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XYZ

Research Agreement Template example

BETWEEN

XXXX [insert name Aboriginal Organisation] XXX ('the Organisation') of XX [insert address] XX ABN XXXXXXXXXXXXX, as representatives of the XX [insert name] XX Aboriginal Traditional Owners (the TO's).

AND

XXX [insert name of Research Organisation] XX ("RO"), ABN XXXXXXXXXXXX of [insert address of research organisation].

RECITALS:

- A. RO has requested to enter the traditional lands of the TO's to undertake XX [insert description of type of research] XX and consequential research ("the Project") at the area/site known as "XX [insert name of area/site/country] XX" ("the Site") which is located XX [insert location details as agreed] XX. A detailed outline of the Project can be found at Schedule 1.
- B. The purpose of the Project is to XX [insert clear project outline] XX.
- C. Funding for the Project has been obtained from XXXXXX and is guaranteed to the completion of the Project.
- D. AO and the TO's have agreed to allow RO access to the traditional lands of the TO's for the purpose of the Project.
- E. AO and RO wish to record their mutual understandings and obligations with respect to the Project, and all research associated with the Project.

1 DEFINITIONS

1.1 In this Agreement:

Aboriginal means a person who is a member of the Aboriginal race of Australia;

Archaeological Activity means the identification, collection and analysis of Materials or Cultural Artifacts by Project Personnel

Cultural Artifacts means any cultural Materials made or modified by a human being;

Data means any scientific data or quantitative empirical results (including without limitation dating of any Cultural Artifacts produced by an Archaeological Activity

Filmed material means the cinematographic and audio recording made by XX [media company] XX in the course of the Project.

Indigenous Cultural and Intellectual Property or ICIP includes all aspects of the Aboriginal peoples' cultural products and expressions, as well as their tangible and intangible cultural

TEMPLATE ONLY - Site excavation & Research Agreement

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knowledge, and means the totality of cultural heritage of Aboriginal people, including, without limitation, their intangible heritage (such as songs, dances, stories, ecological and cultural knowledge), and cultural property, which includes Aboriginal human remains, Cultural Artifacts and any other cultural objects.

Laboratory means any laboratory or other location where RO or Persons engaged by or partnering with RO are inspecting the Cultural Artifacts or any other material recovered from the Site;

Materials means all Cultural Artifacts or other objects, items, materials, samples, documents or things of any description, including human remains, that are recovered, removed, or sought for experimentation by RO under this Agreement;

XXX Protocols means any protocols advised by the TO on how to deal with the Cultural Artifacts and any other matters relating to the culture and history of the TO;

Project Director means the XX [insert title] XX with the responsibility for XX [insert project activities] XX, in this instance XX[insert person's name]XXX;

Project Personnel means the staff and officers of RO, and all persons engaged by RO, or gaining access to, or working on, the site or Research involved in the Project, and extends without limitation to any Project personnel from other Institutions;

Publication or publications means any document, in print, digital or electronic format, produced for peer review, professional publication or publication in any form capable of public dissemination and includes conference papers and presentations;

Reports means documents provided to AO in accordance with clauses 2.8(k) and 5.1.

Research means all field and laboratory research conducted by RO or the Project Personnel concerning the Project, Materials or Cultural Artifacts, whether at the Site or in any laboratory where Cultural Artifacts or other Material from the Site is being examined.

Results means any archaeological, sociological, historical or other scientific findings derived from the Research.

Term of the Project means from the date the last party signs this Agreement until June 30, 2017

2 RO UNDERTAKINGS AND OBLIGATIONS

- 2.1 AO and RO agree to undertake collaborative research activities in relation to the Project.
- 2.2 RO shall conduct the Project at the Site using an experienced [insert archaeological or other discipline] team and research team with the expertise necessary to carry out all Research, and shall apply the highest professional and ethical standards in carrying out the Research, provided that the ethical standards shall be determined according to the baseline standards of the World Archaeological Congress
http://www.worldarchaeologicalcongress.org/site/about_ethi.php.
- 2.3 The focus of any Research to be carried out by RO in respect of the Project shall be pre-approved by AO.

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- 2.4 RO shall notify AO daily of materials found at the Site and AO shall notify RO which of such materials are to be considered Cultural Artifacts.
- 2.5 RO shall ensure that all Project Personnel show respect for the culture and history of the TO and their country. All agreements with RO Personnel shall enable RO to promptly remove those personnel from the Project where RO Personnel do not show such respect. RO shall take all reasonable measures to deal with any allegation of breach of this clause 2.5 by any Project Personnel, provided that if required by AO, RO shall remove any Project Personnel from continuing to carry out work on the Project.
- 2.6 RO shall promptly address any concerns advised by AO with respect to any RO Personnel, including hiring or including additional personnel or removing other RO Personnel in the circumstances described in clause 2.4 above.
- 2.7 RO shall use appropriate and first class equipment suitable or carrying out the Project and the Research.
- 2.8 RO undertakes and agrees that:
- (a) Subject to clause 3.2, any excavated Materials not including human remains (including but not limited to Artifacts, shell, charcoal, hematite) will be removed to RO for study over the term of project, then returned within 3 months of the end of the project to the TO who will retain the option of requesting the Materials be lodged, at RO's expense, at a repository specified by AO. RO further agrees that AO reserves the option of later moving these Materials to a keeping place/research centre on-country. Any such three-way agreement of this nature between AO, RO and the chosen keeping place/research centre must be facilitated by RO at the request of AO.
- (i) In the event that the Project Director ceases employment with RO or is otherwise unable to continue in his role, RO will notify AO within 5 working days of learning this information and will instruct all research to be placed on hold indefinitely until such time as the TO's, through the AO, make a decision about if, or how, Research will continue.
- (b) any scientific data or quantitative empirical results (including without limitation dating of any Cultural Artifacts) ("Data") may be used for research purposes, but prior to any publication of the Data, RO shall submit such publication to the TO, via AO for any comment, which RO undertakes to take into account prior to publication of the Data;
- (c) where any proposed publication seeks to include extrapolation of the Data to arrive at conclusions or opinions that reference social or cultural heritage, or behavioural or anthropological extrapolation, or historical events, RO shall, prior to peer review of such proposed publication, submit such proposed publication to the TO, via AO, no less than 30 days prior to seeking peer review. AO shall provide comments on the proposed publication including, where the TO considers the extrapolations to be lacking in factual or evidentiary basis, and the TO, via AO, will have the right to request further evidence to support such extrapolations at any time during the peer

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review process and prior to publication and until such time as further evidence is forthcoming the publication will be postponed. Where RO are unable to supply evidence to support the disputed extrapolation to the satisfaction of the TO, the TO shall supply a statement advising among other matters that in its opinion the extrapolation is not supported by evidence and RO shall include such statement as a preamble to any publication. It is a condition subsequent to the grant of rights and access being given to RO by AO pursuant to this Agreement that such statement be included as a preamble to any such publication;

- (d) publication or reporting of results at conferences or public gatherings will require a synopsis of the proposed presentation to be forwarded to AO no later than 30 days prior to the conferences or public gatherings for consideration by AO. Where AO has concerns about the content of the publication or reporting, RO undertakes to ensure the concerns of AO are addressed to the satisfaction of AO and where this is not possible, no presentation or reporting at conferences or public gatherings will proceed until the concerns of AO are resolved or AO consents in writing to such publication or reporting with other conditions attached;
- (e) the exact location of the Site, including longitude and latitude points, will not be made publicly available in any forum or publication unless prior written approval has been obtained from the TO's through the AO;
- (f) RO or any institution contracted by RO under this Agreement to perform the Project shall enter into appropriate agreements with any students which shall require that student abides by the terms set out in this Agreement and that any thesis resulting from the Project shall be provided to AO and, on reasonable request, such thesis may be examined in confidence and kept in a confidential repository for no more than twelve (12) months. For the avoidance of doubt, the copyright in a student's thesis shall vest in the student .
- (g) no person or organisation is to be given access to the Materials, ICIP or Results other than for the purposes expressly set out in this Agreement, without the prior written consent of AO, and such consent may be given or withheld in AO's absolute discretion and on such conditions as AO may impose in its sole discretion;
- (h) all PhD candidates involved with the Project, or any candidate known to RO to be seeking to use Data from the Project for PhD purposes must commence negotiations regarding their agreement with AO, and present a plain English description of their expression of interest (EOI) for consideration by and approval from the TO, prior to final approval by the University. Where any thesis seeks to include extrapolation of the Data to arrive at conclusions or opinions that reference social or cultural heritage, or behavioural or anthropological extrapolation, the PhD candidate shall, prior to final submission of such thesis, submit the thesis to the TO, via AO, no less than 60 days prior to final submission. AO shall provide comments on the thesis including, where the TO consider the extrapolations to be lacking in factual or evidentiary basis, and the TO, via AO, will have the right to request further evidence to support such extrapolations at any time prior to final submission and prior to publication and until such time as further evidence is forthcoming the thesis may not be finally submitted.

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Where the PhD candidate is unable to supply evidence to support the disputed extrapolation to the satisfaction of the TO, the TO shall supply a statement advising among other matters that in its opinion the extrapolation is not supported by evidence and the PhD candidate shall include such statement as a preamble to the thesis. It is a condition subsequent to the grant of rights and access being given to PhD candidate to the Data that such statement be included as a preamble to such thesis;

- (i) except where written consent is granted by AO, human skeletal remains will not be removed from the excavation where it is possible to proceed around them. The parties further agree that:
 - i) any human skeletal remains will be the subject of a separate agreement between the scientist or scientists who propose to conduct any study on them and AO on behalf of the TO
 - ii) human skeletal remains will not leave the site without the written permission of AO and will at all times remain the sole property of the TO whose instructions regarding treatment, further study and return or reburial, will be respected and followed by RO at all times
 - iii) RO will produce a plain-English community report for AO, describing only those characteristics of the remains that the TO agree are to be determined by the study, and present this to AO no later than 6 months before the end of the term of the project or within 30 days of its completion, whichever is earlier;
- (j) copies of all excavation notes, photos and databases, publications and student theses from the project will be lodged with AO within 30 days of their completion, or no later than XXX[insert date]XXX , whichever comes first, and AO will have a non-exclusive licence to use this material for the benefit of AO;
- (k) the Project Director will communicate by phone with the Executive Officer (or other nominated contact) of AO, no less than once every 90 days, to update AO on Research progress. Further, every year after July 2012, until the formal completion of the Project, the Project Director will present a written annual report in person to the AO board, covering all aspects of Research. This annual written report to be delivered no later than 30 August of each year.
- (l) they will at all times during the Project, act with professional care and abide by the ethical standards referred to in clause 2.2 with respect of any Cultural Artifacts while in the possession of RO whether in the field at the Site or in any Laboratory;
- (m) no Artifacts, materials (organic or otherwise) or other items (including soil or sand) that are unrelated to the Project but nonetheless originate from the Site, will be removed by any member of the Project team, for personal use or any other purpose, without prior written approval of AO;
- (n) in the absence of institutional agreements between the relevant organisations being sighted and approved by AO prior to the Project commencing, all personnel listed in Schedule 2 of this Agreement and any other person involved in the Project, whether performing Research or any other role shall, by their involvement in the Project, be

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treated as representatives of RO and their actions, including any publications or public comment shall, in relation this project, be imputed to be the actions of RO;

- 2.9 RO shall allow representatives of the TO, through AO, to inspect the Cultural Artifacts at the Site and in the Laboratories at any reasonable time and upon reasonable prior notice requesting access and during such inspection RO will provide a qualified representative to accompany the visit and provide explanation of processes or artifacts, where such explanation is sought.
- 2.10 RO shall where possible engage a minimum of one member of the TO with the Project, to be introduced by AO and shall provide informal field training for such persons.
- 2.11 RO shall ensure that scientists who work on the Project are available during the period they work at the Project to address students at the XXXX School about the work being undertaken at the Project, in the interests of assisting in cultural heritage curriculum development.
- 2.12 In conducting the Project, RO shall comply with all applicable national and state laws regarding the Project and the Research, including obtaining any required permits.

3 AO'S COMMITMENT

- 3.1 AO agrees to grant RO and RO Personnel access to the Site for the purposes of the Project, and shall secure access for RO and the RO Personnel to the Site.
- 3.2 Subject to clause 2.8, AO agrees that RO may carry out excavation at the Site and remove Cultural Artifacts and Materials from the Site for the purpose of specialist analysis and reporting provided that RO shall return all Cultural Artifacts and Materials to AO immediately upon request (and AO shall use all reasonable endeavours to give at least one month's notice (or otherwise as agreed) of any required return).
- 3.3 AO shall assist RO and the RO Personnel with local knowledge concerning the Site.
- 3.4 Subject to RO providing reporting in accordance with clause 5.1, AO shall provide RO with knowledge of any cultural limitations with respect to work in the field and in the Laboratory, so that the work undertaken by RO is culturally appropriate.
- 3.5 Subject to clause 2.8, AO shall allow RO and the RO Personnel (including any advanced research students – Honours, Masters, PhD's) to publish papers and other publications incorporating the Results and the Research.

4 FILMING

- 4.1 RO acknowledges and agrees that AO has engaged XX [insert name of media company] XX to film the Project for the purpose of producing video and audio materials about the Project and the findings of RO from the Project.
- 4.2 RO consents to the filming of the Project, for the term of the Project, and will use its best endeavours to obtain all consents necessary in respect of such filming from all Project Personnel at the Project provided that AO and XX [the media company] XX shall respect the

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privacy of any Project Personnel, particularly students, who do not wish their identity to be published in the Film, where such Project Personnel have not signed release forms.

- 4.3 RO grants XX [the media company] XX reasonable access upon reasonable prior notice to all premises controlled or authorised by RO to undertake research associated with the Project, and agrees to assist in procuring the co-operation of the associated institutions to allow XX [the media company] XX access to film ongoing research and findings associated with Project;
- 4.4 RO agrees, and shall seek agreement from its subcontractors, to assist XX [the media company] XX in procuring the co-operation of Project personnel to be filmed at the Site engaging in the Project, at their relevant places of research or further study in relation to the Project, and to be interviewed for the Film.
- 4.5 RO grants AO (and its licensees including XX [the media company] XX) a non-exclusive licence to use the Results in the Film and to exploit the Results as part of the Film worldwide in all media in perpetuity.
- 4.6 RO and AO shall liaise on the release or broadcast of any media to ensure, where possible, the timing of such release or broadcast is consistent with the publication of the Results in any scientific or popular journal.

5 RECORDS AND REPORTS

- 5.1 RO shall produce plain English reports for AO summarising the progress of the Project and the Research and any Results, on a regular basis to be agreed but at least every 12 months. Such reports will include details of any work to be undertaken at the Site and in the Laboratory to enable AO to assist RO in accordance with clause 3.4. For the avoidance of doubt, this obligation shall be discharged by RO by provision of the Reports set out in clause 2.8(k).
- 5.2 Subject to clause 2.8, RO shall promptly report on the Results in appropriate scientific journals.
- 5.3 RO shall obtain the prior written approval of AO, on behalf of the TO, for the use of any names, images or photographs of any deceased members of the TO which RO wishes to use in any publication of Research or Results.

6 FURTHER ASSURANCES

- 6.1 Each party will:
 - (a) at the cost of the requesting party, perform, execute, acknowledge and deliver all such further acts, documents, deeds and assurances as are reasonably required to give full effect to this Agreement; and
 - (b) refrain from doing anything that might hinder the performance of this Agreement.

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7 BREACH

- 7.1 AO may terminate this Agreement upon any breach by RO of any of the terms of this Agreement which is not remedied within 7 days of notice from AO of such breach.
- 7.2 AO may, but shall not be obliged to, terminate this Agreement without notice on a breach of any of clauses 2, 12 and 13.
- 7.3 In the event of termination of this Agreement, all rights granted to RO and the RO Personnel shall immediately cease and RO shall immediately:
- (a) return to AO all Cultural Artifacts and other material removed from the Site;
 - (b) vacate the Site and remove all equipment and RO Personnel from the Site
- and for the avoidance of doubt, RO shall have no right to use the Research or Results without separate prior written consent of AO which may be given or withheld in its absolute discretion.
- 7.4 The parties agree to attempt to resolve any dispute or difference which may arise between them in relation to this Agreement without delay.
- 7.5 Any dispute arising between the parties may be referred in writing in the first instance to senior representatives of the parties who must endeavour to identify a solution.

8 STATUS

- 8.1 Nothing in the Contract shall be construed to create a partnership, joint venture, agency or employer/employee relationship between the parties.

9 INTELLECTUAL PROPERTY & MORAL RIGHTS

- 9.1 Subject to clauses 9.2 and 9.3, the Parties agree that ownership of the Research and Results, including reports, documents, translations, intellectual property and other data, shall vest in RO.
- 9.2 RO acknowledges and respects Aboriginal ownership of all the Materials, including any ICIP in the Materials, and in the culture and history of the TO, and all such intellectual property and physical ownership in the Materials shall remain vested in AO.
- 9.3 RO will not use any Indigenous Cultural and Intellectual Property or any Materials arising from the Project that are deemed by AO, on behalf of the TO, to be secret or sacred to Aboriginal people unless such use is agreed to in writing by the TO.
- 9.4 RO grants to AO an irrevocable, perpetual, royalty-free, non-exclusive worldwide license to use, reproduce and exploit the intellectual property referred to in clauses 9.1 for use in the Filmed material and for the benefit of AO, provided that RO and/or the authors are appropriately acknowledged in relation to the materials referred to in 9.1.

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- 9.5 RO acknowledges the Moral Rights held by TO peoples and AO in any Indigenous Cultural and Intellectual Property or Materials and will ensure that no reproduction of these items or stories will be made in any form for any purpose without prior written approval of AO.

10 INSURANCES

- 10.1 RO must effect and maintain all usual and customary insurances that it would be prudent to obtain concerning an archaeological dig, and associated laboratory research, including public liability insurance. The insurance shall include any members of AO or the TO who work on or are otherwise involved in the Project, and or who visit the Project or the Laboratory.

11 SUB-CONTRACTING OR ASSIGNMENT

- 11.1 RO may not assign any rights or obligations under this Agreement without the consent of AO.
- 11.2 Subject to 2.8(n), RO may subcontract any of the institutions or entities which employ or enrol the Project Personnel as set out in Schedule 2 to this Agreement.

12 MEDIA & PUBLICITY

- 12.1 RO agrees that none of the Project Personnel, shall at any time either personally or by other means make any statement or disclose any information to any third party relating to the Project, the Research, the Results or the Filmed material without the prior written consent of the AO.
- 12.2 Except as otherwise contemplated in this Agreement, the parties agree that they shall not make any public statement relating to the Project, the Research, the Results or the Filmed material without the prior written consent of the other, not to be unreasonably withheld or delayed, to ensure the timing and nature of such statement is scientifically accurate, and culturally appropriate.
- 12.3 Except as otherwise contemplated in this Agreement and for academic publication, RO, its staff and subsidiaries and RO personnel agree that it will not distribute, share or exploit in the media in any form, including social media platforms, or engage any media to report on, information about the Project or its results without first contacting AO on behalf of the TO and discussing a joint or other plan for distribution of such information. RO further agrees that written approval is required from AO for any audio-visual recording of the Project, other than the record being created by XX [the media company] XX on behalf of AO.
- 12.4 For the avoidance of doubt, subject to clause 3, RO, its staff and subsidiaries and RO personnel agree that no images or recorded documentation of the Project, or any item or story arising from the Project, will be used for any commercial or non-commercial purpose, and further will not be posted or forwarded on any public media platform or social media site, without prior written approval of AO.

13. CONFIDENTIALITY

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- 13.1 Each Party shall keep confidential any information of a secret nature which is disclosed by the other Party pursuant to this Agreement provided that:
- (a) RO may disclose such confidential information to its subcontractors under this Agreement on terms no less onerous than the terms of this Agreement;
 - (b) this obligation shall not apply to any information that has entered the public domain without breach of this clause;
 - (c) such information shall not be kept confidential where it was already known or independently discovered or learned other than through the interaction of the parties under this Agreement.
- 13.2 RO and RO personnel shall keep confidential the location of the Site and the Project, except as otherwise provided in this Agreement.

14 GENERAL

14.1 Entire Agreement. This Agreement constitutes the entire agreement between RO and AO with respect to the subject matter of this Agreement. No other statements or representations, written or oral, shall be deemed a part of the Agreement.

14.2 Waiver. No waiver, consent, modification, or change of terms to this Agreement shall bind either party unless in writing and signed by both parties. No other statements or representations, written or oral, shall be deemed a part of the Agreement.

14.3 Modification. This Agreement may only be modified by subsequent written agreement or letter executed by the parties. Any conflict or inconsistency in this Agreement and its attachments will be resolved by giving the documents precedence in the following order: This Agreement, then Attachments to this Agreement in reverse chronological order.

14.4 No Third Party Beneficiaries RO and AO are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise to third persons unless such third persons are identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

14.5 Severability If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision. To this end, the provisions of this Agreement are declared to be severable.

14.6 Force Majeure RO or AO shall not be liable to the other or deemed in breach under this Agreement if and to the extent such party's performance is prevented by reason of events beyond the control of the other.

14.7 Authority to Bind The signatories to this Agreement represent that they have the authority to bind their respective Institutions to this Agreement.

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14.8 Counterparts This Agreement will be executed in English duplicate originals. Each such duplicate shall be deemed an original copy of this Agreement for all purposes.

14.9 Law of this Agreement The law of this Agreement is the law in force in the State of XXXXX, Australia. The parties to this Agreement submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of XXXXX, Australia and all courts authorized to hear appeals from those courts.

EXECUTED by the parties as on _____ day of _____ 2012

Signed for and on behalf of XXX [insert name of ABORIGINAL ORGANISATION] by a duly authorised person who warrants his or her authority to execute this Agreement:	
..... Signature of authorised person Signature of witness
..... Name of authorised person Name of witness
..... Position of authorised person	

Signed for and on behalf of XXX [insert name of RESEARCH ORGANISATION] XXX by a duly authorised person who warrants his or her authority to execute this Agreement:		
..... Signature of authorised person Signature of witness	Common Seal if required
..... Name of authorised person Name of witness	
..... Position of authorised person		

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SCHEDULE 1

XX [INSERT DETAILED OUTLINE OF PROJECT, PROPOSALS OF RESEARCH INCLUDING ANY EXCAVATION PLANS AND PLANS FOR MOVEMENT OF ARTIFACTS OR MATERIALS] XX.

SCHEDULE 2

PROJECT PERSONNEL COVERED BY THIS AGREEMENT

XX [INSERT NAMES OF PROJECT PERSONNEL] XX

XX [INSERT NAMES OF PROJECT PERSONNEL] XX

XX [INSERT NAMES OF PROJECT PERSONNEL] XX

XX [INSERT NAMES OF PROJECT PERSONNEL] XX

etc

etc

PHD Students

XX [INSERT NAMES OF PhD students] XX

XX [INSERT NAMES OF PhD students] XX

XX [INSERT NAMES OF PhD students] XX

Honours Students

Other Assistants