

Contractor Agreement

Between

CATCHMENT SOLUTIONS PTY LIMITED
("Catchment Solutions", "the Principal")

And

(CONTRACTOR NAME & ACN/ABN)
("the Contractor")

Project title: FEER3115 - Collinsdale – Bindaree Fencing Project

Agreement duration: 6 months

Agreement Number: FEER3110-05b-Collinsdale/Bindaree Fencing

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Date _____ day of _____, 2019.

Parties Catchment Solutions Pty Limited
ABN 89 158 982 186 (“**Catchment Solutions**”, “**the Principal**”)

AND

(CONTRACTOR NAME & ACN/ABN)
 (“**the Contractor**”)

Introduction:

- A. Catchment Solutions is a party to facilitate the adoption of projects that improve agricultural practices and improve agricultural land management to improve the quality of water entering into the Great Barrier Reef Lagoon and achieve the Project Outcomes.
- B. The Contractor has requested that Catchment Solutions provide Funds to the Contractor to allow the Contractor to complete the Project and achieve the Project Outcomes.
- C. The parties have entered into this Agreement to document the terms and conditions of the agreement reached by the parties.

It is agreed:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context otherwise requires:

ABN	has the same meaning as it has in section 41 of the <i>A New Tax System (Australian Business Number) Act 1999</i> (Cth).
Aboriginal Tradition	has the same meaning as it has in section 3 of the <i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i> (Cth).
Accounting Standards	means the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.
Advisers	means the legal or financial or other professional advisers of a party and their respective officers and employees.
Agreement	means this agreement between Catchment Solutions and the Contractor and if applicable the Contractor’s Guarantors as varied (in writing and executed) from time to time and includes any and all Annexures, Schedules or other attachments to this Agreement including but not limited to the Project Plan whether it is attached to this Agreement by Catchment Solutions before or after this Agreement has been executed by the parties.
Agreement Period	means the period commencing on the Commencement Date and expiring on the earlier of:- (a) the date the Project has been completed to the satisfaction of Catchment Solutions and in accordance with this Agreement; or (b) the date this Agreement is terminated or otherwise comes to an end.
Asset	means any item of tangible property, including software, in excess of the value of \$5000, purchased or leased either wholly or in part with the use of the Funds.
Audit	means an audit carried out by a Qualified Accountant in accordance with the Auditing Standards.
Auditor Report	means and has the same meaning it has in the Auditing Standards.

Auditing Standards	means and has the same meaning as it has in sections 9 and 336 of the <i>Corporations Act 2001</i> (Cth), and refers to the auditing standards made by the Australian Auditing and Assurance Standards Board.
Business Day	means in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place.
Carbon Farming Initiative	means the process through which carbon credits are granted under the <i>Carbon Credits (Carbon Farming Initiative) Act 2011</i> (Cth).
Commencement Date	means the date of this Agreement.
Funding Provider	means the entity providing funds to Catchment Solutions for the Project.
Project Funding Agreement	means the agreement between Catchment Solutions and the Funding Provider
Completion Date	means the day after the Contractor has done all that it is required to do under this Agreement to the satisfaction of Catchment Solutions (determined by Catchment Solutions at its discretion).
Confidential Information	means information that is by its nature confidential; and is designated by a party as confidential; a party knows or ought to know is confidential; or is Secret and Sacred Material, but does not include:- information which is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation.
Conflict of Interest	means any circumstance in which the Contractor or any of the Contractor's Personnel has an interest (whether financial or non-financial) or an affiliation that is affecting, will affect, or could be perceived to affect, the Contractor's ability to perform the Project, or its obligations under this Agreement, fairly and independently.
Contract Specifications	means the Contract Specifications outlined in Schedule 2 of this Agreement.
Contractor	means the party specified as such on the title page of this Agreement.
Contractor Representative	means the person identified as such in Schedule 1, or such other person as is notified in writing by the Contractor to Catchment Solutions from time to time.
Contractor's Guarantors	means the parties specified as such on the title page of this Agreement.
Contractor's Contributions	means the Contractor's monetary contributions, specified in Schedule 1 and Schedule 1 of this Agreement.
Catchment Solutions Material	means any Material provided to the Contractor by Catchment Solutions or otherwise produced or created by Catchment Solutions.
Catchment Solutions Representative	means the person identified in Schedule 1 or such other person as is notified by Catchment Solutions to the Contractor from time to time.
Depreciation	has the same meaning as it has in Australian Accounting Standard AASB 116 <i>Property, Plant and Equipment</i> .
Dispose	means to sell, mortgage or encumber, lease or sublease, license or sublicense, assign or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts.
Electronic Communication	has the same meaning as in the <i>Electronic Transactions Act 1999</i> (Cth).
Financial Information	means information relating to the Contractor receipt, retention and expenditure of the Funds, Contractor Contributions and Other Contributions including, at a minimum: (a) a statement identifying any Funds, Contractor Contributions and Other Contributions paid to the Contractor under this Agreement that were not spent, or committed, by the end of the relevant financial year; (b) a statement of revenue and expenditure in relation to the Funds, Contractor Contributions and Other Contributions received and receivable by the Contractor under this Agreement, which must include invoice copies and a definitive statement as to whether the Contractor financial records in relation to the Funds, Contractor Contributions and Other Contributions are complete and accurate, and a statement of the balance of the Funds, Contractor Contributions and Other Contributions in a bank account; and (c) notes of any significant matters that are relevant to the Funds, Contractor Contributions and Other Contributions

Freedom of Information Commissioner Funds	means the office of that name established under the <i>Australian Information Commissioner Act 2010</i> (Cth) as varied from time to time.
	means the amount payable by Catchment Solutions to the Contractor as specified in Schedule 1 which is payable in accordance with this Agreement.
GST	means the goods and services tax under the GST Act.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act</i> and includes other GST related legislation.
Information Commissioner	means the office of that name established under the <i>Australian Information Commissioner Act 2010</i> (Cth) as varied from time to time.
Insolvency Event	means in respect of a party means: if the party: (a) makes an assignment of its estate for the benefit of creditors or (b) enters into any arrangement or composition with its creditors; or (c) suffers any execution against its assets which has or will have an adverse effect on its ability to perform this Agreement; or if the party is an incorporated entity: (a) being insolvent; or (b) an administrator, liquidator, provisional liquidator, receiver, manager or controller under the <i>Corporations Act 2001</i> (Cth) being appointed to the party; or (c) an order being made for the winding up of the party; or if the party is an individual: (a) being bankrupt; or (b) entering into a scheme of arrangement with creditors; or (c) a mortgagee or a chargee agent being appointed; or if the party is an Aboriginal or Torres Strait Islander corporation, the management of some or all of the affairs of the corporation is assumed by someone other than the directors of the corporation in accordance with the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (Cth).
Intellectual Property Rights	means all intellectual property rights, including the following rights: (a) copyright, patents, rights in circuit layouts, trademarks, designs, trade secrets, know how, domain names and any right to have Confidential Information kept confidential; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.
Interest	means interest calculated at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) plus 20 basis points.
Item	means an Item in Schedule 1.
Law	means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government.
Losses	means expenses, liabilities, damages, losses and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party).
Material	means any firmware, software, documented methodology or process, documentation or other material in whatever form, including without limitation any specifications, reports, requirement or business rules, user manuals, user guides, operations manuals, training materials and instructions, data, metadata, and the subject matter of any category of Intellectual Property Rights.
Milestone	means any fixed date to be met by the Contractor in performing any of its obligations under this Agreement, as specified in the Milestone Schedule.
Milestone Schedule	means the Milestone Schedule set out in Schedule 1 of this Agreement.
Moral Rights	means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).

NRM Region	means the natural resource management region identified by the Commonwealth within the boundaries of which the Site is located.
Other Contributions	means third party monetary contributions, contributions in the form of goods to be used in the Project and contributions in the form of services required for the Project, if any, specified in Schedule 1.
Other Project	means any project being funded by the Australian Government that Catchment Solutions considers relevant to the Project.
Personal Information	means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
Personnel	means in relation to the Contractor, any employee, officer, agent, contractor, sub-contractor or other person in any way connected with the Project.
Privacy Act	means the <i>Privacy Act 1988</i> (Cth).
Privacy Commissioner	means the office of that name established under the <i>Australian Information Commissioner Act 2010</i> (Cth) and includes any other person that may, from time to time, perform the functions of that office.
Program Outcomes	means to contribute to the achievement of the strategic objectives and deliver against the five year outcomes of the Sustainable Environment and Sustainable Agriculture streams of Caring for our Country.
Project Budget	means the budget specified in Schedule 1 detailing how the Contractor will spend the Funds, and identifying the Contractor's Contributions and Other Contributions (if any) to the Project and the proposed expenditure of such amounts for the purposes of conducting the Project and otherwise performing its obligations under this Agreement.
Project	means the project to be completed in accordance with this Agreement as described in Schedule 1 and set out in further detail in the Project Plan as defined in Schedule 1.
Project Event	means any promotional event conducted by the Contractor relating to the Project.
Project Generated Income	means any income earned or generated by the Contractor from its use of the Funds, including interest earned from the investment of the Funds, but does not include income earned or generated from the use of the Assets.
Project Material	means any Material that is: created by the Contractor for the purpose of, or as a result of, the Contractor's performance of its obligations under this Agreement; or Third Party Material.
Project Plan	means in relation to a Project, the plan detailing how the Contractor will conduct and complete the Project, including relevant monitoring and evaluation activities to be undertaken and timeframes for completion of various stages of the Project as amended from time to time in accordance with this Agreement and as shown in Schedule 1.
Qualified Accountant	means a person who is a member of the Institute of Chartered Accountants in Australia or of CPA Australia.

1.2 Interpretation

In the Agreement, unless the contrary intention appears:

- (a) the singular includes the plural, and the plural includes the singular;
- (b) reference to a gender includes any other gender;
- (c) other forms of defined words have corresponding meanings;
- (d) if an obligation is imposed on two or more parties, each party is liable for the obligation individually and together with each other person;
- (e) reference to a person includes any other entity or association;
- (f) reference to a party includes that party's personal representative, successors and assigns;
- (g) reference to a document includes any variation or replacement of it;
- (h) reference to something which comprises more than one part or aspect includes a reference to each or any part or aspect;

- (i) reference to a group of persons includes a reference to all of them collectively, any two or more of them collectively, and each of them individually;
- (j) headings are for convenience only and do not affect interpretation;
- (k) references to any legislation or to any provision of any legislation include any modification or re-enactment or any legislative provision substituted for, and all legislation and statutory instruments issued under that legislation;
- (l) reference to “include” or “includes” means “including but not limited to”;
- (m) references to a day includes a Saturday, Sunday or public holiday; and
- (n) all schedules to this Agreement form part of this Agreement.

2. AGREEMENT PERIOD & PROJECT OBLIGATIONS

- 2.1 This Agreement commences on the Commencement Date and, unless terminated earlier, expires on the Completion Date.
- 2.2 In consideration of the provision of the Funds in accordance with this Agreement, the Contractor must complete the Project in accordance with this Agreement and the Contract Specifications.

3. WARRANTIES AND REPRESENTATIONS

- 3.1 The Contractor represents and warrants to Catchment Solutions that:-
 - (a) it has all rights, title, licences, interests, property and regulatory approvals necessary to lawfully perform the Project (including, without limitation, the agreement or consent, where required by Law, of the relevant owner of the Site, native title holder or claimants and the Traditional Owners recognised under land rights legislation);
 - (b) it has, or is able to obtain, the written consent of any organisation that it will partner with or represent on the Project, including Traditional Owners (if relevant);
 - (c) it has not received funding through other initiatives, programs or third parties for substantially the same activities to be undertaken for the Project;
 - (d) it has full power and authority to enter into, perform and observe its obligations under this Agreement;
 - (e) the execution, delivery and performance of this Agreement has been duly and validly authorised by the Contractor; and
 - (f) no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, are threatened which, if adversely decided, could have an adverse effect on the Contractor's ability to perform its obligations under this Agreement.
- 3.2 The Contractor acknowledges that Catchment Solutions, in entering into this Agreement, is relying on the warranties and representations contained in this Agreement.

4. CONDUCT OF THE PROJECT

- 4.1 In consideration of the provision of the Funds, the Contractor must perform the Project:
 - (a) consistently with, and in furtherance of, the Program Outcomes;
 - (b) within the Project Period;
 - (c) in accordance with the Project Budget;
 - (d) in accordance with all applicable Laws;
 - (e) so as to meet the Milestones (by achieving the criteria for completion of the relevant Milestone specified in the Milestone Schedule, if any) and other Project performance requirements, and where no Milestones or Project performance requirements are specified, promptly and without delay;

- (f) so as to deliver a Project which complies with the Program Outcomes and is in accordance with the Project Plan; and
 - (g) otherwise in accordance with the provisions of this Agreement.
- 4.2 The Contractor warrants, to the best of its knowledge, as at the Commencement Date, that no Conflict of Interest exists or is likely to arise in the performance of the Contractor's obligations under this Agreement.
- 4.3 If during the terms of this Agreement, a Conflict of Interest arises, or appears likely to arise, the Contractor must:
 - (a) immediately notify Catchment Solutions in writing of the Conflict of Interest making a full disclosure of all relevant information relating to the Conflict of Interest and setting out the steps the Contractor proposes to take to resolve or otherwise deal with the Conflict of Interest; and
 - (b) take such steps as Catchment Solutions may reasonably require to resolve or otherwise deal with that Conflict of Interest.
- 4.4 The Contractor must, where required to do so by Catchment Solutions, promptly provide information to Catchment Solutions regarding the qualifications and/or performance of any Personnel of the Contractor in relation to the Project.
- 4.5 The Contractor must liaise with and report to Catchment Solutions Representative in relation to the Project, and do or omit to do all acts and things required by Catchment Solutions Representative for the purposes of completion of the Project in accordance with this Agreement.
- 4.6 Upon request, the Contractor must, within the timeframe stipulated in the request or promptly if no timeframe is stipulated in the request, provide all information in relation to the Project or the Contractor or the Contractor's Guarantor's as requested by Catchment Solutions Representative for the purposes of this Agreement which includes but is not limited to monitoring and evaluation purposes.
- 4.7 Without limiting its obligations under this Clause 4, the Contractor must take all reasonable steps to minimise delay in undertaking or completing the Project.
- 4.8 If the Contractor anticipates any delay in performing its obligations under this Agreement, it must as soon as practicable notify Catchment Solutions of that delay in writing.

5. FUNDS

- 5.1 Subject to the provisions of this Agreement, Catchment Solutions agree to pay to the Contractor the Funds in accordance with the Milestone Schedule.
- 5.2 Notwithstanding any other Clause of this Agreement Catchment Solutions may defer, reduce or not make a payment of Funds if at any time:
 - (a) the Contractor has not achieved a Milestone to Catchment Solutions satisfaction, that was due to be completed before the date of payment (as set out in Schedule 1), until that Milestone is completed to Catchment Solutions satisfaction;
 - (b) the Contractor has not performed the Project to the satisfaction of Catchment Solutions and in accordance with the terms of this Agreement, until the Contractor remedies its non-performance;
 - (c) the Contractor has breached any provisions of this Agreement and not remedied the relevant breach of this Agreement to Catchment Solutions satisfaction;
 - (d) Catchment Solutions advise the Contractor that the Funding Contractor has insufficient funding available or is otherwise unable (for any reason) to provide the money to Catchment Solutions at the time the payment is due to the Contractor and provides written evidence from the Funding Contractor of that fact;
 - (e) there is an Insolvency Event;
 - (f) Catchment Solutions has become entitled to terminate this Agreement; or
 - (g) Catchment Solutions form the opinion, on reasonable grounds, having regard to the Project Budget (if any) and information provided in the reports, that the full payment is not properly required by the Contractor to carry out the Project or because of Project surpluses or underspends.

- 5.3 Notwithstanding any other Clause of this Agreement, if the Contractor has received any Funds, the Contractor is not entitled to spend those Funds if Catchment Solutions has notified the Contractor that one or more of the circumstances specified in Clause 5.2 applies, unless Catchment Solutions agree in writing otherwise.
- 5.4 Funds provided under this Agreement:
- (a) must only be used for the purposes of carrying out the Project and performing this Agreement;
 - (b) must not, unless agreed by Catchment Solutions in writing, be used to cover the cost of any activities commenced but not yet completed prior to the commencement date;
 - (c) are not to be applied towards administrative and other general costs of the Contractor unless any such reasonable costs are approved in writing by Catchment Solutions or expressly included in the Project Budget;
 - (d) must not, unless the prior written approval of Catchment Solutions has been obtained, be used in a manner which is inconsistent with the Project Budget;
 - (e) subject to Clause 5.4 (f) must not be used as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of any litigation. This Clause does not prevent the Contractor:
 - (i) providing a copy of this Agreement to a prospective financier; or
 - (ii) indicating to prospective financiers that Catchment Solutions has agreed to provide the Funds for the purposes of the Project; and
 - (f) may form part of an existing security held over the assets of the Contractor provided a priority agreement is entered into between Catchment Solutions, the Contractor and the Contractor financier or holder of the existing security. The priority agreement must be on terms acceptable to Catchment Solutions (at its discretion) and must not allow the financier or holder of the existing security priority to the Funds.
- 5.5 The amount of Funds to be contributed by Catchment Solutions in relation to the Project will not exceed the maximum or total amount of Funds specified in Schedule 1 of this Agreement.
- 5.6 Catchment Solutions accepts no liability for:
- (a) any debts incurred by the Contractor;
 - (b) any monies owing by the Contractor to its Personnel;
 - (c) any Project Budget or cost overruns; or
 - (d) there being insufficient monies to complete the Project.
- 5.7 If:
- (a) on expiry or on any earlier termination of this Agreement, any or all of the Funds:
 - (i) have not been spent or committed in accordance with this Agreement; or
 - (ii) cannot, by reconciliation between the accounts and records maintained by the Contractor and the Project Budget, be shown, to the reasonable satisfaction of Catchment Solutions, to have been spent or committed in accordance with this Agreement; or
 - (b) at any time Catchment Solutions forms the reasonable opinion that:-
 - (i) any Funds have been used, spent or committed by the Contractor other than in accordance with this Agreement; or
 - (ii) the Contractor has breached this Agreement and is not able to remedy the breach of this Agreement,
- Catchment Solutions may by written notice to the Contractor:
- (a) require the Contractor to repay part or all of the Funds provided to the Contractor, and the Contractor must repay to Catchment Solutions the amount set out in the notice, within 10 Business Days of receipt of the notice;
 - (b) deduct an equivalent amount from the Funds payable to the Contractor pursuant to this Agreement or from any other amounts payable to the Contractor under any other agreement with Catchment Solutions; or

- (c) require the Contractor to use all or part of those Funds as Catchment Solutions in its sole and unfettered discretion sees fit.
- 5.8 At Catchment Solutions absolute discretion, and without prejudice to any other rights available to Catchment Solutions under this Agreement or at Law or in equity, if the Contractor fails to repay the Funds in accordance with a notice issued under Clause 5.7:
- (a) Catchment Solutions may require the Contractor to pay Catchment Solutions Interest on the amount set out in the notice from the date it was due, for the period it remains unpaid; and
 - (b) the amount set out in the notice, and Interest owed will then be recoverable by Catchment Solutions as a debt due from the Contractor.
- 5.9 The Contractor must:
- (a) ensure that the Funds are held in an account in the Contractor's name and which the Contractor solely controls, with a deposit-taking institution authorised under the Banking Act 1959 (Cth) to carry on banking business in Australia; and
 - (b) allow the Funds to be identified in relation to the receipt and expenditure of the Funds and any interest accrued on the Funds within the Contractor accounts.
- 5.10 Catchment Solutions shall advise the Contractor within 7 days of:
- (a) Any changes to the terms of the funding, milestones, feedback or additional reporting requirements for Reef Trust 4 funding; and
 - (b) Any additional funding provided during the term of this agreement.

6. CONTRACTOR CONTRIBUTIONS AND OTHER CONTRIBUTIONS

- 6.1 It is a condition precedent to the payment of the Funds under this Agreement that the Contractor must provide the Contractor Contributions and/or the Other Contributions so that the Contractors Contributions and/or Other Contributions when combined have a total value equal to the Funds as set out in Schedule 1 of this Agreement. The value to be attributed to the Other Contributions will be determined by Catchment Solutions at its discretion.
- 6.2 If requested by Catchment Solutions the Contractor must provide Catchment Solutions with written evidence that the persons specified in the Project Budget will provide the Other Contributions, including the amounts, goods or services to be provided, the due dates for each of these amounts, goods or services to be provided and the terms and conditions of the provision of the Other Contributions.
- 6.3 On receiving a request from Catchment Solutions the Contractor must provide evidence (satisfactory to Catchment Solutions at its discretion) that the Contractor has:-
- (a) paid the Contractors Contributions in respect of the Project and as required by this Agreement; or
 - (b) paid and/or obtained the benefit and use of the Other Contributions in respect of the Project and as required by this Agreement.
- 6.4 The Contractor must ensure that the terms on which any other funding or contributions are provided to the Contractor for, or in connection with, the Project are not inconsistent with the terms of this Agreement and do not in any way limit or affect the Contractor ability to comply strictly with its obligations, or Catchment Solutions ability to exercise its rights, under this Agreement.
- 6.5 The Contractor must promptly notify Catchment Solutions if the total amount of the Contractor Contributions or total amount or value of the Other Contributions reduces, or if such a reduction is anticipated.
- 6.6 If:
- (a) Catchment Solutions receives notice under Clause 6.5;
 - (b) the Contractor does not provide the Contractor's Contributions or provide them in time to enable completion of the Project;
 - (c) the Contractor is not able to obtain the Other Contributions or obtain them in time to enable completion of the Project,
- then Catchment Solutions may, at its absolute discretion:

- (a) require a repayment within 30 days to Catchment Solutions of all Funds paid to the Contractor;
 - (b) suspend payment of the Funds or an instalment of the Funds until the Contractor Contributions are provided or the Other Contributions are received;
 - (c) reduce the amount of the Funds, adopting the formula in Clause 6.7, where R = the reduced amount; or
 - (d) terminate this Agreement.
- 6.7 If, on expiry of the Agreement Period or any earlier termination of this Agreement, the Contractor Contributions and/or the Other Contributions have not been provided in full, Catchment Solutions may (without limiting its rights) require the Contractor to refund to Catchment Solutions within 20 Business Days of a written notice from Catchment Solutions, an amount of Funds calculated in accordance with the following formula (up to an amount that does not exceed the total amount of the Funds):
- $$R = OC - AC$$
- Where:
- R = The refund amount;
 - AC = The total aggregate amount of contributions actually made as Contractor's Contributions and / or Other Contributions for the Project pursuant to this Agreement; and
 - OC = The total aggregate amount of Contractor's Contributions and Other Contributions as specified in Schedule 1.
- 6.8 Catchment Solutions may, at its absolute discretion, reduce the amount of the Funds required to be repaid by the Contractor in accordance with Clause 6.7 to an amount lower than the amount determined by the formula prescribed in Clause 6.7.
- 6.9 The Contractor must:
- (a) promptly notify Catchment Solutions in writing of the amount and source of any additional funding or other contributions for the Project including any income derived as a result of the Project (other than Funds provided under this Agreement or contributions already identified in the Project Budget)
 - (a) if requested by Catchment Solutions, promptly provide to Catchment Solutions copies of any written arrangements entered into, or proposed to be entered into, in respect of such other funding or contributions; and
 - (b) ensure that the terms on which any other funding or contributions are provided to the Contractor for, or in connection with, the Project are not inconsistent with the terms of the Funding Contractor and this Agreement and do not in any way limit or affect the Contractor's ability to comply strictly with its obligations, or Catchment Solutions ability to exercise its rights, under this Agreement.
- 6.10 If requested by Catchment Solutions, the Contractor must provide to Catchment Solutions a report within 10 Business Days of the request, including but not limited to the following information:
- (a) an assessment of the Project to date;
 - (b) an updated Project Plan;
 - (c) an updated Project Budget; and
 - (d) any other information of any kind or nature in respect of the Project requested by Catchment Solutions.
- 6.11 Catchment Solutions will assess the report and any additional information and data submitted under this Clause and determine whether the Project continues to represent value for money. Catchment Solutions will inform the Contractor, in writing, of the outcome of its review. If Catchment Solutions determines the Project no longer represents value for money Catchment Solutions may, at its absolute discretion, and on giving 10 Business Days notice:
- (a) reduce the amount of the Funds;
 - (b) reduce the scope of the Project; or

- (c) terminate this Agreement in accordance with Clause 28.

7. TAXES, DUTIES AND GOVERNMENT CHARGES

- 7.1 Subject to Clause 7.2 the Contractor warrants that it has an ABN, which it has correctly given to Catchment Solutions. The Contractor must:
- (a) immediately notify Catchment Solutions of any changes to the Contractor's GST status or ABN; and
 - (b) supply proof of its GST status, as and when requested by Catchment Solutions.
- 7.2 If the Contractor does not have an ABN the Contractor may lodge with Catchment Solutions a completed 'Statement by a Supplier' form claiming an exemption for lodging an ABN. If needed the Contractor should seek advice from the Australian Taxation Office regarding the 'Statement by a Supplier' form.
- 7.3 If the Contractor does not provide either an ABN or a completed 'Statement by a Supplier' form, then Catchment Solutions may, at its discretion, withhold from the payment an amount of 49 per cent or such other amount as determined by the Australian Taxation Office from time to time.

8. PROJECT BUDGET

- 8.1 Unless otherwise agreed in writing by Catchment Solutions (at its discretion), the Contractor must, in relation to the Project, perform the Project and only spend the Funds in accordance with the Project Budget.
- 8.2 For the avoidance of doubt, Catchment Solutions approval of the Project Budget or any amendment to the Project Budget does not in any way limit the Contractor obligations under this Agreement.

9. APPOINTMENT OF SUBCONTRACTORS

- 9.1 The Contractor is responsible for the performance of the Contractor responsibilities under this Agreement regardless of whether the Contractor has subcontracted any of its obligations.
- 9.2 If requested, the Contractor must promptly provide to Catchment Solutions a copy of any contract relating to the Project and/or any Material relating to the engagement of the subcontractor.

10. PARTICIPATION IN EVALUATIONS, ANALYSIS AND SCIENTIFIC MONITORING

- 10.1 The Contractor must participate, as reasonably required by Catchment Solutions, in studies, evaluations and other activities intended to analyse the success of the Project as determined or required by Catchment Solutions and/or the Funding Contractor which includes but is not limited to making data, records and other information (including reports) available to third parties for the purposes of evaluation and analysis.

11. ASSETS

- 11.1 The Contractor must not use the Funds towards the purchase of Assets unless the Asset is identified in the Project Budget or the Contractor has obtained the prior written approval of Catchment Solutions.
- 11.2 An item that is not an Asset but is purchased by the Contractor using the Funds must only be purchased if the Contractor can show that the item is to be used in undertaking the Project to the satisfaction of Catchment Solutions.

12. REPORTS

- 12.1 The Contractor must provide regular reports as and when required by Catchment Solutions in a form acceptable to Catchment Solutions (at its discretion) on any matters required by Catchment Solutions including but not limited to progress reports and final reports.

13. PROJECT REVIEW

- 13.1 Without limiting any other provisions of this Agreement, the Contractor must promptly notify Catchment Solutions in writing of any significant changes to its organisational structure, resources, or circumstances, where such changes:
- (a) affect the boundaries of the Site or the Project; and / or
 - (b) have the potential to alter the Contractor ability to perform its obligations under this Agreement.

- 13.2 Upon receipt of notification under Clause 13.1, Catchment Solutions may:
- (a) direct the Contractor to suspend its dealings with the Funds immediately;
 - (b) return to Catchment Solutions any Funds provided by Catchment Solutions to the Contractor; and/or
 - (c) conduct a review of the Project to assess whether the Project continues to represent value for money.
- 13.3 Catchment Solutions may at any time, and on as many occasions as they see fit, review the Project and the Contractor must promptly and diligently do all acts and things required by Catchment Solutions to assist Catchment Solutions in any review of the Project.

14. RECORDS AND ACQUITTALS

- 14.1 The Contractor must:
- (a) keep comprehensive and accurate records of its use of the Funds, that can be separately identified from other accounts and records of the Contractor (Records); and
 - (b) retain Records referred to in this Clause 14.1 for the Agreement Period and a further period of seven years from the expiry or termination of this Agreement or such longer period as may be required by Law.
- 14.2 The Contractor must keep comprehensive records of the conduct of the Project including progress against the Milestones and the achievement of the Program Outcomes.
- 14.3 The Contractor must:
- (a) deliver information, data and other Material produced under or in connection with this Agreement and any other information reasonably required by Catchment Solutions; and
 - (b) provide all information, data and other Material to Catchment Solutions promptly upon demand.
- 14.4 The Contractor must keep financial records relating to the Project so as to enable all revenue and expenditure related to the Project to be identified in the Contractor records.
- 14.5 Without limiting the Contractor other obligations under this Agreement, the Contractor must provide to Catchment Solutions records in accordance with this Agreement, and substantially in the form of the template specified by Catchment Solutions from time to time (if any).
- 14.6 If Catchment Solutions notifies the Contractor that records submitted are not to Catchment Solutions satisfaction, the Contractor must make the required amendments and resubmit records to Catchment Solutions until such time as Catchment Solutions is satisfied with the record.
- 14.7 In addition to the records required under Clause 14. Catchment Solutions may at any time, and from time to time during the Agreement Period, require the Contractor to provide other information.
- 14.8 The Contractor must comply with a direction of Catchment Solutions under Clause 14.7 by submitting the requested Additional information which complies with all requirements of Catchment Solutions as set out in its direction, within the period of time in the direction, or such longer time period as the parties agree in writing.
- 14.9 The Contractor will be liable for its own costs associated with complying with a direction to submit any records or Additional information required under this Clause 14.

15. ACCESS TO PREMISES AND RECORDS

- 15.1 The Contractor acknowledges and agrees that Catchment Solutions and any persons nominated by Catchment Solutions may, at reasonable times and on giving reasonable notice to the Contractor:
- (a) require the Contractor (including its Personnel) to provide records, documents and information relevant to the performance of this Agreement in a data format and storage medium accessible by Catchment Solutions;
 - (b) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Contractor (including its Personnel) relevant to the performance of this Agreement; and
 - (c) require assistance in respect of any inquiry into or concerning the Project, the Program or this Agreement. For the purpose of this Clause, an inquiry includes any requests received

by any party including but not limited to the Funding Contractor in respect of this Agreement.

- 15.2 The Contractor must (at its own cost) promptly comply with all requirements of Catchment Solutions under Clause 15.1.
- 15.3 For the purpose of Clause 15, the Contractor is not required to provide Catchment Solutions records, documents and information relevant to the performance of this Agreement or documentation, books and records, however stored, in the custody or under the control of the Contractor (including its Personnel) relevant to the performance of this Agreement, that principally comprises Secret and Sacred Material.
- 15.4 Without limiting this Clause 15, Catchment Solutions rights apply equally to the Auditor-General, the Ombudsman, the Information Commissioner, the Privacy Commissioner, the Freedom of Information Commissioner or their delegates, for the purpose of each performing their functions or activities (as the case may be).
- 15.5 The Contractor must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent Clause granting the rights specified in this Clause 15.
- 15.6 This Clause 15 applies for the duration of the Agreement Period and for a period of seven years from the termination or expiry of this Agreement.

16. WORK, HEALTH AND SAFETY

16.1 Definitions

In this Clause 19:

- (a) **corresponding WHS law** has the meaning given in section 35 of the WHS Act;
 - (b) **Regulator** means an authority referred to in a WHS Law as the relevant authority for occupational health and safety complaints, queries or investigations;
 - (c) **WHS Act** means the *Work Health and Safety Act 2011* (QLD);
 - (d) **WHS Law** means the WHS Act and any corresponding WHS law;
 - (e) **WHS entry permit holder** has the meaning given in the WHS Act; and
 - (f) **WHS Regulations** means the regulations made under the WHS Act.
- 16.2 The Contractor must (at its own cost) in carrying out its obligations under this Agreement, comply, and use reasonable endeavours to ensure that its Personnel comply, with the provisions of all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority including those arising under a WHS Law in respect of occupational health and safety.
- 16.3 If the Contractor is required by a WHS Law to report to a Regulator an incident arising out of the Project:
- (a) at the same time, or as soon as is possible in the circumstances, the Contractor must give notice of such incident, and a copy of any written notice provided to a Regulator, to Catchment Solutions; and
 - (b) the Contractor must provide to Catchment Solutions, within such time as is specified by Catchment Solutions, a report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future.
- 16.4 The Contractor must inform Catchment Solutions of the full details of:
- (a) any suspected contravention of a WHS Law relating to the Project, within 24 hours of becoming aware of any such suspected contravention;
 - (b) any cessation or direction to cease work relating to the Project, due to unsafe work, immediately upon the Contractor being informed of any such cessation or direction;
 - (c) any workplace entry by a WHS entry permit holder, or an inspector, to any place where the Project is being performed or undertaken, within 24 hours of becoming aware of any such workplace entry; and
 - (d) any proceedings against the Contractor or its officers, or any decision or request by the Regulator given to the Contractor or its Personnel, under a WHS Law, within 24 hours of becoming aware of any such proceedings, decision or request.

- 16.5 The Contractor must, when using Catchment Solutions premises or facilities, comply with all reasonable directions and procedures relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by Catchment Solutions or as might reasonably be inferred from the use to which the premises or facilities are being put.

17. PROJECT MATERIAL AND INTELLECTUAL PROPERTY RIGHTS

- 17.1 Subject to Clause 17.2, all Intellectual Property Rights in the Project Material created by the Contractor will vest, upon creation, equally between the Contractor and Catchment Solutions.
- 17.2 This Agreement does not affect the ownership of the Intellectual Property Rights in any Third Party Material.
- 17.3 Notwithstanding any other provision of this Agreement, the Contractor grants, or must procure for, Catchment Solutions a perpetual, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sublicense) to use, reproduce, modify, adapt, communicate, publish, broadcast and exploit the Project Material (excluding Secret and Sacred Material) for any non-commercial purpose.
- 17.4 The Contractor must (at its own cost) provide Third Party Material necessary or appropriate to perform its obligations under this Agreement.
- 17.5 If the Contractor cannot obtain the licences for any Third Party Material, the Contractor must:
- (a) notify Catchment Solutions of the best alternative licence terms for that Third Party Material and not use that Third Party Material unless Catchment Solutions consents to those terms; and
 - (b) if Catchment Solutions does not consent to those terms, notify Catchment Solutions of any comparable Third Party Material and comply with its obligations under this Clause in respect of comparable Third Party Material.
- 17.6 On termination or expiry of this Agreement, or earlier if requested by Catchment Solutions, the Contractor must (at its own cost) promptly deliver a copy of all Project Material or any other information concerning the Project then in existence to Catchment Solutions in an agreed format, or as otherwise directed by Catchment Solutions.
- 17.7 The Contractor warrants that anything done by the Contractor in the course of the Project, including in developing the reports, will not infringe the Intellectual Property Rights or Moral Rights of any person.
- 17.8 The Contractor further warrants that Catchment Solutions or its sub licensee's will not, at any time, be infringing the Intellectual Property Rights or Moral Rights of any person when undertaking an activity allowed for under this Agreement or using Project Material (excluding Secret and Sacred Material) in a manner consistent with the licences granted, or to be granted, to Catchment Solutions under this Clause 17.
- 17.9 Intellectual Property Rights and title to Catchment Solutions Material remains vested at all times in Catchment Solutions. Catchment Solutions grants to the Contractor a royalty-free, world-wide, non-exclusive licence (including a right of sublicense to subcontractors) to use, reproduce and modify Catchment Solutions Material solely for the purposes of the Project. The Contractor must ensure that all Catchment Solutions Material is used strictly in accordance with any conditions or restrictions specified by Catchment Solutions from time to time.
- 17.10 To the extent permitted by Law, the Contractor must (at its own cost), where requested by Catchment Solutions in writing, use best endeavours to ensure that each person who:
- (a) has been involved in the performance of the Project; or
 - (b) is or will be the author of any Project Material (including the reports) that is to be licensed to Reef in accordance with this Clause 17,
- provides a written consent to Catchment Solutions permitting Catchment Solutions (including its Personnel) to conduct any act which would otherwise infringe the Moral Rights held by that person.
- 17.11 The consent provided under Clause 17.10 must be consistent with Catchment Solutions being able to conduct any act it is licensed to conduct under this Agreement.
- 17.12 Catchment Solutions acknowledges that the ownership of Intellectual Property Rights under clause 17.1 and the assignment licence under clause 17.3 excludes Material that existed prior to this Agreement being entered into or Material where Intellectual Property rights arise during the term of this Agreement as a result of any means that are not connected with this Agreement.

18. CONFIDENTIAL INFORMATION

- 18.1 A party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- 18.2 In giving written consent to the disclosure of Confidential Information, Catchment Solutions may impose such conditions as it thinks fit, and the Contractor must comply with these conditions.
- 18.3 The obligations on the parties under this Clause 18 will not be taken to have been breached to the extent that Confidential Information is:
- (a) disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
 - (b) disclosed to a party internal management Personnel, solely to enable effective management or auditing of Agreement related activities;
 - (c) to disclose to the Commonwealth or Queensland State Government or any employee or Minister or other party authorised by the Commonwealth or Queensland State Government;
 - (d) shared by Catchment Solutions within Catchment Solutions organisation, or with another Australian or State Government agency, where this serves the Australian Government or State Government legitimate interests;
 - (e) authorised or required by Law, including under this Agreement, under a licence or otherwise, to be disclosed; or
 - (f) in the public domain otherwise than due to a breach of this Clause 18.
- 18.4 Where a party discloses Confidential Information to another person:
- (a) pursuant to Clauses 18.3 (a), (b) or (d), the disclosing party must:
 - (i) notify the receiving person that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential; or
 - (b) pursuant to Clause 18.3 (c), the disclosing party must notify the receiving party that the information is Confidential Information.
- 18.5 Nothing in this Clause 18 derogates from any obligation which either party may have either under the Privacy Act as amended from time to time, or under this Agreement, in relation to the protection of Personal Information.

19. PERSONAL INFORMATION

- 19.1 This Clause 19 applies only if the Contractor deals with Personal Information when it conducts the Project.
- 19.2 In this Clause 19, the terms **agency** and **Australian Privacy Principles** (or **APPs**) have the same meaning as they have in section 6 of the Privacy Act, and **subcontract** has the same meaning it has in section 95B(4) of the Privacy Act.
- 19.3 The Contractor must:
- (a) if it obtains Personal Information while conducting the Project or otherwise performing its obligations under this Agreement, use or disclose that Personal Information only for the purposes of this Agreement;
 - (b) comply with the APPs as if the Contractor were an agency under the Privacy Act; and
 - (c) otherwise comply with the Privacy Act.
- 19.4 The Contractor must ensure that any subcontract entered into by it in relation to the Project places the same obligations about Personal Information on the subcontractor as this Clause 19 places on the Contractor.

20. INDEMNITY AND RELEASE

- 20.1 The Contractor indemnifies Catchment Solutions and continues to indemnify Catchment Solutions against, all:

- (a) Losses suffered or incurred by Catchment Solutions, including as the result of any claim, action, demand, proceeding or suit made in relation to loss of or damage to third party property or, the injury, illness or death of a third party;
- (b) loss of, or damage to, Catchment Solutions property; or
- (c) Losses suffered or incurred by Catchment Solutions in dealing with any claim, action, demand, proceeding or suit against Catchment Solutions, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by Catchment Solutions,

arising from:

- (a) any act or omission by the Contractor (including any of its Personnel) in connection with this Agreement;
 - (b) any breach by the Contractor (including any of its Personnel) of its obligations or warranties or term or condition of this Agreement;
 - (c) any use or disclosure by the Contractor (including its Personnel) of Personal Information or Confidential Information (or both, as the case may be) held or controlled in connection with this Agreement; or
 - (d) the use by Catchment Solutions of the Project Material in accordance with this Agreement, including the Intellectual Property and Moral Rights comprised in the Project Material.
- 20.2 On and from the Commencement Date, the Contractor releases Catchment Solutions from:
- (a) all claims, actions, demands and proceedings which it may have, or claim to have, or but for this release might have had, against Catchment Solutions arising out of this Agreement or in any way connected with the performance of this Agreement; and
 - (b) all liability of Catchment Solutions arising out of this Agreement.
- 20.3 The Contractor liability to indemnify and release Catchment Solutions under Clauses 20.1 and 20.2 will be reduced proportionately to the extent that any negligent or unlawful act or omission, or wilful misconduct on the part of Catchment Solutions (including its officers and employees) contributed to the relevant Losses.
- 20.4 Catchment Solutions right to be indemnified under Clause **20.1** is in addition to, and not exclusive of, any other right, power, or remedy provided by Law or in equity, but Catchment Solutions is not entitled to be compensated in excess of the amount of the relevant Loss.

21. INSURANCE

- 21.1 As at the Commencement Date, the Contractor must take out or have taken out for the period specified in Clause 21.2 or Clause 21.3 (as the case may be) the following insurances:-
- (a) to the extent required by Law, workers compensations insurance in respect of the Contractor liability for any loss, Losses or claim by a person employed or otherwise engaged, by the Contractor; and
 - (b) public liability insurance covering legal liability (including liability assumed under contract) for loss or damage to property or the Assets or the Project or injury or death to persons arising out of or connection with carrying out the Project for an insured amount of not less than \$10 million per occurrence and not less than \$20 million aggregate.
- 21.2 If the Contractor takes out a 'claims made' policy, which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Contractor must maintain the policy (or a policy in like terms) during the term of the Agreement and for a period of seven years on and from the expiry or the early termination of this Agreement.
- 21.3 If the Contractor takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Contractor must maintain the policy during the term of the Agreement.
- 21.4 The Contractor must ensure that any subcontract entered into by the Contractor in relation to this Agreement places on the subcontractor, in respect of the subcontractor activities, the same or similar obligations about insurances, as this Clause 21 places on the Contractor.
- 21.5 The Contractor must, on request, promptly provide to Catchment Solutions any relevant certificates of currency of insurance for inspection.

22. FORCE MAJEURE EVENTS

- 22.1 A party (**Affected Party**) is excused from performing its obligations under this Agreement to the extent it is prevented by circumstances beyond its reasonable control (other than a lack of Contractor Contributions or Other Contributions for any reason or any strike, lockout or labour disputes in respect of the Contractor only), including but not limited to acts of God, natural disasters, acts of war, riots and strikes outside that party organisation.
- 22.2 When the circumstances described in Clause 22.1 arise or are reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on its performance of this Agreement.
- 22.3 If non-performance or diminished performance by the Affected Party due to the circumstances under Clause 22.1 continues for a period of more than 30 consecutive days, the other party may terminate this Agreement immediately by giving the Affected Party written notice.
- 22.4 If this Agreement is terminated under Clause 22:
- (a) each party will bear its own costs and neither party will incur further liability to the other; and
 - (b) where the Contractor is the Affected Party, it will be entitled to payment for work performed or expenses properly incurred prior to the date of intervention of the circumstances described in Clause 22.1.

23. DISPUTE RESOLUTION

- 23.1 If a dispute or difference arises between the Contractor and Catchment Solutions and one Party requires it to be resolved, that Party must promptly give the other Party written notice identifying, and giving details of, the dispute or difference.
- 23.2 Within ten (10) Days of a Party receiving the notice referred to in clause 23.1, a delegate of the Contractor and of Catchment Solutions must meet and attempt to resolve the dispute or difference.
- 23.3 If, within two (2) Days of the first meeting under clause 23.2 the dispute or difference is not resolved, a delegate of the Contractor and of Catchment Solutions must meet within a further ten (10) Days and attempt to resolve the dispute or difference.
- 23.4 If the dispute is not resolved in the meeting convened pursuant to clause 23.3, where the Parties agree, the matter may be referred to mediation and failing resolution by mediation, the dispute is to be referred to arbitration.
- 23.5 Where the Parties cannot agree on costs or the appointment of a mediator or arbitrator, one is to be appointed by the President for the time being of the Queensland Law Society Incorporated and the costs are to be paid by the party that required the dispute to be resolved under clause 23.1.
- 23.6 Where a dispute is referred to arbitration, the arbitrator will have all powers to hear the dispute including the power to determine the venue of the arbitration, compel attendance by witnesses and compel production of documents and records. The decision of the arbitrator will be final and binding on the parties.
- 23.7 Except as provided by this clause, neither Party may commence any legal proceedings against the other Party, unless the dispute resolution requirements in this clause 23 have first been satisfied or the other Party, has for its part, failed to comply with any of those requirements.
- 23.8 Nothing in clause 23 prejudices the right of a Party to seek urgent injunctive or declaratory relief.

24. SUSPENSION OR TERMINATION

- 24.1 If:
- (a) the Contractor fails to comply with any timeframe under this Agreement on two or more occasions;
 - (b) the Contractor fails to remedy its failure to comply with any term or condition of this Agreement within 5 Business Days of receiving a notice (or such longer period as Catchment Solutions may at its sole and unfettered discretion specify in the notice) from Catchment Solutions requiring the Contractor to do so;
 - (c) the Contractor fails to successfully deliver any part or all of the Project Outcomes or the Project;

- (d) Catchment Solutions is satisfied on reasonable grounds that any statement, representation or warranty made by the Contractor is incorrect or incomplete in a way which would have affected the original decision to approve the Funds for the Project;
- (e) the Contractor is unable to provide the Contractor Contributions or the Other Contributions which would have affected the original decision to approve the provision of the Funds by Catchment Solutions for the Project;
- (f) Catchment Solutions is satisfied on reasonable grounds that a report given by the Contractor is significantly misleading, or substantially incomplete or inaccurate;
- (g) Catchment Solutions is satisfied on reasonable grounds that, following a review of the Project, the Project no longer represents value for money;
- (h) there is an Insolvency Event;
- (i) the Contractor, by notice in writing given to Catchment Solutions, indicates its:
 - (i) inability to continue to perform the Project; or
 - (ii) intention to withdraw from the Project,

Catchment Solutions may by written notice to the Contractor, require the Contractor to immediately suspend dealings with the Funds (in whole or in part), and/or terminate this Agreement in its entirety and require the repayment of all or part of the Funds paid to the Contractor within 30 days of providing written notice to the Contractor. If the Contractor does not repay all or part of the Funds within 30 days of receipt of a notice issued pursuant to this Clause then the Contractor must pay Interest on the relevant Funds requested and those Funds are deemed a debt due and owing.

24.2 For the purposes of this Clause **Potential Default** means any event, thing or circumstance which does not fall within the scope of Clause 24.1 and which likely would:

- (a) result in delay in meeting any requirement of the performance of the Project;
- (b) result in the Contractor not being able to achieve a Milestone within the timeframe specified in the Milestone Schedule; or
- (c) give rise to a right of termination with the giving of notice or the passage of time.

24.3 The Contractor must notify Catchment Solutions immediately upon becoming aware of a Potential Default and must include the following information, substantially in the form of the template provided by Catchment Solutions (if any), in its notice:

- (a) the nature of and reason for the Potential Default;
- (b) how the Contractor proposes to rectify the Potential Default;
- (c) the date on which the Contractor proposes that the Potential Default will be rectified; and
- (d) any expected impact that the Potential Default may have on the Project Budget or on the ability to comply with timeframes in the Milestone Schedule.

24.4 If Catchment Solutions becomes aware of a Potential Default either through the receipt of notice from the Contractor under Clause 24.3 or by any other means, Catchment Solutions may provide the Contractor with a written notice setting out the nature of the Potential Default (**Notice of Potential Default**) any extension of time permitted and any requirements Catchment Solutions has in relation to the rectification of the Potential Default or reduction in scope of the Project.

24.5 On receipt of a Notice of Potential Default the Contractor must remedy the Potential Default or, where the Potential Default is not capable of being remedied, prepare a plan for Catchment Solutions approval of the actions that the Contractor proposes to take to deal with the impact of the Potential Default (**Potential Default Plan**).

- (a) If:
 - (i) the Contractor does nothing in response to the Notice of Potential Default;
 - (ii) Catchment Solutions is not satisfied with the Potential Default Plan; or
 - (iii) the Contractor subsequently fails to comply with the Potential Default Plan,

Catchment Solutions may by written notice to the Contractor, require the Contractor to immediately suspend dealings with the Funds (in whole or in part) and/or terminate this Agreement in its entirety and require the repayment of all or part of the Funds paid to the Contractor within 30 days of providing written notice to the Contractor. If the Contractor does not repay all or part of the Funds within 30 days of receipt of a notice issued pursuant

to this Clause then the Contractor must pay Interest on the relevant Funds requested and those Funds are deemed a debt due and owing.

- (b) No action taken by Catchment Solutions pursuant to this Clause will:
 - (i) relieve the Contractor from, or alter or affect, the Contractor liabilities or responsibilities whether under this Agreement or otherwise according to Law; or
 - (ii) prejudice Catchment Solutions rights against the Contractor whether under this Agreement or otherwise according to Law.
- 24.6 If the Funding Provider for any reason terminates their Project Funding Agreement with Catchment Solutions or does not pay to Catchment Solutions any funds it requires to be able to comply with its obligations in this Agreement then Catchment Solutions may, at any time by notice, terminate this Agreement or reduce the scope of the Project and amount of the Funds immediately or if the Funding Contractor directs Catchment Solutions to require payment of all or part of the Funds paid then Catchment Solutions can require the repayment of all or part of the unexpended Funds paid to the Contractor within 30 days of providing written notice to the Contractor. If the Contractor does not repay all or part of the unexpended Funds within 30 days of receipt of a notice issued pursuant to this Clause then the Contractor must pay Interest on the relevant Funds requested and those Funds are deemed a debt due and owing.
- 24.7 Upon receipt of a notice of termination or reduction from Catchment Solutions pursuant to this Clause, the Contractor must:
 - (a) cease carrying out the Project to the extent specified in the notice;
 - (b) take all available steps to minimise any Losses resulting from that termination or reduction; and
 - (c) continue carrying out those parts of the Project not affected by the notice.
- 24.8 Where (for any reason) there has been a reduction in the scope of the Project, Catchment Solutions liability to the Contractor for payment of the Funds will, unless there is an agreement in writing to the contrary, be reduced in accordance with the reduction in the Project.
- 24.9 Catchment Solutions will not be liable to pay any costs to the Contractor under this Clause in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Agreement, together exceed the maximum amount of Funds specified in Schedule 1. The Contractor agrees that it will not be entitled to compensation for loss of prospective profits.
- 24.10 The termination of this Agreement under this Clause does not discharge any right that a party may have for any prior breach of this Agreement.
- 24.11 On termination of this Agreement, or for the duration of any suspension of dealings with the Funds, the Contractor must only deal with the Funds in accordance with the directions of Catchment Solutions and must cease all other dealings with the Funds. The directions of Catchment Solutions may be given at any time after the termination or during any period of suspension. If Catchment Solutions does not provide any directions the Contractor must not deal with the Funds.
- 24.12 Catchment Solutions may end the suspension of dealings with the Funds by written notice to the Contractor, subject to such preconditions (including variations to this Agreement) which Catchment Solutions may require at its discretion.
- 24.13 Catchment Solutions will not be obliged to pay any part of the Funds to the Contractor during any period of suspension of dealings with the Funds or after the termination of this Agreement.
- 24.14 If a purported termination for cause by Catchment Solutions under Clauses 24.1 or 24.2 is determined by a competent authority not to be properly a termination for cause, then that termination by Catchment Solutions will be deemed to be a termination for convenience under Clause 28.1 or 28.2, which termination has effect from the date of the notice of termination referred to in Clause 28.1 or 28.2 (as the case may be), and the Contractor sole rights in such circumstances will be to any Funds due and payable as at the date of the relevant termination notice and the Contractor will not be entitled to damages, costs, Losses, expenses or any other monies from Catchment Solutions.
- 24.15 If the Agreement is terminated under Clause 28.1, then subject to any necessary approvals, the Contractor will be entitled to payment of:
 - (a) that part of the Funds for Services carried out prior to the date of termination;
 - (b) the cost of any goods, materials or services ordered or contracted by the Contractor prior to the date of termination and for which the Contractor is legally bound to pay, and which it cannot otherwise utilise;

- (c) less any amount owing by the Contractor to Catchment Solutions under this Agreement.

25. SURVIVAL OF PROVISIONS

- 25.1 Termination or expiry of this Agreement for any reason does not extinguish or otherwise affect:
- (a) any rights of either party against the other which:
 - (i) accrued prior to the time of termination or expiry; or
 - (ii) otherwise relate to or may arise at any future time from any breach of non-observance of obligations under this Agreement which arose prior to the time of termination or expiry; and
 - (b) the provisions of this Agreement which by their nature survive expiry or termination.

26. VARYING THIS AGREEMENT

- 26.1 This Agreement may only be varied in writing signed by each party.

27. COSTS

- 27.1 Each party must pay its own costs of negotiating, preparing and executing this Agreement.
- 27.2 Unless expressly stated otherwise then in the event that a party is obligated to do any act or thing under this Agreement then the relevant party must do that act or thing at its own cost and expense.

28. COUNTERPARTS

- 28.1 This Agreement may be executed in counterparts by facsimile or email. All executed counterparts constitute one document.

29. RELATIONSHIP

- 29.1 The parties must not represent themselves, and must ensure that their Personnel do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- 29.2 This Agreement does not create a relationship of employment, agency or partnership between the parties.

30. DISCLOSURE OF INFORMATION

- 30.1 Notwithstanding any other provision of this Agreement, Catchment Solutions may disclose information about this Agreement, including Personal Information, required to be reported by Catchment Solutions to the Funding Provider or any other relevant party that Catchment Solutions is required to disclose information to.

31. NOTICES

- 31.1 A party may give a notice required under this Agreement by delivering it to an address of another party set out in this Agreement, or where applicable to an address of another party solicitor, by hand or post or facsimile transmission or email.
- 31.2 If before 5.00 pm local time in the place of delivery a party delivers a notice:
- (a) by hand; or
 - (b) by facsimile and the sending party completes the transmission; or
 - (c) by email.
- the notice will be taken as given on the day of delivery or transmission, and in any other case, on the next day.
- 31.3 If a party gives the notice by post, the notice will be taken as given on the second business day in the place of delivery after the notice is posted.
- 31.4 If a party gives notice by facsimile transmission and the transmission is not fully legible, or if the sending party at the time of transmission, has reason to believe that it is not fully legible, the party concerned may not rely upon this Clause to prove the giving of the notice.

32. SEVERANCE

32.1 If anything in this Agreement:

- (a) is unenforceable, illegal or void; or
- (b) makes the Agreement unenforceable illegal, void or voidable;

then it is severed and the rest of the Agreement remains in force (unless to do so would change the underlying principal commercial purposes of the Agreement).

32.2 If it is held by a court that part of the Agreement is:

- (a) void, voidable, illegal or unenforceable; or
- (b) makes the Agreement void, voidable, illegal or unenforceable;

that part will be severed from this Agreement unless to do so would change the underlying principal commercial purposes of the Agreement.

33. NEGATIVE AGREEMENT

33.1 Where in this Agreement a party agrees not to do something, the party will not attempt to do that thing nor permit or procure that thing to be done.

34. JURISDICTION

34.1 This Agreement is subject to the laws of the State of Queensland.

34.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

35. ASSIGNMENT

35.1 The Contractor may not without Catchment Solutions prior written consent assign, transfer or otherwise deal with its interests in this Agreement. Catchment Solutions may give or withhold its consent at its absolute discretion and if Catchment Solutions grants consent it can impose any terms and conditions considered necessary by Catchment Solutions at its absolute discretion.

35.2 Catchment Solutions may without the consent of the Contractor assign, transfer or otherwise deal with its interests in this Agreement. If Catchment Solutions assigns, transfers or otherwise deals with its interest in this Agreement then Catchment Solutions agrees to obtain a covenant from the relevant party Catchment Solutions is dealing with whereby that party agrees to be bound by the terms of this Agreement. If Catchment Solutions assigns, transfers or otherwise deals with its interest in this Agreement then Catchment Solutions will be released from all of its obligations under this Agreement on and from the date the relevant dealing settles and the incoming party is bound to comply with the terms of this Agreement.

36. FURTHER ASSURANCE

36.1 Each party must do, sign, execute and deliver and must ensure that each of its employees and agents does, signs, executes and delivers, all agreements, deeds, documents, instruments and acts reasonably required of it or them by notice from another party to effectively carry out and give full effect to this Agreement and the rights and obligations of the parties under it.

SCHEDULE 1 ADMINISTRATION DETAILS

ITEM 1 – Contractor

Contractor Name:

ABN:

Contractor Contact:

ITEM 2 – The Term

The term of this agreement is for a period of 6 months commencing 1 July 2019 and expiring 31 December 2019.

ITEM 3 – Activity Milestones

In accordance with Part B Item 1.1 of the Contract Specification attached to and forming part of this Agreement in Schedule 2 below:

Milestone Number	Milestone Description	Milestone Reports	Milestone Completion Date

ITEM 4 – Schedule of Payments

Total payment amount is exclusive of GST. Scheduled payments are as follows:

Payment Milestone	Activity Numbers to be achieved	Payment Percent of Total	Payment Amount (excluding GST)	Payment Date
1				
2				
3				
4				

ITEM 5 – Addresses for Notices

All notices for Catchment Solutions Pty Limited are to be addressed as follows –

PO Box 815
MACKAY QLD 4740
Phone: (07) 4968 4200
Email: pjeston@catchmentsolutions.com.au
Accounts: accounts@catchmentsolutions.com.au

All notices for the Contractor are to be addressed as follows –

Phone:
Mobile:
Email:
Website:

ITEM 5 – CONTRACTOR SERVICES AND MILESTONES

This contract is for the fencing of approximately 14,100 m of creek and gully fencing proposed for the lower section of Collinsdale Creek. This streambank and gully fencing will occur over two properties – Collinsdale and Bindaree, to establish and protect riparian vegetation along the lower eight (8) kilometers of Louisa Creek as well as some side gullies to prevent further erosion. Within Collinsdale, 10,100 m of fencing is proposed while within the upstream Bindaree property about 4,000 m of creek and gully fencing is proposed.

To offset this restricted water source, a number of off-stream water points (including dam sites) will be established adjacent to the creek (outside of the fenced area). Within Collinsdale, seven (7) off-stream watering points are proposed (there are currently none in place). Within Bindaree, an additional two (2) off-stream watering points are proposed to augment the existing supplies.

The Scope of Works generally includes but not limited to: preparation, implementation and maintenance during construction, all required plans including safety management plan, site establishment; reporting; supply and construction of all materials, labour, equipment and other resources and disestablishment of site.

All Works under this Contract must be executed in accordance with this Contract Specifications.

▪ **Work Milestones**

The Works will be based on Work Milestones as described below. The Superintendent will determine the progress of the Works and Milestones achieved in respect to the claims made under the Contract, with progress payments only made for the Works performed and Milestones, and / or pay line items achieved.

Work Milestone Number One - Preliminaries and Site Establishment

This Milestone must include the following aspects of the Works including but not limited to:

- Review the program submitted with the tender, obtain the approval of the Superintendent prior to mobilisation to site, progressively update, submit updated program weekly or as directed by the Superintendent until the completion of construction.
- Prepare, submit and obtain endorsement of the Superintendent for the required site-specific documentation, including but not limited to the following documents:
 - Safety Management Plan including SWMS for all high-risk activities.It is the responsibility of the Contractor to develop and supply comprehensive respective plans/procedures/reports.

- Pre-construction investigation and site survey Works and location of all underground and/or overhead services. Prior to commencement of any physical work, notify the Superintendent of any additional requirements determined as a result of the pre-construction site investigation activities.
- Site establishment including supply, implement and maintain vehicle and plant management throughout the duration of construction.

The total value of this Milestone must not exceed 10% of the total value of the Contract Sum.

Work Milestone Number Two – Construction of 50% of fenced area

This Milestone include the following aspects of the Works including but not limited to:

- Set out and alignment for the proposed work.
- Supply all necessary plant, equipment, labour and material to:
 - Complete the 50% of fencing construction (6.3 km) in accordance with the Contract Specification.

It is the responsibility of the Contractor to ensure site access track is maintained for vehicle and plant access during the construction period.

Work Milestone Number Three – Construction of 50% of remaining fenced area

This Milestone must include the following aspects of the Works including but not limited to:

- Set out and alignment for the proposed work.
- Supply all necessary plant, equipment, labour and material to:
 - Complete the remain 50% of fencing construction (an additional 6.3 km) in accordance with the Contract Specification.

It is the responsibility of the Contractor to ensure site access track is maintained for vehicle and plant access during the construction period.

Work Milestone Number Four – Off-stream Watering Points and Disestablishment

This Milestone must include the following aspects of the Works including but not limited to:

- Set out and alignment for the proposed work.
- Submit all signed quality assurance records including product warranties and certifications.
- Supply all necessary plant, equipment, labour and material to:
 - Complete the Off-stream Watering Points in accordance with this Contract Specification.
- Within Collinsdale, seven (7) off-stream watering points are proposed (there are currently none in place). Within Bindaree, an additional two (2) off-stream watering points are proposed to augment the existing supplies.
- Disestablish site on completion of all Milestones and meeting requirements specified within the Contract.
- Any other work required to complete the entire Contract as per the requirements contained within the Contract.

The total value of this Milestone must not be less than 10% of the total value of the Contract.

Provisional Item – Supply of Resources (Personnel and Equipment)

This is a 'Rate only' item for the provision of resources for any additional work that may be requested by the Principal and or for additional scope arising from latent conditions, to be undertaken as 'Day Work' under the Contract. This item is payable only for the number of hours of various resources utilised and based on the records maintained.

Specific/Ancillary Work

Subject to the requirements of the Contract, the Works must also include the following items:

- Positive location and identification of all services in the Works area prior to commencement of work.
- Reinstatement Works of site as required.
- Provision of resources for any additional work under 'Day work'.

Site

Location and Limits

The site is within the Collinsdale and Bindaree properties, Garnant and the limit of the Works is indicated by the Project Drawings. These limits may only be altered with the written approval of the Superintendent. Activities including material storage areas must be agreed with the Superintendent. Limits of the Site area and the Works area may only be altered with the written approval of the Superintendent. Do not enter onto the landholders property other than to undertake the Works.

The commencement of any activities on the site must not occur without first advising the Superintendent. In particular, no site excavation will be undertaken without first advising the Superintendent.

The site works should not impact Louisa Creek and the Works are to be performed in a manner such as to minimise any disturbance to existing vegetation along Louisa Creek and the Fitzroy River.

Access to the site will be permitted by arrangement with the Superintendent. Protocol for access to the site will be determined and approved by the Superintendent prior to commencement of the Works.

All roadways and access points to the project site are to be kept clear and accessible at all times. Parking of vehicles or equipment within existing roadways / track will only be permitted for short-term loading or unloading of equipment or facilities, and only with the prior approval of the Superintendent. All other vehicles, including vehicles used by personnel to commute to the site, must be parked in a manner such as to not obstruct roadways / tracks subject to the written agreement of the Superintendent.

SCHEDULE 2 CONTRACT SPECIFICATIONS

All watering points at both properties will be linked to existing water lines with the existing river pumping infrastructure were possible.

Collinsdale:

For the installation and construction of the 4.0 kilometre of four wire fencing, the following is required (as a minimum):

- Top strand of plain 2.5mm wire
- Remaining strands to be 2.5mm barb wire
- Total Height 1100mm (minimum)
- 165cm star pickets at 10m spacing
- 2 droppers per 10m spacing
- <500m strainer spacing
- Six gates which are to be of solid construction such as galvanised weld mesh and must match the height specifications of the fencing.

Option for using 1.8mt galv post and for every third post using a post at 2.4mt (metal post). Fence posts are to be driven in at every 6m.

For the installation and construction of the seven cattle watering points, the following is required (as a minimum):

- Seven (7) x troughs (2.0 - 2.4m poly or concrete) with external float over the top,
- 3.3km x 63mm poly blue line (estimate for quoting)
- 2 x solar pump 30m head - 1000m distance (supply 5,000l/hr)
- 3 x 22,000 l tank
- All pipe and tank connection fittings
- Trenching and installation of poly-pipe to 500mm depth (minimum)

Bindaree:

For the installation and construction of the 10.1 kilometre of four strand barb wire fencing, the following is required (as a minimum):

- Top strand of plain 2.5mm wire
- Remaining strands to be barb wire
- Total Height 1100mm
- 165cm star pickets at 10m spacing
- 2 droppers per 10m spacing
- <500m strainer spacing
- Two gates which are to be of solid construction such as galvanised weld mesh and must match the height specifications of the fencing.

Option for using 1.8mt galv post and for every third post using a post at 2.4mt (metal post). Fence posts are to be driven in at every 6m.

For the installation and construction of the three cattle watering points, the following is required (as a minimum):

- Three (3) x troughs (2.0 - 2.4m poly or concrete) with external float over the top
- 2.0km x 63mm poly blue line (estimate for quoting)
- 1 x solar pump 30m head - 1000m distance (supply 5,000l/hr).
- 1 x 22,000 l tank
- All pipe and tank connection fittings
- Trenching and installation of poly-pipe to 500mm depth (minimum)

Note: final site location for fencing and cattle watering points to be confirmed with the relevant landholders.

All works must be carried out in accordance with the Contract Specification FEER3110-05b-Collinsdale.

EXECUTION

Signed by **Catchment Solutions Pty Limited**
ABN 89 158 982 186 pursuant to sections 126 or
127 of the Corporations Act

.....
Authorised Officer Signature

.....
Witness Signature

.....
Print Name

.....
Print Name

.....
Position

Dated:

Signed by the Contractor
pursuant to sections 126 or 127 of the Corporations Act

.....
Authorised Officer Signature

.....
Witness Signature

.....
Print Name

.....
Print Name

.....
Position

Dated: