

WESTERN AUSTRALIAN NRM PROGRAM FUNDING AGREEMENT

This Agreement made on the _____ day of _____ 2011

BETWEEN

the State of Western Australia, represented by the Department of Agriculture and Food
("the Department")

AND

("the Proponent")

RELATING TO FUNDING UNDER THE WESTERN AUSTRALIAN NATURAL RESOURCE MANAGEMENT (NRM) PROGRAM.

1. Context

- 1.1 The Department, through the State NRM Office, is responsible for administering funding made available under the Western Australian NRM Program.
- 1.2 The Proponent has sought funding from the Western Australian NRM Program to implement activities that address State NRM priorities.
- 1.3 The Department has agreed to provide and the Proponent has agreed to accept the Funding described in the Schedule(s) to this Agreement on the terms and conditions set out in this Agreement.

OPERATION OF AGREEMENT

2. Interpretation

- 2.1 For the purpose of this Agreement the following definitions apply:

"ABN" has the meaning given to it in the *A New tax System (Goods and Services Tax) Act 1999*;

"Asset" is a capital item with a purchase price of, or is currently valued at, \$5,000 or more;

"Auditor" is a person who is a member of the Institute of Chartered Accountants in Australia, the National Institute of Accountants, or the Australian Society of Certified Practising Accountants, or who is registered as an auditor pursuant to the Corporations Law or under a corresponding State law or is a person agreed to by the Funding Coordinator;

"Authorised Officer" means an officer authorised by the Proponent to act on the Proponent's behalf;

"Department" means the Western Australian Department of Agriculture and Food;

"Financial Year" means the financial year from 1 July to 30 June, inclusive;

"Funds/Funding" means State funding provided to the Proponent to undertake the Project in accordance with this Funding Agreement and its Schedules;

"Funding Administrator" means the Director of the State NRM office, or a replacement for that officer authorised by the Department;

“Funding Agreement” means this Agreement between the Department and the Proponent under which the Proponent agrees to undertake a Project and the Department provides Funding for the Project as approved by State Ministers. A Proponent Agreement consists of the terms and conditions of this Agreement and any Schedules to this Agreement;

“GST” has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999*;

“GST Registered” means registered for the purposes of GST under the *A New Tax System (Goods and Services Tax) Act 1999*;

“Intellectual Property” includes all copyright, (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields as well as traditional Indigenous knowledge but does not include moral rights;

“Party/Parties” means the Department and/or the Proponent;

“Project” means an activity or a number of activities agreed by the Parties to be undertaken and for which Funding is paid under this Agreement and its Schedules;

“Project Material” means all Material created by the Proponent, or a third party as part of or in the performance of a Project, and includes new, enhanced or derived data;

“Proponent” means the organisation responsible for a Project;

“Schedules” means the attachments to the Funding Agreement that detail the activities which the Parties agree to be undertaken and for which Funding is paid under this Agreement;

“State” means the State of Western Australia;

“Supply” has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999*;

“Tax Invoice” has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999*;

2.2 In this Agreement, unless the contrary intention appears:

- (a) words importing a gender include each gender;
- (b) words in the singular number include the plural and words in the plural number include the singular;
- (c) reference to an individual or person includes a corporation or other legal entity or, where a person is nominated, the individual occupying that position;
- (d) clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (e) all references to clauses are clauses in these Standard Terms and Conditions unless otherwise specified;
- (f) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow; and
- (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

3. Commencement and Operation

3.1 This Agreement shall come into force when:

- (a) signed by both Parties; and

(b) the Proponent provides evidence that it is an incorporated or similar entity, and will continue in force until such date as the Parties agree in writing the Agreement shall end unless terminated earlier in accordance with clause 8.

- 3.2 The Proponent will achieve, or procure the achievement of all milestones described in the attached Schedules to this Agreement.
- 3.3 The Proponent affirms that no other funding has been sought or approved to implement the activities funded under this Agreement.
- 3.4 Nothing in this Agreement affects any other existing agreements between the State Government and its agencies and the Proponent.
- 3.5 This Agreement may be amended at any stage by agreement in writing by the Parties.
- 3.6 Without limiting the previous clause, the Parties will notify and consult each other on matters that come to their attention that may improve the operation of this Agreement.
- 3.7 The Proponent agrees not to represent itself, and to use its best endeavours to ensure that its officers, employees, agents and subcontractors do not represent themselves as being an officer or employee or agent of the State Government, or as otherwise able to bind or represent the State Government.
- 3.8 The Proponent agrees to Funding details and Proponent contact details being made public where the Funding Administrator considers it to be in the public interest.

4. Variations

- 4.1 The Proponent will seek in writing the Funding Administrator's prior approval to vary any aspect of this Agreement and its Schedule(s).

5. Compliance

- 5.1 The laws applicable to this Agreement shall be those in force in Western Australia. The Proponent must ensure that it and its agents meet the objectives of, and complies with, the provisions of any relevant Australian, State legislation, statutes, regulations and by-laws.
- 5.2 With respect to any activity funded through this Agreement, both Parties agree:
 - (a) to be subject to the State's right to disclose any matter with respect to the Funding within the State government sector and in Parliament; and
 - (b) to be subject to the provisions of the *Freedom of Information Act 1992*.
- 5.3 Nothing in this Agreement prevents or inhibits the Department from providing information to the Minister of the Crown in right of the State of Western Australia having responsibility for the Department. Further, nothing in this Agreement prevents or inhibits that Minister of the Crown from providing to the Parliament of Western Australia information concerning any conduct or operation of the Department in such a manner and to such an extent as the Minister thinks reasonable and appropriate.
- 5.4 Non-compliance with this Agreement may result in the Proponent not being eligible to receive further natural resource management funding from the State government.
- 5.5 Breach of any of the terms and conditions may result in suspension or termination of this Agreement.

6. No Assignment

- 6.1 The Proponent shall not assign or otherwise deal with its rights and obligations under this Funding Agreement without the prior written consent of the Funding Administrator.
- 7. Dispute Resolution**
- 7.1 The Parties agree to attempt to settle any dispute arising in connection with this Agreement in good faith by negotiation. Should the dispute remain unresolved the dispute shall be referred to a representative of each of the Parties at senior managerial level as soon as practicable to try to resolve the dispute. Should the dispute remain unresolved, a mediator may be engaged as soon as practicable to resolve the matter.
- 8. Non-performance, Suspension or Termination**
- 8.1 The Funding Administrator may, with reasonable notice, review the progress of a Project and the Proponent will cooperate in any such review.
- 8.2 Where the Funding Administrator determines that the performance of a Project has not fulfilled the conditions of the Funding Agreement, and the Funding Administrator and the Proponent are not able to renegotiate the Project so as to achieve a satisfactory result, the Project may be terminated three (3) months after the Funding Administrator notifies the Proponent of the Department's intention to terminate.
- (a) Upon receipt of such notice the Proponent must immediately implement the action(s) specified in the notice.
- 8.3 Notwithstanding clause 8(2), either Party may terminate a Project with 28 days notice to the other Party.
- 8.4 Prior to either Party giving notice under clauses 8(2) or 8(3), if there is a dispute the Parties shall attempt to resolve that dispute in the manner provided for in clause 7.
- 8.5 Within 14 days of the Project being terminated, the Proponent will:
- (a) return any unspent Funding to the Funding Administrator;
- (b) reimburse the Department for any Funding that was not used exclusively for the Project; and
- (c) advise the Funding Administrator of any Assets purchased with Funding and any Project Material and/or Intellectual Property acquired or created using Funding provided for the Project.
- For the purpose of this clause the Proponent must: take steps to protect Project Material (including Intellectual Property) and Assets and minimise any loss resulting from the suspension or termination of the Project; provide the Funding Administrator and/or his agent with access to the Project Material (including Intellectual Property) and Assets; and the Funding Administrator will determine the relocation or disposal of such Project Material (including Intellectual Property) and Assets.
- 8.6 If a Project is terminated wholly or in part, or its scope amended, the Department will be liable only for:
- (a) payments under the payment provisions of the Schedule for work undertaken before the effective date of termination or amendment; and
- (b) payments proportional to the extent of work undertaken and committed to contractually before the effective date of termination or amendment.
- 8.7 The Department will not be liable to pay compensation to the Proponent for the Project that, in addition to any amounts paid or due, or becoming due, will exceed the total Funding set out in the Schedule.

9. Notices

- 9.1 A Party giving notice under this Agreement will do so in writing.
- 9.2 The contact details of the Department and the Proponent for the purposes of this Agreement are as set out below. Notifications of changes to these addresses will be provided as becomes necessary.
- (a) For the Department:
 Post - State NRM Office, Locked Bag 4, BENTLEY DC WA 6983
 Facsimile - (08) 9474 3196
 Email – snrmo@agric.wa.gov.au
- (b) For the Proponent:
 As detailed in the Schedule.

PAYMENT AND USE OF FUNDING

10. Payment of Funding

- 10.1 Funding will be paid in accordance with the timetables outlined in the Schedule subject to the achievement of Milestones for the Project, reporting or other requirements being met to the satisfaction of the Funding Administrator and the provision of appropriate tax invoices.
- 10.2 On and from receipt of Funding, the Proponent must:
- (a) deposit the Funding in an interest bearing bank account separately established for that Funding with all interest accruing in respect of the Funding to be retained for the purposes of that Funding; or
- (b) if the Proponent does not have a separate bank account for Funding, deposit the Funding into the Proponent's usual bank account and keep a separate record of income, expenditure, and interest relating to the Funding. All interest accruing in respect of the Funding must be retained for the purposes of that Funding.
- (c) The Proponent must report any interest accrued to the Funding Administrator.

11. Use of Funding

- 11.1 The Funding must only be used to undertake the Project described in the Schedule to this Agreement.
- (a) Any Funding that a Proponent has misspent or not spent on a Project will be recovered by the Funding Administrator and returned to the Department.
- (b) Any overpayments to a Proponent will be recovered by the Funding Administrator and returned to the Department
- 11.2 The Proponent shall ensure that any Project activity funded through this Agreement does not cause any detrimental change to the environment or to natural resources.
- 11.3 Assets can be acquired where there is an identified public benefit as part of a funded Project and where it is explicitly agreed between the Proponent and the Funding Administrator.
- (a) The Proponent will seek the prior approval of the Funding Administrator to purchase with Funding any Assets required for Project implementation that have not been identified as approved Assets in the Schedule.
- 11.4 Where a third party is to receive Funding to undertake any Project in whole or in part, the Proponent will ensure that:

- (a) the third party is able to meet conditions set out in this Agreement and any other conditions which may be applied to the Project from time to time;
- (b) the third party is able to manage and monitor expenditure in conformity with sound financial practices;
- (c) the third party is able to act in accord with the Code of Conduct for recipients of State NRM Program funding. This can be found at www.nrm.wa.gov.au;

11.5 The Proponent shall inform the Funding Administrator in writing of any circumstance which may result in the Project not being completed as described in the Schedule.

12. Taxes, Duties and Government Charges

12.1 The amounts specified in or calculated under this Agreement, including without limitation the Funding, are exclusive of GST that is payable in relation to any Supply made under this Agreement.

12.2 The Funding Administrator will determine whether additional amounts are payable under this clause.

12.3 The Department will pay the Proponent the amount of GST that the Proponent pays or is liable to pay in relation to the Funding at the same time and in the same manner as paying the Funding.

12.4 The Proponent must provide the Funding Administrator with a Tax Invoice in respect of each Supply made by the Proponent in relation to the Funding. The Tax Invoice must be provided prior to payment of the Funding and include any additional amount payable under this clause and the Proponent's ABN.

12.5 Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Agreement must be borne by the Proponent.

13. Monitoring and Evaluation, Reporting and Auditing Requirements

13.1 The Proponent will incorporate contemporary monitoring, evaluation and reporting principles and methodology.

13.2 The Proponent will provide the Funding Administrator with data and information that:

- (a) supports reporting on State NRM Program priority investment areas, outcomes and targets;
- (b) provides for evaluation of State NRM Program investments for impact, appropriateness, effectiveness, efficiency and legacy;
- (c) incorporates data access and management principles;
- (d) identifies and records geospatial data for all relevant activities; and
- (e) where relevant, allows for monitoring of the 'state of' and 'trend in' resource condition.

Guidelines and templates for determining custodial arrangements for data, recording metadata, data management plans and a data dictionary can be found at <http://spatial.agric.wa.gov.au/slip/toolkit.asp>

13.3 The Proponent must submit to the Funding Administrator for his approval the following reports for each Project identified in the Schedule:

- (a) progress reports by January, April, July and October each year; and
- (b) a final report and audited (by an independent Auditor) acquittal of all Funding received by the Project within three months of completion of the Project.

13.4 The format of each report identified in clause 13.3 will be provided to the Proponent by the Funding Administrator prior to when the report is due.

- 13.5 In addition to any reports required to be submitted under clause 13.3, the Proponent may be required to submit special reports prepared in such a manner and containing such information as the Funding Administrator requests. The Funding Administrator will specify a date on which the special report must be submitted, however, the Funding Administrator must be reasonable when setting such a date.
- 13.6 All reports are to be signed off by the Proponent's Authorised Officer.
- 13.7 The audited acquittal will include a certification signed by the Proponent's Authorised Officer stating that, in the opinion of the Proponent's Authorised Officer, the amounts shown on the acquittal statement were spent in accordance with the Agreement.

14. Books and Records

- 14.1 The Proponent shall:
- (a) keep and require its contractors to keep adequate books and records in sufficient detail to enable amounts of Funds payable under this Agreement to be separately determined;
 - (b) retain for a period of six years after termination or expiration of this Agreement all books and records relating to the provision of Funds from the Department; and
 - (c) meet all reasonable requests from the Funding Administrator or his agents for access to funded Projects and related Project Material, financial and other records for any purpose including publicity, free information sharing, inspection of the performance of the Project, financial reporting, auditing and evaluation and provide all reasonable assistance requested in respect of any inquiry into or concerning this Agreement.

15. Indemnity and Insurance

- 15.1 The Proponent shall indemnify the Department, the State of Western Australia and all their respective officers, employees, contractors and agents against all costs, losses, expenses, claims, damages and other liabilities (including, without limitation, legal costs and expenses) resulting from any action, suit, claim, demand or proceeding taken or made by any third party as a consequence of any wilful, negligent or unlawful act or omission of the Proponent arising out of or in connection with this Agreement. This obligation remains in force after the Department has discharged its funding liability under this Agreement and after the Project is completed.
- 15.2 The Proponent's liability under the indemnity in clause 15.1 will be reduced proportionally to the extent that any costs, losses, expenses, claims, damages or other liabilities result from the negligence of the Authority, the State of Western Australia or their respective officers, employees, contractors or agents.
- 15.3 The Proponent must maintain sufficient insurance, including but not limited to workers' compensation insurance, Directors and Officers liability, personal accident insurance for volunteers and public liability insurance, to cover any potential liability resulting from any claim arising out of or in connection with this Agreement and its obligation to indemnify the State of Western Australia, the Department, their officers, employees, contractors and agents.
- 15.4 The Proponent shall provide, upon request by the Funding Administrator, evidence of the existence and currency of the insurance required by this clause.

16. Acknowledgment of Funding

- 16.1 The Proponent will acknowledge the State NRM Program as the source of Funding for the Project described in the Schedule.
- 16.2 The Department's requirements, as periodically updated, in relation to acknowledgment, announcements, logos or badging on any promotional material,

including but not limited to any publication, article, newsletter, brochure, other literary work, website, sign, poster and other material or literary work produced with State NRM Program Funding; and at relevant forums, conferences, functions and events, are set out at www.nrm.wa.gov.au

17. Intellectual Property Rights, Program Material and Assets

- 17.1 The Intellectual Property in Project Material created under or in connection with this Agreement vests on its creation in the Department.
- (a) Where the Proponent has engaged a third party to undertake activities with Project Funding, the third party will acknowledge that Intellectual Property created by such activities will vest on its creation with the Department.
- 17.2 To the extent that Project Material or Pre-existing Material comprises traditional Indigenous knowledge that is culturally sensitive to Indigenous groups, the Parties agree that they will not disclose such material to persons or bodies outside the State Government without the agreement of the relevant Indigenous groups.
- 17.3 Ownership of Intellectual Property in any Pre-existing Material owned by the Proponent or a third party is unaffected by clause 17.1, unless otherwise agreed by the Proponent and any relevant third party.
- 17.4 Unless otherwise agreed between the Parties, Assets required for Project implementation and acquired with Funding, shall be deemed to be the property of the Department.
- (a) Where the Proponent has engaged a third party to undertake activities with Project Funding, the third party acknowledges that Assets required for implementing the activity and acquired with Funding shall be deemed to be the property of the Department.
- (b) The Proponent, and/or where the Proponent has engaged a third party to undertake activities with Project Funding the third party, shall insure any Asset acquired with Project Funding for its full replacement value, ensure licences and certificates of currency are kept current and maintain such Assets in good repair and safe condition.
- (c) The Proponent, and/or where the Proponent has engaged a third party to undertake activities with Project Funding the third party, must maintain a register of Assets in accordance with its own accounting practices for Assets acquired under this Agreement.
- (d) Assets may only be disposed of during the implementation of the Project following agreement by the Funding Administrator.

PROPONENT CONDUCT

18. Expected Behaviour and Conduct

- 18.1 The Proponent and its officers, members, employees and agents must act in accord with the Code of Conduct for recipients of State NRM Program funding. This can be found at www.nrm.wa.gov.au

SIGNED BY THE PARTIES on the date set out above.

SIGNED for and on behalf of
the **Department of Agriculture and Food**

SIGNED for and on behalf of
the **Proponent**

by:

by:

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Signature of Authorised Officer

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Signature of Authorised Officer

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Name of Authorised Officer

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Name of Authorised Officer

in the presence of:

in the presence of:

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Signature of Witness

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Signature of Witness

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Name of Witness

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Name of Witness