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

## 1. Interpretation

In this agreement:

1.1. the following definitions apply:

- 1.1.1. “agreement” means this document and all schedules, maps, reporting templates and the like relevant to it;
- 1.1.2. “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;
- 1.1.3. “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;
- 1.1.4. “confidential information” means information that is by its nature confidential and/or:
- 1.1.4.1. is designated by a party as confidential; or
- 1.1.4.2. a party knows or ought to know is confidential; or
- 1.1.4.3. 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:
- 1.1.4.4. information which is or becomes public knowledge other than through breach of this agreement or any other confidentiality obligation;
- 1.1.5. “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);
- 1.1.6. “deliverable” means any document, piece of equipment, data listing or other creation required to be delivered to Terrain NRM in order to complete the performance of the contractor services;
- 1.1.7. “departmental funding” means funding made available to Terrain NRM under a funding agreement;
- 1.1.8. “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;
- 1.1.9. “funding agreement” means an agreement between Terrain NRM and a government department through which, Terrain NRM will acquire the monetary resources required to perform this agreement;
- 1.1.10. “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;
- 1.1.11. “intellectual property rights” means all intellectual property rights, including the following rights:
- 1.1.11.1. copyright, patents, rights in circuit layouts, trademarks, designs, trade secrets, know-how, domain names and any right to have confidential information kept confidential;

- 1.1.11.2. any application or right to apply for registration of any of the rights referred to in 1.1.11.1; and
- 1.1.11.3. all rights of a similar nature to any of the rights in 1.1.11.1 and 1.1.11.2 which may subsist in Australia or elsewhere,
- whether or not such rights are registered or capable of being registered;
- 1.1.12. “key personnel” means the representatives of the contractor specified in Schedule 1;
- 1.1.13. “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)*;
- 1.1.14. “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;
- 1.1.15. “project” means all or any part of the project for which Terrain NRM engages the contractor (the project being more particularly described in schedule two to this agreement);
- 1.1.16. “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;
- 1.1.17. “project material” means any material that is:
- 1.1.17.1. created by the contractor for the purpose of or as a result of the contractor’s performance of its obligations under this agreement; or
- 1.1.17.2. third party material;
- 1.1.18. “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 Terrain NRM to the contractor in connection with the performance of this agreement;
- 1.1.19. “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;
- 1.1.20. “Terrain NRM’s agent” means the person specified in schedule 1 or any other person substituted by Terrain NRM by notice to the contractor;
- 1.1.21. “Terrain NRM’s consent” means prior written consent (which will not be unreasonably withheld) of Terrain NRM which may be given subject to such terms and conditions as Terrain NRM may see fit to impose;
- 1.1.22. “Terrain NRM material” means any material that is property of Terrain NRM or in which, Terrain NRM holds intellectual properties rights, whether exclusively or as non-exclusive licensee, including Terrain NRM promotional material;
- 1.1.23. “Terrain NRM 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;
- 1.1.24. “third party material” means material created by a third party that is:

- 1.1.24.1. created or used for the purpose of or as a result of the contractor's performance of its obligations under this agreement; or
- 1.1.24.2. included, embodied or attached to the project material created by the contractor;
- 1.1.25. "WHS" means Workplace Health and Safety.
- 1.1.26. "workers" are classified as any person who carries out work, in any capacity for Terrain. This includes:
  - 1.1.26.1. an employee
  - 1.1.26.2. a contractor or subcontractor
  - 1.1.26.3. an employee of a contractor or subcontractor
  - 1.1.26.4. an employee of a labour hire company who has been assigned to work in the person's business or undertaking
  - 1.1.26.5. an outworker (a contractor or employee who performs work from their home or a workplace that is not a Terrain office)
  - 1.1.26.6. an apprentice or trainee
  - 1.1.26.7. a student gaining work experience
  - 1.1.26.8. a volunteer.
- 1.2. Clause headings are not to be used as an interpretation aid.
- 1.3. Words in the singular include the plural and words in the plural include the singular according to the requirements of the context.
- 1.4. A reference to a clause or a schedule is a reference to a clause or a schedule of this agreement.

## **2. Term**

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

## **3. Contractor services**

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- 3.1. 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).
- 3.2. The contractor will inform itself of Terrain NRM'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.
- 3.3. The contractor warrants that it has the qualifications, admissions and memberships (if any) required in performance of the contractor services.
- 3.4. 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).
- 3.5. Where specified in schedule(s), Terrain NRM will provide the specified assistance to the contractor.

## **4. Agreement management**

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- 4.1. Terrain NRM appoints Terrain NRM's agent as specified in schedule 1 for the purposes of this agreement.

- 4.2. The contractor will liaise with and report to Terrain NRM's agent; and attend meetings as reasonably required by Terrain NRM's agent.
- 4.3. Reports by the contractor to Terrain NRM's agent must be in writing, unless otherwise permitted by Terrain NRM.

## 5. Key personnel

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- 5.1. The contractor services will be performed by the key personnel as specified in schedule 1 except with Terrain NRM's consent. A person replacing one of the key personnel with Terrain NRM's consent will be one of the key personnel during the period of the person's engagement on the contractor services.
- 5.2. 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.
- 5.3. The contractor will not without Terrain NRM's consent allow key personnel to delegate any part of the contractor services;
- 5.4. If any of the key personnel are not available to perform any of the contractor services allocated to them the contractor will immediately –
  - 5.4.1. give notice to Terrain NRM of the circumstances; and
  - 5.4.2. if so requested by Terrain NRM, arrange for replacement of that person with a person satisfactory to Terrain NRM at no cost to Terrain NRM.
- 5.5. Terrain NRM 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 5.5, the contractor will, at no cost to Terrain NRM, promptly remove and replace the key personnel referred to in the notice with a person satisfactory to Terrain NRM.

## 6. Fees

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- 6.1. The contractor will provide the contractor services for the payment amount specified in the schedule(s).
- 6.2. The contractor will not be entitled to be paid for any part of the contractor services which Terrain NRM has certified as not having been performed in accordance with this agreement.
- 6.3. 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 Terrain NRM may, without limiting any other right it may have, defer payment for that part of the contractor services until Terrain NRM has certified that the services have been performed or performed again in accordance with this agreement.

## 7. GST

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- 7.1. Subject to clause 7.2, 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.
- 7.2. The supplier must give the recipient a tax invoice relating to the taxable supply in exchange for the payment of GST under clause 7.1.
- 7.3. 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 7.1.
- 7.4. 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.

## 8. Payment and reimbursable expenses

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- 8.1. Payments as specified in the schedule(s) may only be varied by agreement in writing and approval of Terrain NRM and will be subject to:
- 8.1.1. the continued allocation of funds by the Australian and Queensland Government to Terrain NRM;
  - 8.1.2. acceptance by Terrain NRM of any progress and final reports as outlined in the schedule(s); and
  - 8.1.3. the completion of the various activities and deliverables set out in the schedule(s) to the satisfaction of Terrain NRM.
- 8.2. Terrain NRM will not have any obligation to pay the contractor for any part of the contractor services until Terrain NRM has been given a correctly rendered invoice.
- 8.3. The contractor will be paid in accordance with the schedule(s). Invoices must be in sufficient detail to allow Terrain NRM 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 Terrain NRM agent.
- 8.4. Upon receipt of an invoice Terrain NRM may require the contractor to provide additional information to assist Terrain NRM to determine whether or not an amount is payable.
- 8.5. Terrain NRM will make payment of a correctly rendered invoice within 30 days after receipt of the invoice or, if additional information is required by Terrain NRM pursuant to clause 8.4, 30 days after receipt of the additional information.
- 8.6. For the purposes of this clause 8, a correctly rendered invoice is an invoice that has been submitted to Terrain NRM in accordance with clause 8.3; 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.
- 8.7. Terrain NRM will notify the contractor within 14 days after receipt of an invoice found not to be correctly rendered.
- 8.8. If an invoice is found, after Terrain NRM has paid the invoiced amount to the contractor, not to have been a correctly rendered invoice, Terrain NRM will:
- 8.8.1. pay any amount owed to the contractor within 30 days of receipt of a correctly rendered invoice or, if additional information is required by Terrain NRM pursuant to clause 8.4, 30 days after receipt of the additional information;
  - 8.8.2. deduct any amount owed to Terrain NRM 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 Terrain NRM.
- 8.9. Payment of money to the contractor will not constitute an admission by Terrain NRM that any of the contractor services have been performed in accordance with this agreement.
- 8.10. The contractor may include in an invoice under clause 8 a claim, and be paid, for expenses described in the schedule(s) after those expenses have been incurred by the contractor. Terrain NRM will only reimburse the contractor for other expenses that have been incurred by the contractor with Terrain NRM's prior consent.

## 9. No agency

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

## 10. No partnership or joint venture

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

## 11. Conflict of interest

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- 11.1. 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 Terrain NRM) the contractor will immediately give notice of the conflict of interest, or the risk of it, to Terrain NRM.
- 11.2. 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 Terrain NRM 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 Terrain NRM.
- 11.3. If Terrain NRM is given notice of a conflict of interest pursuant to clause 11.1 or 11.2, Terrain NRM may proceed in accordance with clauses 16 and 17 to terminate this agreement.

## 12. Project material and intellectual property rights

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- 12.1. All intellectual property rights in the project material created by the contractor will vest, upon creation, in the contractor.
- 12.2. 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 Terrain NRM (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.
- 12.3. 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.
- 12.4. If the contractor cannot obtain the licenses as described in clause 13.2 and 13.3 for any third party material, the contractor must:
  - 12.4.1. notify Terrain NRM of the best alternative licence terms for that third party material and not use that third party material unless Terrain NRM consents to those terms; and
  - 12.4.2. if Terrain NRM does not consent to those terms, notify Terrain NRM of any comparable third party material and comply with its obligations under this clause 12.4 in respect of comparable third party material.
- 12.5. If any project material is produced or reproduced in electronic format, the contractor must deliver it in a format approved by Terrain NRM. Unless otherwise stated, Microsoft Office documents (Word, Excel, Access, PowerPoint) are acceptable.
- 12.6. 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, Terrain NRM 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).

- 12.7. On termination or expiry of this agreement, or earlier if requested by Terrain NRM, the contractor must promptly deliver a copy of all project material then in existence to Terrain NRM in an agreed format, or as otherwise directed by Terrain NRM. Terrain NRM is irrevocably authorised to release such project material, or copies of it, to the government department.
- 12.8. 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.
- 12.9. The contractor further warrants that the government department, Terrain NRM 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 (excluding secret and sacred material) in a manner consistent with the licences granted, or to be granted, to Terrain NRM under this clause 12.
- 12.10. Intellectual property rights and title to Terrain NRM material remains vested at all times in Terrain NRM, as the case may be. Terrain NRM, 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 Terrain NRM material solely for the purposes of the project. The contractor must ensure that all Terrain NRM material is used strictly in accordance with any conditions or restrictions specified by Terrain NRM (as appropriate) from time to time.
- 12.11. To the extent permitted by law, the contractor must, where requested by the government department or Terrain NRM in writing, use best endeavours to ensure that each person who:
- 12.11.1. has been involved in the performance of the project; or
- 12.11.2. Is or will be the author of any project material (including the reports) that is to be licensed in accordance with this clause 12,
- provides a written consent to the government department and/or Terrain NRM permitting the government department and/or Terrain NRM (including their personnel) to conduct any act which would otherwise infringe the moral rights held by that person. The consent provided under this clause 12.11 must be consistent with Terrain NRM being able to conduct any act it is licensed to conduct under this agreement.

## 13. Confidential information

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- 13.1. Subject to clause 13.2, a party must not, without the written consent of the other party, disclose any confidential information of the other party to a third party.
- 13.2. The obligations of the parties under clause 13.1 will not be taken to have been breached to the extent that confidential information is:
- 13.2.1. 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;
- 13.2.2. 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;
- 13.2.3. authorised or required by law, including under this agreement, to be disclosed; or
- 13.2.4. in the public domain otherwise than due to breach of this clause 13.
- 13.3. Where a party discloses confidential information to another person pursuant to clause 13.2.1 or 13.2.2, the disclosing party must:
- 13.3.1. notify the receiving person that the information is confidential information; and
- 13.3.2. not provide the information unless the receiving person agrees to keep that information confidential.



- 13.4. Nothing in this clause 13 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:
- 13.4.1. 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;
  - 13.4.2. comply with each of the:
    - 13.4.2.1. Information Privacy Principles prescribed under schedule three of the *Information Privacy Act 2009 (Qld)*, if applicable; and
    - 13.4.2.2. the Australian Privacy Principles, as if the contractor were an “Agency” as described under schedule one of the *Privacy Act 1988*,  
as applicable;
  - 13.4.3. 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 13 places on the contractor; and
  - 13.4.4. otherwise comply with the *Information Privacy Act 2009* (if applicable) and the *Privacy Act 2008*, as applicable.
- 13.5. 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.

## 14. Acknowledgement and promotion

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- 14.1. The contractor must acknowledge, in the form reasonably required by Terrain NRM (from time to time), the support it has received from the government department (whether directly or through Terrain NRM) and Terrain NRM:
- 14.1.1. in all publications, promotional and advertising materials related to or developed as a result of the project;
  - 14.1.2. on any signs or plaques displayed at the location where the project is undertaken;
  - 14.1.3. in all activities undertaken by it or on its behalf in relation to the project;
  - 14.1.4. if requested by the government department or Terrain NRM, with any products, processes or inventions developed as a result of the project;
  - 14.1.5. at any project event; and
  - 14.1.6. otherwise at the times and in the manner as the government department or Terrain NRM directs from time to time.
- 14.2. The contractor must submit to Terrain NRM and, if required by Terrain NRM, the government department 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 Terrain NRM and, if applicable, the government department.
- 14.3. The contractor must ensure that any material containing the required acknowledgement (under clause 14.1) does not include any immoral, misleading, offensive, political or defamatory material.

- 14.4. The contractor must:
- 14.4.1. invite representatives of the government department or Terrain NRM to all project events; and
  - 14.4.2. ensure that the official proceedings in each project event allows for a government department and Terrain NRM representative to speak.
- 14.5. If an invitation under clause 14.4.1 is accepted by either or both the government department and Terrain NRM, the contractor must, as soon as practicable, notify the government department and Terrain NRM in writing of any change to the project event.
- 14.6. The contractor must notify Terrain NRM, 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 Terrain NRM.
- 14.7. The contractor acknowledges that intellectual property rights in Terrain NRM promotional material vests in Terrain NRM. Terrain NRM will be at liberty to make use of Terrain NRM promotional material, without the consent or authority of the contractor, as it deems appropriate. To avoid doubt:
- 14.7.1. Terrain NRM may make use of Terrain NRM promotional material for promotional purposes and it does not matter how Terrain NRM uses that material (meaning, for example, that Terrain NRM promotional material may be utilised in printed form, on the Terrain NRM website or via electronic social media); and
  - 14.7.2. it is the responsibility of the contractor to inform Terrain NRM of any cultural or other reason why it would prefer if Terrain NRM should not make use of Terrain NRM promotional material for a particular purpose or in a particular manner.

The contractor must ensure that none of the key personnel or any other representative or employee of the contractor raise any claim or objection to the use of Terrain NRM promotional material by Terrain NRM in a way which is consistent with this clause.

## 15. Security and access

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- 15.1. Both Terrain NRM 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.
- 15.2. The contractor will give Terrain NRM's agent, and any other persons authorised in writing by Terrain NRM, 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.

## 16. Suspension of services

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- 16.1. Terrain NRM 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 Terrain NRM because of any change in the nature, scope or timing of the contractor services to be provided.
- 16.2. Terrain NRM may by reasonable notice require the contractor to recommence work on all or any part of the suspended contractor services.
- 16.3. Where the contractor is required to suspend contractor services pursuant to clause 15.1:
  - 16.3.1. the contractor and Terrain NRM 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 6); and

- 16.3.2. any previously agreed completion dates for the contractor services will be postponed by a period equivalent to the duration of the suspension.
- 16.4. Terrain NRM 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 15.1. If the contractor and Terrain NRM 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 24.
- 16.5. If a dispute referred to in clause 25.3 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.
- 16.6. Terrain NRM may suspend contractor services, where Terrain is of the opinion that the contractor is non-compliant with WHS policies, procedures or the *WHS Act 2011*.
- 16.7. During periods of suspension under clause 16.6, Terrain shall not be required to make any payment whatsoever to the contractor.

## 17. Variation

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- 17.1. Terrain NRM may by notice require the contractor to vary the contractor services in nature, scope or timing.
- 17.2. Where Terrain NRM 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.
- 17.3. Any variation must not affect or otherwise impact upon clause 27 of this agreement (and to the extent that it is applicable to clause 27, clause 16 of this agreement).
- 17.4. Failing agreement, the fees and time for completion will be determined pursuant to clause 25. The contractor will not commence work on the variation to the contractor services without Terrain NRM's consent and the written agreement of both parties to the varied services, fees and time for completion.

## 18. Payment for reduced contractor services

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- 18.1. In the event of a reduction in the contractor services Terrain NRM will pay the contractor –
  - 18.1.1. fees determined in accordance with clause 17.2;
  - 18.1.2. reasonable costs incurred by the contractor directly attributable to the reduction in the contractor services; and
  - 18.1.3. compensation for reasonable set up costs incurred by the contractor.
- 18.2. Where the fee for the contractor services is a lump sum, Terrain NRM will not be liable to pay any amounts to the contractor pursuant to clause 18.1 where it would result in amounts greater than the fees and expenses specified in the schedule(s) being paid to the contractor.
- 18.3. Where fees are on a schedule or rates basis the rates for the reduced contractor services will be subject to negotiation and agreement between Terrain NRM and the contractor and failing agreement, resolved pursuant to clause 25.
- 18.4. The contractor will not be entitled to compensation for loss of prospective profits.

## 19. Default of the contractor and termination

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- 19.1. If the contractor:
- 19.1.1. fails to comply with any of the terms and conditions of this agreement;
  - 19.1.2. does or fails to do any act or omission which, if undertaken or not undertaken by Terrain NRM, would be in breach of the funding agreement, provided that Terrain NRM 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;
  - 19.1.3. fails to comply with a direction of Terrain NRM's agent given in accordance with this agreement; or
  - 19.1.4. enters into any arrangement or proceedings for the purpose of insolvency administration or is placed under official management,
- Terrain NRM may suspend payments under this agreement and require the contractor to show cause why the agreement should not be terminated.
- 19.2. If Terrain NRM suspends payments pursuant to clause 19.1, Terrain NRM must:
- 19.2.1. give the contractor notice of the suspension, specifying the reason; and
  - 19.2.2. require the contractor to show cause within 14 days of the notice why the agreement should not be terminated.
- 19.3. If the contractor fails to show cause within the period specified in the notice to the satisfaction of Terrain NRM, Terrain NRM may without prejudice to any other rights, terminate the agreement by notice to the contractor as of the date specified in the notice.
- 19.4. If the contractor:
- 19.4.1. abandons or refuses to proceed with the contractor services;
  - 19.4.2. fails to comply with clause 11 (Conflict of interest);
  - 19.4.3. fails to comply with clause 31 (Compliance with laws);
  - 19.4.4. fails to comply with clause 21 (Insurance); or
  - 19.4.5. fails to comply with clause 33 (Workplace Health and Safety)
- Terrain NRM may terminate this agreement by notice to the contractor as of the date specified in the notice.
- 19.5. Upon termination of this agreement pursuant to clause 19.3 or clause 19.4, 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.

## 20. Indemnities

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- 20.1. The contractor will be liable for loss or damage (including personal injury whether or not resulting in death) suffered by Terrain NRM, 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.
- 20.2. The contractor releases and indemnifies Terrain NRM 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:

- 20.2.1. any wilful or negligent act or omission of the contractor;
  - 20.2.2. any unlawful or negligent act or omission of the visitors, invitees or licensees of the contractor;
  - 20.2.3. 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 Terrain NRM.
- 20.3. To the extent that the contractor fails to carry out the obligations specified in Workplace Health and Safety legislation the contractor undertakes to indemnify Terrain 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 Workplace Health and Safety requirements while carrying out any of the contracted services with relation to this agreement.

## **21. Insurance**

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- 21.1. 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.
- 21.2. The contractor must effect in connection with the provision of the contractor services, on terms and conditions no less favourable to Terrain NRM than –
- 21.2.1. public liability insurance; \$20,000,000;
  - 21.2.2. if applicable, professional indemnity insurance. \$1,000,000.00 for Individual and \$2,000,000.00 for Aggregate claims.
- 21.3. The insurances must be effected with an insurer, include terms and conditions acceptable to Terrain NRM 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.
- 21.4. The contractor must upon request in writing, produce evidence to Terrain NRM that the policy has been maintained.
- 21.5. The contractor will upon request in writing at any time by Terrain NRM, produce evidence to Terrain NRM that the insurances required by this clause 21 have been effected and maintained.

## **22. Unavoidable delay**

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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 –

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

## **23. No Subcontracting**

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- 23.1. The contractor will not subcontract any part of the contractor services without Terrain NRM's consent.
- 23.2. Any consent given by Terrain NRM for the contractor to subcontract:
- 23.2.1. will not operate as an authority to transfer responsibility to the subcontractor;
  - 23.2.2. will not relieve the contractor from any of its liabilities or obligations under this agreement; and

- 23.2.3. will be conditional upon the consent of the government department under any applicable funding agreement (and clauses 27.2.2 and 27.2.3 will apply, save that all costs involved in the application for and/or the granting of consent will be paid by the contractor).
- 23.3. The contractor will not assign this agreement or any of the benefits under this agreement without Terrain NRM's consent.
- 23.4. 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.

## **24. Further assistance**

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

## **25. Resolution of disputes**

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- 25.1. Any dispute between Terrain NRM 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.
- 25.2. 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).
- 25.3. For the purposes of this clause 25, a dispute will have arisen between the parties when a party gives notice to that effect to the other party.

## **26. Clauses to survive termination**

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- 26.1. The following clauses will survive termination or expiration of this agreement:
  - 26.1.1. clause 12 (project material);
  - 26.1.2. clause 13 (confidential information);
  - 26.1.3. clause 21.4 (evidence of insurance);
  - 26.1.4. clause 24 (further assistance); and
  - 26.1.5. clause 26.2.
- 26.2. The contractor must, for a period of seven years following the date of expiration or earlier determination of this agreement:
  - 26.2.1. maintain all books and records (including financial records) in connection with this agreement and the project;
  - 26.2.2. allow Terrain NRM (and its representatives) access to and copies of all such books and records.

## **27. Funding**

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- 27.1. The contractor acknowledges that:
  - 27.1.1. the ability of Terrain NRM to perform this contract is, in certain respects, conditional on the availability of departmental funding;

- 27.1.2. departmental funding may be available to Terrain NRM under funding agreement with a government department and where available, will be subject to the terms of any relevant funding agreement; and
  - 27.1.3. the appointment of the contractor under clause 4 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.
- 27.2. If, in the terms of a funding agreement, the consent of a government department is required to the appointment of the contractor under clause 4:
- 27.2.1. this agreement is subject to and conditional upon the granting of that consent (and the parties acknowledge that conditional consent is not consent unless Terrain NRM notifies the contractor in writing that consent has been granted);
  - 27.2.2. Terrain NRM will apply to the relevant government department for consent at its own cost; and
  - 27.2.3. the contractor will promptly provide all documents and materials and do so acts and things as Terrain NRM reasonably requires (or which is required in the terms of the relevant funding agreement) to procure the granting of consent.
- 27.3. 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 27.2.1 and:
- 27.3.1. any consent or direction of Terrain NRM in relation to the performance of any of the contractor services; and/or
  - 27.3.2. conduct of any description on the part of Terrain NRM, including the payment of money under clause 6,
- will not constitute a waiver of clause 27.2.1.
- 27.4. If at any time following the commencement date, funding under a funding agreement is:
- 27.4.1. suspended for any reason (other than default by Terrain NRM under the funding agreement brought about through circumstances beyond its control), Terrain NRM 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 16 will apply, save that clauses 16.3.1 and 16.4 will have no application;
  - 27.4.2. terminated for any reason (other than default by Terrain NRM under the funding agreement brought about through circumstances beyond its control), Terrain NRM 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.
- 27.5. If at any time following the commencement date, funding under a funding agreement is:
- 27.5.1. suspended and clause 27.4.1 does not apply, Terrain NRM may, by notice in writing given to the contractor, suspend the performance of this agreement with immediate effect and clause 16 will apply; and
  - 27.5.2. terminated for any reason and clause 27.4.2 does not apply, Terrain NRM may, by notice in writing given to the contractor, terminate this agreement with immediate effect and clause 16.3.1 will apply as if that provision catered for termination of this agreement as opposed to suspension.

## 28. Execution by facsimile and counterparts

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- 28.1. 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.
- 28.2. 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.

## 29. Notices

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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 –

- 29.1. 2 days after deposit in the mail with postage prepaid;
- 29.2. immediately upon delivery by hand;
- 29.3. 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.
- 29.4. 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.

## 30. Waiver

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

## 31. Governing law and compliance with laws

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- 31.1. 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.
- 31.2. The contractor must comply with all relevant laws and the requirements of any statutory authority in performing the contractor services.

## 32. Joint and several liability

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Where the proponent consists of two or more persons:

- 32.1. obligations bind each of them severally and all of them jointly; and
- 32.2. rights benefit each of them severally and all of them jointly.

## 33. Workplace Health & Safety

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Terrain NRM 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 Terrain's behalf will at all times identify and exercise all necessary precautions for the health and safety of all persons including contractor employees, Terrain 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.

- 33.1. The contractor will ensure familiarisation to all work health, safety and environmental policies, procedures or measures implemented or adopted by Terrain 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.
- 33.2. 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.
- 33.3. Non-Conformance - If during the performance of this contract, Terrain informs the contractor that it is the opinion of the Terrain that the contractor is:
  - 33.3.1. Not conducting work in compliance with the contractor's Health and Safety Plan and/or work method statement, the Environment Risk Mitigation Plan, WHS management procedures, relevant legislation or WHS procedures provided by the Terrain NRM from time to time, or
  - 33.3.2. 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. Terrain may direct the contractor to suspend the work until such time as the contractor satisfies Terrain that the work will be resumed in conformity with applicable WHS provisions.

- 33.4. During periods of suspension referred to above, Terrain shall not be required to make any payment whatsoever to the contractor (refer clause 16.6) . 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, Terrain may terminate the work forthwith, without further obligation to the contractor (refer clause 19.4). In this event, Terrain's liability shall be limited to payment for the work performed and costs incurred by the contractor up to the time of termination.

Terrain NRM 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 Terrain 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*.

## **34. Workplace Gender Equality Act 2012**

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Terrain NRM 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. Terrain NRM at its sole discretion can request from the contractor the provision of the following information:

- 34.1. a statutory declaration by one of its officers that the WGE Act does not apply to the contractor; or
- 34.2. 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.

## **35. Indigenous employment**

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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.

## 36. Entire agreement

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