

Conditions

1 Definitions and Interpretation

Defined terms and aids to interpretation of this Agreement are set out in the Dictionary at the end of this Agreement.

2 OEH's obligations

- 2.1 OEH will pay the Recipient, in accordance with the terms of this Agreement, an amount up to the Maximum Funding Amount towards the Recipient's performance of the Project.
- 2.2 OEH will not pay the Recipient for anything that is part of the Recipient's Core Activities.
- 2.3 OEH may arrange the provision of additional services to the Recipient, including:
 - support with the administration of financial assistance;
 - participation in meetings of the Recipient's Floodplain Risk Management Committee;
 - meeting with the Recipient's staff frequently, particularly at critical stages in the Project;
 - assistance with the preparation of briefs and review of proposals for studies;
 - technical review of plans, studies and designs for compliance with Government objectives and Project aims and requirements;
 - assistance with the preparation and review of specifications for works;
 - assistance with the review of tenders for works; and
 - assistance with the management of consultants and contractors.
- 2.4 OEH will approve the Work Plan referred to in clause 3.1.

3 Recipient's obligations

- 3.1 Within three months of the Commencement Date noted on page 1 of this Agreement, and following compliance with clauses 17.3 or 18.3 and 17.4 or 18.4, the Recipient will submit, a Work Plan in the format provided on OEH's website. Before awarding the contract for this project, the Recipient must receive written advice from OEH indicating the Work Plan has been approved.
- 3.2 The Recipient will carry out the Project as outlined in its Application and in accordance with the Work Plan.
- 3.3 The Recipient will advise OEH immediately if it has sought, is offered, or intends to accept funding from any other source(s) for this Project at any time during the Funding Term.
- 3.4 The Recipient must ensure that all funds provided by OEH under this Agreement are applied only to the actual cost of the Project.
- 3.5 The Recipient will ensure that all activities undertaken under the Project are consistent with the objectives of the Floodplain Management Program, the *NSW Flood Prone Land Policy* and the *NSW Floodplain Development Manual (2005)*. If necessary, the Recipient may seek clarification of this obligation from OEH.
- 3.6 The Recipient will undertake or oversee all technical, environmental, heritage and risk assessments, and obtain the necessary consents in relation to the Project in accordance with NSW legislative requirements and accepted best practice guidelines.
- 3.7 The Recipient will, in conjunction with OEH, monitor and evaluate the Project against the agreed project outcomes as described in the Application or any subsequent written agreement between the parties.
- 3.8 The Recipient will keep OEH informed of the progress of the Project in relation to the Work Plan and will highlight any significant technical issues.

- 3.9 The Recipient will report on or explain any aspect of the Project requested by OEH, and give due consideration to all comments issued by OEH in relation to the Project.
- 3.10 The Recipient's Representative will be responsible for managing the Recipient's obligations under this Agreement. The recipient must notify OEH immediately of any change to the Recipient's Representative at any time during the funding term.

4 Record keeping

- 4.1 The Recipient must:
- (a) Maintain financial receipts and expenditure details and other correspondence and materials related to the Project until the grant is formally acquitted;
 - (b) Permit OEH to inspect (and if necessary be supplied with copies of) all the Recipient's accounts and any other documents, including any application documents, relating to the Project;
 - (c) Comply with all reasonable requests by OEH for other information and particulars concerning the Project within 14 days of such request; and
 - (d) Retain the records referred to in this clause 4 (**Record keeping**) throughout the Funding Term and for seven (7) years after the date that is the earlier of the date of expiry of the Funding Term or termination of this Agreement.

5 Reports

- 5.1 The Recipient must prepare and submit to OEH:
- (a) a Milestone Report and Expenditure Certificate for each Milestone achieved; and
 - (b) a Final Report for the Project within two months of the project completion date.
- 5.2 The reports must be prepared using the **relevant templates provided by OEH**.

6 Claiming a payment

- 6.1 OEH will make Milestone Payments to the Recipient under this Agreement up to a total amount not exceeding the Maximum Funding Amount.
- 6.2 OEH will make a Milestone Payment to the Recipient in response to the successful delivery of a Milestone and the submission of a satisfactory Milestone Report and Expenditure Certificate in accordance with clause 5.1.
- 6.3 The Milestone Payment for a Milestone will be the proportion, set as the Funding Ratio, of the Recipient's **Actual Expenditure** in delivering the Milestone, as detailed in the relevant Milestone Report and Expenditure Certificate, subject to clause 6.4.
- 6.4 If a Milestone Payment determined under clause 6.3 would mean that the total amount OEH pays under this Agreement would exceed the Maximum Funding Amount, that Milestone Payment will be reduced by the amount by which the Maximum Funding Amount would be exceeded.
- 6.5 If the total amount of all the Milestone Payments OEH makes for the Project is less than the Maximum Funding Amount, OEH will not be liable to make additional payments to the Recipient.
- 6.6 Payments will not be made until the Recipient provides OEH with a valid Australian Business Number.

7 Goods and Services Tax (GST)

- 7.1 In this clause, the expressions 'Australian law', 'consideration', 'GST' and 'input tax credit', have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*.

7.2 Funding made under this Agreement is a payment specifically covered by an appropriation under Australian law, which is not the provision of consideration for GST purposes.

7.3 OEH's financial assistance to the Recipient under this Agreement will be based upon a Project's actual costs, less any input tax credits the Recipient is entitled to.

8 Variation

8.1 The Recipient must obtain written approval from OEH for any variation to the:

- (a) Agreement (including the Funding Term),
- (b) Work Plan,
- (c) budget (including any changes to funding sources), or
- (d) scope of a Project (to that outlined in the Application).

9 Breach of conditions

9.1 If the Recipient breaches any of the Recipient's obligations under this Agreement, or is otherwise not undertaking or is unable to carry out the Project in accordance with the Work Plan, OEH may make a written request to the Recipient to rectify the breach or resume carrying out the Project in accordance with the Work Plan.

9.2 OEH may suspend or withhold any payments under this Agreement or part thereof until the Recipient has taken action to comply with a request under clause 9.1.

9.3 If the Recipient cannot rectify a breach or complete the Project to the satisfaction of OEH after receiving a request under clause 9.1, OEH may terminate this Agreement.

9.4 If OEH terminates the Agreement:

- (a) OEH will only be liable to pay the Recipient in respect of Milestones that the Recipient has satisfactorily delivered at the date of termination and for which the Recipient has submitted a Milestone Report and Expenditure Certificate; and
- (b) The Recipient must repay to OEH any monies OEH paid to the Recipient under this Agreement that is in excess of OEH's liability at the date of termination.

9.5 If the Recipient fails to repay any excess payments, OEH may recover them in any appropriate court as a debt due to the Crown.

10 Publicity

10.1 The Recipient must acknowledge the NSW Government's contribution in any public statements or written material in relation to the Project.

10.2 The Recipient must also use the current NSW Government logo in any publicity provisions related to the Project (including brochures, signage, advertising, invitations etc., but excluding those documents referred to in clause 17.15), and ensure compliance with any accompanying logo style guides.

10.3 The Recipient must extend an invitation to a government representative to any launch or public event associated with the Project, and where they are able to attend, acknowledge them as an official guest. Where practicable, the Recipient should also afford the government representative the courtesy of publicly addressing the event.

10.4 OEH may publicise the awarding of the funding at any time after it is awarded, including:

- (a) the Recipient's name;
- (b) the amount of financial assistance;
- (c) the title and description of the Project; and
- (d) the outcomes of the Project.

11 Intellectual property

- 11.1 In this clause, Intellectual Property includes all statutory, legal, equitable and other proprietary rights and interests, including without limit, in copyright, patents, registered and unregistered trademarks, registered designs, circuit layouts, and trade secrets.
- 11.2 The Recipient warrants that:
- (a) in carrying out the Project, it will not infringe any Intellectual Property rights; and
 - (b) any report by the Recipient will not contain anything that, to its knowledge, is libellous or defamatory.
- 11.3 The Recipient indemnifies OEH and their employees and agents against any action, costs, expenses, losses or damages suffered or incurred by all, or any more of them, arising out of, or in any way in connection with, any breach by the Recipient or its employees or its agents of the Recipient's obligations under clause 11.2.
- 11.4 Where Intellectual Property in any Project Materials is vested in the Recipient, the Recipient will grant OEH a permanent, irrevocable royalty-free, non-exclusive licence to make such Project Materials publicly available and to otherwise communicate, reproduce, adapt or publicise them on a non-profit basis, including the use and modification of any models and reproduction of photographs for OEH purposes.
- 11.5 Where Intellectual Property in any Project Materials is not vested in the Recipient or OEH, the Recipient will do all things necessary to ensure that OEH is granted a permanent, irrevocable royalty-free, non-exclusive licence to make such Project Materials publicly available and to otherwise communicate, reproduce, adapt or publicise them on a non-profit basis, including the use and modification of any models and reproduction of photographs for OEH purposes.

12 Indemnity and release

- 12.1 The Project shall be performed at the Recipient's risk. The Recipient accepts full responsibility for the performance of the Project and for the consequences of implementing any of the Project's findings and recommendations.
- 12.2 The Recipient indemnifies and keeps indemnified the Director-General of the Department of Premier and Cabinet and his employees and agents, the Minister and the Crown in right of NSW from and against all actions, claims, demands and other proceedings that may be made or recovered against the Director-General of the Department of Premier and Cabinet and his employees and agents, the Minister and the Crown in right of NSW, in respect of any damage to property, personal injury or death where the damage, injury or death was caused by any wilful, unlawful or negligent act or omission of the Recipient or its employees or agents in relation to the carrying out of the Project. OEH will inform the Recipient as soon as it becomes aware of any such action, claim, demand or proceeding.
- 12.3 The Recipient will release the Director-General of the Department of Premier and Cabinet and his employees and agents, the Minister and the Crown in right of NSW from and against all actions, claims, demands and other proceedings that the Recipient may make or recover against the Director-General of the Department of Premier and Cabinet and his employees and agents, the Minister and the Crown in right of NSW, in respect of any damage to property, personal injury or death suffered by the Recipient, its employees or agents in relation to the carrying out of the Project.
- 12.4 The indemnity and release provided by the Recipient in clauses 12.2 and 12.3 is reduced proportionately to the extent that the relevant damage to property, personal injury or death is caused or contributed to by any wilful, unlawful or negligent act or omission by OEH or its employees or agents.

13 Insurance

- 13.1 The Recipient shall be responsible for effecting and maintaining all insurances required under workers' compensation legislation and for taking all other actions requisite as employer of person engaged to carry out all or any part of the Project. The Recipient shall also be responsible for ensuring volunteers carrying out any part of the Project are covered by volunteer personal accident insurance.
- 13.2 The Recipient must effect and maintain public liability insurance in relation to all premises and sites on which the Project is carried out for all works and activities undertaken for this Project. The insurance shall be for an amount of at least \$20,000,000. The policies or a certificate of currency shall be made available to OEH for inspection on request.

14 Confidentiality

- 14.1 OEH will not disclose any Confidential Information that is contained in any reports, documents and other materials provided to OEH by the Recipient that OEH has agreed not to disclose.
- 14.2 OEH undertakes not to disclose any personal information (in accordance with the definition of personal information contained in the *Privacy and Personal Information Protection Act 1998*), that is contained in the reports, documents and materials that have been submitted without written consent. OEH will not use any personal information for purposes other than the original purposes for which that personal information was supplied without written consent.
- 14.3 Clauses 14.1 and 14.2 are subject to any legal obligation on OEH to disclose information.

15 Survival of obligation

- 15.1 The Recipient's obligations under clauses 5, 10, 11, 12 and OEH's obligations under clause 14 survive the termination or expiry of this Agreement.

16 Miscellaneous

- 16.1 Any written notice or demand provided for in the Agreement may be served on the Recipient by ordinary prepaid post or email.
- 16.2 Neither the Recipient nor any person engaged by the Recipient shall be in the service or employment of OEH by virtue of this Agreement.
- 16.3 Any court proceedings arising out of or relating to this Agreement must not be heard or started in any court other than a court in NSW. The Agreement will be governed by and construed in accordance with the law for the time being in force in NSW.
- 16.4 The invalidity or unenforceability of any one or more of the conditions of the Agreement shall not invalidate or render unenforceable the remaining conditions of the Agreement. Any invalid or unenforceable condition shall be severable and all other conditions shall remain in full force and effect.
- 16.5 All project activities need to be consistent with relevant current Government policy.

Specific conditions

17 Studies and Survey, investigations and design, monitoring and documentation projects

- 17.1 The following conditions apply to studies and survey, investigations and design, monitoring and documentation projects only.
- 17.2 The Recipient will arrange for all work in the project to be undertaken by an external consultant selected through competitive tendering, unless OEH approves otherwise under clauses 17.16 and 17.17.

- 17.3 The Recipient will submit the project brief to be used in the call for tenders to OEH and will consider all OEH comments on the brief prior to releasing the call for tenders.
- 17.4 The Recipient will seek comments from OEH on all proposals received in response to the call for tenders and consider OEH's comments before awarding the contract for the work.
- 17.5 If the project captures or generates geospatial data, all data will be supplied by the Recipient at, or before, the completion of the project to the Grants Program Coordinator, OEH. Data must be compatible with the ESRI software, unless prior written approval is given by OEH.
- 17.6 The recipient shall provide digital metadata files for all geospatial data produced under this agreement. The digital metadata files shall be provided to OEH along with each final product deliverable. The metadata file shall meet ISO 19139 standards and NSW metadata portal requirements.
- 17.7 If the Project involves the collection of any geospatial data (including LiDAR, digital elevation or monitoring data) the Recipient must do all things necessary to ensure that the Whole-of-Government is granted a permanent, irrevocable royalty-free, non-exclusive licence to make such Project Materials publicly available and to otherwise communicate, reproduce, adapt or publicise them on a non-profit basis.
- 17.8 If the Project involves the collection of any LiDAR or digital elevation data, the Recipient will ensure that the data is collected and classified in accordance with the "ICSM LiDAR Acquisition Specifications and Tender Template" and/or the most recent version of the Land and Property Information "Standard LiDAR Product Specifications".
- 17.9 If the project involves collecting raw data, such as LiDAR data, the Recipient will ensure that all collected data is supplied in addition to derived data for the project. For LiDAR, this would include supplying the full LAS files.
- 17.10 Geospatial data includes those generated in a: Geographic Information System (GIS); Land Information System (LIS); Remote Sensing or Image Processing system; Computer-Aided Design and Drafting (CADD) system; Automated Mapping/Facilities Management (AM/FM) system; and other computer system that employs or references data using either absolute, relative, or assumed coordinates.
- 17.11 The Recipient will supply progress reports, draft reports and working papers on investigations and associated model data files to OEH for technical review. The Recipient will submit all comments provided by OEH following such review to the selected consultant for consideration.
- 17.12 The Recipient will seek comments from OEH and consider all OEH comments prior to finalisation of any draft reports or working papers or designs and asset management plans and operations and maintenance manuals.
- 17.13 At the completion of the Project, the Recipient will provide to OEH copies of final reports, model data files, damage calculation files and reports and final works designs and specifications and other project deliverables in the number and format specified by OEH.
- 17.14 The Recipient will place a copy of all current public consultation drafts and final floodplain management plans and studies on its internet website within one month of completion of these documents.
- 17.15 The Recipient will ensure that draft and final floodplain management plans and studies **do not** include the NSW Government or OEH name or logo on the cover or title page.

The Recipient will ensure that these documents include the following acknowledgement:

"[the Recipient's name] has prepared this document with financial assistance from the NSW Government through its Floodplain Management Program. This document does not necessarily represent the opinions of the NSW Government or the Office of Environment and Heritage."

- 17.16 If the Recipient proposes to undertake the work in the Project itself:
- (a) The Recipient must provide a detailed cost estimate (including those costs directly incurred in undertaking the Project and on-costs to a maximum of 10% of salaries) to OEH and seek approval from OEH;
 - (b) The cost estimate is to be accompanied by detailed justification for the work to be done by the Recipient together with full details of the key staff to be involved demonstrating that they have the expertise, skills, qualifications and experience to undertake the work;
 - (c) The Recipient must show it can and will commit the key staff and other resources required to the project to ensure that work is completed within the time period specified in the approved Work Plan. The Recipient must not change the nominated key staff without OEH's approval; and
 - (d) The Recipient will not commence work until OEH gives written approval.
- 17.17 If OEH gives approval for the Recipient to undertake the work itself:
- (a) The Recipient must effect and maintain appropriate professional indemnity insurance in relation to carrying out all works and activities undertaken for the Project. The insurance shall be for an amount of at least \$2,000,000. The policies or a certificate of currency shall be made available to OEH for inspection on request;
 - (b) Clauses 17.11 to 17.15 above apply, as appropriate, to the Recipient's undertaking of the work; and
 - (c) Despite clause 2.2, OEH will pay, under the Agreement, for the Recipient's costs as outlined in the detailed cost estimate provided under clause 17.16 (a). OEH will not pay for other Recipient's Core Activities.

18 Construction and specified maintenance projects

- 18.1 The following conditions apply to construction and specified maintenance projects only.
- 18.2 The Recipient will arrange for all construction work to be carried out by an external contractor selected through competitive tendering, unless OEH approves otherwise under clauses 18.8 and 18.9.
- 18.3 The Recipient will arrange for full-time supervision of construction work to be undertaken by an external contractor selected by competitive tendering, unless OEH approves otherwise under clauses 18.8 and 18.9.
- 18.4 The Recipient will seek and obtain OEH's comments in writing of the draft plans, designs, estimates and asset management plan or operations and maintenance manual for the works and consider OEH's comments before calling for tenders for the construction work.
- 18.5 The Recipient will submit a written report on tenders to OEH, seek comments on the recommended tender and consider all OEH comments before awarding the contract for the construction work.
- 18.6 The Recipient will ensure that the works are constructed strictly in accordance with the agreed plans and specifications. No variations are to be undertaken without OEH's prior written agreement.
- 18.7 The Recipient is to maintain the works constructed in good order and condition at the Recipient's expense by including the required funding for such maintenance in its asset management plan within its annual Plan of Management. In relation to flood warning systems, maintenance is considered to include the regular servicing of the gauging stations and any other hardware and the operational aspects of the system to ensure that it is fit for its intended purpose.

- 18.8 If the Recipient proposes to carry out day labour or other work or undertake supervision, the Recipient must provide to OEH sound economic or practical reasons and a detailed cost estimate and obtain written approval from OEH prior to commencing work.
- 18.9 If OEH gives approval to the Recipient to undertake day labour, or other work or supervision, then:
- (a) The Recipient must effect and maintain appropriate professional indemnity insurance in relation to carrying out for all works and activities undertaken for the Project. The insurance shall be for an amount of at least \$2,000,000. The policies or a certificate of currency shall be made available to OEH for inspection on request;
 - (b) For full-time supervision of contract works, the Recipient must provide full details of the key staff to be involved demonstrating that they have the expertise, skills, qualifications and experience to undertake the work and that it can and will commit these staff and the other resources required to the project to ensure that work is completed within the time period specified in the approved Work Plan. The Recipient must not change the nominated key staff without OEH's approval;
 - (c) Clauses 18.4, 18.6 and 18.7 apply as appropriate to the Recipient's undertaking of the work; and
 - (d) Despite clause 2.2, OEH will pay under the Agreement for the Recipient's costs as outlined in the cost estimate provided under clause 18.8.

19 Project-specific conditions

- 19.1 Project must go out to competitive tender and cannot be undertaken in-house.