



Australian Government

Fisheries Research and Development Corporation

Project Agreement

for the «ProjectTitle»,

Project Number: «ProjectID»

Fisheries Research and Development Corporation

ABN 74 311 094 913

«ResearchProviderLegalName»

ABN «ResearchProviderABN»

PROJECT AGREEMENT

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PARTIES

Fisheries Research and Development Corporation (ABN 74 311 094 913) a body incorporated in accordance with the Primary Industries Research and Development Act 1989 (Cth) (**FRDC**).

«**ResearchProviderLegalName**» (ABN «**ResearchProviderABN**»),
«**ResearchProviderMailingAddress**» (**Research Provider**).

RECITALS

- A. The FRDC's mission is to maximise economic, environmental and social benefits for its stakeholders through effective investment and partnership in research and development (**R&D**).
- B. To achieve this mission, the FRDC is responsible to its stakeholders to:
 - i. plan, invest in and manage fisheries R&D throughout Australia; and
 - ii. facilitate the dissemination, adoption and commercialisation of the results of fisheries R&D.
- C. The Parties wish to enter into an agreement for the conduct of the Project by the Research Provider on the following terms and conditions.

OPERATIVE PROVISIONS

PART 1 - DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

The following definitions apply in the Agreement.

Adjustment Note has the same meaning as in the GST Law.

Agreement means this agreement including the Schedules and any annexures, as amended from time to time.

ANZLIC means the Spatial Information Council of Australia and New Zealand (formerly known as the Australia New Zealand Land Information Council).

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Auditor-General means the Auditor-General of the Commonwealth of Australia, as appointed under the *Auditor-General Act 1997* (Cth).

Australian Information Commissioner means the Australian Information Commissioner, as appointed under the *Australian Information Commissioner Act 2010* (Cth)

Background IP means Intellectual Property that is or forms part of or is embodied within Material provided or used within a Project which was created by the relevant Party or any Third Party prior to, or separately to, undertaking the Project.

Business Day means any day of the week other than Saturday, Sunday or a public holiday in the Australian Capital Territory.

Capital Item means any item that is identified in Schedule 2 – R&D Funding Application as a Capital Item.

Commercialise means:

- (a) *in the case of a product:*
 - (i) to use, exploit, make, sell, hire, or otherwise dispose of;
 - (ii) to offer to make, sell, hire or otherwise dispose of; or
 - (iii) to import it or keep it for the purpose of doing any of the actions referred to in paragraph (a)(i) or (a)(ii);
- (b) *in the case of a method or process, to do any of the actions in paragraph (a) in respect of the method or process, or a product resulting from the method or process; and*
- (c) *to licence or otherwise entitle any third party to do any of the actions in paragraphs (a) or (b),*
for profit or commercial gain.

Commercialisation Costs means the reasonable direct or actual out of pocket costs incurred by the Commercialisation Party:

- (a) *to file, prosecute, maintain and defend Intellectual Property protection for any Project Material;*
- (b) *to obtain external advice in relation to business development, legal, and accounting issues reasonably necessary to Commercialise any Project Material;*

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- (c) *to undertake any Commercialisation activity deemed by it to be reasonably necessary to Commercialise any Project Material under the terms of this Agreement provided that such costs are agreed with the other Party prior to expenditure;*
- (d) *to comply with the obligations in this Agreement regarding Commercialisation including preparing a Commercialisation plan and reporting to the other Party on Commercialisation activities; or*
- (e) *as agreed in writing by the Parties.*

Commercialisation Party means the Research Provider, unless otherwise specified in the Special Conditions.

Commonwealth means the Commonwealth of Australia.

Confidential Information means, information, including technical and commercial information, which is disclosed by one Party (Disclosing Party) to the other Party (Receiving Party) for the purposes of the Agreement, and which is:

- (a) information which is properly designated as 'confidential' by or on behalf of the Disclosing Party;
- (b) information which is disclosed in circumstances of confidence;
- (c) information that the Receiving Party knows, or ought to know, is confidential, including any information the disclosure of which could prejudice the registration, Commercialisation or value of any Project Material or Project Material IP;

and including

- (d) *FRDC Confidential Information; and/or*
- (e) *Research Provider Confidential Information;*

but excluding Excluded Information.

Conflict of Interest means circumstances in which, due to a direct or indirect relationship (commercial or otherwise and including any potential relationship or opportunity or inducement and any such situation which comes into existence after the commencement of this document) involving the Research Provider or its personnel and another person or entity, the Research Provider is unable to discharge its obligations under this document in an objective and independent manner to the best of its ability.

Contributing Student means a person who:

- (a) *is enrolled in a higher degree program at a self-accrediting higher education institution in Australia, or a private education provider accredited by a State or Territory Government;*

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(b) *is to undertake work in relation to, or otherwise participate in, any part of the Project; and*

(c) *wishes to use, reproduce or adapt Project Material IP in developing a Student Thesis.*

Corresponding WHS Law has the same meaning as in Regulation 6A of the WHS Regulations

Custodian means an entity:

(a) *recognised by ANZLIC as a custodian of a fundamental dataset, or a component of that dataset;*

(b) *listed on the FRDC website as a Custodian for the purposes of the Agreement; or*

(c) *the FRDC otherwise agrees in writing is a Custodian for the purposes of the Agreement.*

Deliverables means:

(a) *the Milestone Progress Reports specified in Schedule 1 – Schedule of Payments;*

(b) *the Final Financial Report; and*

(c) *the Final Report.*

Excluded Information means any information that:

(a) *is or becomes public knowledge other than by breach of the Agreement or any other confidentiality obligations; or*

(b) *has been independently developed by a Party or lawfully acquired by a Party from a person who to the Party's knowledge at the time of acquisition owed no duty of confidence in relation to that information as established by written evidence.*

Final Financial Report means the final financial report to be delivered under the Agreement.

Final Report means the final report to be delivered under the Agreement.

Financial Year means a full year ending 30 June.

FRDC Background IP means the IP Rights in all information and Materials disclosed or provided by the FRDC (whether before or after the date of the Agreement) to the Research Provider for the purpose of the Project.

FRDC Confidential Information means information that:

(a) *is designated in Schedule 4 – Confidential Information as confidential to the FRDC;*

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- (b) *the FRDC notifies the Research Provider in writing as confidential to the FRDC; or*
- (c) *the Research Provider becomes aware of that is by its nature confidential and the Research Provider knows or ought to know is confidential.*

but does not include Excluded Information.

FRDC Funds means the FRDC payments specified in Schedule 1 – Schedule of Payments.

FRDC Income means:

- (a) *all income (excluding GST) arising from the Commercialisation of:*
 - (i) FRDC Materials; or
 - (ii) any Capital Items;other than Commercialisation in accordance with **clauses 35.1(b)** or **35.2**; and
- (b) *any income specifically identified as FRDC Income in Schedule 2 – R&D Funding Application,*
but does not include costs directly incurred by the Research Provider in order to derive the income.

FRDC Information means all information relating to the FRDC, its operations, facilities, customers, personnel, assets or programs, whether or not it was generated or processed by, or on behalf of, the FRDC.

FRDC Material means any Material provided by the FRDC to the Research Provider for the purposes of the Agreement, or copies or derivatives of Material so provided.

FRDC Related Personal Information means Personal Information about persons who are or have been officers, employees, contractors or clients of the FRDC or users of FRDC Information.

FRDC Standards means the FRDC's current design and content standards set out on the FRDC web site from time to time, including in relation to:

- (a) *the Milestone Progress Report;*
- (b) *financial reports;*
- (c) *the Final Report;*
- (d) *copyright notices; and*
- (e) *other matters for which the FRDC determines a standard.*

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FRDC Third Party Funder means a third party listed in Schedule 7 – FRDC Third Party Funders as a party that has contributed, or will contribute, Third Party Resources to the FRDC for the purposes of the Project.

Freedom of Information Commissioner means the Freedom of Information Commissioner, as appointed under the *Australian Information Commissioner Act 2010* (Cth)

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any regulations made pursuant to that Act.

Income means FRDC Income and Project Material Income.

Income Share means 50% or such other proportion specified in the Special Conditions or agreed between the Parties in accordance with **clause 36.2**.

Intellectual Property Rights or **IP Rights** means all present and future rights conferred by statute, common law or equity in, or in relation to, copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.

These rights include:

- (a) *all rights in all applications to register these rights;*
- (b) *all renewals and extensions of these rights; and*
- (c) *all rights in the nature of these rights,*

but do not include Moral Rights.

Internal Research means R&D conducted by a Party (or, where a Third Party has been appointed by the FRDC pursuant to **clauses 59.7** or **60.7(d)** to complete the Project, by that Third Party) for the purpose of performing its ordinary functions and carrying out its core business but does not include R&D being carried out for any Commercialisation of the whole or part of the Project Material.

IP Register means a register of Intellectual Property as described in **clause 19**.

Listed Marine Species has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

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Listed Threatened Species has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Loss or **Losses** means any loss, damage (whether direct or indirect), liability, cost or expense including legal expenses on a solicitor and own client basis.

Major Capital Item means a Capital Item that:

- (a) *cost more than \$20,000 when purchased; or*
- (b) *has a depreciated value (determined at a reasonable rate of depreciation nominated by the FRDC or as otherwise agreed by the Parties) that at the Project Completion Date is \$5,000 or greater.*

Material means all material including data, photographs, equipment, organisms (living or dead), product hardware, software, facilities and premises.

Milestone means a milestone specified in Schedule 1 – Schedule of Payments.

Milestone Progress Report means a report on the Research Provider's progress in achieving a Milestone.

Moral Rights means all present and future rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, as defined by and granted under the *Copyright Act 1968* (Cth), and any similar rights existing under foreign laws anywhere in the world.

Party means the FRDC or the Research Provider, as the context requires.

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

Principal Investigator means the person identified in Schedule 2 – R&D Funding Application as responsible for supervision and administration of the Project on behalf of the Research Provider and includes any person subsequently approved in writing by the FRDC to replace that person.

Privacy Commissioner means the Privacy Commissioner, as appointed under the *Australian Information Commissioner Act 2010* (Cth).

Project means the R&D project described in Schedule 2 – R&D Funding Application and includes the preparation, presentation and delivery of Project Material.

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Project Completion Date means the date on which the Research Provider is required to complete the final Milestone as specified in Schedule 1 – Schedule of Payments.

Project Data means the data sets listed in Schedule 6 – Project Data, but does not include Confidential Information.

Project Material means all Material created, generated, developed or collected by or for the Research Provider or required to be created, generated, developed or collected by the Research Provider as part of, or in the course of performing the Project or by any use of FRDC Funds, including but not limited to:

- (a) *the project material listed in Schedule 2 – R&D Funding Application;*
- (b) *all Deliverables;*
- (c) *Project Data; and*
- (d) *any other report the Research Provider must prepare under the Agreement.*

Project Material Income means all income (excluding FRDC Income and GST) arising from the Commercialisation of the Project Material or Project Material IP, after deduction of Commercialisation Costs.

Project Material IP means:

- (a) *all IP Rights in the Project Material; and*
- (b) *all other IP Rights created, generated or developed as part of or in the course of performance of the Project or by any use of FRDC Funds;*

but does not include:

- (c) *FRDC Background IP; or*
- (d) *Research Provider Background IP (or their improvements); or*
- (e) *third party IP Rights in existence prior to the creation or development of the Project Material.*

Protected Species has the same meaning as in the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth) (Dictionary and "Schedule 12 - Protected species" of those regulations) made pursuant to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Research Provider includes Research Provider Personnel, where the context so requires.

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Research Provider Background IP means all IP Rights that the Research Provider has the right to apply to the Project and which the Research Provider has incorporated into Project Material.

Research Provider Confidential Information means information that:

- (a) *is designated in Schedule 4 – Confidential Information as confidential to the Research Provider; or*
- (b) *the Research Provider notifies the FRDC in writing as confidential to the Research Provider,*
- (c) *the FRDC becomes aware of that is by its nature confidential and the FRDC knows or ought to know is confidential,*

but does not include Excluded Information.

Research Provider Personnel means:

- (a) *officers, employees, contractors and agents of the Research Provider; and*
- (b) *students (including Contributing Students) participating in the Project.*

Research Provider Resources means any financial or other contributions provided by the Research Provider in relation to the conduct of the Project as set out in Schedule 2 – R&D Funding Application.

Special Conditions means the special conditions (if any) set out in Schedule 3 – Special Conditions.

Start Date means the date upon which this Agreement is signed.

Student Thesis means a thesis by a Contributing Student that:

- (a) *is required to be examined for the Contributing Student to complete academic requirements for the award of a higher degree; and*
- (b) *contains Project Material or Project Material IP, or otherwise refers to Project Material or Project Material IP.*

Tax Invoice has the same meaning as in the GST Law.

Taxable Supply has the same meaning as in the GST Law.

Term means the period referred to in **clause 56.1**.

Third Party means any entity or person that is not a party to the Agreement.

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Third Party IP means all Intellectual Property that is or forms part of or is embodied within Material provided or used within a Project which is owned or licensed by a Third Party.

Third Party Resources means any financial or other contributions including but not limited to Third Party IP and Background IP provided by a Third Party in relation to the conduct of the Project as set out in Schedule 2 – R&D Funding Application, whether obtained by the FRDC or the Research Provider.

WHS Law means the *Work Health and Safety Act 2011* (Cth) and the WHS Regulations.

WHS Regulations means the *Work Health and Safety Regulations 2011* (Cth)

2. RULES FOR INTERPRETING THE AGREEMENT

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting the Agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) *A reference to:*
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a Party to the Agreement or to any other document or agreement includes a permitted substitute or a permitted assign of that Party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) monetary units are references to units of Australian currency, unless otherwise stated; and
 - (vi) any thing (including a right, obligation or concept) includes each part of it.
- (b) *A singular word includes the plural, and vice versa.*
- (c) *A word that suggests one gender includes the other gender.*

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- (d) *If a word is defined, another part of speech has a corresponding meaning.*
- (e) *If an example is given of any thing, the example does not limit the scope of that thing.*
- (f) *The word "agreement" includes an undertaking or other binding arrangement or understanding, whether or not in writing.*
- (g) *No rule of construction will apply in the interpretation of the Agreement to the disadvantage of one Party on the basis that that Party put forward or drafted the Agreement or any part of it.*
- (h) *A reference to a matter being to the knowledge of a person means that the matter is to the best of the knowledge and belief of that person after proper enquiry, and includes enquiries that a reasonable person would be prompted to make by reason of knowledge of a fact.*
- (i) *For the purposes of warranties with respect to IP Rights, a thorough search of the following databases maintained by IP Australia and (where reasonably necessary in the context of the Project) the World Intellectual Property Organization (WIPO) satisfies the requirement that the Research Provider make "proper enquiries":*
 - (i) patents databases;
 - (ii) trade marks databases; and
 - (iii) designs databases.
- (j) *Words and expressions used in the Agreement that are defined in the GST Law have the same meaning as in the GST Law, unless the context otherwise provides.*

3. BUSINESS DAYS

If the day on or by which a person must do something under this document is not a Business Day, the person must do it on or by the next Business Day.

4. INCONSISTENCY

Unless otherwise agreed by the Parties in writing, if there is any inconsistency between **clauses 1 to 81** of the Agreement (these terms and conditions) and the Schedules, then the documents will prevail in the following order:

1. Schedule 3 – Special Conditions;
2. **clauses 1 to 81** of the Agreement (these terms and conditions); and
3. the remaining Schedules,

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to the extent of the inconsistency.

5. GRANT OF APPROVAL

The grant of any approval or consent by the FRDC under the Agreement will not relieve the Research Provider from any liability under the Agreement.

PART 2 – CONDUCT OF THE PROJECT

6. PERFORMANCE

6.1 The Research Provider must conduct the Project on the terms and conditions of the Agreement.

6.2 The Research Provider must:

- (a) *conduct the Project:*
 - (i) in accordance with Schedule 2 – R&D Funding Application;
 - (ii) diligently, to a high scientific standard, using professional care and skill, and in accordance with accepted scientific, ethical, business and financial principles; and
 - (iii) with a view to accomplishing the objectives of the Project and achieving the Milestones efficiently and expeditiously;
- (b) *meet, and report against, all Milestones specified in Schedule 1 – Schedule of Payments;*
- (c) *appoint Personnel with the necessary skills, qualifications and experience to undertake and perform the Project;*
- (d) *effectively supervise the activities of the Principal Investigator and all Research Provider Personnel in the performance of the Project;*
- (e) *apply appropriate equipment, facilities and Research Provider Background IP to conduct the Project;*
- (f) *use each Capital Item only in accordance with the Agreement;*
- (g) *comply with any Special Conditions;*
- (h) *comply with any reasonable direction of the FRDC;*
- (i) *respond promptly in writing to any reasonable queries by the FRDC in relation to the Project; and*

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- (j) *without limiting **clause 11**, notify the FRDC, as soon as possible, but no later than 20 Business Days after it becomes aware of an event to which this clause **6.2 (j)** relates, if an act or omission of the Research Provider or Research Provider Personnel causes, or is likely to cause, a problem or delay that has, or is likely to have, a material impact on the Research Provider's ability to complete the Project.*

7. MILESTONES, DELIVERABLES AND TIMING

7.1 The Research Provider must:

- (a) *provide all Deliverables to the FRDC;*
- (b) *achieve all Milestones; and*
- (c) *otherwise complete the Project,*

within the timeframes specified in Schedule 1 – Schedule of Payments.

8. LEGAL, POLICY AND ETHICAL REQUIREMENTS

8.1 The Research Provider must:

- (a) *not knowingly infringe the IP Rights of any person in conducting the Project; and*
- (b) *ensure that the Project is conducted in accordance with all applicable laws.*

8.2 The Research Provider must:

- (a) *where the Project involves research being conducted on humans or animals:*
 - (i) *comply with all applicable codes in relation to humans or animals, adopted by the National Health and Medical Research Council or the relevant institution ethics committee;*
 - (ii) *provide to the FRDC upon request, evidence that the Project has been approved by the National Health and Medical Research Council or the relevant institution ethics committee; and*
 - (iii) *notify the FRDC of the death or serious injury to any marine animal that is a member of:*
 - (A) *a Listed Threatened Species;*
 - (B) *a Listed Marine Species;*
 - (C) *a Protected Species; or*

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- (D) any other species that is likely to attract adverse media scrutiny or comment,
within 10 days after becoming aware of such death or serious injury;
- (b) *where the Project involves the use of recombinant DNA techniques:*
 - (i) comply with the principles and guidelines on the use of recombinant DNA techniques approved by the Australian Government's Genetic Manipulation Advisory Committee or any equivalent or successor body; and
 - (ii) provide to the FRDC upon request, evidence that the Project has been approved by the relevant institution ethics or biosafety committee;
- (c) *where the Project involves the use of ionising radiation:*
 - (i) ensure that persons performing procedures involving ionising radiation are appropriately trained and hold a relevant current licence from the relevant State, Territory or Commonwealth authority; and
 - (ii) provide to the FRDC upon request, evidence that the Project has been approved by the National Health and Medical Research Council or the relevant institution ethics committee;
- (d) *where the Project involves the use of currently unregistered agricultural or veterinary chemicals:*
 - (i) obtain all necessary permits from the Australian Pesticides and Veterinary Medicines Authority and comply with all relevant requirements specified in the Agricultural and Veterinary Chemicals Code; and
 - (ii) provide to the FRDC upon request, evidence that the Project has been approved by the relevant institution ethics or biosafety committee;
- (e) *where the Project involves changes to the natural environment, or can have an effect on the natural environment:*
 - (i) ensure all necessary permits or licences are obtained from the relevant State, Territory or Commonwealth authority; and
 - (ii) provide to the FRDC upon request, evidence that the Project has been approved by the relevant institution ethics or biosafety committee.

8A RESTRICTIONS ON RESEARCH PROVIDER PUBLIC COMMENTS

- 8A.1 A Party ("Notifying Party") must not:
 - a. make any public comments;

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- b. make any comments to any media organisation; or
 - c. issue any media release,
- in relation to the Project without the prior written approval of the other Party (“Approving Party”).

8A.2 Each media release in relation to the Project must acknowledge the contribution that each Party has made to the Project and if required by a Party the contribution of the providers of that Party's Third Party Resources. The appropriate form of words for the acknowledgment is as set out in Schedule 3 – Special Conditions.

8A.3 Subject to clause 8A.4, each Approving Party must, in relation to a request by the Notifying Party for the Approving Party's approval under clause 8A.1:

- a. notify the Notifying Party of the Approving Party's response within 2 Business Days after the date of the receipt of the request; and
- b. not unreasonably withhold its approval.

8A.4 An Approving Party must not withhold its approval of a request by a Notifying Party under clause 8A.1(a) unless the Approving Party, acting reasonably, considers that the comment or media release is likely to prejudice the best interests of the Australian fishing industry.

8A.5 For the avoidance of doubt, no right or obligation arising from this contract is to be read or understood as limiting the Research Provider's rights to enter into public debate or criticism of the Australian Government, its agencies, employees, servants or agents.

8A.6 Notwithstanding any other provision in this clause 8A, a Party is not required to give approval under this clause 8A unless it has the prior approval of the providers of the Party's Third Party Resources.

8A.7 If a Party is required by law or a regulatory body to make a public announcement in connection with the Agreement, the Party must, to the extent practicable, first consult with, and take into account the reasonable requirements of the other Party.

9. WARRANTIES

9.1 Each Party warrants that, to its knowledge it is, and will at all times be, entitled to grant the express and implied licences of IP Rights that are granted or otherwise arise pursuant to the Agreement.

9.2 The Research Provider represents and warrants that, to its knowledge:

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- (a) *anything done by or on behalf of it (including for the Research Provider by the Principal Investigator or other Research Provider Personnel) in the course of conducting the Project, including the development of the Project Material, will not infringe the IP Rights or Moral Rights of any person;*
- (b) *it and its Research Provider Personnel will not engage, and have not engaged, in conduct that exposes the FRDC to risk of liability for IP Rights infringement;*
- (c) *all information provided by the Research Provider to the FRDC in connection with the Agreement and the Project (including in Schedule 2 – R&D Funding Application) is, in all material respects, complete, up-to-date, accurate and not misleading;*
- (d) *before the Start Date, the Research Provider has disclosed in writing the full details of:*
 - (i) the amounts and sources of all resources to be used to carry out the Project; and
 - (ii) any other person or entity who has or may have an interest in the Project Material;
- (e) *the Principal Investigator and the Research Provider Resources will be available for the Project as specified in the Agreement;*
- (f) *the Research Provider has not breached, and will not breach, any confidentiality obligations in relation to any information provided to, or to be provided to, and used by the FRDC in relation to the Agreement; and*
- (g) *the Research Provider has the right to use all assets that it is required to use to carry out the Project.*

9.3 The Research Provider warrants that the person executing the Agreement on behalf of the Research Provider is duly authorised to do so.

9.4 The Research Provider must notify the FRDC within 10 Business Days after any change to any of the information or details warranted to in **clauses 9.1, 9.2 and 9.3** occurs.

9.5 The Research Provider acknowledges it is a serious offence under Division 137 of the *Criminal Code Act 1995* (Cth) to give false and misleading information to the FRDC or its officers or agents.

PART 3 - PERSONNEL

10. RESEARCH PROVIDER PERSONNEL AND CONTRIBUTING STUDENTS

10.1 The Research Provider must ensure that:

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- (a) *before commencing any work on the Project or accessing any Project Material or Confidential Information, each Research Provider Personnel (including any Contributing Students) who are to participate in the Project or have access to any Project Material or Confidential Information, has:*
 - (i) assigned to the Research Provider their entire interest, other than their Moral Rights, in any Project Material IP that they may develop or acquire; and
 - (ii) undertaken to keep the Confidential Information confidential; and
- (b) *any Research Provider Personnel used to conduct the Project undertakes work in respect of the Project in accordance with the terms of the Agreement.*

11. PRINCIPAL INVESTIGATOR

11.1 Where the Principal Investigator is unable to undertake work in respect of the Project, the Research Provider must:

- (a) *notify the FRDC in writing within 10 Business Days after becoming aware of that inability or likely inability;*
- (b) *provide reasons for that inability, and details of an interim replacement until a final replacement is found; and*
- (c) *at the earliest opportunity, but no later than 60 Business Days after providing written notice under **clause 11.1(a)**, engage a replacement Principal Investigator that has been approved by the FRDC, such approval not to be unreasonably withheld.*

11.2 If the Research Provider is unable to nominate an acceptable replacement Principal Investigator under **clause 11.1**, the FRDC may terminate the Agreement in accordance with **clause 60**.

12. SUBCONTRACTING

12.1 The Research Provider must not, without the prior written approval of the FRDC, subcontract the performance of any part of the Project. In giving written approval, the FRDC may impose such terms and conditions as it reasonably thinks fit.

12.2 The Research Provider remains fully responsible for conducting the Project notwithstanding that the Research Provider has subcontracted the performance of any part of the Project.

PART 4 – VARIATION TO THE PROJECT

13. VARIATION TO THE PROJECT

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- 13.1 Any variation to the Project must be effected in accordance with this **clause 13** or **clause 75**
- 13.2 Subject to **clause 75**, the Research Provider must not vary the Project in any way (including any variation to the due dates for the Milestones as specified in Schedule 1 – Schedule of Payments) without the prior written approval of the FRDC.
- 13.3 During the Term, either Party (the **Requesting Party**) may request a variation to the Project (which may or may not include a variation to the FRDC Funds), which request must be in writing.
- 13.4 If the Research Provider is the Requesting Party it must provide the FRDC with full details of the relevant variation, including the reasons for the variation and the likely effects of the variation on any aspect of the Project or the Agreement, and:
- (a) *if the impact of a proposed variation or related series of variations would amount to an increase in FRDC Funds of more than \$30,000 (excluding GST):*
 - (i) the proposed variation will be considered a new application and will be resubmitted as such to the FRDC for evaluation, and if approved;
 - (ii) the amendments to the Agreement will be effected in accordance with **clause 75**;
 - (b) *if the impact of a proposed variation or related series of variations:*
 - (i) would amount to an increase in FRDC Funds of \$30,000 (excluding GST) or less;
or
 - (ii) would result in a decrease in FRDC Funds,

the proposed variation will be considered a minor funding application and will be resubmitted to the FRDC as such for evaluation, and if approved,
 - (iii) the variation may be agreed by an exchange of correspondence between authorised representatives of the Parties, which exchange may be made electronically, including by email; or
 - (c) *if the impact of a proposed variation or related series of variations has a non-funding impact, the variation may be agreed by an exchange of correspondence between authorised representatives of the Parties, which exchange may be made electronically, including by email.*
- 13.5 The FRDC will not be liable for any additional work undertaken or expenditure incurred by the Research Provider pursuant to a variation to the Agreement unless:

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- (a) *such variation has been effected in accordance with this **clause 13**; and*
- (b) *the additional expenditure has been agreed to by the FRDC.*

13.6 Either Party may reject a request to vary the Project.

PART 5 - FRDC FUNDS AND ADDITIONAL RESOURCES

14. FRDC FUNDS

14.1 Subject to the Agreement, the FRDC will pay to the Research Provider the FRDC Funds as specified in Schedule 1 – Schedule of Payments.

14.2 Subject to **clause 14.3**, the payment of FRDC Funds under the Agreement is subject to:

- (a) *where applicable in relation to Third Party Resources to be provided by the FRDC, those Third Party Resources having been appropriated, provided that:*
 - (i) FRDC notifies the Research Provider as soon as FRDC becomes aware that the Third Party Resources will not be appropriated; and
 - (ii) the obligation on the Research Provider to carry out the part of the Project or achieve Milestones to which those Third Party Resources apply is deferred until such time as those Third Party Resources have been appropriated; and
- (b) *the Research Provider having:*
 - (i) completed, in accordance with the Agreement and to the FRDC's reasonable satisfaction, the relevant Milestone specified in Schedule 1 – Schedule of Payments; and
 - (ii) delivered a Tax Invoice to the FRDC for the payment sought.

14.3 The final payment of the FRDC Funds is subject to:

- (a) *the Research Provider having completed, in accordance with the Agreement and to the FRDC's reasonable satisfaction, all Milestones specified in Schedule 1 – Schedule of Payments;*
- (b) *the Research Provider having delivered to the FRDC:*
 - (i) the Final Report, in accordance with **clause 46**;
 - (ii) the Final Financial Report, in accordance with **clause 45**;
 - (iii) any FRDC Income due to the FRDC under **clause 36**; and

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- (iv) any Project Material specified for such delivery in Schedule 2 – R&D Funding Application and Schedule 3 – Special Conditions;
- (c) *the reconciliation of FRDC Funds in accordance with **clause 15**; and*
- (d) *the Research Provider having published, in accordance with **clause 31**, all Project Data identified in Schedule 6 – Project Data unless the FRDC otherwise agrees in writing, such agreement not to be unreasonably withheld.*

15. RECONCILIATION OF FRDC FUNDS

15.1 After the FRDC has reviewed and accepted the Final Report and the Final Financial Report, the FRDC will notify the Research Provider as to whether:

- (a) *further FRDC Funds are payable by the FRDC to the Research Provider; or*
- (b) *the Research Provider is required to refund any surplus FRDC Funds or pay any FRDC Income to the FRDC; or*
- (c) *there are no further payments to be made between the Parties and no further action is required by the Parties.*

15.2 If the FRDC notifies the Research Provider, in accordance with **clause 15.1**, that the Research Provider is required to:

- (a) *refund any surplus FRDC Funds to the FRDC, then the Research Provider must:*
 - (i) as soon as is practicable refund to the FRDC the surplus FRDC Funds; and
 - (ii) provide an Adjustment Note to the FRDC at the same time as the refund referred to in **clause 15.2(a)(i)**; and/or
- (b) *pay any FRDC Income to the FRDC, then the Research Provider must:*
 - (i) as soon as practicable pay to the FRDC the FRDC Income; and
 - (ii) pay to the FRDC any applicable GST at the same time the Research Provider pays to the FRDC the FRDC Income under **clause 15.2(b)(i)**.

15.3 Notwithstanding clauses **15.1** and **15.2** or any other provision of the Agreement, if at any time it is determined in accordance with clause **69** that Funds paid to the Research Provider have not been applied, spent or committed in accordance with the Agreement then those Funds will be repayable on demand as a debt due to the FRDC.

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16. DEFERRED PAYMENT OF FRDC FUNDS

16.1 The FRDC may, without derogating from any other right it may have, defer payment of FRDC Funds as specified in the relevant Tax Invoice if:

- (a) *the Research Provider fails to comply with any requirement in the Agreement, until such breach is remedied to the reasonable satisfaction of the FRDC; or*
- (b) *the FRDC does not have sufficient industry contributions or funds from the Commonwealth at the time a payment is due.*

16.2 The deferment of a payment under **clause 16.1** does not constitute a breach of the Agreement by the FRDC.

17. PROJECT EXPENDITURE

17.1 The Research Provider must apply the FRDC Funds for the purpose of the Project only

17.2 The Research Provider must not use FRDC Funds budgeted for Capital on other types of expenditure without the prior written approval of the FRDC

17.3 The Research Provider must record each transaction made in sufficient detail to identify:

- (a) *each good or service purchased or provided; and*
- (b) *the cost to the Research Provider of that good or service.*

18. ADDITIONAL RESOURCES

18.1 The Research Provider must provide or procure, at no cost to the FRDC, all additional resources necessary to conduct the Project and the fulfilment of the Research Provider's obligations under the Agreement, including:

- (a) *the Third Party Resources to be provided to the Research Provider set out in Schedule 2 – R&D Funding Application;*
- (b) *any Third Party IP and Background IP to be provided to the Research Provider; and*
- (c) *all necessary facilities, services, and premises.*

18.2 If the Third Party Resources to be procured by the Research Provider are unavailable or reduced by any amount, or the Research Provider becomes aware of a potential reduction, the Research Provider must:

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- (a) *within 20 Business Days, notify the FRDC in writing of:*
 - (i) the reduction;
 - (ii) the reasons for the reduction; and
 - (iii) the anticipated impact on the Project; and
- (b) *within 60 Business Days, take reasonable steps to secure from other third parties that have been approved by the FRDC, alternative funding or contributions.*

18.3 Where the Research Provider is unable to secure alternative funding or contributions in accordance with **clause 18.2**, and if, in the FRDC's reasonable opinion, the Project cannot be continued at an acceptable standard unless the Research Provider secures such funding, the FRDC may, at its absolute discretion, agree to provide additional funds to compensate for the reduction in the Third Party Resources.

18.4 The Research Provider must not accept an increase in the Third Party Resources that, of itself, or in conjunction with other increases, would amount to a 20% or greater increase in total Third Party Resources, without the FRDC's prior written approval, which approval will not be unreasonably withheld. In seeking the FRDC's approval, the Research Provider must, as soon as practicable and at least within 20 Business Days of becoming aware of the potential increase, notify the FRDC in writing of:

- (a) *the reasons for the proposed increase;*
- (b) *the anticipated impact of the proposed increase on the Project and any possible impact on FRDC Funds; and*
- (c) *a request for the FRDC's approval to accept the proposed increase.*

PART 6 - OWNERSHIP AND LICENCES

19. IP REGISTER

- 19.1 The Research Provider must use reasonable endeavours to maintain an IP Register in an appropriate form acceptable to the FRDC, identifying material Intellectual Property used or created during the Project. The IP Register should be sufficient to enable each Party's Intellectual Property rights, and any restrictions on use of material Intellectual Property in any Project Material, to be reasonably identified.
- 19.2 The Research Provider must provide to the FRDC a current version of the IP Register within 20 Business Days after request from the FRDC.
- 19.3 The Special Conditions may impose additional obligations on the Research Provider in respect of the IP Register.

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20. FRDC MATERIAL

- 20.1 The Research Provider acknowledges the FRDC's ownership, or control by licence, of FRDC Material and the IP Rights in the FRDC Material.
- 20.2 Subject to this **clause 20**, the FRDC grants a non-exclusive, non-transferable, royalty-free licence to the Research Provider for the Term to use the FRDC Material for the purpose of the Project and inclusion in the Project Material.
- 20.3 The Research Provider must:
- (a) *ensure that FRDC Material is used, copied, supplied or reproduced only for the purposes of the Agreement;*
 - (b) *keep the FRDC Material secure;*
 - (c) *not grant, create or allow any encumbrance or adverse interest in favour of any person over FRDC Material; and*
 - (d) *only use the FRDC Material in accordance with any conditions:*
 - (i) set out in Schedule 3 – Special Conditions, or
 - (ii) as notified from time to time in writing by the FRDC.

21. OWNERSHIP OF PROJECT MATERIAL

- 21.1 Ownership of all Deliverables vests immediately upon creation in the FRDC.
- 21.2 Ownership of all Project Material, other than Deliverables and Project Material IP, vests immediately upon creation in the Research Provider.
- 21.3 Ownership of all Project Material IP shall be governed specifically and uniquely by Clause 24 of the Agreement.
- 21.4 The Research Provider must ensure that all Deliverables documentation:
- (a) *is neatly and legibly compiled and adequately documented;*
 - (b) *contains sufficient evidence to support all conclusions, findings and opinions;*
 - (c) *is in accordance with the FRDC Standards; and*
 - (d) *is in a format as reasonably requested by the FRDC.*
- 21.5 The Research Provider may keep copies of the Deliverables as is necessary for its reasonable record keeping requirements, provided that the Research Provider

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continues to comply with its confidentiality obligations under the Agreement in relation to such material.

- 21.6 Within 10 Business Days after a request by the FRDC, the Research Provider must provide the FRDC with copies of all Project Data created or collected up to the date of the request. The Research Provider's obligation under this **clause 21.5** survives the expiry or termination of the Agreement.

22. LICENCE TO USE FRDC BACKGROUND IP

- 22.1 The FRDC grants to the Research Provider a perpetual, irrevocable, royalty-free, non-exclusive, worldwide licence to use, reproduce and adapt the FRDC's Background IP as required to enable the Research Provider to exercise any rights it has under the Agreement.
- 22.2 The Research Provider may sublicense the rights granted under **clause 22.1** to its contractors and Contributing Students, but only to the extent required to enable the Research Provider to exercise any rights it has under the Agreement.

23. LICENCE TO USE RESEARCH PROVIDER BACKGROUND IP AND THIRD PARTY IP

- 23.1 The Research Provider grants to the FRDC a perpetual, irrevocable, royalty-free, non-exclusive, worldwide licence to use, reproduce and adapt the Research Provider's Background IP as required to enable the FRDC to exercise any rights it has under the Agreement (including to use, distribute, communicate, modify, reproduce or otherwise deal with, any Project Material into which Research Provider Background IP is incorporated).
- 23.2 The Research Provider must procure licensing rights on behalf of and for the benefit of the Parties to any Third Party IP that is used in the Project or incorporated within the Project Material, prior to it being required for such use or incorporation.
- 23.3 Where despite best efforts the Research Provider is unable to grant or procure any material licensing rights described under **clause 23.1 or clause 23.2**, the Research Provider must record any restrictions or encumbrances relating to the licensing rights granted over the Research Provider's Background IP or Third Party IP in the IP Register.
- 23.4 Subject to clause 23.3, The FRDC may sublicense the rights granted under **clause 23.1**, and clause 23.2 including the right to sublicense, to:
- (a) *its contractors;*
 - (b) *each FRDC Third Party Funder; and*

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- (c) *each Third Party that has been appointed by the FRDC to complete the Project pursuant to **clauses 59.7 or 60.7(d)**,*

to enable:

- (d) *the FRDC to exercise any rights it has under the Agreement;*
- (e) *each FRDC Third Party Funder and any sub-licensees to disseminate and publish each Deliverable in accordance with **clause 33**; and*
- (f) *each third party and any sub-licensees that has been appointed by the FRDC to complete the Project to publish in accordance with **clause 33**.*

24. PROTECTION OF PROJECT MATERIAL AND OWNERSHIP OF PROJECT MATERIAL IP

- 24.1 Ownership of Project Material IP, including any IP Rights assigned to the Research Provider by a Contributing Student under **clause 10.1**, will vest immediately upon creation in the Commercialisation Party.
- 24.2 Where specified in the Special Conditions or otherwise agreed with the other Party, the Commercialisation Party must take reasonable action to obtain protection for the Project Material IP and enforce its rights in relation to Project Material IP. The Commercialisation Party's costs incurred in performing its obligations under this clause are deducted from income received from Commercialisation of Project Material IP before the Project Material Income is calculated.

25. LICENCE TO USE PROJECT MATERIAL IP

- 25.1 The Commercialisation Party grants to the other Party a permanent, irrevocable, royalty-free, non-exclusive, worldwide licence to use, reproduce and adapt the Project Material IP as required to enable the other Party to exercise any rights or fulfil any obligations it has under the Agreement, including the rights to sublicense in accordance with this **clause 25**.
- 25.2 The Research Provider may sublicense the rights granted under **clause 25.1** to its contractors and Contributing Students, but only for Internal Research or to the extent required to enable the Research Provider to exercise any rights or fulfil any obligations it has under the Agreement. For the avoidance of doubt, no sublicense of rights to Commercialise any Project Material or Project Material IP may be granted by the Research Provider.
- 25.3 The FRDC may sublicense the rights granted under **clause 25.1**, including the right to sublicense, to:
 - (a) *its contractors;*

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- (b) *any FRDC Third Party Funder; and*
- (c) *any third party appointed by the FRDC to complete the Project pursuant to **clauses 59.7** or **60.7(d)**,*

to enable;

- (d) *the FRDC to exercise any rights it has under the Agreement;*
- (e) *each FRDC Third Party Funder and any sub-licensee to disseminate and publish each Deliverable in accordance with **clause 33**; and*
- (f) *each third party and any sub-licensee that has been appointed by the FRDC to complete the Project to publish in accordance with **clause 33**.*

26. **GIVING EFFECT TO CLAUSES 9, 20, 22, 23, AND 25**

- 26.1 If requested by the FRDC to do so, the Research Provider must at its own cost bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to **clauses 9** (Warranties), **20** (FRDC Material), **22** (Licence to use FRDC Background IP), **23** (Licence to use Research Provider Background IP and Third Party IP), **25** (Licence to use Project Material IP).

PART 7 – USE OF PROJECT MATERIAL IP

27. **THE PARTIES' USE OF PROJECT MATERIAL IP**

- 27.1 Without limiting clause 25.1, each Party may use, reproduce and adapt any Project Material IP to:
 - (a) *review the Project;*
 - (b) *conduct Internal Research;*
 - (c) *disseminate and publish the Final Report or any other Project Material, but only in accordance with **clause 33**; and*
 - (d) *Commercialise the Project Material IP, but only in accordance with **clause 35**.*

28. **A THIRD PARTY FUNDER'S USE OF PROJECT MATERIAL IP**

- 28.1 The FRDC may authorise each FRDC Third Party Funder to use, reproduce and adapt the Project Material IP to:
 - (a) *review the Project;*

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- (b) *conduct R&D for the purpose of performing its ordinary functions and carrying out its core business (but not including Commercialisation of the whole or part of the Project Material);*
- (c) *disseminate and publish the Final Report or any other Project Material, but only in accordance with **clause 33**; and*
- (d) *Commercialise the Project Material IP, but only in accordance with **clause 35.3**.*

29. OTHER THIRD PARTIES' USE OF PROJECT MATERIAL IP

29.1 Where a Third Party has been appointed by the FRDC to complete the Project pursuant to **clauses 59.7** or **60.7(d)**, the FRDC may authorise that Third Party to use, reproduce and adapt the Project Material IP to:

- (a) *review and complete the Project;*
- (b) *conduct Internal Research;*
- (c) *disseminate and publish each Deliverable, including the Final Report and any other Project Material, but only in accordance with **clause 33**; and*
- (d) *Commercialise the Project Material IP, but only in accordance with **clause 35.3**.*

30. A CONTRIBUTING STUDENT'S USE OF PROJECT MATERIAL IP

30.1 Where a Contributing Student has:

- (a) *assigned to the Research Provider their entire interest, other than their Moral Rights, in any Project Material IP they may develop or acquire; and*
- (b) *undertaken to keep Confidential Information confidential,*

in accordance with **clause 10.1(a)**, the FRDC consents to the inclusion of Project Material in that Contributing Student's Student Thesis on the terms of this **clause 30**.

30.2 The Research Provider must ensure that a Contributing Student does not include Project Material in that student's Student Thesis unless the Parties have agreed in writing to either:

- (a) *adhere to the procedure set out in **clause 30.3**; or*
- (b) *the period of time that the Student Thesis is to be withheld from public access, including if the FRDC does not require the Student Thesis to be withheld from public access.*

30.3 The procedure referred to in **clause 30.2** is as follows:

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The Research Provider must provide to the FRDC a copy of any Student Thesis before the Student Thesis is due to be examined, and:

- (a) *if the FRDC does not notify the Research Provider within 20 Business Days after receipt of the Student Thesis that obligations of confidence must bind the examiners of the Student Thesis, then the Research Provider may permit:*
 - (i) the examination of the Student Thesis; and
 - (ii) the deposit of the Student Thesis in any library, or
- (b) *if the FRDC notifies the Research Provider within 20 Business Days after receipt of the Student Thesis that obligations of confidence must bind the examiners of the Student Thesis, then the Research Provider must ensure that:*
 - (i) the examiners of the Student Thesis undertake in writing to the Research Provider to keep confidential all Project Material and FRDC Confidential Information, on the same terms as the Research Provider's undertakings in the Agreement; and
 - (ii) the Student Thesis is withheld from public access for 24 months after examination, unless the FRDC agrees in writing that the Student Thesis may be made publicly available on a different date.

PART 8 - PUBLICATION

31. OBLIGATION TO MAKE PROJECT DATA PUBLICLY AVAILABLE

31.1 Unless otherwise specified in Schedule 3 – Special Conditions, the Research Provider must:

- (a) *make all Project Data publicly available, through a Custodian; and*
- (b) *publish on the Australian Spatial Data Directory, the meta-data referred to in **clause 42**.*

31.2 Publication and access to Project Data pursuant to **clause 31.1**, may only occur pursuant to licence agreements consistent with standard data licence terms and conditions as agreed to in writing by the FRDC. The Parties will use a Creative Commons license for non-commercial use (Attribution-Non-Commercial 4.0 International), where the Parties agree that this is appropriate.

32. NO CHARGE FOR PUBLICATION OF PROJECT DATA

32.1 Subject to **clause 32.2**, unless the Parties otherwise agree in writing, neither Party may charge, or authorise or permit any third person to charge any fee, cost, or other amount to access or use Project Data.

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32.2 The Research Provider may authorise a Custodian of Project Data to charge a third party a fee to access Project Data, provided the fee:

- (a) *represents the reasonable and direct costs of providing access to that Project Data; and*
- (b) *does not include the cost of the Custodian receiving, storing or otherwise maintaining the Project Data.*

33. RIGHTS TO PUBLISH AND RESTRICTIONS

33.1 The following parties may publish Project Material in accordance with this **clause 33**:

- (a) *the FRDC;*
- (b) *the Research Provider;*
- (c) *each FRDC Third Party Funder and their sub-licensees; and*
- (d) *a third party that has been appointed by the FRDC to complete the Project in accordance with **clauses 59.7 or 60.7(d)**.*

33.2 Subject to **clause 33.3**, each of the parties listed at **clause 33.1** may publish copies of the reports the Research Provider provides to the FRDC under **clause 44** (Milestone Progress Reports), **clause 45** (Financial Reports) and **clause 46** (Final Report).

33.3 If a Party (the **Notifying Party**) notifies the other Party in writing that a report referred to in **clause 33.2** contains Confidential Information:

- (a) *the other Party must treat that report as Confidential Information; and*
- (b) *if the Notifying Party is the Research Provider:*
 - (i) the Research Provider must provide the FRDC with a modified version of that report suitable for public release; and
 - (ii) each of the parties listed at **clause 33.1** may publish that modified version.

33.4 If a Party (**Proposing Party**) proposes to publish any Project Material, other than Project Data or the reports referred to in **clause 33.2**, the Proposing Party must notify the other Party at least 20 Business Days before the proposed publication date.

33.5 If:

- (a) *the other Party notifies the Proposing Party in writing that it objects to such publication; and*

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- (b) *that objection is based on a reasonable expectation that publication:*
 - (i) would disclose (directly or indirectly) the Confidential Information of the other Party; or
 - (ii) could result in any third parties gaining a commercial advantage,

then the Proposing Party may not publish the Project Material which is subject to the objection, otherwise than in accordance with **clause 33.6**.

33.6 Where a Party objects to publication under **clause 33.5**, a dispute will be deemed to have arisen for the purposes of **clause 69**, and either Party may seek to have the dispute resolved in accordance with that clause.

34. MINIMUM REQUIREMENTS FOR RESEARCH PROVIDER PUBLICATIONS

34.1 Where the Research Provider disseminates or publishes Project Material under **clause 33** or under **clause 35**, the Research Provider must:

- (a) *acknowledge the contribution that the Australian Government has made to the Project through the FRDC. The appropriate form of words for the acknowledgement is at Schedule 3 – Special Conditions;*
- (b) *display the Australian Government logo on the Project Material and in promotional material, unless the FRDC agrees otherwise in writing;*
- (c) *acknowledge each FRDC Third Party Funder as a funding source in the relevant publication;*
- (d) *display the logo of each FRDC Third Party Funder in a format that is approved by the FRDC and the relevant FRDC Third Party Funder, unless the FRDC agrees otherwise in writing;*
- (e) *include copyright notices on the Project Material that are in accordance with FRDC Standards (which can be found on the FRDC web site at <http://www.frdc.com.au>), unless the FRDC agrees otherwise in writing;*
- (f) *attribute authorship in respect of the Project Material so as to not infringe the Moral Rights of any person;*
- (g) *consult with the FRDC throughout the publication process, including providing to the FRDC the final draft produced and obtaining the FRDC's approval of that draft before publication, which approval will not be unreasonably withheld; and*
- (h) *provide a copy of the published Project Material to the FRDC within 20 Business Days after the date of publication.*

PART 9 - COMMERCIALISATION

35. COMMERCIALISATION

- 35.1 Subject to **clause 35.2 and clause 35.3**, only the Commercialisation Party may Commercialise the Project Material or Project Material IP.
- 35.2 The Commercialisation Party will use reasonable endeavours to Commercialise Project Material IP that it agrees with the other Party is appropriate for Commercialisation, but only where the Commercialisation Party reasonably considers that Commercialisation can be achieved without incurring undue risk and where it would not infringe any Third Party IP.
- 35.3 Prior to initiating any Commercialisation of Project Material or Project Material IP, the Commercialisation Party must provide a Commercialisation Plan, in a format as agreed between the Parties or failing agreement after 14 days, in a format determined by the Commercialisation Party, for the other Party's approval, which must not be unreasonably withheld. ^[11]_[SEP]
- 35.4 Each Party that is permitted to publish or disseminate copies of the Final Report in accordance with **clause 33**:
- (a) *may Commercialise such publication or dissemination; and*
 - (b) *is solely entitled to any income that Party obtains through such Commercialisation.*
- 35.5 Each Party is permitted to use or make the Project Material in accordance with any express rights conferred under the Agreement, but must not otherwise do any of the actions that come within the definition of Commercialise, except in accordance with **clause 35.1**.
- 35.6 The Commercialisation Party must maintain appropriate records and accounts of:
- (a) the Commercialisation activities it undertakes;
 - (b) any royalties, licences fees or other income it receives from Commercialisation of the Project Material IP; and
 - (c) any Commercialisation Costs it incurs.

PART 10 – FRDC INCOME AND PROJECT MATERIAL INCOME

36. INCOME

- 36.1 In respect to FRDC Income unless otherwise:

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- (a) *specified in Schedule 3 – Special Conditions; or*
- (b) *agreed in writing between the Parties,*

the FRDC is solely entitled to any FRDC Income.

36.2 In respect to Project Material Income, the Parties will share such income in proportion of each Party's Income Share subject to any amendment to the Income Share as may be agreed by the Parties from time to time.

36.3 If the Research Provider receives any FRDC Income the Research Provider must:

- (a) within 20 Business Days of receiving the FRDC Income, notify the FRDC that the Research Provider holds such FRDC Income;
- (b) not use, dispose of, transfer, encumber, assign or otherwise deal with the FRDC Income without the prior written approval of the FRDC;
- (c) provide a report that details the Income received so that the FRDC may raise an invoice for any FRDC Income owing to the FRDC; and
- (d) within 20 Business Days after receiving the invoice in accordance with **clause 36.3(c)**, pay the FRDC all FRDC Income owing to the FRDC.

36.4 If the Commercialisation Party receives any Project Material Income, the Commercialisation Party must:

- (a) within 20 Business Days after receiving the Project Material Income, notify the other Party that the Commercialisation Party holds such Project Material Income;
- (b) not use, dispose of, transfer, encumber, assign or otherwise deal with the Project Material Income without the prior written approval of the other Party;
- (c) provide a report that details the Project Material Income received so that the other Party may raise an invoice for any Project Material Income owing to the other Party in accordance with the agreed Income Share; and
- (d) within 20 Business Days after receiving the invoice in accordance with **clause 36.3(c)** pay the other Party all Project Material Income owing to the other Party.

36.5 The Research Provider (in respect of FRDC Income) or the Commercialisation Party (in respect of Project Material Income) (the **GST Liable Party**) must pay to the other Party any applicable GST in relation to the payment of any Income at the same time as the payment by the GST Liable Party of the relevant Income.

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- 36.6 In the event that any GST is payable by the GST Liable Party in accordance with **clause 36.4**, the other Party will provide the GST Liable Party with a Tax Invoice in respect of that payment

PART 11 - DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION, SECURITY AND PROTECTION OF PRIVACY

37. CONFIDENTIAL INFORMATION

- 37.1 Subject to this **clause 37** and **clause 40**, each Party must not, without the prior written approval of the other Party, make public or disclose to any person other than the other Party any of the other Party's Confidential Information.
- 37.2 Each Party must take all reasonable steps to ensure its professional advisors, employees, students (including Contributing Students), agents and subcontractors engaged in conducting the Project do not make public or disclose the other Party's Confidential Information. A Party may require the Disclosing Party to arrange for its professional advisors, employees, agents and subcontractors to give a written undertaking that imposes substantially the same obligations on those persons as those imposed on the Disclosing Party under this **clause 37**.
- 37.3 Each Party (the **Disclosing Party**) may disclose the other Party's Confidential Information:
- (a) *in the case of the FRDC being the Disclosing Party, to its Third Party Funders where necessary for purposes connected to the Project, who may disclose the information to third parties in accordance with this **clause 36** as if they were the Disclosing Party;*
 - (b) *to its professional advisors, employees, agents and subcontractors solely in order to comply with obligations, or to exercise rights, under the Agreement or any other agreement in relation to the Project;*
 - (c) *to its internal management personnel, solely to enable effective management or auditing of activities related to the Agreement or any other agreement in relation to the Project;*
 - (d) *to be shared by the Disclosing Party within its or another government agency, where this serves the Commonwealth's or State's or territory's (as applicable) legitimate interests;*
 - (e) *to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Disclosing Party;*
 - (f) *if required in connection with legal proceedings; or*

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- (g) *for public accountability reasons, including to the responsible Minister and in response to a request for information by the Commonwealth or a State or Territory Parliament or a Parliamentary Committee,*

but in each case, subject to the Disclosing Party giving the other Party reasonable sufficient notice in the circumstances of any proposed disclosure to the extent permitted by law to enable the other Party to make comments or representations in relation to the proposed disclosure or take other appropriate action (including seek a protective order or other remedy to prevent the disclosure)

- 37.4 A Party must not transfer the other Party's Confidential Information outside Australia, or allow persons outside Australia to have access to such information, without the prior written approval of the other Party.
- 37.5 Unless otherwise agreed, a Party must only use the other Party's Confidential Information for the purposes of fulfilling its obligations or exercising its rights under the Agreement or any other agreement in relation to the Project.
- 37.6 Unless otherwise agreed, on the expiration or termination of the Agreement, each Party (**first Party**) must deliver to the other Party:
- (a) *(and not retain any copies) all material forms of the other Party's Confidential Information except for:*
- (i) information that is confidential to both Parties; and
 - (ii) one copy of such Confidential Information as is necessary for reasonable record keeping processes; and
 - (iii) material forms of Confidential Information as is necessary to comply with statutory record keeping requirements; and
- (b) if requested by the other Party, a statutory declaration executed by an authorised person on behalf of the first Party that to that person's knowledge, all of the other Party's Confidential Information held or acquired by the first Party has either been destroyed or delivered to the other Party and that none of the other Party's Confidential Information has been retained by the first Party, its officers, employees, agents or contractors.

38. SECURITY

- 38.1 The Research Provider must:

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- (a) *take reasonable steps to ensure that FRDC Material, FRDC Confidential Information and FRDC Related Personal Information held in connection with the Agreement is protected against loss, unauthorised access, use, modification, disclosure or other misuse; and*
- (b) adhere to any security procedures advised by the FRDC from time to time, which procedures will not be unreasonable.

38.2 Where an incident occurs that concerns the use or disclosure of FRDC Material, FRDC Confidential Information or FRDC Related Personal Information or that may have a potential material impact on the Project (a **security incident**), the Research Provider must notify the FRDC immediately on becoming aware of that incident. Where oral notification is provided, it must be followed by written notification within 2 Business Days.

38.3 If a security incident occurs, the Research Provider must comply with any reasonable directions of the FRDC in order to rectify the security problem.

39. **PRIVACY**

39.1 This **clause 39** applies only where the Research Provider deals with Personal Information when, and for the purpose of, conducting the Project under the Agreement.

39.2 The Research Provider acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (Cth) (**Privacy Act**), and agrees in respect of conducting the Project under the Agreement:

- (a) *to use or disclose Personal Information obtained during the course of conducting the Project under the Agreement, only for the purposes of the Agreement:*
- (b) *not to do any act or engage in any practice that would breach an Australian Privacy Principle (APP) contained in Schedule 1 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that APP;*
- (c) to carry out and discharge the obligations contained in the APPs as if it were an agency under the Privacy Act;
- (d) to notify individuals whose Personal Information the Research Provider holds, that complaints about acts or practices of the Research Provider may be investigated by the Commonwealth Privacy Commissioner who has power to award compensation against the Research Provider in appropriate circumstances;
- (e) to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an APP or an APP binding a Party;

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- (f) to immediately notify the FRDC if the Research Provider becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this **clause 39**, whether by the Research Provider or any Research Provider Personnel; and
- (g) to ensure that any Research Provider Personnel who is required to deal with Personal Information for the purposes of the Agreement is made aware of the obligations of the Research Provider set out in this **clause 39**.

- 39.3 The Research Provider agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under the Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Research Provider has under this **clause 39**, including the requirement in relation to subcontracts.
- 39.4 The Research Provider must indemnify the FRDC in respect of any Loss incurred by the FRDC arising out of or in connection with a breach of the obligations of the Research Provider under this **clause 39** or any misuse of FRDC Related Personal Information or disclosure in breach of an obligation under the Privacy Act or otherwise, except to the extent that the Loss is directly caused by a negligent or wrongful act or omission of the FRDC or any of its officers or employees. For the purposes of the previous sentences, "Loss" includes any loss or liability assumed by the FRDC to pay a person a reasonable amount as compensation for loss or damage suffered by that person as a result of any breach of this **clause 39** by the Research Provider for which the FRDC would have been liable under the Privacy Act if such breach had been that of the FRDC.
- 39.5 In this **clause 39**, the terms 'agency', 'APP code' and 'Australian Privacy Principles' (APPs) have the same meaning as they have in section 6 of the Privacy Act.
- 39.6 The Research Provider obligations in this **clause 39** are in addition to, and do not restrict, any obligations it may have under the Privacy Act or any privacy codes or privacy principles contained in, authorised by or registered under any law including any such privacy codes or principles that would apply to the Research Provider but for the application of the other provisions of this **clause 39**.
- 39.7 Without prejudice to the obligations in clauses 39.1 to 39.6, the Research Provider must, in performing the Project, comply with all applicable laws of the Australian States and Territories concerning the management and protection of personal information, including but without prejudice to the generality thereof, the following legislation:

- (a) *Privacy and Data Protection Act 2014* (Vic);

PROJECT AGREEMENT

(b) *Privacy and Personal Information Protection Act 1998 (NSW)*;

(c) *Information Act 2002 (NT)*;

(d) *Information Privacy Act 2009 (Qld)*; and

(e) *Personal Information Protection Act 2004 (Tas)*.

40. DISCLOSURE OF INFORMATION TO FRDC THIRD PARTY FUNDERS

40.1 The FRDC may, without limiting its rights under the Agreement, provide the following information to a FRDC Third Party Funder:

- (a) *one copy of the executed Agreement*;
- (b) one copy of each amendment to the Agreement;
- (c) one copy of each notice received by the FRDC from the Research Provider in relation to the Agreement; and
- (d) one copy of all Project Material.

PART 12 - PROJECT ADMINISTRATION AND REPORTS

41. PROJECT ADMINISTRATION

41.1 The Research Provider must comply with any reasonable direction (within the general scope of administration of the Agreement) given by, or on behalf of, the FRDC.

42. META-DATA

42.1 The Research Provider must ensure that all Project Data and all Deliverables are accompanied by meta-data.

42.2 The meta-data referred to in **clause 42.1** must conform to the ANZLIC standards that are current at the time, which include the ANZLIC profile of ISO 19115:2005.

43. RESEARCH RECORDS

43.1 The Research Provider must:

- (a) *maintain records, in sufficient detail and in good scientific manner, which are complete and accurate and which fully and properly reflect all work done and results achieved in the performance of the Project (**Research Records**)*;

PROJECT AGREEMENT

- (b) keep and maintain the Research Records for the Term and for 7 years after expiry or termination of the Agreement; and
- (c) keep the Research Records confidential in accordance with its obligations under **clause 37** and must not use the records or any information contained in the records, except to the extent permitted by the Agreement.

44. MILESTONE PROGRESS REPORTS

44.1 The Research Provider must provide the FRDC with a Milestone Progress Report:

- (a) *on the date specified in Schedule 1 – Schedule of Payments; and/or*
- (b) within 20 Business Days after receiving a request from the FRDC for a Milestone Progress Report.

45. FINANCIAL REPORTS

45.1 The Research Provider must provide the FRDC with a financial report within 10 Business Days after receiving a request from the FRDC for such a report.

45.2 The Research Provider must provide the FRDC with a Final Financial Report on the Project Completion Date.

45.3 All financial reports (including the Final Financial Report) must be:

- (a) *prepared in accordance with the FRDC Standards; and*
- (b) otherwise acceptable to the FRDC, in the FRDC's reasonable opinion.

45.4 The Final Financial Report must include a financial statement that:

- (a) *clearly summarises all transactions made on the project; and*
- (b) includes all of the information recorded in accordance with **clause 17.3**.

45.5 The Final Financial Report must certify that the Research Provider has, in respect of all employees who performed any part of the Project, paid all wages and provided all entitlements due under any industrial instrument (as that term is defined in the *Corporations Act 2001* (Cth)).

46. FINAL REPORT

46.1 The Research Provider must provide the FRDC with the draft Final Report on the date specified in Schedule 1 – Schedule of Payments and in accordance with the FRDC Standards.

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46.2 Within 40 Business Days after receipt of the draft Final Report, the FRDC must notify the Research Provider in writing:

- (a) *that the draft Final Report is acceptable; or*
- (b) of any amendments that are required (in the reasonable opinion of the FRDC) including if a modified version of the Final Report is required for public release.

46.3 The Research Provider must provide the Final Report, including any modified version of the Final Report or any amendments required by the FRDC within 40 Business Days after receipt of the notice referred to in **clause 46.2**.

47. ACCOUNTS AND RECORDS

47.1 The Research Provider must

- (a) keep and must require its subcontractors to keep adequate books and records, in accordance with Australian accounting standards; and
- (b) retain and require its subcontractors to retain for a period of seven years after termination or expiration of this Agreement all books and records relating to the Project and this Agreement.

48. AUDIT AND ACCESS

48.1 The FRDC or a representative may conduct audits relevant to the performance of the Research Provider's obligations under this Agreement. Audits may be conducted of:

- (a) *the Research Provider's operational practices and procedures as they relate to this Agreement, including security procedures;*
- (b) *the accuracy of the Research Provider's invoices and reports in relation to the conduct of the Project under this Agreement and any Commercialisation of Project Material IP;*
- (c) *the Research Provider's compliance with its confidentiality, privacy obligations and security obligations under this Agreement;*
- (d) *material (including books and records) in the possession of the Research Provider relevant to the Project or Agreement; and*
- (e) *any other matters determined by the FRDC to be relevant to the Project or Agreement.*

48.2 The FRDC may, at reasonable times and on giving reasonable notice to the Research Provider:

PROJECT AGREEMENT

- (a) access the premises of the Research Provider to the extent relevant to the performance of this Agreement;
 - (b) require the provision by the Research Provider, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the FRDC by use of the FRDC's existing computer hardware and software;
 - (c) inspect and copy documentation, books and records, however stored, in the custody or under control of the Research Provider, its employees, agents or subcontractors; and
 - (d) require assistance in respect of any inquiry into or concerning the Project or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the FRDC), any request for information directed to the FRDC, and any inquiry conducted by parliament or any parliamentary committee.
- 48.3 The Research Provider must provide access to the Research Provider's computer hardware and software to the extent necessary for the FRDC to exercise its rights under this clause, and provide the FRDC with any reasonable assistance requested by the FRDC to use that hardware and software.
- 48.4 The FRDC must use reasonable endeavours to ensure that:
- a. audits performed pursuant to clause **48.1**; and
 - b. the exercise of the general rights granted by clause **48.2** by the FRDC,
- do not unreasonably delay or disrupt in any material respect the Research Provider's performance of its obligations under the Agreement.
- 48.5 Except as set out in clause **48.6**, each Party must bear its own costs of any reviews and/or audits.
- 48.6 If the Research Provider is able to substantiate that it has incurred direct expenses in the FRDC's exercise of the rights granted under clause 48.1 or clause 48.2 which, having regard to the value of this Agreement, are substantial, the FRDC and the Research Provider will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.
- 48.7 The rights of the FRDC under clause **48.1** to **48.3** apply equally to the Auditor-General or a delegate of the Auditor-General, the Australian Information Commissioner,

PROJECT AGREEMENT

Privacy Commissioner and Freedom of Information Commissioner and their delegates for the purpose of performing their statutory functions or powers.

- 48.8 The Research Provider must do all things necessary to comply with the Auditor-General's, the Australian Information Commissioner's, the Privacy Commissioner's or the Freedom of Information Commissioner's or their delegate's requirements, notified under clause **48.4**, provided such requirements are legally enforceable and within their power.
- 48.9 The requirement for, and participation in, audits does not in any way reduce the Research Provider's responsibility to perform its obligations in accordance with the Agreement.
- 48.10 The Research Provider must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause.
- 48.11 Nothing in this Agreement reduces, limits, or restricts in any way any function, power, right or entitlement of the Auditor-General, the Australian Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner or their delegates. The rights of the FRDC under this Agreement are in addition to any other power, right or entitlement of the Auditor-General, the Australian Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner or their delegates.
- 48.12 This clause applies for the Term and for a period of seven years from the termination or expiry of this Agreement.
49. **RESERVED**
50. **RESERVED**

PART 13 - CAPITAL ITEMS

51. **CAPITAL ITEMS**

- 51.1 The Research Provider may use the FRDC Funds to acquire or construct Capital Items:
- (a) *in accordance with Schedule 2 – R&D Funding Application; or*
 - (b) as otherwise agreed by the Parties in writing.
- 51.2 Unless otherwise specified in the Special Conditions, during the Term and for such other period that the FRDC may request:

PROJECT AGREEMENT

- (a) *subject to **clause 51.4**, all Capital Items remain the property of the Research Provider;*
- (b) the use and loss of Capital Items will be at the risk of the Research Provider until delivered into the physical possession of the FRDC;
- (c) the Research Provider must:
 - (i) keep each Capital Item secure and maintain them in good working order;
 - (ii) account for each Capital Item in accordance with the Research Provider's established procedures;
 - (iii) repair or replace a Capital Item as required during the course of the Project, unless the Parties agree that:
 - (A) the damage requiring repair or replacement was caused by a pre-existing defect in the Capital Item; or
 - (B) replacement or repair is not appropriate;
 - (iv) promptly comply with each notice issued by the FRDC under clauses **51.4(b)** and **51.4(c)**; and
- (d) without the prior written approval of the FRDC, which approval will not be unreasonably withheld, the Research Provider must not dispose, transfer, encumber, assign, licence or otherwise deal with a Major Capital Item, except in accordance with this **clause 51**.

51.3 Within 20 Business Days after:

- (a) *the Project Completion Date; or*
 - (b) earlier termination of the Agreement,
- the Research Provider must notify the FRDC in writing of:
- (c) each Major Capital Item; and
 - (d) each Capital Item that the Research Provider wishes to continue to use for its own purposes, including:
 - (i) the intended use of each item; and
 - (ii) how the intended use will benefit the fishing industry.

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- 51.4 At any time during the Term and for up to 20 Business Days after receiving the notice referred to in **clause 51.3(a)**, the FRDC may notify the Research Provider in writing of:
- (a) *each Capital Item that the FRDC agrees the Research Provider may continue to use for its own purposes; or*
 - (b) *each Capital Item that the Research Provider must:*
 - (i) transfer ownership to the FRDC, for no consideration; and
 - (ii) deliver into the physical possession of the FRDC; or
 - (c) *the FRDC's requirements for the disposal of all other Major Capital Items.*
- 51.5 The FRDC will pay all reasonable transport or disposal costs incurred by the Research Provider under **clauses 51.4(b)**.
- 51.6 The Research Provider must, at its own cost, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to:
- (a) *give effect to this **clause 51** and any directions, imposition or advice given by the FRDC under this **clause 51**; and/or*
 - (b) secure the FRDC's rights under this **clause 51**.
- 51.7 At times when a Capital Item is not required for the purpose of the Project, and until the FRDC notifies the Research Provider in writing to stop using that item, the Research Provider may, at its risk, use that item:
- (a) *prior to the Project Completion Date, at the premises where the Project is being conducted; and*
 - (b) after the Project Completion Date, anywhere in Australia,
- for internal, academic, or non-commercial research and teaching purposes (whether related to the Project or not) intended to be of benefit to the fishing industry.

PART 14 - EMPLOYER OBLIGATIONS

52. EMPLOYER OBLIGATIONS

- 52.1 Any officer, subcontractor, employee, student or agent of the Research Provider conducting the Project on behalf of the Research Provider under the Agreement is and remains at all times an employee, independent contractor, student or agent of the Research Provider.

PROJECT AGREEMENT

- 52.2 The Research Provider must at all times and at its own expense comply with the provisions of any relevant legislation and industrial instruments (as that term is defined in the *Corporations Act 2001* (Cth)) in respect of the persons the Research Provider uses to conduct any part of the Project.
- 52.3 The Research Provider must indemnify the FRDC for any payment which the FRDC is required to make (including but not limited to payments under the *Superannuation Guarantee (Administration) Act 1992* (Cth), payroll tax, other taxes and any penalties on an indemnity basis) and any Losses incurred by the FRDC (including, but not limited to, the tax effect of the loss of any tax deductions) if, despite the provisions of the Agreement, the FRDC is held at any time to be the employer or principal of any persons referred to in **clause 52.1** or becomes liable to pay any amounts in respect of such person.
- 52.4 For the purposes of **clause 52.3**, the FRDC will be deemed to be acting as agent or trustee for and on behalf of the Research Provider's officers, employees, contractors or agents from time to time.

53. WORKPLACE GENDER EQUALITY

- 53.1 The Research Provider must comply with its obligations, if any, under the *Workplace Gender Equality Act 2012* (Cth) (**Act**).
- 53.2 The Research Provider must not enter into a subcontract under the Agreement with a subcontractor named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the Act.
- 53.3 Any subcontract must include a provision that requires the subcontractor to notify the Workplace Gender Equality Agency of any failure to comply with the Act.

PART 15 – INDEMNITIES AND INSURANCE

54. INDEMNITY

- 54.1 The Research Provider must at all times indemnify the FRDC, its officers, employees, agents, contractors, FRDC Third Party Funders and third parties appointed by the FRDC pursuant to **clauses 59.7** or **60.7(d)** to complete the Project (**those indemnified**) from and against all Losses:
- (a) *incurred by any of those indemnified; or*
 - (b) arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified,

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to the extent such Loss was caused or contributed to in any way by a breach of the Agreement or by any unlawful, wilfully wrongful or negligent act or omission of the Research Provider, or any Research Provider Personnel in carrying out the Project or in connection with the Agreement.

54.2 The FRDC may enforce the indemnity in **clause 543.1** in favour of those indemnified for the benefit of each of those indemnified in the name of the FRDC or any of those indemnified.

54.3 The Research Provider's liability to indemnify the FRDC under **clause 54.1** will be reduced proportionally to the extent that a wilfully wrongful or negligent act or omission of:

- (a) *a third party that is not:*
 - (i) contracted to the Research Provider; or
 - (ii) a related body corporate of the Research Provider; or
- (b) the FRDC, its officers, employees, agents or contractors (other than the Research Provider),

contributed to the Loss, as established by the Research Provider.

54.4 Nothing in the indemnity contained in **clause 54** will in any way reduce or qualify the FRDC's rights at law in respect of the events that are the subject of the indemnity.

55. **INSURANCE**

55.1 Subject to **clause 55.4**, the Research Provider must, at its own expense, effect and maintain with a reputable insurance company during the Term (except in the case of professional indemnity insurance which must also be maintained until the expiration of 7 years after the expiration or termination of the Agreement) the following categories of insurance:

- (a) *a public liability insurance policy for an amount not less than \$10 million per occurrence;*
- (b) a products liability insurance policy for an amount not less than \$10 million per occurrence;
- (c) workers compensation insurance for an amount required by the relevant State and Territory legislation or, where common law liability is not covered by the relevant statutory scheme, common law employers' liability cover of not less than \$50 million in the aggregate in any 12 month period; and

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(d) professional indemnity insurance for an amount not less than \$5 million per claim and in the aggregate in any 12 month period.

55.2 The taking out of the insurance policies referred to in **clause 55.1** does not relieve the Research Provider of any obligation or liability which it has under any other provision of the Agreement.

55.3 The Research Provider must, if requested by the FRDC and without delay, provide evidence that is acceptable to the FRDC of the insurances referred to in **clause 55.1** and their currency.

55.4 The Research Provider is not required to effect and maintain the insurances specified in **clause 55.1** if the Special Conditions exempt the Research Provider from compliance with **clause 55.1**.

PART 16 – TERM AND TERMINATION

56. TERM OF AGREEMENT

56.1 The Agreement will commence on the Start Date and, subject to the Agreement, will continue in force until the earlier of:

- (a) *6 months after the Project Completion Date; or*
- (b) termination of the Agreement.

57. TERMINATION DUE TO UNAVAILABILITY OF ADDITIONAL RESOURCES

57.1 If the FRDC does not agree to provide additional funds under **clause 18.3** or the Parties do not agree to a Project variation, either Party may terminate the Agreement by giving at least 20 Business Days written notice to the other Party.

57.2 Termination of the Agreement by a Party under this **clause 57** does not constitute a breach of the Agreement by either Party or cause any liability to arise in relation to any Loss suffered by either Party as a result of the termination.

58. TERMINATION ON DEFERMENT OF FRDC FUNDS

58.1 Where the FRDC defers a payment under **clause 16.1(b)**:

- (a) *the Research Provider may terminate the Agreement for convenience by providing the FRDC at least 60 Business Days written notice, provided that if at any time during the period of notice the FRDC is able to continue funding the Project, the Research Provider may withdraw the notice of termination; and*

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- (b) the FRDC may terminate the Agreement in accordance with **clause 59**.

58.2 If the Agreement is terminated under **clause 58.1**:

- (a) *subject to **clause 58.2(b)**, the FRDC is not obliged to make any further payment to the Research Provider;*
- (b) the FRDC will be liable only for any reasonable costs in respect of unavoidable Loss incurred by the Research Provider and directly attributable to the termination of the Agreement, provided that:
 - (i) the costs are fully substantiated to the FRDC;
 - (ii) the costs must not exceed the total FRDC Funds payable under the Agreement and must not include loss of potential profit; and
 - (iii) for the avoidance of doubt, reasonable costs in respect of unavoidable Loss include costs incurred in conducting the Project prior to the date of termination and in respect of which FRDC Funds would otherwise have been paid; and
- (c) the Research Provider may continue the Project in accordance with **clause 59.5**.

59. TERMINATION ON NOTICE BY THE FRDC

59.1 The FRDC may, at its sole discretion for any reason, and at any time by providing 60 Business Days written notice, terminate the Agreement, in whole or in part, for any reason whatsoever.

59.2 Upon receiving a notice of termination referred to in **clause 59.1**, the Research Provider must:

- (a) *stop work as specified in the notice and comply with any other directions or requests included in the notice, in particular in relation to FRDC Material and Project Material;*
- (b) comply with all obligations in the Agreement relating to FRDC Material and Project Material;
- (c) take all available steps to minimise or avoid any Loss resulting from that termination and to protect FRDC Material and Project Material; and
- (d) continue work on any part of the Project not affected by the notice.

59.3 As soon as practicable after receiving a notice of termination referred to in **clause 59.1**, the Research Provider must provide the FRDC with a report that describes

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what work has been performed by the Research Provider under the Agreement up until the date of termination.

59.4 If the Agreement is terminated by the FRDC in accordance with **clauses 58.1 or 59.1**, the FRDC will be liable only for any reasonable costs in respect of unavoidable Loss incurred by the Research Provider and directly attributable to the termination of the Agreement, provided that the costs are fully substantiated to the FRDC. These costs must not exceed the total FRDC Funds payable under the Agreement and must not include loss of potential profit. For the avoidance of doubt, reasonable costs in respect of unavoidable Loss include costs incurred in conducting the Project in accordance with the Agreement prior to the date of termination and in respect of which FRDC Funds would otherwise have been paid.

59.5 If the Agreement is terminated by:

- (a) *either Party in accordance with **clause 58.1**; or*
- (b) the FRDC in accordance with **clause 59.1**,

either Party (the Continuing Party) may continue the Project by giving the other Party written notice of the Continuing Party's intention to continue the Project.

59.6 If the Research Provider is the Continuing Party, the licence granted by the FRDC to the Research Provider under **clause 20.2** extends to allow the Research Provider, subject to any reasonable conditions imposed by the FRDC, to:

- (a) *use FRDC Material that is incorporated in any Project Material that exists at the date of termination for the purpose of completing the Project; and*
- (b) subject to the Agreement, permanently incorporate the FRDC Material in Material produced by the Research Provider after the date of termination.

59.7 If the FRDC is the Continuing Party, the FRDC may appoint a third party to complete the Project in accordance with this **clause 59**.

59.8 Prior to a third party being appointed under **clause 59.7**, the FRDC must:

- (a) *provide the Research Provider with written notice advising of the identity of each third party it intends to appoint; and*
- (b) allow the Research Provider 5 Business Days to object to the appointment of a particular third party.

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59.9 The FRDC must not appoint a particular third party under **clause 59.7** if, within 5 Business Days of the notice referred to in **clause 59.8(a)** being delivered to the Research Provider:

- (a) *the Research Provider:*
 - (i) notifies the FRDC in writing that it objects to the appointment of that particular third party; and
 - (ii) provides reasons for its objection; and
- (b) such objection is reasonable in the circumstances.

59.10 If the FRDC is not able to appoint a particular third party because of the operation of **clause 59.9**, the Parties must negotiate in good faith on the appointment of a third party that is acceptable to both the FRDC and the Research Provider.

59.11 If the FRDC appoints a third party to complete the Project under **clause 59.7**:

- (a) *without limiting clause 59.3, the Research Provider must disclose to:*
 - (i) the FRDC; and
 - (ii) any third party appointed by the FRDC to complete the Project and that has agreed to keep Confidential Information confidential,
- all Project Data, the methods used and all results and conclusions reached in carrying out the Project, access to the Research Provider's records and all information and explanations in relation to the Project; and
- (b) subject to any reasonable conditions imposed by the Research Provider and the licences of Project Material granted to the FRDC under **clause 25**;
 - (i) the FRDC; and
 - (ii) any third party appointed by the FRDC to complete the Project and that has agreed to keep Confidential Information confidential,

are entitled to use any IP Rights arising in relation to the Project, including any Project Material, to complete the Project.

59.12 For avoidance of doubt, ownership of IP Rights in Project Material that exists at the date of termination is not affected by the termination, and the Parties must only Commercialise Project Material that exists at the date of termination in accordance with **clause 35**.

60. **DEFAULT BY RESEARCH PROVIDER**

60.1 Without prejudice to its rights at law, the FRDC may, by notice in writing to the Research Provider, terminate the Agreement immediately if the Research Provider:

- (a) *becomes insolvent or bankrupt;*
- (b) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors;
- (c) goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purposes of reconstruction, or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to supervision of a court either voluntarily or otherwise;
- (d) suffers any execution against its assets having adverse effect on its ability to perform the Agreement;
- (e) is an individual and becomes incapable or of unsound mind or the Research Provider's person or estate is liable to be dealt with in any way under any laws relating to mental health; or
- (f) is an individual and dies.

60.2 Without prejudice to its rights at law, the FRDC may, by notice in writing to the Research Provider, require the Research Provider to show cause why the Agreement should not be terminated (**show cause notice**) where:

- (a) *the Research Provider is charged with an indictable offence;*
- (b) the Research Provider assigns its rights otherwise than in accordance with the requirements of the Agreement;
- (c) the Research Provider has failed to achieve, to the reasonable satisfaction of the FRDC, any Milestone within 20 Business Days after the date specified in Schedule 1 – Schedule of Payments;
- (d) the Research Provider has failed to remove or avoid a conflict of interest when directed to do so by the FRDC in accordance with **clause 64**;
- (e) the Research Provider has failed to meet any other obligation under the Agreement; or
- (f) the Project is, in the opinion of the FRDC, no longer viable.

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- 60.3 Upon receiving a show cause notice under **clause 60.2**, the Research Provider must respond in writing within 20 Business Days.
- 60.4 The FRDC must consider the Research Provider's response provided under **clause 60.3**, and may:
- (a) *terminate the Agreement immediately by notice in writing if the FRDC considers that the problem or problems that prompted the show cause notice are unlikely to be resolved to its reasonable satisfaction within 10 Business Days; or*
 - (b) enter into negotiations with the Research Provider to attempt to resolve the problem or problems that prompted the show cause notice.
- 60.5 If the Research Provider does not respond to the show cause notice in accordance with **clause 60.3**, the FRDC may terminate the Agreement immediately by notice in writing.
- 60.6 If, on termination of the Agreement under this **clause 60**, there are any surplus FRDC Funds, those surplus FRDC Funds must be repaid by the Research Provider to the FRDC on termination and, if not repaid, is recoverable by the FRDC from the Research Provider as a debt.
- 60.7 If the Agreement is terminated under this **clause 60**:
- (a) *subject to the Agreement, the Parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;*
 - (b) the FRDC 's rights to recover damages are not affected;
 - (c) the Research Provider must comply with all obligations in the Agreement relating to FRDC Material, Project Material and Capital Items;
 - (d) the FRDC may appoint a third party to complete the Project;
 - (e) the Research Provider must disclose to:
 - (i) the FRDC; and
 - (ii) any third party engaged by the FRDC to complete the Project and that has agreed to keep Confidential Information confidential;
- all Project Data, the methods used and all results and conclusions reached in carrying out the Project, access to the Research Provider's records and all information and explanations in relation to the Project; and

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- (f) subject to any reasonable conditions imposed by the Research Provider, and the licences of Project Material granted to the FRDC under **clause 25**:
- (i) the FRDC; and
 - (ii) any third party engaged by the FRDC to complete the Project and that has agreed to keep Confidential Information confidential,
- are entitled to use any IP Rights arising in relation to the Project, including any Project Material, to complete the Project.

61. DEFAULT BY FRDC

61.1 Without prejudice to its rights at law, the Research Provider may, by notice in writing to the FRDC, terminate the Agreement immediately if the FRDC fails to comply with the Agreement and:

- (a) *if the failure is capable of remedy, the Research Provider, by notice in writing to the FRDC, requires the FRDC to remedy the failure; and*
- (i) the FRDC does not commence to remedy the failure within 10 Business Days after being given the notice referred to in **clause 61.1(a)**; and
 - (ii) the FRDC fails to remedy the failure within 20 Business Days after being given the notice referred to in **clause 61.1(a)**; or
- (b) if the failure is not capable of remedy, the Research Provider provides the FRDC with 10 Business Days' notice in writing of its intention to terminate.

61A. EFFECT OF TERMINATION OR EXPIRATION ON RIGHT TO PROJECT MATERIAL INCOME

61A.1 Termination or expiration of this Agreement will not affect the enforceability of any rights or obligations accrued under this Agreement which survive termination.

61A.2 If this Agreement terminates or expires, the Parties retain their respective rights and entitlements to Project Material Income relating to Project Material IP created prior to the effective date of termination or expiration in proportion to their respective Income Shares, regardless of whether that Project Material IP has already been Commercialised at the effective date of termination or expiration or not. This right continues for a period of 6 years from the effective date of termination or expiration.

PART 17 - GOVERNMENT TAXES, LEVIES AND CHARGES

62. GOVERNMENT TAXES, LEVIES AND CHARGES

- 62.1 Subject to **clause 62.2**, the FRDC Funds are inclusive of all levies and taxes, including GST.
- 62.2 The amounts specified in Schedule 1 – Schedule of Payments do not include GST. GST will be added to the amounts specified in Schedule 1 – Schedule of Payments at the time that each payment of FRDC Funds is paid to the Research Provider if the Research Provider is liable to pay GST.
- 62.3 Subject to **clause 14.3**, where a Taxable Supply is made under the Agreement, the Research Provider must provide the FRDC with a Tax Invoice at the same time the Research Provider provides the FRDC with the relevant Milestone Progress Report referred to in **clause 44**.
- 62.4 If the amount of any GST payable by the FRDC to the Research Provider in relation to any supply under the Agreement differs for any reason from the amount of GST actually paid or payable by the Research Provider in relation to that supply, the difference must be paid by the Research Provider to the FRDC or by the FRDC to the Research Provider (as the case may be) and the Research Provider must supply the FRDC with an Adjustment Note in this respect as soon as practicable.
- 62.5 Any outgoing cost, expense or cost paid or payable by the Research Provider which may be reimbursed by the FRDC must first be reduced by the amount of any input tax credit entitlement before being claimed from the FRDC.
- 62.6 If a payment by the Research Provider to satisfy a claim by the FRDC under or in connection with the Agreement (for example, under an indemnity given by the Research Provider or for a breach of any representation or warranty by the Research Provider) gives rise to a liability to pay any GST in respect of a Taxable Supply by the FRDC, the Research Provider must pay, and indemnify the FRDC from, the amount of that GST.
- 62.7 The amount recoverable by the FRDC in respect of any indemnity, representation or warranty given by the Research Provider under the Agreement includes the amount of GST payable on the cost or expense in relation to which the indemnity, representation or warranty is paid, but will exclude the amount of any input tax credit or other credit to which the FRDC, as the taxable supplier, is entitled in respect of the cost or expense recovered.
- 62.8 The Parties each warrant that they are registered under the GST Law and that each Party will notify the other promptly if it ceases to be registered for the purpose of the GST Law.

PART 18 - GENERAL OBLIGATIONS

63. NEGATION OF EMPLOYMENT PARTNERSHIP AND AGENCY

- 63.1 The Research Provider must not represent itself, and must ensure that its employees do not represent themselves, as being employees, partners or agents of the FRDC.
- 63.2 The Research Provider will not by virtue of the Agreement be, or for any purpose be deemed to be, an employee, partner or agent of the FRDC.

64. CONFLICT OF INTEREST

- 64.1 Subject to **clause 64.2**, the Research Provider warrants that, to its knowledge, at the date of signing the Agreement, no Conflict of Interest exists or is likely to arise in the performance of its obligations under the Agreement.
- 64.2 Where a Conflict of Interest, a risk of Conflict of Interest or a perceived Conflict of Interest arises in the performance of the Research Provider's obligations under the Agreement, the Research Provider must notify the FRDC immediately of the situation and must follow all reasonable directions by the FRDC about the method for handling the Conflict of Interest, risk of Conflict of Interest or perceived Conflict of Interest.

65. COMPLIANCE WITH FRAUD POLICY

- 65.1 FRDC Funds and FRDC Material must only be used for the purposes of the Project and in accordance with this Agreement.
- 65.2 The Research Provider must notify the FRDC immediately on becoming aware of:
 - (a) *any loss or overpayment of FRDC Funds;*
 - (b) any loss of FRDC Material or Project Material; or
 - (c) any misuse or potential misuse of FRDC Funds or FRDC Material, including dishonestly obtaining a benefit by deception or other means.

Where oral notification is provided, it must be followed by written notification within 2 Business Days.

- 65.3 The Research Provider must comply with any reasonable directions of the FRDC in order to recover any loss or overpayment, or rectify any misuse or potential misuse.

66. WHS LAW REQUIREMENTS

PROJECT AGREEMENT

- 66.1 The Research Provider, in connection with the provision of the Project, must comply with the WHS Law and any applicable Corresponding WHS Law as amended from time to time.
- 66.2 The Research Provider will ensure compliance with its obligations under applicable work health and safety laws. This includes, but is not limited to:
- (a) ensuring the safety of the Research Provider Personnel;
 - (b) ensuring the safety of the FRDC's workers;
 - (c) ensuring the safety of the general public;
 - (d) consulting with all other relevant parties with duties and obligations under applicable work health and safety laws
- 66.3 If the Research Provider is undertaking activities at the FRDC's or a stakeholder's premises, and there is a conflict or inconsistency between the Research Provider's work health and safety policies or procedures and those of the FRDC or the stakeholder, then the Research Provider must notify the FRDC immediately.
- 66.4 The Research Provider must promptly, after becoming aware of it, notify the FRDC of any accident, notifiable incident (being an incident which is notifiable under WHS Law or Corresponding WHS Law), injury or damage to property that occurs in connection with the Project.
- 66.5 In relation to any incident notified to the FRDC under clause **66.4**, the Research Provider must promptly provide to the FRDC:
- (a) an investigation report containing findings on the causes and effects of, and corrective and preventative actions arising from, any accident, notifiable incident, injury or damage to property notified to the FRDC under clause **66.4**; and
 - (b) following the completion of an investigation report in accordance with clause **66.5(a)**, a monthly report identifying the status of any preventative or corrective actions identified in that investigation report.
- 66.6 The Research Provider must permit the FRDC (or any person nominated by the FRDC), and must procure such further permission as may be necessary for the FRDC (or its nominated person) to inspect, examine, interview and take statements from Research Provider Personnel for the purposes of determining the causes and effects of any accident, notifiable incident, injury or damage to property.

PROJECT AGREEMENT

66.7 The Research Provider must attend and participate in any meetings, provide and maintain current WHS information and take any other steps requested by FRDC for the purposes of ensuring compliance with the WHS Law

67. ANTI-DISCRIMINATION LEGISLATION

67.1 The Research Provider must comply with the provisions of all applicable Commonwealth, State and territory anti-discrimination legislation, including the, Racial Discrimination Act 1975 (Cth), Sex Discrimination Act 1984 (Cth) and Disability Discrimination Act 1992 (Cth).

68. FREEDOM OF INFORMATION

68.1 In clauses 68.2 and 68.3, 'document' and 'Commonwealth contract' have the same meaning as in the Freedom of Information Act 1982 (Cth).

68.2 The Research Provider acknowledges that the Agreement is a Commonwealth contract.

68.3 The Research Provider must cooperate with and assist the FRDC as it may reasonably require to enable it to comply with any obligations it may have under freedom of information legislation (including the Freedom of Information Act 1982 (Cth)), including by:

- (a) observing the policies and protocols notified to the Research Provider regarding complying with freedom of information legislation; and
- (b) if the FRDC receives a request for access to a document or other material created by, or in the possession of, the Research Provider or any subcontractor that relates to the performance of the Agreement (and not to the entry into the Agreement), providing to them, or at their election giving them and their advisers access to and the means to copy, that document or other material

69. RESOLUTION OF DISPUTES

69.1 Each Party undertakes to use reasonable endeavours in good faith to resolve any disputes or differences that arise between the Parties in connection with the Agreement.

69.2 A Party may give the other Party a notice of dispute (**dispute notice**) in connection with the Agreement, and the Parties will each use reasonable endeavours to resolve the dispute within 20 Business Days after giving the dispute notice.

PROJECT AGREEMENT

- 69.3 Notwithstanding the existence of a dispute or difference each Party must continue to perform the Agreement, unless a Party has insufficient resources to continue.
- 69.4 If, after 20 Business Days, the Parties have not resolved the dispute in accordance with **clause 69.2**, then either Party may submit the dispute or difference to:
- (a) *formal or informal mediation; or*
 - (b) arbitration in the Australian Capital Territory by a single arbitrator:
 - (i) appointed by the agreement of the Parties; or
 - (ii) if the Parties cannot agree, appointed by the Supreme Court of the ACT in accordance with the *Commercial Arbitration Act 1986 (ACT)*,and the other Party agrees that the dispute shall thereafter be resolved by arbitration in accordance with this **clause 69**.
- 69.5 If the dispute or difference is submitted to mediation and is not settled within 20 Business Days after the submission to mediation (unless such period is extended by agreement of the Parties), either Party may either:
- (a) *submit the dispute to arbitration in accordance with **clauses 69.4(b)** and **69.6**; or*
 - (b) commence legal proceedings.
- 69.6 The arbitration referred to in **clause 69.4(b)** must be conducted in accordance with the *Commercial Arbitration Act 1986 (ACT)*, except that:
- (a) *the arbitrator must observe the rules of natural justice but is not required to observe the rules of evidence;*
 - (b) a Party may have legal or other representation;
 - (c) the arbitrator does not have the power conferred by section 25 of the *Commercial Arbitration Act 1986 (ACT)*;
 - (d) the arbitrator must include in the arbitration award the finding on material questions of law and of fact, including references to the evidence on which the findings of fact are based; and
 - (e) the Parties irrevocably agree to consent pursuant to section 38(4)(a) or section 39(1)(b) of the *Commercial Arbitration Act 1986 (ACT)* to an appeal or application to the Supreme Court of the ACT on any question of law that arises out of an arbitration award or in the course of the arbitration.

PROJECT AGREEMENT

- 69.7 Where a dispute or difference is submitted to arbitration and the quantum of the dispute or difference is less than \$50,000, or the dispute is not directly related to a monetary sum, arbitration shall take place using the submission of documents alone unless both Parties agree otherwise.
- 69.8 Liability for costs, including the arbitrator's fees, may be determined by the arbitrator, but if not, will be borne equally by the Parties.
- 69.9 Subject to this **clause 69**, only if the dispute has not been resolved:
- (a) *by negotiation in accordance with **clause 69.2**; or*
 - (b) *by mediation in accordance with **clause 69.4(a)**,*
- either Party may commence legal proceedings.
- 69.10 Nothing in this **clause 69** prevents either Party from seeking urgent injunctive relief.

70. EXCUSABLE DELAY

- 70.1 A Party (**non-performing Party**) will not be liable for any default or delay in performance of its obligations under the Agreement if, and to the extent that, the default or delay is caused by an Excusable Delay Event. For the purposes of this **clause 70**, an Excusable Delay Event means any:
- (a) *fire, flood, earthquake, elements of nature or act of God;*
 - (b) riot, civil disorder, rebellion or revolution;
 - (c) delay in passing any relevant legislation, including appropriation bills; or
 - (d) other similar cause beyond the reasonable control of the non-performing Party,
- but in each case only if, and to the extent that:
- (e) the non-performing Party is without fault in causing the default or delay; and
 - (f) the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing Party at its expense through the use of alternate sources, work around plans or other means.
- 70.2 The Parties agree that industrial action or industrial disputation including a strike by employees of a non-performing Party or any subcontractor (or both) is not an Excusable Delay Event.

PROJECT AGREEMENT

- 70.3 When an Excusable Delay Event has occurred, the non-performing Party will be excused from further performance of the obligations affected for as long as the circumstances prevail provided the non-performing Party continues to use its best endeavours to recommence performance whenever and to whatever extent possible without delay. The non-performing Party must immediately notify the other Party of the Excusable Delay Event and describe at a reasonable level of detail the circumstances causing such delay.
- 70.4 If the Research Provider is excused from the performance of its obligations pursuant to **clause 70.3** for more than 60 consecutive Business Days, the FRDC may terminate the Agreement immediately by written notice to the Research Provider without limiting any other rights it may have.
- 70.5 If the FRDC terminates the Agreement under **clause 70.4**, the FRDC will be liable only for any reasonable costs in respect of unavoidable Loss incurred by the Research Provider and directly attributable to the termination of the Agreement, provided that the costs are fully substantiated to the FRDC. These costs must not exceed the total FRDC Funds payable under the Agreement and must not include loss of potential profit. For the avoidance of doubt, reasonable costs in respect of unavoidable Loss include costs incurred in conducting the Project in accordance with the Agreement prior to the date of termination and in respect of which FRDC Funds would otherwise have been paid.

71. SEVERABILITY

- 71.1 Each provision of the Agreement and each part of such provision, will, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision or part. If any provisions or part of such provision is void or otherwise unenforceable for any reason, then that provision or part (as the case may be) will be severed and the remainder will be read and construed as if the severable provision or part had never existed.

72. APPLICABLE LAW

- 72.1 The Agreement will be governed by the laws in force in the Australian Capital Territory and the Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

73. NOTICES, REQUESTS AND WRITTEN APPROVALS

- 73.1 For the purposes of this **clause 73**:
- (a) *a Recipient Party is a Party receiving a notice or request under the Agreement from the other Party;*

PROJECT AGREEMENT

- (b) a Recipient is the Recipient Party's representative as specified in Schedule 8 – Notice Details; and
- (c) a Recipient Party's Address is the address specified in Schedule 8 – Notice Details.

73.2 A notice or request or written approval to a Recipient Party must be in writing addressed to the Recipient, and:

- (a) *left at or sent by prepaid post to the Recipient Party's Address; or*
- (b) sent by email to the regular business email address of the Recipient.

73.3 A notice or request or written approval given in accordance with **clause 73.2** is received:

- (a) *if left at the Recipient Party's Address, on the date of delivery;*
- (b) if sent by prepaid post, 5 Business Days after the date of posting;
- (c) if sent by email, when the Recipient sends an acknowledgement of receipt by return email unless the Recipient Party's email system sends an automated "out-of-office" email notification.

73.4 In the case of notices or requests or written approval sent by email the sending party must, when sending the email, request that the Recipient acknowledges receipt by return email.

74. ENTIRE AGREEMENT

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

75. AMENDMENT

75.1 The Agreement can only be amended, supplemented or replaced by:

- (a) *the Parties completing the proforma document set out in Schedule 5 – Proforma Amendment Agreement; or*
- (b) another document signed by the Parties.

76. ASSIGNMENT AND NOVATION

PROJECT AGREEMENT

- 76.1 Subject to **clause 76.2**, a Party must not assign or otherwise transfer its rights or obligations under the Agreement without the prior written approval of the other Party.
- 76.2 The Parties acknowledge and agree that:
- (a) the FRDC's rights and obligations under the Agreement may be transferred at any time to the Commonwealth, a third party nominated by the Commonwealth or a FRDC Third Party Funder.
 - (b) where the Research Provider is a department of state, agency or statutory authority of the Australian Government or a State or Territory government, the Research Provider's rights and obligations under the Agreement may be transferred to another department of state, agency or statutory authority of that government if such a transfer is required by a machinery of government change.
- 76.3 If a transfer is made under **clause 76.2** the Party effecting the transfer must advise the other Party within 10 Business Days after such a transfer occurs.
- 76.4 Except where a transfer is to occur under **clause 76.2(b)**, the Research Provider must not consult with any other person or body for the purpose of entering into an agreement that will require novation of the Agreement without first consulting the FRDC.

77. WAIVER

- 77.1 A waiver by a Party in respect of a breach of a provision of the Agreement by the other Party will not be deemed to be a waiver in respect of any other breach, and the failure of a Party to enforce at any time any of the provisions of the Agreement will in no way be interpreted as a waiver of such provision.

78. CONTINUATION OF CLAUSES

- 78.1 The following clauses will survive the expiration or termination of the Agreement: **Clauses 9.1 and 9.2 (Warranties), 20 (FRDC Material), 21.5 (Ownership of Project Material), 23 (Licence to use FRDC Background IP), 23 (Licence to use Research Provider Background IP and Third Party IP), 24 (Protection of Project Material and Ownership of IP Rights in Project Material), 25 (Licence to use Project Material IP), 26 (Parties' use of Project Material IP), 33 (Rights to Publish and Restrictions), 34 (Minimum Requirements for Research Provider Publications), 35(Commercialisation), 36 (Income), 37 (Confidential Information), 38 (Security), 39 (Privacy), 47 (Accounts and Records), 48 (Audit and Access), 51(Capital Items), 54 (Indemnity), 55 (Insurance), 59.5 (continuation of Project after Termination), 59.12**

PROJECT AGREEMENT

(commercialisation after Termination by FRDC), **61A** (Effect of Termination or Expiration on right to Project Material Income), **62.6** and **62.7** (Government Taxes, Levies and Charges), **69** (Resolution of Disputes) and Schedule 3 - Special Conditions.

78.2 All clauses that are required to give effect to the clauses referred to in **clause 78.1** will also survive the expiration or termination of the Agreement.

79. **GIVING EFFECT TO THE AGREEMENT**

79.1 Each Party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other Party may reasonably require to give full effect to the Agreement.

80. **COSTS AND EXPENSES**

80.1 Each Party must pay its own expenses incurred in negotiating and preparing the Agreement and any related documentation.

81. **COUNTERPARTS**

81.1 The Agreement may be executed in counterparts.

PROJECT AGREEMENT

This **PROJECT AGREEMENT** is **EXECUTED** as an agreement.

DATE

SIGNED for and on behalf of the Fisheries
Research and Development Corporation in
the presence of:

Signature of witness

Signature of FRDC representative

Name of witness

Name and title of FRDC representative

SIGNED for and on behalf of
«**ResearchProviderLegalName**», by its duly
authorised representative, in the presence
of:

Signature of witness

Signature of Research Provider
representative

Name of witness

Name and title of Research Provider
representative

PROJECT AGREEMENT

SCHEDULE 1 – SCHEDULE OF PAYMENTS

<Paste Schedule 1 here>

PROJECT AGREEMENT

SCHEDULE 2 - R&D FUNDING APPLICATION

<Paste Schedule 2 here>

PROJECT AGREEMENT

SCHEDULE 3 – SPECIAL CONDITIONS

<Paste Schedule 3 here>

PROJECT AGREEMENT

SCHEDULE 4 - CONFIDENTIAL INFORMATION

FRDC Confidential Information

Not Applicable

Research Provider Confidential Information

Not Applicable

PROJECT AGREEMENT

SCHEDULE 5 – PROFORMA AMENDMENT AGREEMENT

DEED OF AMENDING AGREEMENT NO. <<ProformaAmendmentDocumentDataNumber>>

PARTIES

Fisheries Research and Development Corporation (ABN 74 311 094 913) a body incorporated in accordance with the Primary Industries Research and Development Act 1989 (Cth) (FRDC).

<<ProformaResearchProviderName>> ABN: : <<ProformaResearchProviderABN>>
<<ProformaResearchProviderMailingAddress>> (Research Provider).

RECITALS

A. On <<AgreementDate>>, the Parties entered into an agreement for the conduct of a R&D project by the Research Provider (Original Agreement).

B. The Parties have agreed to amend the Original Agreement on the terms and conditions set out in this Deed of Amendment No. <<ProformaAmendmentDocumentDataNumber>> (Deed).

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Definitions

The following definitions apply in this Deed.

Deed of Agreement No. <<ProformaAmendmentDocumentDataNumber>> means the terms and conditions of this deed, including any schedules, annexures and any other documents specifically incorporated in this Deed by reference.

Original Agreement means the agreement between the FRDC and the Research Provider dated <<AgreementDate>>.

Party means the FRDC or the Research Provider, as the context requires.

Except as specified in this Deed of Amendment No.

<<ProformaAmendmentDocumentDataNumber>>, other terms have the same meaning as in the Original Agreement.

1.2 Rules for interpreting this Deed

PROJECT AGREEMENT

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed of Amendment No <<ProformaAmendmentDocumentDataNumber>>, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (ii) a Party to this Deed of Amendment No. <<ProformaAmendmentDocumentDataNumber>> or to any other document or agreement includes a permitted substitute or a permitted assign of that Party;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) any thing (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) If a word is defined, another part of speech has a corresponding meaning.
- (d) If an example is given of any thing (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (e) The word "agreement" includes an undertaking or other binding arrangement or understanding, whether or not in writing.

2. AMENDMENT

2.1 Amendment

The Parties have agreed to amend the Original Agreement in accordance with this Deed of Amendment No. <<ProformaAmendmentDocumentDataNumber>>.

2.2 Ratification of Original Agreement

Subject to the variations contained in this Deed of Amendment No. <<ProformaAmendmentDocumentDataNumber>>.and any other formal variations

PROJECT AGREEMENT

previously agreed by the Parties, the Parties confirm and ratify all of the provisions of the Original Agreement. The Original Agreement remains in full force and effect and must be read and construed as if the terms of this Deed of Amendment No.

<<ProformaAmendmentDocumentDataNumber>>.were inserted by way of substitution or addition.

2.3 Amendment not to affect rights

Nothing contained in, or effected by, this Deed of Amendment No.

<<ProformaAmendmentDocumentDataNumber>>.abrogates, prejudices, diminishes or otherwise affects any powers, rights, remedies or obligations of any person arising under or in respect of the Original Agreement before the date of execution of this Deed of Amendment No. <<ProformaAmendmentDocumentDataNumber>>.

3. AMENDMENTS

With effect from the date of execution of this Deed of Amendment No.

<<ProformaAmendmentDocumentDataNumber>>.the Original Agreement is amended as set out in Annexure 1.

4. GENERAL

4.1 Amendment

This Deed of Amendment No. <<ProformaAmendmentDocumentDataNumber>>.may only be amended or supplemented in writing, signed by the Parties.

4.2 Governing law

This Deed of Amendment No. <<ProformaAmendmentDocumentDataNumber>>.is governed by the law in force in the Australian Capital Territory and the Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

4.3 Liability for expenses

Each Party must pay its own expenses incurred in negotiating, executing, stamping and registering this Deed of Amendment No.

<<ProformaAmendmentDocumentDataNumber>>.

4.4 Giving effect to this document

Each Party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other Party may reasonably require to give full effect to this Deed of Amendment No.

<<ProformaAmendmentDocumentDataNumber>>.

PROJECT AGREEMENT

4.5 Counterparts

This Deed of Amendment No. <<ProformaAmendmentDocumentDataNumber>>. may be executed in counterparts.

4.6 Attorneys

Each person who executes this Deed of Amendment No. <<ProformaAmendmentDocumentDataNumber>>. on behalf of a Party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

5. NOTICES

5.1 Each communication (including each notice, consent, approval, request and demand) under or in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that Party to each other Party from time to time):
 - (i) FRDC:

Name:	Fisheries Research and Development Corporation
Address:	PO Box 222
	DEAKIN WEST ACT 2600
Email:	frdc@frdc.com.au
For the attention of:	Mr John Wilson
 - (ii) Research Provider:

Name:	<i>[insert]</i>
Address:	<i>[insert]</i>
Email:	<i>[insert]</i>
For the attention of:	<i>[insert]</i>
- (c) must be signed by the Party making it or (on that Party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that Party;

PROJECT AGREEMENT

- (d) must be delivered by hand or sent by prepaid post to the address of the addressee, in accordance with clause 5.1 (b); and
- (e) is taken to be received by the addressee:
 - (i) if left at the addressee's address, on the date of delivery;
 - (ii) if sent by prepaid post, 5 Business Days after the date of posting;

but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

PROJECT AGREEMENT

This **DEED OF AMENDING AGREEMENT** is **EXECUTED** as a deed.

DATE

SIGNED for and on behalf of the Fisheries
Research and Development Corporation in
the presence of:

Signature of witness

Signature of FRDC representative

Name of witness

Name and title of FRDC representative

SIGNED for and on behalf of
<<ResearchProviderLegalName>> , by its
duly authorised representative, in the
presence of:

Signature of witness

Signature of Research Provider
representative

Name of witness

Name and title of Research Provider
representative

PROJECT AGREEMENT

ANNEXURE 1 – LIST OF AMENDMENTS

<<ProformaAmendmentDocument>>

PROJECT AGREEMENT

SCHEDULE 6 – PROJECT DATA

Data Type & Management

«ProjectData»

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SCHEDULE 7 – FRDC THIRD PARTY FUNDERS

<<FRDCThirdPartyFunders>>

PROJECT AGREEMENT

SCHEDULE 8 – NOTICE DETAILS

FRDC Representative

Name	John Wilson
Position	Business Development Manager
Postal Address	Locked Bag 222 Deakin West ACT 2600
Email Address	frdc@frdc.com.au
Telephone	02 6285 0411

Research Provider Representative

Name	«FullName»
Position	«JobTitle»
Postal Address	«address1_composite»
Email Address	«EmailAddress1»
Telephone	«Phone»

SCHEDULE 9 – INTELLECTUAL PROPERTY REGISTER

A. Background IP (BIP) and or Third Party IP (TPIP) to be used in Project

Item:	Owners of BIP/TPIP	Base form of IP to be used and Nature of IP Rights *	Description Sufficient to Identify Background IP or TPIP	Confidentiality Required YES/ NO	Rights to use (Has an agreement been obtained for use of the BIP/TPIP in the project) (Yes/No) If YES is the agreement for Research or Commercial use or both.	Is the BIP or TPIP required for commercial use of Project IP (Yes/No) If YES specify how the BIP and TPIP will be used in Project IP.
Eg	XYZ	Database Copyright	Database developed from Fish stock reports	NO	Yes- RESEARCH and public release of data is allowed for non-commercial use only.	Yes – Data to be used in development of fish stock predictive tool
Conditions on use: List any encumbrances or special terms and conditions for the IP listed above that may affect rights to its use, publication or the commercial use of project outputs. Fish stock data to be made available under Creative Commons license for non-commercial use (Attribution-Non-Commercial 4.0 International). A licence agreement MUST be developed with XYZ prior to any commercial use of Fish stock reports or fish stock data.						
1						
Conditions on use: List any encumbrances or special terms and conditions for the IP listed above that may affect rights to its use, publication or the commercial use of project outputs.						
2						
Conditions on use: List any encumbrances or special terms and conditions for the IP listed above that may affect rights to its use, publication or the commercial use of project outputs.						
No...						
Conditions on use: List any encumbrances or special terms and conditions for the IP listed above that may affect rights to its use, publication or the commercial use of project outputs.						

* Specify whether the right stems from: copyright, patent, trade mark, design, circuit layout right, plant breeder's rights or other (please specify).

PROJECT AGREEMENT

B. Project Material – Project material and IP likely to be developed created or collected (data) from Project

Item:	Owners of Project Material and Project Material IP	Base form of IP developed and Nature of IP Rights *	Description Sufficient to Identify Project IP	Confidentiality Required YES/ NO	Commercial use rights (Has an agreement been obtained from the owners for use of IP for commercial purposes) (Yes/No) If Yes – list key conditions for use section below
Eg	XYZ	Database Copyright	New fish stock data developed from project.	YES	NO
<p>Conditions on use: List any encumbrances or special terms and conditions for the IP listed above that may affect rights to its use, publication or commercial use of project outputs.</p> <p>New data may not be published without XYZ prior approval. Once XYZ approval has been provided over used of the data, any improvements to Fish stock data is to be made available under Creative Commons license for non-commercial use (Attribution-Non-Commercial 4.0 International). A licence agreement MUST be developed with XYZ prior to any commercial use of Fish stock reports or fish stock data.</p>					
Eg	FRDC/XYZ	Software Copyright	Software - Fish stock predictive tool for north coast	YES	NO
<p>Conditions on use: List any encumbrances or special terms and conditions for the IP listed above that may affect rights to its use, publication or the commercial use of project outputs.</p> <p>Licence agreement MUST be executed with owners prior to any commercial release of software tool.</p>					
1					
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