter using the template prescribed by DNRME from time to time.

“Records” means all information, books, accounts and supporting documentation prepared by the DO and placed in secure storage in an accessible format to be used for accounting, auditing, Funds receipt and expenditure, Project, Milestones and Program monitoring evaluation and review.

“Registers” means the Conflict of Interest Register, IP Register, Contractors’ Register, and the Capital Assets Register required respectively under clauses 26, 17, 24 and 6.5 and includes any other register that may be required by DNRME of the DO from time to time during the Term.

“Reports” means the Quarterly Financial Report, Budget, Work Plan, Project Data, Interim Performance Report, Bi-Annual Milestone Performance Report, Annual Audited Financial Statements, and Final Report.

“Reporting Template” means all templates including applications tools (‘apps’) approved and/or provided by DNRME for the purposes of the DO generating and providing the Reports under this Agreement.

“Representative” means an employee, agent, chief executive and other authorised officers, agents, director, volunteer, Contractor, or other authorised representative of a Party.

“Rights” means all rights, title, approvals, exemptions, permits, authorisations, leases licences, interests and contractual or property rights necessary or required for the performance of the Project.

“Schedules” means the attached Schedules 1 to 5 inclusive.

“Special Conditions” means the special conditions (if any) set out in Item 7 of Schedule 1.

“State” means the State of Queensland as represented by DNRME or other department or entity as the context requires.

“Term” means the period referred to in clause 1 of this Agreement.

“Termination Date” means the date of termination of this Agreement either as a result of termination under clause 22.1 or 22.2.

“Unspent Funds” means any surplus of the Funds at the earlier of the Completion Date or Termination Date where Funds received and interest earned and gain or loss on the disposal of Capital Assets are in excess of Funds incurred under accrual accounting basis solely for performing Activities in the achievement of Milestones in accordance with this Agreement. Expenses incurred are inclusive of amounts payable for works completed.

“Work Plan” contains detailed information on and for the undertaking and performance of a Project including its Activities, Milestones, Outcomes and Outputs to be delivered by the DO and reported using the Work Plan Template. The Work Plan includes all information and attachments (including the MERI Plan, the program logic, activities, project location data (shapefiles), outputs to be achieved, data to be collected during the project (including establishment of baseline data), analysis of data, project evaluation, and annual review/assessment of project implementation. For the avoidance of doubt if there is any discrepancy between the Application and the Work Plan, the Work Plan, as approved by DNRME, has priority.

“Work Plan Template” means the template approved and/or provided by DNRME from time to time for the purposes of the DO generating and providing the Work Plan to DNRME in accordance with this Agreement.

40 INTERPRETATION

40.1 Interpretation

- (a) In this Agreement, unless a contrary intention appears, all references to: (a) an individual or person includes a corporation or other legal entity or, where a position is nominated, the individual occupying that position; (b) words in the singular number include the plural and words in the plural number include the singular; (c) words importing a gender include any other gender; (d) clauses are clauses in this Agreement unless otherwise specified; (e) dollars and \$ are to Australian currency; (f) any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth or the State as the context requires, and if it has been or is being amended, is a reference to that statute or other legislation as amended; (g) a business day is a day other than Saturday, Sunday or any public holiday in Queensland; and (h) “includes” in any form is not a word of limitation.

40.2 Precedence

- (a) The Schedules form part of this Agreement.
- (b) In case of any inconsistencies between the clauses of this Agreement and the Schedules except for Item 7 of Schedule 1 (Special Conditions), the clauses of this Agreement take precedence to the extent of the inconsistency.

40.3 Special Conditions

- (a) Any Special Condition agreed by the Parties and set out in Item 7 of Schedule 1 prevails and takes precedence over any other clause in this Agreement to the extent of any inconsistency between the Special Condition and those other clauses.

- (b) Where a Special Condition and a clause to which it relates can be textually and contextually read together and co-exist and this construction is not excluded by the words of the Special Condition then this construction prevails.

SIGNED AS A DEED OF AGREEMENT:

SIGNED SEALED AND DELIVERED for and on behalf of **STATE OF QUEENSLAND** by Alan Feely, Deputy Director-General, Natural Resources, Department of Natural Resources, Mines and Energy

this _____ day of _____ 2019
in the presence of:

Witness: name (print)

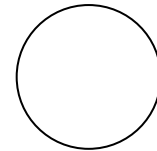
Signature

Signature

The Common Seal of **INSERT NAME OF INCORPORATED ASSOCIATION** (ABN: **XX XXX XXX XXX**) was hereto affixed in accordance with its Rules

this _____ day of _____ 2019
in the presence of:

Witness: name (print)



Affix Seal Here

Signature

Witness signature

SIGNED SEALED AND DELIVERED for and on behalf of **INSERT NAME OF COMPANY** (ACN: **XXX XXX XXX**) in accordance with s127 of the *Corporations Act 2001*

this _____ day of _____ 2019

Director: name (print)

Director/Secretary: name (print)

Signature

Signature

Notes for companies signing agreements:

- Seal is not required – but may be used. See sections 126 and 127 of the Corporations Act 2001.
- Sole director companies simply insert name and sign as **sole director** (striking out director).

- Other companies sign by atleast **two directors** *or* by a **director and the company secretary**, striking out the inapplicable title.
- Where an **attorney or other agent** executes this Agreement on behalf of a company the form of execution must indicate the source of this authority and a certified copy of the authority must be provided to the State. A witness is not required in any case, except for an attorney or other agent where the source of authority requires a witness.

SCHEDULE 1
AGREEMENT DETAILS

ITEM 1 – Delivery Organisation

Insert name of Delivery Organisation
(ACN: ABN: XX XXX XXX XXX)

ITEM 2 – Contact Officer

The Director, Natural Resources Programs, Operations Support, Natural Resources

ITEM 3 – Insurance

Public liability insurance in the sum of twenty million dollars (\$20,000,000) for the Term

Workers compensation insurance as required by law for the Term.

Professional indemnity insurance in the sum of one million dollars (\$1,000,000) during the Term and for six (6) years after the Completion Date.

ITEM 4 – Addresses for notices

State:

All notices for DNRME are to be addressed as follows:

The Director
Natural Resources Programs
Operations Support, Natural Resources
Department of Natural Resources, Mines and Energy
PO Box 15216
City East QLD 4002
Ph: (07) 30878412
Email: NRIP@dnrme.qld.gov.au

Insert DO Name:

All notices for the insert DO name are to be addressed as follows:

Name of Activity Officer
Position
Insert Name of NRM DO
Address 1
Address 2
Address 3
Ph: (07) XXX XXXX

Email: XXXXXXXXXXXXXXXXXXXX

ITEM 5 – Amount of the Funds

\$XXXX (GST exclusive)
\$XXXX (GST)
\$XXXX (GST inclusive)

Amount in words dollars only.

In accordance with clause 3.1, the Funds are the maximum amount that may be provided by DNRME to the DO, with associated Payments being subject to clause 4.

ITEM 6 – NRM Region

Insert NRM Region

ITEM 7 – Special Conditions

- A. The parties agree that:
1. The Application may have contained details of projects which are still being considered by DNRME and which have not yet been approved by DNRME ('additional Projects');
 2. The decision as to whether to approve additional Projects to be added to the terms of this Agreement is at the sole, unfettered discretion of DNRME and DNRME is under no obligation to approve any additional Projects.
 3. There will be no agreement for the funding for any additional Projects by DNRME until such time as:
 - a) DNRME has approved the terms of the additional Projects; and
 - b) both parties have executed a separate attachment, substantially in the form set out in Schedule 5 of this Agreement ('additional Project Schedule').
 4. If the requirements in 3 (a) and (b) above have not been satisfied, DNRME will have no obligation to provide any funding (in addition to the Funding) to the DO in respect of additional Projects.
 5. Special conditions prevail over any other clause in the Agreement in accordance with clause 40.3.

Insert any other special condition if applicable

ITEM 8 – Project/s Title

each approved project title from the Application form.

**SCHEDULE 2
PAYMENT TABLE**



SCHEDULE 3

Work Plan Submission Schedule for *TraNsfoRM!* Innovation.

Work Plans for each Project are to be submitted as follows:

Work Plan	Date Due
Work Plan - Review 1 2019-2021	21 January 2020
Work Plan Review 2 2021-2022	21 January 2021

SCHEDULE 4
APPLICATION

The Application electronically submitted to DNRME by the DO forms part of this Agreement and has been stored by DNRME in its eDOCS electronic storage system. The Application has not been attached in hard copy paper form to this Agreement.



SCHEDULE 5

Additional Project Schedule

Insert Agreement ID

[to be completed in accordance with the Item 7 of Schedule 1 (Special Condition) relating to this additional Project. The obligations relating to this Project do not bind the parties unless and until the parties have separately executed this attachment, substantially in the form set out below]

This additional Project Schedule, when executed by the parties, will be annexed to and form part of the Agreement between the parties relating to the Natural Resources Investment Program 2018-2022 executed on the XXXX day of XXXX 20XX (Agreement) and will be subject to the same terms and conditions of the Agreement, including Schedule 1, as if it had been executed with, and formed part of, the Agreement executed on that date.

The following additions are made to the Project Deed:

SCHEDULE 1

ITEM 5 – Amounts of Funds

	\$ (GST inclusive)
Amount of the Funds (before additional project/s)	XXXX
Additional Project 1	XXXX
Additional Project 2	XXXX
Amount of Funds (after additional Project/s)	XXXX

ITEM 7 – Special Conditions

insert

ITEM 8 - Project/s Title

Additional Project 1: insert

Additional Project 2: insert

SCHEDULE 2 REPLACEMENT PAYMENT TABLE TO INCLUDE ADDITIONAL PROJECT/S

insert

ADDITIONAL OUTCOMES AND MILESTONES FOR ADDITIONAL PROJECT/S TO FORM PART OF THE WORK PLAN

insert

SIGNED AS A DEED: [Note – this schedule is **not** to be executed at the same time as the Agreement. The schedule will be signed separately when and any additional Projects are agreed between the parties]

SIGNED SEALED AND DELIVERED for and on behalf of **STATE OF QUEENSLAND** by insert name, Deputy Director-General, Natural Resources, Department of Natural Resources, Mines and Energy

this _____ day of _____ 20XX
in the presence of:

Witness: name (print)

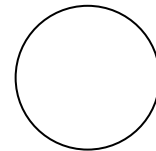
Signature

Signature

The Common Seal of **INSERT NAME OF INCORPORATED ASSOCIATION** (ABN: XX XXX XXX XXX) was hereto affixed in accordance with its Rules

this _____ day of _____ 20XX
in the presence of:

Witness: name (print)



Affix Seal Here

Signature

Witness signature

SIGNED SEALED AND DELIVERED for and on behalf of **INSERT NAME OF COMPANY** (ACN: XXX XXX XXX) in accordance with s127 of the *Corporations Act 2001*

this _____ day of _____ 20XX

Director: name (print)

Director/Secretary: name (print)

Signature

Signature

Notes for companies signing agreements:

- Seal is not required – but may be used. See sections 126 and 127 of the Corporations Act 2001.
- Sole director companies simply insert name and sign as **sole director** (striking out director).

- Other companies sign by atleast **two directors** *or* by a **director and the company secretary**, striking out the inapplicable title.
- Where an **attorney or other agent** executes this Agreement on behalf of a company the form of execution must indicate the source of this authority and a certified copy of the authority must be provided to the State. A witness is not required in any case, except for an attorney or other agent where the source of authority requires a witness.