# Funding Conditions

Parties

Director of National Parks ABN 13 051 694 963 (DNP)

[***Insert Host Institution Name and ABN***] (**Recipient**)

[**Insert Principal Investigator Name**] (**Principal Investigator**)

Agreed terms

1. Obligations of the Recipient
	1. Performance of the Project

The Recipient must perform the Project in accordance with the terms of this Agreement, the timeframes specified in the Schedule and all applicable laws.

* 1. Agreement Period

This Agreement commences on the Commencement Date and ends when the Recipient has performed its obligations under this Agreement to DNP’s satisfaction or this Agreement is otherwise terminated under clause 19.

1. Recipient warranties

The Recipient warrants that:

1. it has the right to perform the Project;
2. it has, or is able to obtain, the written consent of any organisation that it will partner with or represent on the Project, including traditional owners (if relevant);
3. it has not received funding through other initiatives or programs for substantially the same activities to be undertaken for the Project, other than the co-contributions listed in the Schedule;
4. it has no overdue reports or acquittals, under any contractual or statutory arrangement for funding with DNP or any other Australian Government agency; and
5. it has full power and authority to enter into, perform and observe its obligations under this Agreement.
6. Conduct of the Project

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

1. within the Project Period;
2. in accordance with all applicable laws;
3. so as to deliver the Project Outcomes and meet all reporting requirements; and
4. otherwise in accordance with this Agreement.
5. Subcontracting and personnel
6. The Recipient is fully responsible for the performance of the Project and must not (unless otherwise stated in the Schedule) subcontract any aspect of the Project.
7. The Recipient must ensure that the Personnel of the Recipient will perform work in relation to the Project in accordance with this Agreement.
8. Funds
	1. Payment of the Funds

Subject to Parliamentary appropriation and to the provisions of this Agreement, DNP agrees to pay to the Recipient the Funds at the times and in the manner specified in Item B(2) of the Schedule.

* 1. Use of the Funds

Funds provided under this Agreement:

1. must only be used for the purposes of carrying out the Project and performing this Agreement;
2. must not be used to cover the cost of any activities completed prior to the execution of this Agreement;
3. must not, unless agreed by DNP in writing, be used to cover the cost of any activities commenced but not yet completed prior to the execution of this Agreement; and
4. are not to be applied towards administrative and other general costs of the Recipient unless any such costs are approved in writing by DNP.
	1. Amount of Funds capped

The amount of Funds to be contributed by DNP in relation to the Project will not exceed the maximum amount of Funds specified in Item B(1) of the Schedule.

* 1. No liability for DNP

DNP accepts no liability for any debts incurred by the Recipient, any monies owing by the Recipient to its personnel, any cost overruns or there being insufficient monies to complete the Project.

* 1. Management of the Funds

The Recipient must ensure that the Funds are held in an account in the Recipient’s name and which the Recipient solely controls, with a deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia; and identify the receipt and expenditure of the Funds separately within the Recipient’s accounts and records so that the Funds are identifiable at all times.

* 1. Repayment of the Funds

If, on expiry or on any earlier termination of this Agreement, DNP forms the reasonable opinion that any Funds have been used, spent or committed by the Recipient other than in accordance with this Agreement, DNP may by written notice to the Recipient require the Recipient to repay that part of the Funds, and the Recipient must repay to DNP the amount set out in the notice, within 20 business days of receipt of the notice.

1. Taxes, duties and government charges

In this clause 6,a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) has the meaning given to it in the GST Act.

* 1. Taxes

Subject to this clause 6, the Recipient must pay all taxes, duties, licensing fees or government charges imposed or levied in Australia or overseas in connection with this Agreement.

* 1. GST
1. If a party (supplier) makes a supply under or in connection with this Agreement in respect of which GST is payable, the recipient of the supply must pay to the supplier an additional amount equal to the GST payable on the supply.
2. If specified in Item D of the Schedule, and on the basis that the Funding paid under this Agreement is:
3. of a non-commercial, funding nature;
4. paid to a ‘government related entity’ for GST Act purposes; and
5. sourced from an appropriation,

the parties rely on section 9-17(3) of the GST Act in determining that the payment of Funding is not consideration and that no GST is payable in respect of payment of Funding under this Agreement.

* 1. ABN
1. Subject to clause 6.2, the Recipient warrants that it has an ABN, which it has correctly quoted to DNP. The Recipient must immediately notify DNP of any changes to the Recipient's GST status or ABN; and supply proof of its GST status, as and when requested by DNP.
2. If the Recipient does not provide an ABN, then DNP will withhold from the payment an amount of 46.5 per cent or such other amount as determined by the Australian Taxation Office from time to time.
	1. Not Used
3. Recipient Contributions
4. It is a condition precedent to the payment of the Funds under this Agreement that

the Recipient must provide the Recipient’s Contributions (as specified in Item C of the Schedule).

1. The Recipient must ensure that the terms on which any other funding or contributions are provided to the Recipient for, or in connection with, the Project are not inconsistent with the terms of this Agreement and do not in any way limit or affect the Recipient's ability to comply strictly with its obligations, or DNP’s ability to exercise its rights, under this Agreement.
2. The Recipient must promptly notify DNP if the total value of the Recipient's Contributions reduces, or if such a reduction is anticipated.
3. Assets

The Recipient must not use the Funds towards the purchase of Assets unless it has obtained the prior written approval of DNP, which may be subject to any conditions DNP may, in its absolute discretion, impose.

1. Records, reports and acquittals
	1. Records and accounts

The Recipient must:

1. keep comprehensive and accurate accounts and records of its use of the Funds, that can be separately identified from other accounts and records of the Recipient; and
2. retain the accounts and records referred to in this clause 9 for the Agreement Period and a further period of seven years from the expiry or termination of this Agreement or such longer period as may be required by law.
	1. Recipient must keep records

The Recipient must keep comprehensive written records of the conduct of the Project including the achievement of the Project Outcomes.

* 1. Provision of records to DNP

The Recipient must:

1. deliver information and other Material produced under or in connection with this Agreement and otherwise as reasonably required by DNP; and
2. provide all information and other Material to DNP in accordance with the timeframes specified in this Agreement and otherwise promptly upon demand.
	1. Financial records

The Recipient must keep financial records relating to the Project so as to enable all revenue and expenditure related to the Project to be identified in the Recipient’s accounts and the Audit of those records.

* 1. Reports
1. Without limiting the Recipient's other obligations under this Agreement, the Recipient must provide to DNP the reports in accordance with Item A(5) of the Schedule at the times, and substantially in the form of the template provided by DNP from time to time (if any).
2. If DNP notifies the Recipient that a report submitted is not to DNP’s satisfaction, the Recipient must make the required amendments and resubmit the report to DNP.
	1. Participation in evaluations and analysis of the Project
3. The Recipient must participate, at its own cost and as reasonably required by DNP, in studies, evaluations, surveys, meetings and other activities intended to analyse the success of the Project or Program.
4. The Recipient agrees to make case studies, records and other information (including reports) available to third parties for the purposes of evaluation and analysis.
5. Audit and access
6. DNP or a representative may conduct audits relevant to the performance of the Recipient’s obligations under this Agreement.
7. The Recipient acknowledges and agrees that DNP and any persons nominated by DNP may, at reasonable times and on giving reasonable notice to the Recipient:
8. access and inspect the Recipient’s premises and any Assets, wherever they may be located, to the extent relevant to the performance of this Agreement; and
9. require the Recipient (including its personnel) to provide records, documents and information relevant to the performance of this Agreement in a data format and storage medium accessible by DNP.
10. Project Material and Intellectual Property Rights
	1. Intellectual Property Rights in Project Material
11. All Intellectual Property Rights in the Project Material vest in the Recipient upon their creation.
12. All project outputs must be publicly released under a Creative Commons Attribution (CC-BY) Licence.
	1. Project Material copies

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

* 1. Intellectual Property Rights warranties
1. The Recipient warrants that anything done by the Recipient in the course of the Project, including in developing the reports, will not infringe the Intellectual Property Rights or Moral Rights of any person.
2. The Recipient further warrants that DNP or its sublicensees will not, at any time, be infringing the Intellectual Property Rights or Moral Rights of any person when undertaking an activity allowed for under this Agreement or using Project Material in a manner consistent with the Creative Commons Attribution (CC-BY) licence under which it is released.
	1. Licence to use DNP Material
3. If DNP provides any DNP Material to the Recipient, the Recipient must ensure that DNP Material is used strictly in accordance with any direction by DNP.
4. DNP grants to the Recipient, a world-wide, royalty-free, non-exclusive, non-transferable licence to use DNP Material solely for the purpose of the Project.
5. Acknowledgement and project events

The Recipient must acknowledge, in the required form as set out in Item G of the Schedule, the support it has received from DNP in all publications, promotional and advertising Materials, signs or plaques displayed at the location where the Project is undertaken, at any project event and otherwise at the times and in the manner as DNP directs from time to time.

1. Confidential Information

The Recipient must not, without the prior written consent of DNP, disclose any of DNP’s information that is confidential or which the Recipient has been informed by DNP is confidential to a third party.

1. Protection of personal information

The Recipient must:

1. use or disclose personal information obtained in relation to this Agreement only for the purposes of this Agreement;
2. not do any act or engage in any practice that would breach an Information Privacy Principle or National Privacy Principle under the Privacy Act 1988 (Cth); and
3. immediately notify DNP if the Recipient becomes aware of a breach or possible breach of any of its obligations under this clause 14.
4. Indemnity and release
5. The Recipient indemnifies DNP and its personnel against all losses reasonably sustained or incurred by DNP arising out of or in connection with:
6. any negligent, unlawful or wilfully wrong act or omission of the Recipient or its subcontractors or personnel; or
7. any breach of this Agreement.
8. The Recipient releases DNP and its subcontractors and personnel from:
9. all claims, actions, demands and proceedings which it may have, or claim to have, or but for this release might have had, against DNP arising out of this Agreement or in any way connected with the performance of this Agreement; and
10. all liability of DNP arising out of this Agreement.
11. Insurance

The Recipient must have and maintain the insurances as described in Item E of the Schedule and if requested, provide to DNP, current relevant confirmation of insurance documentation from its insurers.

1. Conflict of interest

In the event of a conflict of interest, the Recipient must notify DNP immediately in writing and fully disclose all relevant information relating to the conflict and take such steps as may be required by DNP to resolve or otherwise deal with the conflict.

1. Dispute resolution

The parties must endeavour to resolve any dispute under this Agreement by mediation or other dispute resolution method before they commence legal proceedings (except proceedings for urgent interlocutory relief).

1. Termination
	1. Termination and reduction for convenience

DNP may, by written notice, terminate this Agreement at any time.

* 1. Termination by DNP for default
1. DNP may terminate this Agreement effective immediately by giving notice to the Recipient if:
2. the Recipient breaches a material provision of this Agreement where that breach is not capable of remedy or where the Recipient fails to remedy the breach within 14 days after receiving notice; or
3. an event specified in clause (b) happens to the Recipient.
4. The Recipient must notify DNP immediately if the Recipient ceases to be able to pay its debts as they become due and payable, enters into liquidation, has a controller or managing controller or liquidator or administrator appointed, or is declared bankrupt or assigns his or her estate for the benefit of creditors or any analogous event occurs.
5. Notices
	1. Service of notices

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

1. directed to the other party’s contact person at the other party’s address (as set out in Item 0 of the Schedule and as varied by any notice); and
2. hand delivered or sent by prepaid post or Electronic Communication to that address.
	1. Effective on receipt

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

1. if hand delivered, on delivery;
2. if sent by prepaid post, on the second business day after the date of posting (or on the seventh business day after the date of posting if posted to or from a place outside Australia); or
3. if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth),

but if the delivery, receipt or transmission is not on a business day or is after 5.00pm on a business day, the notice is taken to be received at 9.00am on the next business day.

1. Survival

Clauses 5 (Funds), 9 (Records, reports and acquittals), 10 (Audit and access), 13 (Confidential Information), 14 (Protection of personal information), 15 (Indemnity and release), 16 (Insurance), 22.1 (Relationship) and 23 (Definitions and interpretation) survive the expiry or termination of this Agreement.

1. Miscellaneous
	1. Relationship

The parties must not represent themselves, and must ensure that their officers, employees and agents do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

* 1. Governing law and jurisdiction

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

* 1. Counterparts

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

* 1. Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with its subject matter.

* 1. Variation

No variation of this Agreement is legally binding upon either party unless in writing and signed by both parties.

1. Definitions and interpretation
	1. Definitions

In this Agreement:

**Agreement** means this agreement between DNP and the Recipient, as amended from time to time, and includes its Schedule.

**Agreement Period** means the period specified in clause 1.2.

**Asset** means any item of tangible property purchased or leased either wholly or in part with the use of the Funds with a value at the time of acquisition of $5,000 or more, excluding GST.

**Commencement Date** the date on which this Agreement is executed by the last party to do so.

**Conditions** mean these Funding Conditions.

**Confidential Information** meansinformation that is by its nature confidential and

1. is designated by a party as confidential; or
2. a party knows or ought to know is confidential,

but does not include information which is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation.

**DNP Material** means any Material provided to the Recipient by DNP.

**Electronic Communication** has the same meaning as in the *Electronic Transactions Act 1999* (Cth).

**Funds** means the amount specified in Item B(1) that is payable by DNP to the Recipient under this Agreement.

**Intellectual Property Rights** means all intellectual property rights including copyright.

**Item** means an item in the Schedule to this Agreement.

**Material** means any software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

**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 a work, and the right not to have authorship of a work falsely attributed, as defined in the *Copyright Act 1968* (Cth).

**Other Contributions** the other contributions specified in Item C(2) of the Schedule

**Project** means the Project described in Schedule 2.

**Project Material** means any document or deliverable to be prepared by the Recipient in the course of performing the Project.

**Project Outcomes** the outcomes described in Item A(3) of the Schedule.

**Project Period** means the period specified in Item A(2) of the Schedule.

**Recipient Contributions** means the recipient contributions specified in Item C(1) of the Schedule.

**Schedule** means the schedule to this Agreement.

* 1. Interpretation

If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

1. these Conditions;
2. the Schedule; and
3. documents incorporated by reference in this Agreement.

# The Schedule

**Project title: ‘[**Insert project title**]’**

**Grant number:** [Insert grant number]

**Recipient:** [Insert name and ABN of Recipient]

**Principal Investigator:** [Insert Principal Investigator Name]

## Project (clauses 1.1, 3, 9.5 and 23.1)

1. Project description

[Insert ’Project Aim’ from application form]

1. Project Period

The Project Period commences on the Commencement date and ends on [Insert end date].

1. Project Outcomes

[Insert ’Project Outcomes’ from application form.]

1. Reports

The Recipient is required to provide the following reports as per the milestones listed in Item B(2):

* Progress Report;
* Final Report;
* Financial Report; and
* Any other reports as required by DNP.

Templates for these reports will be provided.

Report should be submitted by the Recipient contact to DNPal contact via email, in the first instance.

1. Milestones

All milestones associated with this project are listed in Item B(2).

## Funds (clause 5)

1. Maximum amount of Funds

The maximum amount of Funds payable by DNP under this Agreement will be **$16,500** **(inclusive of GST)**.

1. Payment

The Funds will be paid in accordance with the following table:

| **No.** | **Milestone description** | **Milestone date** | **Amount (including GST)** |
| --- | --- | --- | --- |
|  | Signing of Agreement by DNP | Commencement Date | $8,250 |
|  | Delivery of Progress Report to DNP | TBC | Not applicable |
|  | Acceptance of Progress Report by DNP | TBC | Not applicable |
|  | Completion Date | TBC | Not applicable |
|  | Delivery of Final Report to DNP | TBC; or within 60 business days after the earlier termination of this Agreement | Not applicable |
|  | Acceptance of Final Report by DNP | TBC | $8,250 |

## Other contributions (clause 7)

1. Recipient’s Contributions
	* 1. The total amount of the Recipient’s Contributions is $[***insert amount***] (inclusive of GST) and must be paid in accordance with the following table.

| No. | Recipient’s Contributions | Due date |
| --- | --- | --- |
|  | [Include details from budget table in application] | [***Include $ value inclusive of GST***]Due over the life of the project |
|  | [Include details from budget table in application] | [***Include $ value inclusive of GST***]Due over the life of the project |
| **TOTAL (GST inclusive)** | [***Insert total amount (inc GST)***] |

## GST (clause 6.2)

Clause 6.2(b) does not apply.

## Insurance (clause 16)

The Recipient must have and maintain the following insurances as at the Commencement Date:

1. workers' compensation insurance as required by law; and
2. public liability insurance and professional indemnity or errors and omissions insurance to the value of $5 million.

## Confidential Information (clause 13)

DNP's Confidential Information: Not applicable.

Recipient's Confidential Information: Not applicable.

## Acknowledgement (clause 12)

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

1. at a minimum, in the following way:

“*The [****insert Project title****] is supported through funding from the Bush Blitz Programme, a partnership between the Australian Government, BHP Billiton Sustainable Communities and Earthwatch Australia”,* or

1. in any other form required by DNP.

## Contact details (clause 20)

|  |  |
| --- | --- |
| **DNP representative**  | Position: Grants OfficerPhone: 02 6250 9433Email: abrs.grants@environment.gov.au  |
| **DNP address for notices** | Position: ABRS Grants OfficerDirector of National ParksPostal address: GPO Box 787, Canberra, ACT, 2601Physical address: Australian National Botanic Gardens, Clunies Ross Street, Acton, ACT, 2601Email: abrs.grants@environment.gov.au |
| **Recipient representative**  | Name: [***insert name***]Position: [***insert position***]Phone: [***insert phone number*** ]Fax: [***insert facsimile number***]Email: [***insert email***] |
| **Recipient address for notices** | Name: [***insert name***]Position: [***insert position***]Postal address: [***insert postal address***]Physical address: [***insert physical address***]Fax: [***insert facsimile number***]Email: [***insert email***] |

# Execution page

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of the **DIRECTOR OF NATIONAL PARKS** by a duly authorised representative |  |  |
|  |  |  |
| Name of authorised representative (print) |  | Name of witness (print) |
| Signature of authorised representative |  | Signature of witness  |
|  |  |  |
| Date |  | Date |

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of [***insert name of institution and ABN***] by a duly authorised representative who warrants that they have the authority to sign this Agreement on behalf of [***insert name of institution]*** |  | in the presence of: |
|  |  |  |
| Name of authorised representative (print) |  | Name of witness (print) |
| Signature of authorised representative  |  | Signature of witness  |
|  |  |  |
| Date |  | Date |