



Australian Government
Department of Agriculture,
Water and the Environment

Schedule B

Commonwealth Standard Agreement

between the Commonwealth of Australia as represented by
the Department of Agriculture, Water and the Environment ABN
34 190 894 983

and

the Secretariat of the Pacific Regional Environment Programme to
implement phase one of the Pacific Ocean Litter Project

Agreement with the Secretariat of the Pacific Regional Environment Programme to implement the Pacific Ocean Litter Project	4
Parties to this Agreement	4
Contractor	4
DAWE	4
Background	4
Scope of this Agreement.....	5
Agreement Details	6
A. Purpose of the Payments.....	6
B. Activity	6
C. Duration of the Agreement.....	8
D. Payments	9
E. Reporting.....	10
F. Party representatives and address for notices	11
SPREP's representative and address.....	11
DAWE representative and address	11
Supplementary Terms from Clause Bank	11
1. Child protection, gender equity and social inclusion.....	11
2. Contracts and Payments	12
Schedule 1: DAWE Standard Conditions.....	13
1. Undertaking the Activity	13
2. Payment	13
3. Acknowledgements.....	13
4. Notices.....	13
5. Relationship between the Parties	13
6. Subcontracting	14
7. Conflict of interest.....	14
8. Variation, assignment and waiver	14
9. Taxes, duties and government charges.....	14
10. Spending the Payments	14
11. Repayment	15
12. Record keeping.....	15
13. Reporting.....	15
14. Privacy	16
15. Confidentiality.....	16
16. Insurance.....	16
17. Intellectual property	16

18. Dispute resolution.....	16
19. Reduction, Suspension and Termination	17
20. Cancellation or reduction for convenience.....	18
21. Survival	18
22. Definitions	19

Agreement with the Secretariat of the Pacific Regional Environment Programme to implement the Pacific Ocean Litter Project

Once completed, this document, together with the Agreement Details and the Commonwealth Standard Conditions (Schedule 1), forms an Agreement between the Commonwealth and SPREP.

Parties to this Agreement

Contractor

Full legal name	Secretariat of the Pacific Regional Environment Programme (SPREP)
Legal entity type (e.g. individual, incorporated association, company, partnership etc)	Pacific Intergovernmental Organisation
Trading or business name	Secretariat of the Pacific Regional Environment Programme
Any relevant licence, registration or provider number	N/A
Australian Company Number (ACN) or other entity identifiers	N/A
Australian Business Number (ABN)	N/A
Registered for Goods and Services Tax (GST)?	N/A
Date from which GST registration was effective?	N/A
Registered office (physical/postal)	Postal: SPREP, PO Box 240, Apia Samoa Physical: Avele Street Apia
Relevant business place (if different)	
Telephone	+685 21929
Fax	+685 20231
Email	anthonyt@sprep.org cc - wasteteam@sprep.org

DAWE

Full legal name	Commonwealth of Australia (the Commonwealth) as represented by the Department of Agriculture, Water and the Environment
Legal entity type (e.g. individual, incorporated association, company, partnership etc)	Non-Corporate Commonwealth entity
Australian Business Number (ABN)	34 190 894 983
Registered office (physical/postal)	Postal: GPO Box 787, Canberra, ACT, 2601
Relevant business place (if different)	John Gorton Building King Edward Terrace Parkes, ACT
Telephone	+61 2 6274 2021
Fax	+61 0448 207 144
Email	melissa.masters@awe.gov.au cc - polp@environment.gov.au

Background

The DAWE has agreed to enter this Agreement under which the DAWE will provide SPREP with one or more Payments for the purpose of assisting SPREP to undertake the associated Activity.

SPREP agrees to use each Payment and undertake each Activity in accordance with this Agreement and the relevant Agreement Details.

Scope of this Agreement

This Agreement comprises:

- (a) this document;
- (b) the Supplementary Terms;
- (c) the Standard Conditions (Schedule 1);
- (d) the Agreement Details;
- (e) any other document referenced or incorporated in the Agreement Details.

Each set of Agreement Details, including Supplementary Terms (if any), only applies to the particular Payment and Activity covered by that set of Agreement Details and a reference to the 'Agreement' in the Agreement Details or the Supplementary Terms is a reference to the Agreement in relation to that particular Payment and Activity. If there is any ambiguity or inconsistency between the documents comprising this Agreement in relation to a Payment, the document appearing higher in the list will have precedence to the extent of the ambiguity or inconsistency.

This Agreement represents the Parties' entire agreement in relation to each Payment provided under it and the relevant Activity and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing.

Certain information contained in or provided under this Agreement may be used for public reporting purposes.

Agreement Details

A. Purpose of the Payments

The purpose of the Payments (AU\$2.535 million over five years) is to support the Secretariat of the Pacific Regional Environment Programme (SPREP) implement the first phase of the Pacific Ocean Litter Project (POLP).

POLP aims to contribute to SPREP's implementation of the Pacific Regional Action Plan: Marine Litter 2018-2025¹ (the Action Plan) and build the capacity of Pacific island countries (PICs) to plan and successfully implement measures to curb marine litter.

POLP will primarily focus on supporting PICs with reducing single-use plastics from household litter and take-away food and beverage containers (i.e. single use plastic bags, PET bottles, Styrofoam containers and plastic straws). This focus would also have a positive impact on other high-risk sources identified in the Action Plan, for example beachside tourist enterprises. Support will be delivered through technical assistance aimed at assisting PICs with decreasing key sources of marine litter.

POLP will be delivered in two phases: the first phase is covered in this Agreement; the second phase will be administered through a Department of Foreign Affairs and Trade (DFAT)-SPREP grant arrangement after the conclusion of phase one. Both phases contribute to the attainment of the long-term and specific outcomes outlined in Annexure 1 (draft Project Design) and summarised below. The long-term outcome for POLP is:

Decreased marine litter within the coastal and ocean environments of Pacific island country Exclusive Economic Zones by reducing the availability of single-use plastics (e.g. PET, plastic bags, Styrofoam and straws).

The intermediate outcomes of POLP are:

- Measures, policies or practical strategies to reduce single-use plastics are adopted/resourced/implemented.
- Local and visiting consumers (women, men, girls and boys) are using less single-use plastics and more alternative products
- Target sectors, companies and businesses adopt plastic reduction measures
- Alternative products are identified for adoption.

SPREP will ensure that the funds are used to contribute to these intermediate end of project outcomes; that is, outputs from phase one will contribute to the achievement of outcomes carried by phase two.

B. Activity

1. SPREP will provide the following services:

- (a) Director (or equivalent) of the Waste and Pollution Control Division to provide oversight of POLP and progress the recruitment of the Implementation Manager and Project Staff from date of Agreement to the engagement of an Implementation Manager or end of September 2021 (whichever comes first).
- (b) Recruit and engage a POLP project team (three staff) to support the Implementation Manager, in accordance with SPREP recruitment and employment rules and procedures.
- (c) Procure contractors and consultants to deliver services and activities as required in accordance with SPREP procurement rules and procedures.

¹ SPREP released a Pacific Regional Action Plan: Marine Litter 2018-2025 in May 2018. The Plan proposes a range of activities to address marine plastic pollution, including a ban on single use plastic bags, primarily through raising community awareness and behavioural change.

- (d) Prepare a phase one Project Implementation Plan which captures how the activities under this Agreement accord with the draft Project Design intermediate end of project outcomes.
- (e) Prepare annual forward workplans and budgets for approval by the Project Oversight Group (POG). The annual work plans will have consideration to the draft \$16 million Project Design (and any subsequent iterations) at Annexure 1.
- (f) Finalise the existing monitoring and evaluation plan (attached to Annexure 1), for approval by the POG.
- (g) Prepare a communications and stakeholder engagement plan for the POLP for approval by the POG.
- (h) Provide half-yearly and annual reports with financial statements that outline progress with implementation of the phase one Project Plan, annual workplan and Monitoring and Evaluation Plan.
- (i) Brief the POG on progress with implementation, risks, challenges and lessons learned (at least two times a year).
- (j) Provide written reports of meetings, workshops and results of activities.
- (k) Support the formative evaluation of phase one of POLP (to be commissioned by DAWE).
- (l) Contribute to the implementation of the Marine Litter - Pacific Regional Action Plan 2018-2025, consistent with the Project Plan and annual work plans.

To achieve the intermediate project outcomes POLP will undertake or consider the following activities, among others:

- the provision of funding for a project team at SPREP (excluding the POLP Implementation Manager) to drive coordination, implementation and partnerships;
- a re-assessment of the breadth of relevant projects taking place in the Pacific, including lessons learned, gaps, country priorities and opportunities for collaboration with other donors;
- building on the existing gap analysis and country priorities, prepare a prospectus for potential donors for further investment and collaboration in the region;
- work with DAWE and DFAT to develop and implement a pilot country selection process, from which the POG will approve the selection of countries for piloting strategies and approaches;
- engage pilot countries for support under POLP;
- support regional and national capacity development, awareness raising and advocacy;
- undertake a regional feasibility study that assesses opportunities for investment in environmentally and economically sustainable alternatives to single-use plastic products. The study will give particular consideration to income generation opportunities for women and people with disability;
- develop and promote a beach litter survey app;
- support skills, training, mentoring, and networking at regional, national and sub-national levels;
- guided by the Monitoring and Evaluation Plan, collect data and undertake analysis to assess the effectiveness of measures in changing the behaviour of businesses, business sectors and consumers;
- undertake feasibility and investment options for income generating activities resulting from alternative products to plastics; and
- mobilise widespread multi-sectoral community support and active engagement in reducing marine plastics through community awareness campaigns.

DFAT will, through a separate grant arrangement with SPREP, provide funding for a dedicated project implementation manager to oversee the delivery of POLP.

SPREP can claim a maximum 15% Program Management Fee to cover indirect costs associated with delivering the project including electricity and water, office space, security and maintenance necessary for project staff and support staff. The equivalent of 0.25 of the salary of the Director, Waste Management and Pollution Control, can be drawn from the POLP funding for the maximum period of 01 May 2021 to end of September 2021.

C. Duration of the Agreement

The Activity starts on the date of signing of this Agreement by the DAWE representative.

The Activity (other than the provision of any final reports) ends on 31 July 2023, after which POLP will be funded through a different arrangement.

The Agreement ends on 30 November 2023 *'when SPREP has provided all of the reports and repaid any Payment amount as required under this Agreement'*.

Activity Schedule		
Deliverables	Due Date	Status
Submit a draft proposal to DAWE on Greening the Pacific Games investment in clean water stations, promotional opportunities for the POLP and plan for the delivery of an education and awareness program for reducing single use plastics in Samoa.	20 June 2019	Completed
Submit <u>2020</u> draft Annual Workplan and indicative budget to the DAWE	30 November 2019	Completed
Acceptance of 2019-2020 Workplan and budget by the Project Management Committee	28 February 2020	Completed
Submit 2019 draft Annual Report and Financial Acquittal to DAWE	14th February 2020	Completed
Submit to Project Oversight Group the 2020 Mid-year and Transition Report	31 July 2020	Prepared but not submitted to POG
Provide the services of the Director (or equivalent), Pollution and Waste Management Division, to oversee POLP from the 1 May until the Project Implementation Manager is instated or to end of September 2021 (whichever comes first).	1 May 2021	
Recruit and engage three project support staff	30 September 2021	
Complete and submit a draft Phase One Project Implementation Plan, a Monitoring and Evaluation Plan (based on the draft Project Design M&E plan) and a draft Annual Workplan and Budget 2022	15 November 2021	
Submit an Annual Project Report and Financial Records and Acquittal Statement for 2021	15 February 2022	
Submit completed Project Communications and Stakeholder Engagement Plan	15 February 2022	
Complete and submit to DAWE draft Mid-year Progress Reports and Financial Statements	31 July each year 2021, 2022	
Submit a draft Annual Workplan and Budget 2023	15 November 2022	
Submit an Annual Report and Financial Records and Acquittal Statement for calendar year 2022	15 February 2023	
Complete a draft Final Project Report and Acquittal Statement	31 August 2023	

D. Payments

The maximum amount payable is \$2.535M (GST is not applicable), noting that \$720,000 has already been paid.

SPREP's nominated bank account into which the Payments are to be paid is:

Beneficiary Name: SPREP USD Working account
 Beneficiary Account Number: 01-849599-07
 Beneficiary Bank: BSP (Samoa) Ltd
 Beneficiary Bank Address: Beach Road, PO Box 1860, Apia, Samoa
 SWIFT CODE: BOSPWSWS

The Payments will be paid in instalments by the DAWE upon completion of the agreed Milestones, and compliance by SPREP with its obligations under this Agreement.

	Milestone	Anticipated payment date	Amount (excl. GST)	GST	Total (incl. GST)
1	On signature of agreement	30 May 2019	\$720,000	N/A	\$720,000 PAID ✓
2	Endorsement of Annual Work Plan (2020) by Project Oversight Group	31 March 2020	N/A		
3	Submission of Annual Report	15 May 2021	N/A		
4	Endorsement of Phase One Project Implementation Plan (including finalised M&E Plan) and Annual Work Plan and Budget (2022) by Project Oversight Group	15 December 2021	\$650,000	N/A	\$650,000
5	Submission of half year report	31 July 2022	N/A		
6	Endorsement of Annual Work Plan and Budget (2023) by Project Oversight Group	15 December 2022	\$650,000	N/A	\$650,000
7	Endorsement of Annual Report by Project Oversight Group	15 March 2023	\$425,000		\$425,000
8	Endorsement of Final Report and Financial Statement for Phase One by Project Oversight Group	31 October 2023	\$90,000	N/A	\$90,000
	Total Amount		\$2,535,000		\$2,535,000

Invoicing

Each payment will be made following submission by SPREP of a correctly rendered invoice. To be correctly rendered, the invoice must:

1. be correctly addressed
2. be for the correct amount in Australian dollars.

The Recipient must acknowledge receipt of the Funds to the DAWE in writing as soon as practicable after receiving the Funds.

E. Reporting

SPREP agrees to create the following reports and documents in the form specified and to provide the reports to the DAWE representative in accordance with the following:

1. Phase One Project Implementation Plan

- 1.1 Within the timeframe specified in the Activity Schedule the recipient must submit a draft Phase One Project Implementation Plan for the endorsement by the Project Oversight Group (Milestone 4). The draft Project Plan must:
 - (a) set out specific, measurable, achievable, relevant and time-based objectives/goals and associated strategies/activities, milestones/timelines and targets
 - (b) strategies and activities included in the Phase One Project Implementation Plan must be assessed as consistent with the draft \$16M draft Project Design (Annexure 1).

2. Mid-year Reports

- 2.1 Within the timeframe specified in the Activity Schedule, the recipient must prepare a Mid-year Report and Financial Information for the endorsement by the Project Oversight Group in July of each year (in accordance with Milestone 5) in which the Recipient has received, expended or retained funds pursuant to this Agreement.
 - (a) The Mid-year Report must provide an outline of progress with implementation of the project against the annual workplan for the relevant calendar year.
 - (b) The required Financial Information must include an itemised statement of income and expenditure.

3. Annual Report and Verified Financial Information

- 3.1 Within the timeframe specified in the Activity Schedule, the recipient must submit a draft Annual Report for the endorsement by the Project Oversight Group. The Annual Report must:
 - (a) be submitted for endorsement by the Project Oversight Group at the end of each calendar year (in accordance with Milestones 3 and 6) in which the Recipient has received, expended or retained Funds pursuant to this Agreement. The recipient will finalise Annual Reports in accordance with advice and comments provided by the Committee and the DAWE.
 - (b) The Annual Report must provide a detailed explanation of progress and deliverables against the Phase One Project Plan and Monitoring and Evaluation Plan.
 - (c) The required Financial Information must be approved by the Recipient's Chief Financial Officer or other position within the Recipient organisation with the corporate responsibility for ensuring the veracity and accuracy of financial information reported on behalf of the Recipient.

4. Final Report

- 4.1 Within the timeframe specified in the Activity Schedule the recipient must submit a draft Final Report and Financial Information for the endorsement by the Project Oversight Group:

- (a) at the end of the project in accordance with Milestone 8. The recipient will finalise the Final Report in accordance with advice and comments provided by the Committee and the DAWE.
- (b) The Final Report must reference the formative evaluation of the project against the Phase One Project Plan and Monitoring and Evaluation Plan.
- (c) The required Financial Information covering the full period of the agreement must be approved by the Recipient's Chief Financial Officer or other position within the Recipient organisation with the corporate responsibility for ensuring the veracity and accuracy of financial information reported on behalf of the Recipient.

5. Additional Reports

5.1 The DAWE may at any time, and from time to time, during the Agreement Period, require the Recipient to provide reports and other information in addition to the Mid-year, Annual and Final Reports required.

F. Party representatives and address for notices

SPREP's representative and address

Representative name	Mr Tony Talouli
Position	Director, Waste Management and Pollution Control Division
Postal/physical address(es)	PO Box 240 Samoa; Avele Street Apia
Business hours telephone	+685 21929 Ext 245
Mobile	+685 757 2552
Fax	+685 20231
E-mail	anthonyt@sprep.org cc - wasteteam@sprep.org

DAWE representative and address

Name of representative	Melissa Masters
Position	Assistant Director, Pacific Engagement Section
Postal/physical address(es)	GPO Box 787, Canberra, ACT 2601; John Gorton Building, King Edward Terrace, Parks ACT 2600
Business hours telephone	+61 2 6274 2871
Mobile	
E-mail	melissa.masters@awe.gov.au cc - polp@environment.gov.au

The Parties' representatives will be responsible for liaison and the day-to-day management of the Agreement, as well as accepting and issuing any written notices in relation to the Agreement.

Supplementary Terms from Clause Bank

1. Child protection, gender equity and social inclusion

1.1 The Recipient and its Personnel will ensure that any procurement undertaken under this Agreement will ensure that the following policies are included:

- (a) Child Protection – Should the execution of activities under this agreement involve working with children, SPREP shall undertake a child protection risk assessment and if risks are identified, Australia's Department of Foreign Affairs and Trade Child Protection Policy will apply. The *Child Protection Policy* is accessible on the DFAT website: <http://dfat.gov.au/aid/topics/safeguards-risk-management/child-protection/Pages/child-protection.aspx> and particularly the child protection compliance standards at Attachment 1 to the policy.
- (b) Promoting Opportunities for All: Gender Equality and Women's Empowerment (November 2011) for the DFAT – Australian Aid Program accessible on the DFAT website: <http://dfat.gov.au/about-us/publications/Pages/promoting-opportunities-for-all-gender-equality-and-women-s-empowerment.aspx>

- (c) *Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014* for the DFAT – Australian Aid Program, accessible on the DFAT website: <http://dfat.gov.au/about-us/publications/Pages/development-for-all-towards-a-disability-inclusive-australian-aid-program-2009-2014.aspx>, and in particular the strategy's six (6) guiding principles.

2. Contracts and Payments

- 2.1 Where SPREP enters into a contract or provides a Payment in connection with the Activity, SPREP will manage all matters in connection with the contract or Payment arrangement, including, without limitation, the following:
- (a) ensuring that the contract or Payment arrangement requires the contractor (and any sub-contractor) to detect and prevent Fraudulent Activities;
 - (b) ensuring that the contract or Payment arrangement requires the contractor (and any sub-contractors) to ensure that no offer, gift or payment, consideration or benefit of any kind that would or could be considered an illegal or corrupt practice, will be made or received either directly or indirectly, as an inducement or reward in relation to the contract or Payment arrangement;
 - (c) reporting to DAWE all instances of fraud, including suspected fraud or corruption, arising out of any contract or Payment arrangement within five (5) business days of becoming aware of the fraud or corruption and reporting to DFAT on a monthly basis the progress of any investigation and the actions taken to mitigate the risk of similar instances of fraud or corruption occurring in the future;
 - (d) taking all reasonable steps to ensure that the contractor (and any sub-contractors), individuals, entities or organisations involved in any way whatsoever in the Activity:
 - (i) are not directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act
 - (ii) are not, and do not become listed as a terrorist organisation under the *Criminal Code Act 1995* (Cth) and related regulations. The list of terrorist organisations is currently posted at <https://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx>
 - (iii) are not, and do not become listed on the 'Consolidated List' made under the *Charter of the United Nations Act 1945* (Cth) and the *Autonomous Sanctions Act 2011* (Cth), and related regulations, currently posted at <http://dfat.gov.au/international-relations/security/sanctions/pages/consolidated-list.aspx>, and
 - (iv) are not, and do not become listed on the World Bank's "Listing of Ineligible Firms and Individuals" currently posted at <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>
 - (v) are not acting on behalf of, or at the direction of, individuals, persons, entities or organisations on the lists referred to in subparagraphs (ii) to (iv)
 - (vi) are not owned or controlled by individuals, persons, entities or organisations mentioned in subparagraphs (ii) to (iv), and
 - (vii) do not provide direct or indirect support, resources or assets (including DFAT funding under any Activity) to individuals, persons, entities or organisations associated with terrorism or mentioned in subparagraphs (ii) to (iv)
 - (e) ensuring that SPREP has a right to suspend or terminate a contract or Payment arrangement at no cost to SPREP if, in SPREP's opinion, the contractor (and any sub-contractor) does not meet this clause 2 (a) – (d).
- 2.2. SPREP will inform DAWE immediately if it discovers that a contractor or sub-contractor has or may have contravened 2.1.

Schedule 1: DAWE Standard Conditions

1. Undertaking the Activity

1.1 SPREP agrees to undertake the Activity for the purpose of the Payment in accordance with this Agreement.

1.2 SPREP is fully responsible for the Activity and for ensuring the performance of all its obligations under this Agreement in accordance with all relevant laws. SPREP will not be relieved of that responsibility because of:

- (a) the Payment or withholding of any approval or the exercise or non-exercise of any right by the DAWE, or
- (b) any payment to, or withholding of any payment from, SPREP under this Agreement.

2. Payment

2.1 The DAWE agrees to pay the Payments to SPREP in accordance with the Agreement Details.

2.2 Notwithstanding any other provision of this Agreement, the DAWE may by notice withhold payment of any amount of the Payments and/or take any other action specified in the Supplementary Terms if it reasonably believes that:

- (a) SPREP has not complied with this Agreement
- (b) SPREP is unlikely to be able to perform the Activity or manage the Payments in accordance with this Agreement, or
- (c) there is a serious concern relating to SPREP or this Agreement that requires investigation.

2.3 A notice under clause 2.2 will contain the reasons for any action taken under clause 2.2 and, where relevant, the steps SPREP can take to address those reasons.

2.4 The DAWE will only be obliged to pay a withheld amount once SPREP has addressed the reasons contained in a notice under clause 2.2 to the DAWE's reasonable satisfaction.

3. Acknowledgements

3.1 SPREP agrees not to make any public announcement, including by social media, in connection with the Payments without the DAWE's prior written approval.

3.2 SPREP agrees to acknowledge the Australian Government's support in all Material, publications and promotional and advertising materials published in connection with this Agreement by including the Australian Aid identifier (below). The DAWE may further notify SPREP of the form of acknowledgement that SPREP is to use.



Australian Aid Identifier

4. Notices

4.1 Each Party agrees to promptly notify the other Party of anything reasonably likely to adversely affect the undertaking of the Activity, management of the Payments or its performance of any of its other requirements under this Agreement.

4.2 A notice given by a Party under this Agreement must be in writing and addressed to the other Party's representative as set out in the Agreement Details or as most recently updated by notice given in accordance with this clause.

5. Relationship between the Parties

A Party is not by virtue of this Agreement the employee, agent or partner of the other Party and is not authorised to bind or represent the other Party.

6. Subcontracting

6.1 SPREP is responsible for the performance of its obligations under this Agreement, including in relation to any tasks undertaken by subcontractors.

6.2 SPREP agrees to make available to the DAWE the details of any of its subcontractors engaged to perform any tasks in relation to this Agreement upon request.

6.3 SPREP agrees not to subcontract any part of the performance of the Activity without the DAWE's prior written consent. The DAWE may impose any conditions it considers reasonable and appropriate when giving its consent.

6.4 SPREP agrees to remove a subcontractor from the Activity at the reasonable request of the DAWE and at no additional cost to the DAWE.

7. Conflict of interest

7.1 Other than those which have already been disclosed to the DAWE, SPREP warrants that, to the best of its knowledge, at the date of this Agreement neither it nor its officers have any actual, perceived or potential conflicts of interest in relation the Activity.

7.2 If during the term of the Agreement, any actual, perceived or potential conflict arises or there is any material change to a previously disclosed conflict of interest, SPREP agrees to:

- (a) notify the DAWE promptly and make full disclosure of all relevant information relating to the conflict; and
- (b) take any steps the DAWE reasonably requires to resolve or otherwise deal with that conflict.

8. Variation, assignment and waiver

8.1 This Agreement may be varied in writing only.

8.2 SPREP cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the DAWE's prior approval.

8.3 SPREP agrees not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of, or involve any assignment of rights under, this Agreement without first consulting the DAWE.

8.4 A waiver by a Party of any of its rights under this Agreement is only effective if it is in a signed written notice to the other Party and then only to the extent specified in that notice.

9. Taxes, duties and government charges

9.1 SPREP agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement, except as provided by this Agreement.

9.2 If Goods and Services Tax (GST) is payable by a supplier on any supply made under this Agreement, the recipient of the supply will pay to the supplier an amount equal to the GST payable on the supply, in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

9.3 If at the commencement of the Agreement SPREP is not registered for GST and during the term of the Agreement SPREP becomes, or is required to become, registered for GST, SPREP agrees to notify the DAWE in writing within 7 days of becoming registered for GST.

10. Spending the Payments

10.1 SPREP agrees to spend the Payments for the purpose of performing the Activity and otherwise in accordance with this Agreement.

10.2 Within one month after the Activity's Completion Date **[and at least every 12 months during the term of the Activity]**, SPREP agrees to provide **[a] financial statement[s]** signed by SPREP verifying the Payments were spent in accordance with this Agreement.

10.3 A statement under clause 10.2 must include an income and expenditure statement in relation to the Payments and the Activity for each financial year of the Agreement.

11. Repayment

11.1 If any amount of the Payments:

- (a) has been spent other than in accordance with this Agreement; or
- (b) is additional to the requirements of the Activity;

then the DAWE may by written notice:

- (c) require SPREP to repay that amount to the DAWE;
- (d) require SPREP to deal with that amount as directed by the DAWE; or
- (e) deduct the amount from subsequent Payments or amounts payable under another agreement between SPREP and the DAWE.

11.2 If the DAWE issues a notice under this Agreement requiring SPREP to repay a Payment amount:

- (a) SPREP must do so within the time period specified in the notice;
- (b) SPREP must pay interest on any part of the amount that is outstanding at the end of the time period specified in the notice until the outstanding amount is repaid in full; and
- (c) the DAWE may recover the amount and any interest under this Agreement as a debt due to the DAWE without further proof of the debt being required.

12. Record keeping

12.1 SPREP agrees to keep financial accounts and other records that:

- (a) detail and document the conduct and management of the Activity;
- (b) identify the receipt and expenditure of the Payments [and any Other Contributions] separately within SPREP's accounts and records so that at all times the Payments are identifiable;
- (c) enable all receipts and payments related to the Activity to be identified and reported.

12.2 SPREP agrees to keep the records for five years after the Completion Date or such other time specified in the Agreement Details and provide copies of the records to the DAWE upon request.

13. Reporting

13.1 SPREP agrees to provide the Reporting Material specified in the Agreement Details to the DAWE.

13.2 In addition to the obligations in clause 13.1, SPREP agrees to:

- (a) liaise with and provide assistance and information to the DAWE as reasonably required by the DAWE; and
- (b) comply with the DAWE's reasonable requests, directions and monitoring requirements, in relation to the Activity and any DAWE review or evaluation of it.

13.3 If the DAWE acting reasonably has concerns regarding the performance of the Activity or the management of the Payments, the DAWE may by written notice require SPREP to provide one or more additional reports, containing the information and by the date(s), specified in the notice.

13.4 If, at any time, a Party reasonably believes that the Activity is unlikely to fully meet the purpose of the Payments, or there are Activity risks that need to be addressed, that Party may provide written notice to the other Party setting out its reasons for that belief and proposing steps that could be taken to better achieve that purpose or address those risks. The Parties agree to work co-operatively to:

- (a) consider, and negotiate in good faith, any change proposed under this clause 13.4; and
- (b) implement any such change that is agreed by the Parties by executing a variation to this Agreement under clause 8.1.

13.5 Except to the extent the Parties agree a variation under clause 8.1, clause 13.4 does not limit any of a Party's other rights under this Agreement.

13.6 SPREP acknowledges that the giving of false or misleading information to the DAWE is a serious offence under the *Criminal Code Act 1995* (Cth).

14. Privacy

14.1 When dealing with Personal Information in carrying out the Activity, SPREP agrees:

- (a) to comply with the requirements of the Privacy Act 1988 (Cth);
- (b) not to do anything which, if done by the DAWE, would be a breach of an Australian Privacy Principle.

15. Confidentiality

15.1 The Parties agree not to disclose each other's confidential information without the other Party's prior written consent unless required or authorised by law or Parliament to disclose.

15.2 The DAWE may disclose SPREP's confidential information where;

- (a) the DAWE is providing information about the Activity or Payments in accordance with DAWE accountability and reporting requirements;
- (b) the DAWE is disclosing the information to a Minister of the Australian Government, a House or Committee of the Commonwealth Parliament; or
- (c) the DAWE is disclosing the information to its personnel or another Commonwealth agency where this serves the Commonwealth's legitimate interests.

16. Insurance

16.1 SPREP agrees to effect and maintain, until all of its obligations under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the activities and services including:

- (a) Group Life and Accidental & Disability Insurance Policy (SPREP staff);
- (b) Industrial Special Risk Policy (Buildings, Equipment and Content in the event of accidents, burglary and natural disasters in Samoa); and
- (c) The capability to self-insure against any events which might otherwise be classified under public liability, professional indemnity and / or employer's liability.'

16.2 SPREP agrees to provide proof of insurance to the DAWE upon request and within the time specified in the request.

17. Intellectual property

17.1 SPREP owns the Intellectual Property Rights in Material created by SPREP as a result of undertaking the Activity.

17.2 SPREP provides the DAWE a permanent, non-exclusive, irrevocable, royalty-free licence to use, modify, communicate, reproduce, publish, adapt and sub-license the Reporting Material for Commonwealth Purposes.

17.3 The licence in clause 17.2 does not apply to Activity Material.

17.4 This Agreement does not affect the ownership of Intellectual Property Rights in Existing Material.

18. Dispute resolution

18.1 The Parties agree not to initiate legal proceedings in relation to a dispute arising under this Agreement unless they have first tried and failed to resolve the dispute by negotiation.

18.2 Unless clause 18.3 applies, the Parties agree to continue to perform their respective obligations under this Agreement when a dispute exists.

18.3 The Parties may agree to suspend performance of the Agreement pending resolution of the dispute.

18.4 Failing settlement by negotiation in accordance with clause 18.1, the Parties may agree to refer the dispute to an independent third person with power to intervene and direct some form of resolution, in which case the Parties will be bound by that resolution. If the Parties do not agree to refer the dispute to an independent third person, either Party may initiate legal proceedings.

18.5 Each Party will bear their own costs in complying with this clause 18, and the Parties will share equally the cost of any third person engaged under clause 18.4.

18.6 The procedure for dispute resolution under this clause does not apply to any action relating to termination, cancellation or urgent interlocutory relief.

19. Reduction, Suspension and Termination

19.1 Reduction in scope of agreement for fault

19.1.1 If SPREP does not comply with an obligation under this Agreement and the DAWE believes that the non-compliance is incapable of remedy, or if SPREP has failed to comply with a notice to remedy, the DAWE may by written notice reduce the scope of the Agreement.

19.1.2 SPREP agrees, on receipt of the notice of reduction, to:

- (a) stop or reduce the performance of SPREP's obligations as specified in the notice;
- (b) take all available steps to minimise loss resulting from the reduction;
- (c) continue performing any part of the Activity or the Agreement not affected by the notice if requested to do so by the DAWE;
- (d) report on, and return any part of, the Payments to the DAWE, or otherwise deal with the Payments, as directed by the DAWE.

19.1.3 In the event of reduction under clause 19.1.1, the amount of the Payments will be reduced in proportion to the reduction in the scope of the Agreement.

19.2 Suspension

19.2.1 If:

- (a) SPREP does not comply with an obligation under this Agreement and the DAWE believes that the non-compliance is capable of remedy;
 - (b) the DAWE reasonably believes that SPREP is unlikely to be able to perform the Activity or manage the Payments in accordance with this Agreement; or
 - (c) the DAWE reasonably believes that there is a serious concern relating to SPREP or this Agreement that requires investigation;
- the DAWE may by written notice:
- (d) immediately suspend SPREP from further performance of the Activity (including expenditure of the Payments); and/or
 - (e) require that the non-compliance or inability be remedied, or the investigation be completed, within the time specified in the notice.

19.2.2 If SPREP:

- (a) remedies the non-compliance or inability specified in the notice to the DAWE's reasonable satisfaction, or the DAWE reasonably concludes that the concern is unsubstantiated, the DAWE may direct SPREP to recommence performing the Activity; or
- (b) fails to remedy the non-compliance or inability within the time specified, or the DAWE reasonably concludes that the concern is likely to be substantiated, the DAWE may reduce the scope of the Agreement in accordance with clause 19.1 or terminate the Agreement immediately by giving a second notice in accordance with clause 19.3.

19.3 Termination for fault

19.3.1 The DAWE may terminate this Agreement by notice where SPREP has:

- (a) failed to comply with an obligation under this Agreement and the DAWE believes that the non-compliance is incapable of remedy or where clause 19.2.2.b applies; or
- (b) provided false or misleading statements in relation to the Payments; or
- (c) become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration.

19.3.2 SPREP agrees, on receipt of the notice of termination, to:

- (a) stop the performance of SPREP's obligations;
- (b) take all available steps to minimise loss resulting from the termination; and
- (c) report on, and return any part of, the Payments to the DAWE, or otherwise deal with the Payments, as directed by the DAWE.

20. Cancellation or reduction for convenience

20.1 The DAWE may cancel or reduce the scope of this Agreement by notice, due to:

- (a) a change in government policy; or
- (b) a Change in the Control of SPREP which the DAWE reasonably believes will negatively affect SPREP's ability to comply with this Agreement.

20.2 On receipt of a notice of reduction or cancellation under this clause, SPREP agrees to:

- (a) stop or reduce the performance of SPREP's obligations as specified in the notice; and
- (b) take all available steps to minimise loss resulting from that reduction or cancellation; and
- (c) continue performing any part of the Activity or the Agreement not affected by the notice if requested to do so by the DAWE;
- (d) report on, and return any part of, the Payments to the DAWE, or otherwise deal with the Payments, as directed by the DAWE.

20.3 In the event of reduction or cancellation under this clause, the DAWE will be liable only to:

- (a) pay any part of the Payments due and owing to SPREP under this Agreement at the date of the notice; and
- (b) reimburse any reasonable and substantiated expenses SPREP unavoidably incurs that relate directly and entirely to the reduction in scope or cancellation of the Agreement.

20.4 In the event of reduction, the amount of the Payments will be reduced in proportion to the reduction in the scope of the Agreement.

20.5 The DAWE's liability to pay any amount under this clause is:

- (a) subject to SPREP's compliance with this Agreement; and
- (b) limited to an amount that when added to all other amounts already paid under the Agreement will not exceed the total amount of the Payments.

20.6 SPREP will not be entitled to compensation for loss of prospective profits or benefits that would have been conferred on SPREP but for the cancellation or reduction in scope of the Agreement under clause 20.1.

20.7 The DAWE will act reasonably in exercising its rights under this clause.

21. Survival

The following clauses survive termination, cancellation, or expiry of this Agreement:

- clause 10 (Spending the Payments)
- clause 11 (Repayment)

- clause 12 (Record keeping)
- clause 13 (Reporting)
- clause 14 (Privacy)
- clause 15 (Confidentiality)
- clause 16 (Insurance)
- clause 17 (Intellectual property)
- clause 19 (Reduction, Suspension and Termination)
- clause 21 (Survival)
- clause 22 Definitions, and
- any other clause which expressly or by implication from its nature is meant to survive.

22. Definitions

In this Agreement, unless the contrary appears:

- Activity means the activity described in the Agreement Details and includes the provisions of the Reporting Material.
- Activity Material means any Material, other than Reporting Material, created or developed by SPREP as a result of the Activity and includes any Existing Material that is incorporated in or supplied with the Activity Material.
- Agreement means the Agreement Details, Supplementary Terms (if any), the Commonwealth Standard Conditions and any other document referenced or incorporated in the Agreement Details.
- Australian Privacy Principle has the same meaning as in the *Privacy Act 1988*.
- Change in the Control means any change in any person(s) who directly exercise effective control over SPREP.
- Commonwealth means the Commonwealth of Australia as represented by the Commonwealth entity specified in the Agreement and includes, where relevant, its officers, employees, contractors and agents.
- Commonwealth Standard Conditions means this document.
- Commonwealth Purposes includes the following:
 - a. the Commonwealth verifying and assessing Activity proposals
 - b. the Commonwealth preparing, managing, reporting on, auditing and evaluating agreements, including this Agreement
 - c. the Commonwealth preparing, managing, reporting on, auditing and evaluating agreements, including this Agreement
 - d. the Commonwealth developing and publishing policies, programs, guidelines and reports, including Commonwealth annual reports
 but in all cases:
 - e. excludes the commercialisation (being for-profit use) of the Material by the Commonwealth.
- Completion Date means the date or event specified in the Agreement Details.
- DAWE means the Commonwealth of Australia as represented by the Department of Environment and Energy or any other non-corporate Commonwealth entity
- Existing Material means Material developed independently of this Agreement.
- Agreement Details means the document titled Agreement Details that forms part of this Agreement.
- Intellectual Property Rights means all copyright, patents, registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity (other than moral rights under the *Copyright Act 1968*).

- Material includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means including all copies and extracts of them.
- Party means SPREP or the Commonwealth.
- Payment means the money, or any part of it, payable by the DAWE to SPREP for the Activity as specified in the Agreement Details and includes any interest earned by SPREP on that money.
- Personal Information has the same meaning as in the *Privacy Act 1988*.
- Records includes documents, information and data stored by any means and all copies and extracts of the same.
- Reporting Material means all Material which SPREP is required to provide to the Commonwealth for reporting purposes as specified in this Agreement, including the Agreement Details, and includes any Existing Material that is incorporated in or supplied with the Reporting Material.