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RECITALS

- A. The contractor has agreed to perform certain contractor services for FBA.
- B. The parties wish to record the terms and conditions of their agreement.

1. Precedence

Where any inconsistencies exist between:

- (a) Special Conditions (listed in Schedule 1)
- (b) Terms and Conditions (Schedule 4 – as outlined in the contents therein)
- (c) Milestones, Activities and proposal (listed in Schedule 3)
- (d) Payment Schedule (listed in Schedule 2)

The provisions will take precedence in that order to the extent necessary to resolve this inconsistency.

2. Special Conditions

The parties agree to be bound by any special conditions in Schedule 1.

3. Interpretation

In this agreement:

3.1. the following definitions apply:

- 3.1.1. “agreement” means this document and all schedules, maps, reporting templates and the like relevant to it;
- 3.1.2. “claim” means any allegation, debt, cause of action, proceeding, suit or demand of any nature however arising and whether present or future, fixed or unascertained, actual or contingent and whether at law, in equity, under statute or otherwise;
- 3.1.3. “commencement date” means the date on which this agreement is executed by the parties, or if not executed by the parties on the same date, means the later of the dates of execution;
- 3.1.4. “confidential information” means information that is by its nature confidential and/or:
 - 3.1.4.1. is designated by a party as confidential; or
 - 3.1.4.2. a party knows or ought to know is confidential; or
 - 3.1.4.3. information or knowledge of special religious, spiritual or customary significance considered to be secret, exclusive or restricted by an Aboriginal person or according to Aboriginal Tradition,

but does not include:



- 3.1.4.4. information which is or becomes public knowledge other than through breach of this agreement or any other confidentiality obligation;
- 3.1.5. “capital item” means any item of tangible property, purchase, leased, created or otherwise bought into existence either wholly or in part using the Funds, which has a value of over \$5,000.00 (exclusive of GST), but does not include project material;
- 3.1.6. “contractor” means the party specified in Schedule 1;
- 3.1.7. “contractor services” means each of the services that the contract will provide or has agreed to provide under and in accordance with the terms of this agreement as described in the Schedule(s);
- 3.1.8. “deliverable” means any document, piece of equipment, data listing or other creation required to be delivered to FBA in order to complete the performance of the contractor services;
- 3.1.9. “departmental funding” means funding made available to FBA under a funding agreement;
- 3.1.10. “force majeure” means any event beyond the reasonable control of the party affected and includes an event due to natural causes that happens independently of human intervention;
- 3.1.11. “funding agreement” means an agreement between FBA and a government department through which, FBA will acquire the monetary resources required to perform this agreement;
- 3.1.12. “government department” means the state or federal government represented by a government department or through a government owned corporation that is a party to the funding agreement;
- 3.1.13. “intellectual property rights” means all intellectual property rights, including the following rights:
- 3.1.13.1. copyright, patents, rights in circuit layouts, trademarks, designs, trade secrets, know-how, domain names and any right to have confidential information kept confidential;
- 3.1.13.2. any application or right to apply for registration of any of the rights referred to in 3.1.13.1; and
- 3.1.13.3. all rights of a similar nature to any of the rights in 3.1.13.1 and 3.1.13.2 which may subsist in Australia or elsewhere,
- whether or not such rights are registered or capable of being registered;
- 3.1.14. “key personnel” means the representatives of the contractor specified in Schedule 1;
- 3.1.15. “moral rights” means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of work and the right not to have authorship of work falsely attributed as defined in the *Copyright Act 1968 (Cth)*;
- 3.1.16. “personal information” means the information or an opinion (including information or an opinion forming part of database) whether true or not and whether recorded in a material form or not about a natural person whose identity is apparent or can reasonably be ascertained from the information or opinion;
- 3.1.17. “project” means all or any part of the project for which FBA engages the contractor (the project being more particularly described in schedule 2 to this agreement);
- 3.1.18. “project event” means any promotional event conducted by the contractor relating to the project, including celebration of funds, all openings, ceremonies or other public events to mark the completion of any aspect of the project and all other openings, ceremonies or public events which are related to the project, excluding any event or aspects of any event (such as a ceremony) which involves secret and sacred material;
- 3.1.19. “project material” means any material that is:

- 3.1.19.1. created by the contractor for the purpose of or as a result of the contractor's performance of its obligations under this agreement; or
- 3.1.19.2. third party material;
- 3.1.20. "records" means all material including but not limited to books, documents, information, computer software, equipment, and data stored by any means disclosed, or made available, by FBA to the contractor in connection with the performance of this agreement;
- 3.1.21. "secret and sacred material" means any information or knowledge of special religious, spiritual or customary significance considered to be secret, exclusive or restricted by an Aboriginal person or according to Aboriginal Tradition;
- 3.1.22. "FBA's agent" means the person specified in schedule 1 or any other person substituted by FBA by notice to the contractor;
- 3.1.23. "FBA consent" means prior written consent (which will not be unreasonably withheld) of FBA which may be given subject to such terms and conditions as FBA may see fit to impose;
- 3.1.24. "FBA material" means any material that is property of FBA or in which, FBA holds intellectual properties rights, whether exclusively or as non-exclusive licensee; including FBA promotional material;
 - 3.1.24.1. "FBA promotional material" means photographic images and records and/or other material and information of/or relating to the project (both during and after completion of the project), the contractor and key personnel, deliverables and any aspect of the contractor services;
- 3.1.25. "third party material" means material created by a third party that is:
 - 3.1.25.1. created or used for the purpose of or as a result of the contractor's performance of its obligations under this agreement; or
 - 3.1.25.2. included, embodied or attached to the project material created by the contractor;
- 3.1.26. "WHS" means Work Health and Safety.
- 3.1.27. "workers" are classified as any person who carries out work, in any capacity for FBA. This includes:
 - 3.1.27.1. an employee;
 - 3.1.27.2. a contractor or subcontractor;
 - 3.1.27.3. an employee of a contractor or subcontractor;
 - 3.1.27.4. an employee of a labour hire company who has been assigned to work in the person's business or undertaking;
 - 3.1.27.5. an outworker (a contractor or employee who performs work from their home or a workplace that is not the FBA office);
 - 3.1.27.6. an apprentice or trainee;
 - 3.1.27.7. a student gaining work experience;
 - 3.1.27.8. a volunteer.

3.2. Clause headings are not to be used as an interpretation aid.

- 3.3. Words in the singular include the plural and words in the plural include the singular according to the requirements of the context.
- 3.4. A reference to a clause or a schedule is a reference to a clause or a schedule of this agreement.

4. Term

This agreement will start on the commencement date and unless earlier terminated, or extended in accordance with its terms, the expiry date of this agreement will be as specified in schedule 1.

5. Contractor services

- 5.1. The contractor will provide and complete the contractor services through its key personnel, to the standards and in the manner, frequency, quantity and times specified in the schedule(s).
- 5.2. The contractor will inform itself of FBA's stated requirements in respect of the contractor services, act professionally at all times and exercise skill, care and diligence in performing the contractor services.
- 5.3. The contractor warrants that it has the qualifications, admissions and memberships (if any) required in performance of the contractor services.
- 5.4. The contractor will ensure that the deliverable(s) specified in the schedule(s) complies with the standards and specifications (if any) set out in schedule(s).
- 5.5. Where specified in schedule(s), FBA will provide the specified assistance to the contractor.

6. Agreement management

- 6.1. FBA appoints FBA's agent as specified in schedule 1 for the purposes of this agreement.
- 6.2. The contractor will liaise with and report to FBA's agent; and attend meetings as reasonably required by FBA's agent.
- 6.3. Reports by the contractor to FBA's agent must be in writing and as per Schedule/s, unless otherwise permitted by FBA.

7. Key personnel

- 7.1. The contractor services will be performed by the key personnel as specified in schedule 1 except with FBA's consent. A person replacing one of the key personnel with FBA's consent will be one of the key personnel during the period of the person's engagement on the contractor services.
- 7.2. The contractor will ensure that key personnel are competent and have the necessary skills to perform the contractor services on which they will be engaged.
- 7.3. The contractor will not without FBA's consent allow key personnel to delegate any part of the contractor services;
- 7.4. If any of the key personnel are not available to perform any of the contractor services allocated to them the contractor will immediately –
 - 7.4.1. give notice to FBA of the circumstances; and
 - 7.4.2. if so requested by FBA, arrange for replacement of that person with a person satisfactory to FBA at no cost to FBA.

- 7.5. FBA may, on reasonable grounds, give notice requiring the contractor to remove key personnel from working on the contractor services. Upon receipt of a notice pursuant to this clause 7.5, the contractor will, at no cost to FBA, promptly remove and replace the key personnel referred to in the notice with a person satisfactory to FBA.

8. Fees

- 8.1. The contractor will provide the contractor services for the payment amount specified in the schedule(s).
- 8.2. The contractor will not be entitled to be paid for any part of the contractor services which FBA has certified as not having been performed in accordance with this agreement.
- 8.3. The contractor will promptly perform or perform again any part of the contractor services certified as not being performed in accordance with this agreement and FBA may, without limiting any other right it may have, defer payment for that part of the contractor services until FBA has certified that the services have been performed or performed again in accordance with this agreement.

9. GST

- 9.1. Subject to clause 9.2, if a party ("the supplier") should make a taxable supply to another party ("the recipient") under this deed, the recipient must pay to the supplier the GST arising on the taxable supply at the time the consideration for it falls due for payment.
- 9.2. The supplier must give the recipient a tax invoice relating to the taxable supply in exchange for the payment of GST under clause 9.1.
- 9.3. As a separate and distinct obligation, the recipient indemnifies the supplier from liability for the payment of GST arising on taxable supplies made to the recipient under this deed, subject to the provision of a tax invoice by the supplier under clause 9.1.
- 9.4. In this clause, words and phrases that are defined in A New Tax System (Goods and Services Tax) Act 1999 have, so far as the context permits, the corresponding meaning.

10. Payment and reimbursable expenses

- 10.1. Payments as specified in the schedule(s) may only be varied by agreement in writing and approval of FBA and will be subject to:
- 10.1.1. the continued allocation of funds by the Australian and Queensland Government to FBA;
 - 10.1.2. acceptance by FBA of any progress and final reports as outlined in the schedules(s); and
 - 10.1.3. the completion of the various activities and deliverables set out in the schedule(s) to the satisfaction of FBA.
- 10.2. FBA will not have any obligation to pay the contractor for any part of the contractor services until FBA has been given a correctly rendered invoice.
- 10.3. The contractor will be paid in accordance with the schedule(s). Invoices must be in sufficient detail to allow FBA to assess progress of the contracted services. For work carried out on a time basis, invoices must be supported by records of times spent by individuals on the contractor services, certified by the contractor and the FBA agent.
- 10.4. Upon receipt of an invoice FBA may require the contractor to provide additional information to assist FBA to determine whether or not an amount is payable.

- 10.5. FBA will make payment of a correctly rendered invoice within 30 days after receipt of the invoice or, if additional information is required by FBA pursuant to clause 10.4, 30 days after receipt of the additional information.
- 10.6. For the purposes of this clause 10, a correctly rendered invoice is an invoice that has been submitted to FBA in accordance with clause 10.3; the amount claimed in the invoice is due for payment and is correctly calculated in accordance with this agreement; and the invoice correctly identifies the contractor services performed.
- 10.7. FBA will notify the contractor within 14 days after receipt of an invoice found not to be correctly rendered.
- 10.8. If an invoice is found, after FBA has paid the invoiced amount to the contractor, not to have been a correctly rendered invoice, FBA will:
 - 10.8.1. pay any amount owed to the contractor within 30 days of receipt of a correctly rendered invoice or, if additional information is required by FBA pursuant to clause 10.4, 30 days after receipt of the additional information;
 - 10.8.2. deduct any amount owed to FBA from the next invoiced payment or, if no other payment is due to the contractor pursuant to this agreement, recover the amount from the contractor as a debt due to FBA.
- 10.9. Payment of money to the contractor will not constitute an admission by FBA that any of the contractor services have been performed in accordance with this agreement.
- 10.10. The contractor may include in an invoice under clause 10 a claim, and be paid, for expenses described in the schedule(s) after those expenses have been incurred by the contractor. FBA will only reimburse the contractor for other expenses that have been incurred by the contractor with FBA's prior consent.

11. No agency

The contractor will not represent itself or allow itself to be represented as an employee or agent of FBA; or by virtue of this agreement be or become an employee or agent of FBA.

12. No partnership or joint venture

Nothing contained in this agreement is to be construed as creating the relationship between the parties of partnership, principal and agent or joint venture.

13. Conflict of interest

- 13.1. The contractor warrants that, to the best of its knowledge, it does not, and is not likely to have any conflict of interest in the performance of this agreement. If a conflict or risk of conflict of interest arises (without limitation, because of work undertaken for any person other than FBA) the contractor will immediately give notice of the conflict of interest, or the risk of it, to FBA.
- 13.2. The contractor will take all reasonable measures to ensure that its employees, agents and subcontractors do not engage in any activity or obtain any interest which is in conflict with providing the contractor services to FBA fairly and independently. The contractor will immediately give notice of any conflict of interest relating to the activities or interests of any of its employees, agents or subcontractors to FBA.
- 13.3. If FBA is given notice of a conflict of interest pursuant to clause 13.1 or 13.2, FBA may proceed in accordance with clause 21 to terminate this agreement.

14. Project material and intellectual property rights

- 14.1. All intellectual property rights in the project material created by the contractor will vest, upon creation, in the contractor.
- 14.2. The contractor must make, or must procure for the making of, all project material (excluding secret and sacred material) available under a perpetual creative commons attribution licence (CC-BY 3.0). For the purpose of this agreement, the creative commons attribution licence (CC-BY 3.0) is the form of licence detailed at <http://creativecommons.org.au/>. Notwithstanding any other provision of this agreement, the contractor grants, or must procure for FBA (who in turn grants the government department) a perpetual, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right to sublicense) to use, reproduce, modify, adapt, communicate, publish, broadcast and exploit the project material (excluding secret and sacred material) for non-commercial purposes.
- 14.3. This agreement does not affect intellectual property rights in third party material and the contractor must secure and obtain all third party material to perform its obligations under this agreement.
- 14.4. If the contractor cannot obtain the licenses as described in clause 15.2 and 15.3 for any third party material, the contractor must:
- 14.4.1. notify FBA of the best alternative licence terms for that third party material and not use that third party material unless FBA consents to those terms; and
 - 14.4.2. if FBA does not consent to those terms, notify FBA of any comparable third party material and comply with its obligations under this clause 14.4 in respect of comparable third party material.
- 14.5. If any project material is produced or reproduced in electronic format, the contractor must deliver it in a format approved by FBA. Unless otherwise stated, Microsoft Office documents (Word, Excel, Access, PowerPoint) are acceptable.
- 14.6. To the extent that project material comprises of traditional indigenous knowledge which is culturally sensitive to indigenous organisations or other information which the Government department, FBA or the contractor has been advised must remain confidential, the contractor must not disclose such project material. Such material may be disclosed however with written consent of the indigenous organisation (but only to the extent permitted in that consent).
- 14.7. On termination or expiry of this agreement, or earlier if requested by FBA, the contractor must promptly deliver a copy of all project material then in existence to FBA in an agreed format, or as otherwise directed by FBA. FBA is irrevocably authorised to release such project material, or copies of it, to the government department.
- 14.8. The contractor warrants that anything done by the contractor in the course of the project, including in developing the reports, will not infringe the intellectual property rights or moral rights of any person.
- 14.9. The contractor further warrants that the government department, FBA or its sub licensees will not, at any time, be infringing the intellectual property rights or moral rights of any person when undertaking an activity allowed for under this agreement or using project material (excluding secret and sacred material) in a manner consistent with the licences granted, or to be granted, to FBA under this clause 14.
- 14.10. Intellectual property rights and title to FBA material remains vested at all times in FBA, as the case may be. FBA, as appropriate, grants to the contractor a royalty-free, world-wide, non-exclusive licence (including a right of sublicense to subcontractors) to use, reproduce and modify FBA material solely for the purposes of the project. The contractor must ensure that all FBA material is used strictly in accordance with any conditions or restrictions specified by FBA (as appropriate) from time to time.
- 14.11. To the extent permitted by law, the contractor must, where requested by the government department or FBA in writing, use best endeavours to ensure that each person who:
- 14.11.1. has been involved in the performance of the project; or

14.11.2. Is or will be the author of any project material (including the reports) that is to be licensed in accordance with this clause 14,

provides a written consent to the government department and/or FBA permitting the government department and/or FBA (including their personnel) to conduct any act which would otherwise infringe the moral rights held by that person. The consent provided under this clause 14.11 must be consistent with FBA being able to conduct any act it is licensed to conduct under this agreement material;;

14.12. The contractor must use capital item in accordance with this Agreement for purposes of the deliverables.

14.12.1 The contractor must maintain a register of all capital items showing the purchase price and date, and the depreciated value if requested by FBA;

14.13. The contractor must:

14.13.1 store capital items securely and safeguard them against theft, loss, damage, or unauthorized use;

14.13.2 maintain all capital items in good working order and maintain all appropriate insurances;

14.13.3 be fully responsible for, and bear all risks relating to, the use or disposal of all capital items.

14.14. Unless otherwise agreed in writing with FBA, on completion of all deliverables capital items must be;

14.14.1 sold, if the total residual value of the capital item is over \$5,000 and the proceeds returned to FBA;
or

14.14.2 forfeited to FBA within fourteen (14) days of issue of such request by FBA.

15. Confidential information

15.1. Subject to clause 15.2, a party must not, without the written consent of the other party, disclose any confidential information of the other party to a third party.

15.2. The obligations of the parties under clause 15.1 will not be taken to have been breached to the extent that confidential information is:

15.2.1. disclosed by a party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under these terms and conditions;

15.2.2. disclosed to a party's internal management personnel solely to enable effect management or auditing of the activities of that party in connection with this agreement;

15.2.3. authorised or required by law, including under this agreement, to be disclosed; or

15.2.4. in the public domain otherwise then due to breach of this clause 15.

15.3. Where a party discloses confidential information to another person pursuant to clause 15.2.1 or 15.2.2, the disclosing party must:

15.3.1. notify the receiving person that the information is confidential information; and

15.3.2. not provide the information unless the receiving person agrees to keep that information confidential.

15.4. Nothing in this clause 15 derogates from any obligation which either party may have either under the *Privacy Act 1988* or under this agreement in relation to the protection of personal information and, in respect of personal information, the contractor must:



- 15.4.1. in performing (or failing to perform) the contractor services or any act omission, matter or thing pursuant to or in accordance with this agreement, use or disclose personal information only for the purposes of this agreement;
- 15.4.2. comply with each of the:
 - 15.4.2.1. Information Privacy Principles prescribed under schedule 3 of the *Information Privacy Act 2009 (Qld)*, if applicable; and
 - 15.4.2.2. the Australian Privacy Principles, as if the contractor were an “Agency” as described under schedule 1 of the *Privacy Act 1988*,
as applicable;
- 15.4.3. ensure that any subcontract entered into by it in relation to the contractor services places the same obligations about the personal information on the subcontractor as this clause 15 places on the contractor; and
- 15.4.4. otherwise comply with the *Information Privacy Act 2009* (if applicable) and the *Privacy Act 1988*, as applicable.
- 15.5. The contractor must keep all records that relate to the contractor services in a secure location so that no unauthorised person is able to gain access to them.

16. Acknowledgement and promotion

- 16.1. The contractor must acknowledge, in the form reasonably required by FBA (from time to time), the support it has received from the government department (whether directly or through FBA) and FBA:
 - 16.1.1. in all publications, promotional and advertising materials related to or developed as a result of the project;
 - 16.1.2. on any signs or plaques displayed at the location where the project is undertaken;
 - 16.1.3. in all activities undertaken by it or on its behalf in relation to the project;
 - 16.1.4. if requested by FBA, with any products, processes or inventions developed as a result of the project;
 - 16.1.5. at any project event; and
 - 16.1.6. otherwise at the times and in the manner as FBA directs from time to time.
- 16.2. The contractor must submit to FBA and, if required by FBA, all publications, promotional and advertising materials relating to or developed as a result of the project for approval (both as to form and substance) and must not make use of any such publication, promotional or advertising material until such approval has been granted by FBA.
- 16.3. The contractor must ensure that any material containing the required acknowledgement (under clause 16.1) does not include any immoral, misleading, offensive, political or defamatory material.
- 16.4. The contractor must:
 - 16.4.1. invite representatives of FBA to all project events; and
 - 16.4.2. ensure that the official proceedings in each project event allows for an FBA representative to speak.
 - 16.4.3. permit FBA to invite others to all project events.

- 16.5. If an invitation or its invitees, under clause 16.4.1 is accepted by FBA, the contractor must, as soon as practicable, notify FBA in writing of any change to the project event.
- 16.6. The contractor must notify FBA, before making a public announcement in connection with this agreement or any transaction contemplated by it except if the announcement is required by Law or a regulatory body (including a relevant stock exchange), and provide a copy of the announcement to FBA.

17. Security and access

- 17.1. Both FBA and the contractor when using each other's premises or facilities, will comply with all rules, directions and procedures including those relating to security and to workplace health and safety in effect at the premises or in regard to the facilities as notified to by each party.
- 17.2. The contractor will give FBA's agent, and any other persons authorised in writing by FBA, reasonable access subject to reasonable notice, to premises occupied by the contractor where the contractor services are being undertaken and will permit them to inspect any project material or records related to the contractor services.

18. Suspension of services

- 18.1. FBA may by notice require the contractor to suspend the progress of the whole or any part of the contractor services for a specified period after receipt of reasonable notice, if suspension is required by FBA because of any change in the nature, scope or timing of the contractor services to be provided.
- 18.2. FBA may by reasonable notice require the contractor to recommence work on all or any part of the suspended contractor services.
- 18.3. Where the contractor is required to suspend contractor services pursuant to clause 17.1:
- 18.3.1. the contractor and FBA will negotiate in good faith as to reasonable compensation payable to the contractor (but in determining reasonable compensation, consequential or economic loss suffered or sustained by the contractor as a direct or indirect consequence of suspension must not, under any circumstances, exceed the sum remaining to be paid to the contractor [at the time suspension takes effect] under clause 8); and
- 18.3.2. any previously agreed completion dates for the contractor services will be postponed by a period equivalent to the duration of the suspension.
- 18.4. FBA will reimburse the contractor for additional costs reasonably and properly incurred by the contractor as a result of suspension of the contractor services pursuant to clause 17.1. If the contractor and FBA do not agree on the amount of reasonable compensation within 30 days of the request for compensation by the contractor, the amount will be determined pursuant to clause 27.
- 18.5. If a dispute referred to in clause 27.3 has arisen between the parties either party may, during the continuation of the dispute, by notice to the other party require the suspension of the progress of the whole or any part of the contractor services from the date specified in the notice until the dispute has been resolved.
- 18.6. FBA may suspend contractor services, where FBA is of the opinion that the contractor is non-compliant with WHS policies, procedures or the *WHS Act 2011*.
- 18.7. During periods of suspension under clause 18.6, FBA shall not be required to make any payment whatsoever to the contractor.

19. Variation

- 19.1. FBA may by notice require the contractor to vary the contractor services in nature, scope or timing.
- 19.2. Where FBA requires a variation to the contractor services, the parties will negotiate in good faith a variation of the services, fees and the time for completion.



- 19.3. Any variation must not affect or otherwise impact upon clause 29 of this agreement (and to the extent that it is applicable to clause 29, clause 18 of this agreement).
- 19.4. Failing agreement, the fees and time for completion will be determined pursuant to clause 27. The contractor will not commence work on the variation to the contractor services without FBA's consent and the written agreement of both parties to the varied services, fees and time for completion.

20. Payment for reduced contractor services

- 20.1. In the event of a reduction in the contractor services FBA will pay the contractor –
- 20.1.1. fees determined in accordance with clause 19.2;
 - 20.1.2. reasonable costs incurred by the contractor directly attributable to the reduction in the contractor services; and
 - 20.1.3. compensation for reasonable set up costs incurred by the contractor.
- 20.2. Where the fee for the contractor services is a lump sum, FBA will not be liable to pay any amounts to the contractor pursuant to clause 20.1 where it would result in amounts greater than the fees and expenses specified in the schedule(s) being paid to the contractor.
- 20.3. Where fees are on a schedule or rates basis the rates for the reduced contractor services will be subject to negotiation and agreement between FBA and the contractor and failing agreement, resolved pursuant to clause 27.
- 20.4. The contractor will not be entitled to compensation for loss of prospective profits.

21. Default of the contractor and termination

- 21.1. If the contractor:
- 21.1.1. fails to comply with any of the terms and conditions of this agreement;
 - 21.1.2. does or fails to do any act or omission which, if undertaken or not undertaken by FBA, would be in breach of the funding agreement, provided that FBA first gives the contractor written notice of the relevant provision of the funding agreement and the contractor fails to comply with this clause within seven days on which that written notice is provided;
 - 21.1.3. fails to comply with a direction of FBA's agent given in accordance with this agreement; or
 - 21.1.4. enters into any arrangement or proceedings for the purpose of insolvency administration or is placed under official management,
- FBA may suspend payments under this agreement and require the contractor to show cause why the agreement should not be terminated.
- 21.2. If FBA suspends payments pursuant to clause 21.1, FBA must:
- 21.2.1. give the contractor notice of the suspension, specifying the reason; and
 - 21.2.2. require the contractor to show cause within 14 days of the notice why the agreement should not be terminated.
- 21.3. If the contractor fails to show cause within the period specified in the notice to the satisfaction of FBA, FBA may without prejudice to any other rights, terminate the agreement by notice to the contractor as of the date specified in the notice.
- 21.4. If the contractor:



- 21.4.1. abandons or refuses to proceed with the contractor services;
- 21.4.2. fails to comply with clause 13 (Conflict of interest);
- 21.4.3. fails to comply with clause 33 (Compliance with laws);
- 21.4.4. fails to comply with clause 23 (Insurance); or
- 21.4.5. fails to comply with clause 35 (Work Health and Safety)

FBA may terminate this agreement by notice to the contractor as of the date specified in the notice.

- 21.5. Upon termination of this agreement pursuant to clause 21.3 or clause 21.4, all money which has been paid and all money to be paid for work done to the date of the termination will be in full and final satisfaction of all claims by the contractor under this agreement.

22. Indemnities

- 22.1. The contractor will be liable for loss or damage (including personal injury whether or not resulting in death) suffered by FBA, its officers, servants or agents, arising from the unlawful or negligent acts or omissions of the contractor in the course of the performance (or attempted or purported performance) of the contractor services.
- 22.2. The contractor releases and indemnifies FBA and all its officers, servants and agents from and against all actions, proceedings, claims and demands which may be brought or made against any of them by any person, including the contractor, arising from:
 - 22.2.1. any wilful or negligent act or omission of the contractor;
 - 22.2.2. any unlawful or negligent act or omission of the visitors, invitees or licensees of the contractor;
 - 22.2.3. death, injury, loss or damage suffered by the contractor or any of its visitors, invitees or licensees except where the death, injury, loss or damage is caused by the wrongful act or omission of FBA.
- 22.3. To the extent that the contractor fails to carry out the obligations specified in Work Health and Safety legislation the contractor undertakes to indemnify FBA against any claims, actions or prosecutions which are instigated by the Attorney General, Department of Justice as a result of such failure by the contractor to observe relevant Work Health and Safety requirements while carrying out any of the contracted services with relation to this agreement.

23. Insurance

- 23.1. The contractor must have and maintain for the duration of this agreement workers' compensation insurance in relation to any employees of the contractor for an unlimited amount, including liability under statute and at common law.
- 23.2. The contractor must effect in connection with the provision of the contractor services, on terms and conditions no less favourable to FBA than –
 - 23.2.1. public liability insurance; \$20,000,000;
 - 23.2.2. if applicable, professional indemnity insurance. \$1,000,000.00 for Individual and \$2,000,000.00 for Aggregate claims.
- 23.3. The insurances must be effected with an insurer, include terms and conditions acceptable to FBA and be maintained for the duration of this agreement and maintain for the period of 52 weeks after completion of the contractor services or termination of this agreement.
- 23.4. The contractor must upon request in writing, produce evidence to FBA that the policy has been maintained.



- 23.5. The contractor will upon request in writing at any time by FBA, produce evidence to FBA that the insurances required by this clause 23 have been effected and maintained.

24. Unavoidable delay

A party will not be entitled to exercise its rights and remedies upon the default of the other party (whether at common law or pursuant to this agreement) if that default –

- 24.1. is caused by force majeure; or
- 24.2. continues for less than three (3) days.

25. No Subcontracting

- 25.1. The contractor will not subcontract any part of the contractor services without FBA's written consent.
- 25.2. Any consent given by FBA for the contractor to subcontract:
- 25.2.1. will not operate as an authority to transfer responsibility to the subcontractor;
 - 25.2.2. will not relieve the contractor from any of its liabilities or obligations under this agreement; and
 - 25.2.3. will be conditional upon the consent of the government department under any applicable funding agreement (and clauses 29.2.2 and 29.2.3 will apply, save that all costs involved in the application for and/or the granting of consent will be paid by the contractor).
- 25.3. The contractor will not assign this agreement or any of the benefits under this agreement without FBA's consent.
- 25.4. The contractor must ensure that the terms or conditions of any sub-contract it enters into, in relation to this agreement, are not inconsistent with the terms or conditions of this agreement.

26. Further assistance

The contractor will do all things reasonably required by FBA to give effect to this agreement or to perfect or protect the rights of FBA including, without limitation, giving or obtaining confidentiality undertakings acceptable to FBA in relation to records and the contractor services.

27. Resolution of disputes

- 27.1. Any dispute between FBA and the contractor being associated with this agreement will be the subject of mediation for a period of 14 days (or longer period agreed between the parties) by a mediator appointed by agreement between the parties.
- 27.2. If the parties fail to agree as to the appointment of a mediator within seven days after a dispute arises, the mediator will be appointed by the Australian Commercial Disputes Centre (Queensland).
- 27.3. For the purposes of this clause 27, a dispute will have arisen between the parties when a party gives notice to that effect to the other party.
- 27.4. The parties agree not to commence litigation (except in the case of urgent interlocutory relief) until the dispute resolution process in this Clause 27 is complete.

28. Clauses to survive termination

- 28.1. The following clauses will survive termination or expiration of this agreement:



- 28.1.1. clause 14 (project material and intellectual property rights);
 - 28.1.2. clause 15 (confidential information);
 - 28.1.3. clause 22 (indemnities);
 - 28.1.4. clause 23.4 (evidence of insurance);
 - 28.1.5. clause 26 (further assistance); and
 - 28.1.6. clause 28.2.
- 28.2. The contractor must, for a period of seven years following the date of expiration or earlier determination of this agreement:
- 28.2.1. maintain all books and records (including financial records) in connection with this agreement and the project;
 - 28.2.2. allow FBA (and its representatives) access to and copies of all such books and records.

29. Funding

- 29.1. The contractor acknowledges that:
- 29.1.1. the ability of FBA to perform this contract is, in certain respects, conditional on the availability of departmental funding;
 - 29.1.2. departmental funding may be available to FBA under funding agreement with a government department and where available, will be subject to the terms of any relevant funding agreement; and
 - 29.1.3. the appointment of the contractor under clause 6 may be conditional on the consent of the government department that is a party to the relevant funding agreement, and the terms of that agreement.
- 29.2. If, in the terms of a funding agreement, the consent of a government department is required to the appointment of the contractor under clause 6:
- 29.2.1. this agreement is subject to and conditional upon the granting of that consent (and the parties acknowledge that conditional consent is not consent unless FBA notifies the contractor in writing that consent has been granted);
 - 29.2.2. FBA will apply to the relevant government department for consent at its own cost; and
 - 29.2.3. the contractor will promptly provide all documents and materials and do so acts and things as FBA reasonably requires (or which is required in the terms of the relevant funding agreement) to procure the granting of consent.
- 29.3. The performance by the contractor of all or any of the contractor services prior to the granting of consent under a funding agreement (where consent is required) will have no effect on clause 29.2.1 and:
- 29.3.1. any consent or direction of FBA in relation to the performance of any of the contractor services; and/or
 - 29.3.2. conduct of any description on the part of FBA, including the payment of money under clause 8,
- will not constitute a waiver of clause 29.2.1.
- 29.4. If at any time following the commencement date, funding under a funding agreement is:

- 29.4.1. suspended for any reason (other than default by FBA under the funding agreement brought about through circumstances beyond its control), FBA may, by notice in writing given to the contractor, suspend the performance of this agreement with immediate effect and, to the extent that the context permits, clause 18 will apply, save that clauses 18.3.1 and 18.4 will have no application;
- 29.4.2. terminated for any reason (other than default by FBA under the funding agreement brought about through circumstances beyond its control), FBA may, by notice in writing given to the contractor, terminate this agreement with immediate effect and, save for breaches on the part of either party prior to the time of termination, each party will release and discharge the other from all claims.

30. Execution by facsimile and counterparts

- 30.1. A party may execute this agreement by signing a facsimile or electronic copy of it and causing to be delivered to the other parties a facsimile or electronic copy of the agreement (including the page containing the signature) signed by the first party.
- 30.2. This agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon the same instrument.

31. Notices

Notices must be in writing and may be delivered by prepaid postage, by hand or by facsimile transmission or electronic communication to the parties at the address specified in the schedule(s) or other address subsequently notified by a party to the other. Notices will be deemed to be given –

- 31.1. 2 days after deposit in the mail with postage prepaid;
- 31.2. immediately upon delivery by hand;
- 31.3. immediately upon an apparently successful facsimile transmission of the entire notice being noted by the sender's transmitter, unless sent on a Saturday or Sunday or after 5.00pm on any other day ("a week day"), in which case the notice will be deemed to be given at 9.00 am on the next week day.
- 31.4. if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999 (Cth)*, unless sent on a Saturday or Sunday or after 5.00 pm on any other day ("a week day"), in which case the notice will be deemed to be given at 9.00 am on the next week day.

32. Waiver

- 32.1. A right under this agreement will only be waived where the waiver is in writing and is signed by the relevant party.
- 32.2. A waiver by either party will not prejudice its rights in respect of any subsequent breach of this agreement by the other party.

33. Governing law and compliance with laws

- 33.1. This agreement will be governed by and construed in accordance with the law of Queensland and the parties submit to the jurisdiction of the courts of that State.
- 33.2. The contractor must comply with all relevant laws and the requirements of any statutory authority in performing the contractor services.

34. Joint and several liability

Where the proponent consists of two or more persons:



34.1. obligations bind each of them severally and all of them jointly; and

34.2. rights benefit each of them severally and all of them jointly.

35. Work Health & Safety

FBA is obligated to provide and maintain, so far as is practicable, a workplace for its employees and non-employees, that is safe and without risk to health and the environment. As a condition of this contract, the contractors or sub-contractors that may be engaged to perform a service on FBA's behalf will at all times identify and exercise all necessary precautions for the health and safety of all persons including contractor employees, FBA employees and members of the public who may be affected by the services. Contractors and sub-contractors will also exercise all necessary environmental risk mitigation measures and minimise the environmental impact of their work.

35.1. The contractor will ensure familiarisation to all work health, safety and environmental policies, procedures or measures implemented or adopted by FBA and/or the occupiers of any premises at or within which the contractor will perform works under this contract and shall comply with all such policies, procedures or measures.

35.2. Legislative Compliance - The contractor must comply with and ensure that its workers (as that expression is defined by the WHS Act 2011) comply with any Acts, regulations, local laws and by-laws, Codes of Practice and Australian Standards.

35.3. Non-Conformance - If during the performance of this contract, FBA informs the contractor that it is the opinion of the FBA that the contractor is:

35.3.1. Not conducting work in compliance with the contractor's Health and Safety Plan and/or Safe Work Method Statement, the Environment Risk Mitigation Plan, WHS management procedures, relevant legislation or WHS procedures provided by the FBA from time to time, or

35.3.2. Conducting the work in such a way as to endanger the safety of others.

The contractor shall be expected to promptly remedy the non-conformance. FBA may direct the contractor to suspend the work until such time as the contractor satisfies FBA that the work will be resumed in conformity with applicable WHS provisions.

35.4. During periods of suspension referred to above, FBA shall not be required to make any payment whatsoever to the contractor (refer clause 18.6). If the contractor fails to rectify any breach of health, safety and environment requirements for which the work has been suspended, or if the contractor's performance has involved recurring breaches of health and safety, FBA may terminate the work forthwith, without further obligation to the contractor (refer clause 21.4). In this event, FBA's liability shall be limited to payment for the work performed and costs incurred by the contractor up to the time of termination.

FBA has an obligation to report to Workplace Health and Safety Queensland if a notifiable incident has occurred on projects and for this reason, the contractor must notify FBA immediately if an incident arises out of the conduct of a business or undertaking and results in the death, serious injury or serious illness of a person or involves a dangerous incident. Notifiable Incidents are defined in Section 35 of the *WHS Act 2011*.

36. Workplace Gender Equality Act 2012

FBA has an obligation to comply with *Workplace Gender Equality Act 2012* in line with head funding agreements and these obligations flow through to the contractor. The *Workplace Gender Equality Act 2012* (WGE Act) requires private sector employers of 100 or more employees and independent contractors to prepare, submit to the Workplace Gender Equality Agency and otherwise make available (in accordance with the WGE Act) public reports in relation to gender equality indicators, and to comply with minimum standards determined by the Workplace Gender Equality Agency within relevant time periods specified in the WGE Act. The contractor must comply with the WGE Act. FBA at its sole discretion can request from the contractor the provision of the following information:

36.1. a statutory declaration by one of its officers that the WGE Act does not apply to the contractor; or

- 36.2. if the WGE Act applies to the contractor, a letter or such other evidence in writing confirming that the Contractor is not named by the Workplace Gender Equality Agency as an employer not currently complying with the WGE Act.

37. Indigenous employment

The contractor must report on the number of Indigenous people either directly employed or subcontracted, and / or engaged as volunteers in the agreement, in each progress report and in the final report.

38. Entire agreement

This agreement constitutes the entire agreement between the parties in relation to its subject matter.