



**Australian Government**  
**Director of National Parks**

# LICENCE AGREEMENT

TO USE AND OCCUPY AREA IN  
AUSTRALIAN NATIONAL BOTANIC GARDENS

Date of Licence Agreement [date]  
Licence Agreement Number [number]

## PARTIES

DIRECTOR OF NATIONAL PARKS, ABN 13 051 694 963 (DNP), and  
[NAME OF LICENSEE] (ABN number) (Licensee)

## PURPOSE

1. The DNP is vested with the title to, and is responsible for the management of, the Australian National Botanic Gardens (ANBG), the Commonwealth reserve established by that name under the *Environment Protection and Biodiversity Act 1999*.
2. The Licensee agrees to use and occupy an area in the ANBG for [event] (Event) in accordance with the terms and conditions set out in this Agreement.
3. [purpose of event]

## PARTICULARS

A.1	Licensee Contact clause 1.1	[name] [address] [ABN]
A.2	DNP Contact clause 1.1	[name] [address] [phone]
A.3	DNP Liaison Contact After Hours	[name] [phone]
A.4	Event clause 1.1	[name of the event] [start date] to [end date]
A.5	Licensed Period clauses 1.1 and 2	[start date] to [end date]
A.6	Licensed Area clause 1.1	[area agreed upon] Attachment A – Map of Licensed Area
A.7	Maximum Capacity clauses 1.1 and 6.4	[Maximum number of people to be in the licensed area]
A.8	Licence Fees clauses 1.1 and 4	[\$amount]
A.9	Bond clauses 1.1 and 4	[\$amount]
A.10	Public Liability Insurance Cover clause 22.1	[\$amount]
A.11	Hours of Use clause 8	Mon-Fri [hours] Sat [hours] Sun [hours]
A.12	Licensee's First Aid Officer clause 19.4	[name] [phone]
A.13	Licensee's Fire Warden Officer clause 19.4	[name] [phone]
A.14	Number of Parking Spaces allocated to Licensee's Vehicles clause 12.2	[number of cars allowed to park at ANBG]

## TERMS AND CONDITIONS

### 1. Definitions and Interpretation

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- 1.1. Unless the contrary intention appears, terms used in the Agreement have the following meaning:
- a) **Access Routes** means the routes designated in Attachment A or as otherwise specified by the DNP in writing from time to time;
  - b) **Bond** means the amount described in Item **A.9** of Particulars;
  - c) **EPBC Act** means the *Environment Protection and Biodiversity Conservation Act 1999*;
  - d) **EPBC Regulations** means the *Environment Protection and Biodiversity Conservation Regulations 2000*;
  - e) **Essential Services** means all utilities and services on or in the ANBG serving the Licensed Area, including water, gas, electricity, air-conditioning and telecommunication systems etc, and all associated parts and accessories;
  - f) **Event** means the Event specified in Item **A.4** of Particulars;
  - g) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999*;
  - h) **Hours of Use [optional]** means the hours described in Item **A.11** of Particulars;
  - i) **Licence Fees** means the amounts described in Item **A.8** of Particulars;
  - j) **Licensed Area** means the area described in Item **A.6** of Particulars, and Attachment A;
  - k) **Licensed Period** means the period described in Item **A.5** of Particulars;
  - l) **Licensee's Equipment** means the all items brought into the ANBG and used by the Licensee in relation to the Event;
  - m) **Licensee's Personnel** includes employees, officers, agents, advisors, contractors, and subcontractors of the Licensee;
  - n) **Licensee's Vehicles** means all vehicles used by or on behalf of the Licensee;
  - o) **Maximum Capacity** means the number of people specified in Item **A.7** of Particulars that may be permitted into the Licensed Area at any one time;
  - p) **Notice** means notice in writing and delivered to the relevant contact person in Item **A.1** and **A.2** of Particulars;
  - q) **Notifiable Incident** has the meaning given to it by the *Work Health and Safety Act 2011*;
  - r) **Party** means a party to this Agreement, and a reference to a Party includes a reference to that Party's Personnel unless the context requires otherwise;
  - s) **Territory** means the Australian Capital Territory;
  - t) **Structures** means any structures related to the Event such as marquees, fences, signage, generators etc;
- 1.2. A waiver by either Party in respect of a breach of this Agreement will be of no force or effect unless in writing and will not be taken to be a waiver in respect of any other or subsequent breach.
- 1.3. This Agreement represents the Parties' entire agreement and no variation of this Agreement is legally binding on either Party unless it is agreed in writing and signed by the Parties.
- 1.4. This Agreement is construed according to the laws of the Territory and the Parties agree to submit to the non-exclusive jurisdiction of the courts of the Territory.

### 2. Period of Agreement

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- 2.1. This Agreement will commence from the date the last party signs the Agreement and will end (unless terminated earlier in accordance with clauses 24, 25 or 27) at the end of the Licensed Period and the Licensee has complied with clauses 8, 11, 17.

### 3. Licence

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- 3.1. By this Agreement, the DNP grants the Licensee a no-transferable Licence to use and occupy the Licensed Area at the ANBG, for the duration of the Licensed Period for the Event, and subject to the terms and conditions set out in this Agreement.
- 3.2. This Agreement gives the Licensee a contractual right only and does not give the Licensee a lease or any other interest in the Licensed Area, nor confer any right of exclusive use and occupation of the Licensed Area on the Licensee.

- 3.3. The DNP retains possession of the Licensed Area, and may after giving reasonable notice, have full and free access the whole or any part of the Licensed Area. Notice will not be required in the case of an emergency.

#### **4. Licence Fee and Bond**

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- 4.1. The Licensee must pay the Licence Fees and Bond to the DNP, within [number] days of the DNP issuing the Licensee with a valid tax invoice in accordance with the GST Act
- 4.2. The Licensee must, when making payments under clause 4.1, pay the DNP an amount equivalent to the GST paid or payable by the DNP in respect of the Licence Fees.
- 4.3. If the Licensee fails to pay the Licence Fees by the times set out in clause 4.1, DNP may immediately terminate this Agreement and retain the Bond as per clause 27.
- 4.4. Despite the expiry of the Licence Period, the Licensee must continue to pay a pro rata rate of the Licence Fee until the Licensee has delivered vacant possession of the Licensed Area.

#### **5. Licensee's Warranty**

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- 5.1. The Licensee warrants that it has all other authorisations and approvals necessary to conduct the Event.
- 5.2. The DNP makes no warranty that the Licensed Area may be used, or are fit, for the Event and the Licensee has made and relied on its own inquiries.

#### **6. Use of the Licensed Area**

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- 6.1. The Licensee must comply with this Agreement and reasonable directions issued by the DNP relating to the ANBG, including any ANBG Rules (Attachment B).
- 6.2. The Licensee must comply with the requirement of all applicable laws, in particular the EPBC Act, EPBC Regulations and any management plan in operation for the ANBG under the EPBC Act.
- 6.3. The Licensee must not:-
- a) use or store at the ANBG inflammable gases or hazardous materials of any kind; or
  - b) carry out any works or excavation, or remove any DNP fixtures or equipment from the Licensed Area without the prior approval of the DNP.
- 6.4. The Licensee must not allow the number of people in the Licensed Area to exceed the Maximum Capacity and take all reasonable steps to minimise foreseeable risks to all persons in the Licensed Area.
- 6.5. The Licensee must provide an evacuation plan and risk management plan to the DNP for approval at least [number] days before the Licensed Period commences.

#### **7. Access**

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- 7.1. The Licensee may access through the ANBG to and from the Licensed Area along the Access Routes designated in Attachment A.
- 7.2. The Licensee must not use any other part of the ANBG for the Event without prior written approval of the DNP.
- 7.3. The DNP may, upon request, permit the Licensee to use parts of the ANBG adjacent to the Licensed Area, subject to such terms and conditions as the DNP imposes.
- 7.4. The DNP may at any time enter the Licensed Area to inspect its state of repair and condition and give the Licensee notice to carry out repairs in accordance with this Agreement.

#### **8. Structures**

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- 8.1. The Licensee must submit to the DNP for approval, plans and specifications for any Structures associated with the Event.
- 8.2. The Licensee is responsible for the erection and dismantling of all Structures related to the Event, including access to the Licensed Area by Licensee's Personnel.
- 8.3. The Licensee may only erect Structures in the Licensed Area during Hours of Use.
- 8.4. The Licensee must ensure that all Structures are in accordance with the approval by the DNP.

- 8.5. Before the expiration of this Agreement, the Licensee must remove from the Licensed Area all of the Structures and make good any damage caused by that removal. This obligation is in addition to any other obligation of the Licensee to maintain and repair the Licensed Area.

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## 9. Licensee's Personnel

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- 9.1. The Licensee must ensure all Licensee's Personnel comply with applicable laws and understand the Licensee's obligations under this Agreement.
- 9.2. The Licensee must ensure all Licensee's Personnel have the necessary skills, the appropriate supervision and are adequately trained in relation to work health and safety (**WHS**) and comply with the Licensee's WHS management system.
- 9.3. All contracts under this clause **Error! Reference source not found.** [Licensee's Personnel] must be consistent with the terms and conditions of this Agreement.

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## 10. Event Attendees

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- 10.1. The Licensee must take all reasonable steps to ensure the health and wellbeing of all persons attending the Licensed Area for the Event.
- 10.2. The Licensee must take all reasonable steps to ensure persons attending the Licensed Area for the Event do not:
- a) behave contrary to any ANBG Rules (Attachment C); or
  - b) behave contrary to any warning or regulatory signs in the ANBG.

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## 11. Licensee's Equipment

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- 11.1. All equipment to be used by the Licensee for the Event (Licensee's Equipment) must be approved by the DNP.
- 11.2. The Licensee's Equipment will remain at all times the responsibility of the Licensee. The Licensee will in no circumstances be entitled to claim compensation from the DNP for loss or damage to the Licensee's Equipment, except to the extent loss or damage is due to an act or omission involving fault on the part of the DNP.
- 11.3. Before the expiration of this Agreement, the Licensee must remove from the Licensed Area all of the Licensee's Equipment and make good any damage caused by that removal.
- 11.4. If the Licensee does not remove the Licensee's Equipment before the expiration of this Agreement, those items not removed will become the property of the DNP and the DNP may deal with them as the DNP sees fit.
- 11.5. Despite termination of this Agreement, the Licensee must continue to pay the Licence Fee until it has complied with clause 11.3.

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## 12. Vehicles and Parking

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- 12.1. The Licensee must not allow the Licensee's Vehicles to obstruct the passage of other vehicles or pedestrians, removing all vehicles not directly involved in the Event from the Licensed Area
- 12.2. The Licensee may park [number] of vehicles in a location as approved by the DNP in the area described in Attachment A.
- 12.3. All of the Licensee's Vehicles will remain at all times the responsibility of the Licensee. The Licensee will in no circumstances be entitled to claim compensation from the DNP for loss or damage to the Licensee's Vehicles.
- 12.4. The DNP will prepare and implement a plan to manage traffic in ANBG for the Event, and will hire directional traffic signs as needed.
- 12.5. Costs for DNP staff services and sign hire incurred in clause 12.4 will be invoiced to and paid by the Licensee, in addition to the Licence Fee.

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## 13. Catering Services

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- 13.1. The DNP may, upon request, give prior written approval to the Licensee to engage catering services in the Licensed Area.
- 13.2. The Licensee must obtain and maintain all necessary approvals and permits required by law relating to health and hygiene standards in the Territory.

13.3. All contracts under this clause 13 [Catering Services] must be consistent with the terms and conditions of this Agreement.

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**14. Amenities**

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14.1. The Licensee must ensure there are sufficient amenities to service the needs of anticipated number of visitors to Event.

14.2. The DNP may, upon request, give prior written approval to the Licensee to engage the provisions of additional amenities in the Licensed Area.

14.3. The Licensee must obtain and maintain all necessary approvals and permits required by law relating to health and hygiene standards in the Territory.

14.4. All contracts under this clause 14 [Amenities] must be consistent with the terms and conditions of this Agreement.

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**15. Smoking and Fire Management**

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15.1. The Licensee must not permit smoking inside the ANBG except in the area approved by the DNP described in Attachment A and must ensure all cigarette and tobacco wastes are removed from the ANBG.

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**16. Promotional Material**

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16.1. The Licensee may, with prior written approval from the DNP, display promotional material for the Event inside the ANBG in accordance with Item A [*Promotional Material*] of Attachment B, subject to any conditions the DNP may impose.

16.2. References to the ANBG and the DNP in the promotional material must at all times be in a manner that is consistent with the values of the ANBG and be approved by the DNP.

16.3. The Licensee is responsible for the content and distribution of the promotional material, and must ensure the prompt removal and proper disposal of promotional materials from within the ANBG upon the termination of this Agreement.

16.4. The Licensee agrees to allocate to DNP free of charge, [number] tickets for the Event for promotional purposes.

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**17. Cleaning**

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17.1. The Licensee must keep the Licensed Area and the surrounding land free from rubbish, and upon the expiration of this Agreement, return the Licensed Area to the same state of repair and condition as at the start of the Agreement.

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**18. Garbage and Trade Waste**

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18.1. The Licensee must remove all garbage and trade waste from the ANBG.

18.2. The Licensee must ensure that all garbage and trade waste is securely wrapped to prevent escape of liquids and disposed of in a way that maximises recycling, and in accordance with all relevant legislation.

18.3. The Licensee must only use the plumbing facilities in the Licensed Area for its intended purposes.

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**19. Work Health and Safety**

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19.1. The Licensee must at all times comply with Commonwealth and Territory laws relating to work health and safety (**WHS**).

19.2. If required by the DNP, the Licensee must develop a WHS management system in accordance with Item F of Attachment 3, and comply with all DNP's policies, directions and procedures relating to WHS at the ANBG.

19.3. The Licensee must notify the DNP as soon as practicable if a Notifiable Incident occurs in the Licensed Area, and within 48 hours, give the DNP a written report on the incident.

19.4. The Licensee must ensure that fire wardens and first aid officers, in a sufficient number for the scale of the Event, are present within the Licensed Area at all times during the Event.

## **20. Security**

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- 20.1. The Licensee must forward details of proposed security arrangements to the DNP for approval prior to the commencement of the Licensed Period. The Licensee must comply, at its own cost, with all reasonable instructions regarding security of the ANBG issued by the DNP from time to time.
- 20.2. The Licensee must notify the DNP as soon as practicable after becoming aware of any activity in the ANBG that may compromise official resources, and notify the Australian Federal Police (ACT Policing) and the DNP immediately on becoming aware of criminal activity within the ANBG. The Licensee must comply with all directions of the DNP to resolve the incident.

## **21. Indemnity**

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- 21.1. The Licensee indemnifies the DNP (including DNP's Personnel) from and against any:
- a) cost or liability incurred by the DNP;
  - b) loss of and damage to property of the DNP; and
- arising from either:
- c) a breach by the Licensee of this Agreement; or,
  - d) an act or omission involving fault on the part of the Licensee or the Licensee's Personnel in connection with this Agreement.
- 21.2. The Licensee's liability to indemnify the DNP under clause 21.1 will be reduced proportionately to the extent that an act or omission involving fault on the part of the DNP contributed to the relevant cost, liability, damage, loss or expense.
- 21.3. The right of the DNP to be indemnified under this clause 21 is in addition to, and not exclusive of, any other right, power or remedy provided by law.
- 21.4. This clause 21 will survive the expiry or termination of this Agreement.

## **22. Insurance**

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- 22.1. The Licensee must maintain the following insurances, in respect of the Licensed Area and the Event (including risks referred to in clause 21):
- a) public liability insurance of an amount not less than the amount specified in Item **A.10** of Particulars in respect of each claim, or another amount as required by the DNP;
  - b) employers' indemnity insurance (including workers' compensation insurance) in respect of all Licensee's Personnel employed in, about or from the Licensed Area; and
  - c) insurance on the Licensee's Equipment, vehicles and structures in the Licensed Area to the full insurable value on a replacement or reinstatement basis.
- 22.2. The Licensee must give the DNP with a Certificate of Currency for insurances required by clause 22.1 on or before the commencement of the Licensed Period.

## **23. Licensed Area Unfit or Event**

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- 23.1. If at any time, the Licensee cannot use the Licensed Area for the Event because the Licensed Area becomes inaccessible or damaged, or is resumed for a public purpose, the DNP may elect to:
- a) offer the Licensee a licence of a suitable replacement area, and the Licensee will not unreasonably refuse to accept this offer; or
  - b) terminate this Agreement and refund to the Licensee the Bond and Licence Fees.
- 23.2. Clause 23 does not apply to the extent an act or omission of the Licensee caused the unfitness or inaccessibility of the Licensed Area.
- 23.3. The Licensee will not be entitled to claim for compensation from DNP arising from the unfitness or inaccessibility of the Licensed Area except to the extent an act or omission involving fault on the part of DNP caused the unfitness or inaccessibility.
- 23.4. The Licensee will in no circumstance be entitled to compensation for loss of prospective profits.

## **24. Damage to Licensed Area**

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- 24.1. The Licensee must immediately notify the DNP of any damage to, or defect in, the Licensed Area as soon as the Licensee becomes aware of them.



- 24.2. The Licensee must immediately repair any damage caused by the Licensee to the Licensed Area and any public property.
- 24.3. The DNP may use the Bond towards the cost of repairing damages to the Licensed Area caused or contributed to by the Licensee.
- 24.4. The DNP will return the residue Bond to the Licensee after all expenses, including damages and post-event clean up, are deducted from the Bond.

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## **25. Termination (No Default)**

- 25.1. A Party may terminate this Agreement by giving the other Party written notice.
- 25.2. If within 30 days of the Event, the Licensee terminates this Agreement, the DNP will refund to the Licensee the Bond only.
- 25.3. If a Party terminates this Agreement during the Licensed Period, the terminating Party will be liable only for reasonable costs incurred by the other Party and directly attributable to the termination.
- 25.4. The Licensee will in no circumstances be entitled to compensation for loss of prospective profits.

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## **26. Default**

- 26.1. The Licensee commits an event of default under this Agreement if the Licensee:
- a) fails to pay the Licence Fees, or any other money due to the DNP within [number] days of the due date for payment;
  - b) being a corporation, enters into a Scheme of Arrangement, or goes into liquidation, or if a receiver of the Licensee's property or assets is appointed, or an official manager of the Licensee is appointed;
  - c) the Licensee, being an individual becomes bankrupt or enters into a Scheme of Arrangement with creditors;
  - d) fails to commence or continue to perform its obligations under this Agreement;
  - e) remains in default in fulfilling any of the terms or provisions of this Agreement to be performed, following the specified timeframe in a written notice from the DNP to rectify default.
- 26.2. If the Licensee commits a default, the DNP may (but is not obliged to), as the Licensee's agent, do all acts and things necessary to perform the Licensee's obligations, and all costs incurred by the DNP in doing so constitutes a liquidated debt to the DNP and must be paid by the Licensee on demand.

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## **27. Termination for Default**

- 27.1. If the Licensee commits a default under clause 26, the DNP may, by written notice, immediately terminate this Agreement and remove the Licensee, all of the Licensee's Equipment, Licensee's Personnel, subcontractors and customers from the Licensed Area.
- 27.2. Termination under this clause does not affect any accrued rights or remedies of the DNP.

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## **28. Disputes**

- 28.1. The Parties must endeavour to resolve any dispute under this Agreement by mediation or other dispute resolution method before they commence legal proceedings.
- 28.2. Clause 28 does not apply to action by the DNP under clause 27 [Termination For Default], or clause 25 [Termination (No Default)], nor does it preclude either Party from commencing legal proceedings for urgent interlocutory relief.

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## **29. Negation of Employment, Partnership and Agency**

- 29.1. The Licensee acknowledges and declares that it is not an agent, partner, joint venturer, subcontractor, servant or employee of the DNP, and agrees not to represent itself as such.

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## **30. Licence Costs**

- 30.1. Each Party will meet its own costs (including all solicitors' costs) in completing this Agreement.



**31. Conditions of DNP Approvals**

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- 31.1. The DNP may, under this Agreement, withhold or grant approval, and on such conditions as the DNP see fit, including requiring payment of a reasonable fee, and the Licensee must comply with all conditions.

**EXECUTION**

**SIGNED** for and on behalf of the  
**DIRECTOR OF NATIONAL PARKS** by

in the presence of

\_\_\_\_\_  
Signature of duly authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name and position of duly authorised  
representative

\_\_\_\_\_  
Name of witness

**SIGNED** for and on behalf of  
**[LICENSEE]** by

in the presence of

\_\_\_\_\_  
Signature of duly authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name and position of duly authorised  
representative

\_\_\_\_\_  
Name of witness

## ATTACHMENT A – MAP OF LICENSED AREA

<map of licensed area>

## ATTACHMENT B – ANBG RULES

### A. Signs

- A.1. The Licensee must not install or exhibit signs, advertisements or the like in the ANBG or external roadside, other than as approved in advance in writing by the DNP.
- A.2. The Licensee must allow the DNP to display information material relating to the ANBG within the Licensed Area.

### B. Behaviour of the Licensee and Licensee's Personnel

- B.1. The Licensee must ensure that the Licensee's Personnel do not smoke inside buildings at the ANBG or within view of visitors to the ANBG.
- B.2. The Licensee's Personnel must act in an appropriate and professional manner, avoiding expletives and loud conversations.
- B.3. The Licensee must not hinder or restrict public access to ANBG areas during the Licensed Period, including ANBG toilets and parking.
- B.4. The Licensee must not do anything that would damage the DNP or the ANBG's reputation.

### C. Equipment and Other Items

- C.1. The Licensee must not, without the prior written approval of the DNP:
  - a. erect or place in the Licensed Area, a radio or television aerial, receiver or antenna; or
  - b. use a radio, record player, tape-recorder, loudspeaker, amplifier, television screen or other similar device in the Licensed Area; or
  - c. install vending machines in the Licensed Area.
  - d. must not allow noise level to exceed L<sub>Amax</sub> of 75dB(A) when measured at the nearest perimeter of the Licensed Area.

### D. Cooperation with DNP

- D.1. The Licensee must cooperate with the DNP with respect to visitor programs undertaken by ANBG and help keep records of visitor where requested by DNP.

### E. Environment

- E.1. Comply with the EPBC Act and EPBC Regulations. This means ( unless DNP gave written approval):
  - a. not damage or remove plants (the Licensee will incur a financial penalty for unnecessary damage to plants);
  - b. not bring plant material into the ANBG;
  - c. walk on the paths not on garden beds;
  - d. animals are not permitted, even in cars;
  - e. no fires or firearms;
  - f. not feed wildlife;
  - g. no vehicles past the car park;
  - h. take all rubbish home or put the rubbish in any bins provided (there is a recycling facility in the main car park but the ANBG is a 'no bin' garden).
- E.2. In particular the Licensee must:
  - a. not form new tracks, damage plants, cut or alter fences or services, without the prior written approval of the DNP;
  - b. keep storage areas tidy and barricaded to minimise hazards;

- c. not store materials near or under plants or trees or on garden beds;
- d. secure loads moving around the ANBG so as to prevent dropping of materials;
- e. take all due care to prevent spillage of sump oils, lubricants and fuels, and, if a spill does occur, report it to the DNP immediately;
- f. remove materials only as approved by the DNP;
- g. remove all waste including food and construction waste from the ANBG; and
- h. not burn waste in the ANBG.

- E.3. The Licensee must not bring any plants into the ANBG without the prior written approval of the DNP. The Licensee must ensure that all plant material approved is non-invasive, non-weedy Australian flora.
- E.4. The Licensee must, where possible, minimise waste and encourage recycling.

### F. Work Health and Safety

- F.1. If required by the DNP, the Licensee must, in conjunction with the DNP, develop a WHS management system in accordance with clause 19 [*Work Health and Safety*], which must include as a minimum:
  - a. effective isolation of work sites using appropriate barriers and signage;
  - b. use of Personal Protective Equipment (**PPE**);
  - c. prior and comprehensive notice to the DNP of interruptions to Essential Services, as well as of all maintenance and checks to the ANBG fire protection systems; and
  - d. provision of Material Safety Data Sheets (**MSDSs**) for all hazardous materials brought onto the ANBG.
- F.2. The Licensee's Personnel must not consume alcohol or other drugs in the ANBG, nor do any work while under the influence of such substances.
- F.3. When working in and around buildings, the Licensee must identify fire and emergency exits and fire evacuation assembly points. Maps are available in all buildings on the ANBG and information can be requested from DNP.
- F.4. The Licensee must ensure the Licensed Area can be accessed by emergency vehicles at all times.
- F.5. The Licensee must be familiar with the ANBG site layout, and comply with all directions from ANBG park staff and police in an emergency.