

STATE NRM PROGRAM WESTERN AUSTRALIA

FUNDING AGREEMENT TERMS AND CONDITIONS

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

1. Context

- 1.1 The NRM Office, through the Department, is responsible for administering funding made available under the State NRM Program Western Australia.
- 1.2 The Proponent has sought funding from the State NRM Program Western Australia 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 NRM Program Western Australia funding provided to the Proponent to undertake the Project in accordance with this Funding Agreement and its Schedule(s);

“**Funding Administrator**” means the Manager of the State NRM Program, 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 the Project and the Department provides Funding for the Project as approved by State Ministers. A Funding Agreement consists of the terms and conditions of this Agreement and any attached Schedule(s):

“**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 Knowledge but does not include Moral Rights;

“Legal Entity” means an organisation that has legal standing in the eyes of the law. A legal entity has legal capacity to enter into agreements or contracts, assume obligations, incur and pay debts, sue and be sued in its own right, and to be held responsible for its actions. For the purpose of this Agreement it should have an Australian Business Number (ABN) and be GST registered.

“Moral Rights” means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship as defined in the *Copyright Act 1968 (Cth)*;

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

“Pre-Existing Material” means all material created by the Proponent, or a third party, prior to or independently of the performance of a Project;

“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 as set out in the Schedule(s);

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

“Proponent” means the organisation responsible for a Project;

“Royalties for Regions/RfR” means the Royalties for Regions program administered by the Department of Regional Development or funding provided by that program;

“Schedule(s)” 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;

“Sponsor” means a GST registered organisation that has entered into an agreement with the Proponent to enable the Proponent to access Funding. The Sponsor is not responsible for the Proponent complying with the terms and conditions set out in this Agreement or implementation of the Project described in the Schedule(s) to 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*;

“Traditional Knowledge” refers to the rights of Indigenous peoples (whether or not recognised by statute or common law in Australia) in respect of the whole body of cultural practices, resources and knowledge systems that have been developed, nurtured and refined (and continue to be developed, nurtured and refined) by Indigenous peoples and transferred and maintained by indigenous peoples from generation to generation as part of expressing and maintaining their cultural identity. This body of knowledge includes, but is not limited to scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and sustainable use of flora and fauna), language, spiritual knowledge and cultural environmental resources. This body of knowledge includes knowledge that is in current use and knowledge that is restored and revitalised by Indigenous peoples.

- 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 and be legally binding on the Parties when:
- (a) executed by both Parties and exchanged in the manner described in clause 3.2; and
 - (b) the Proponent, or its Sponsor, provides to the Department evidence that it is an incorporated or similar entity,
- and will continue in force until the completion of the Project and all reporting and audit requirements by the Proponent unless terminated earlier in accordance with clause 8.
- 3.2
- (a) The Parties irrevocably consent to them both executing and exchanging this Agreement in the manner described in this clause 3.2, and agree that they intend such execution and exchange to constitute them entering a written contract in the form of the Agreement in accordance with the *Electronic Transactions Act 2011* (Western Australia).
 - (b) The Proponent will access and read this Agreement in electronic form on the NRM website after the Department notifies the Proponent (by email to the Proponent's email address provided) of the presence of the Agreement there.
 - (c) If the Proponent agrees to the content of the Agreement and wishes to enter it with the Department, the Proponent will log in to the SmartyGrants[®] application webpage and complete the form (sent to the Proponent by the NRM Office via SmartyGrants[®]) on which it is to execute the Agreement, the Proponent and/or its authorised representative(s) will then execute the Agreement in the required form on that page, and the Proponent will then submit the electronic form.
 - (d) After the Department receives the submitted electronic form the Agreement will be deemed to be executed. The Department will send a notification email to the Proponent at its email address to confirm receipt of the submitted electronic form and execution of the Agreement.
- 3.3 The Proponent will achieve, or procure the achievement of all milestones described in the attached Schedule(s) to this Agreement.
- 3.4 The Proponent affirms that no other funding has been sought or approved to implement the activities funded under this Agreement.
- 3.5 Nothing in this Agreement affects any other existing agreements between the State Government and its agencies and the Proponent.
- 3.6 This Agreement may be amended at any stage by agreement in writing by the Parties.

- 3.7 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.
- 3.8 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.
- 3.9 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 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 if the breaching party fails to reasonably remedy that breach within 10 business days of receiving notice from the other party requiring that it do so.

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 the Project and the Proponent will cooperate in any such review.
- 8.2 Where the Funding Administrator determines that the performance of the 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) reasonably 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 or uncommitted 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 provided that the Proponent may retain copies of Project Material as required by law.
- 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(s) for legitimate Project expenses incurred or irrevocably committed to before the effective date of termination or amendment; and
 - (b) in the case of aspects of the Project that will continue after partial termination or amendment of scope, payments for legitimate Project expenses incurred under the payment provisions of the Schedule(s).
- 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(s).

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:
NRM Office, Department of Agriculture and Food WA,
Locked Bag 4, BENTLEY DC WA 6983
Email: snrmo@agric.wa.gov.au
[Telephone: \(08\) 9368 3168](tel:(08)93683168)
 - (b) For the Proponent:
As detailed in the Schedule(s).

PAYMENT AND USE OF FUNDING

10. Payment of Funding

- 10.1 Funding will be paid in accordance with the timetables outlined in the Schedule(s) subject to the achievement of Milestones for the Project, reporting or other requirements being met to the reasonable satisfaction of the Funding Administrator and the provision of appropriate tax invoices.
- 10.2 On and from receipt of Funding, the Proponent, or Sponsor as appropriate, 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, or Sponsor, does not have a separate bank account for Funding, deposit the Funding into the Proponent's, or Sponsor'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(s) 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.
- (a) The Proponent and its officers, members, employees and agents must commit to following best-practice guidelines for managing the spread of *Phytophthora Dieback*. These can be found at:
<http://www.dwg.org.au/files/DWG%20Handbook.pdf>.
- 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(s).
- 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 implement the standards, principles and procedures described in clause 18;
- 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(s).

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 Department will pay the Proponent, or Sponsor as appropriate, the amount of GST that the Proponent, or Sponsor, pays or is liable to pay in relation to the Funding at the same time and in the same manner as paying the Funding.
- 12.3 The Proponent, or Sponsor as appropriate, 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, or Sponsor's as appropriate, ABN.
- 12.4 Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas on the Proponent 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.
- 13.3 The Proponent must submit to the Funding Administrator for his approval the following reports for each Project identified in the Schedule(s):
 - (a) progress reports; 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 reasonably 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 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 Subject to clause 15.5, 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) directly resulting from 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 Department, the State of Western Australia or their respective officers, employees, contractors or agents.
- 15.3 The Proponent must maintain an appropriate level of insurance, including but not limited to public liability, personal accident and professional indemnity insurance.
- 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.
- 15.5 The Proponent gives no warranty: (a) as to the success of the Project or the achievement of its aims; or (b) in respect of Project Material, including that Project Material is reliable, safe or fit for any purpose. The State and the Department, and their respective officers, employees, contractors and agents, use Project Material at their own risk.

16. Acknowledgment of Funding

- 16.1 The Proponent will acknowledge the Western Australian (otherwise known as State) NRM Program as the source of Funding for the Project described in the Schedule(s).
- 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 available from the State NRM Office.
- 16.3 If your project is located outside the Perth region, or covers areas within both the Perth region and regional areas, you are required to acknowledge both the State NRM Program and Royalties for Regions program.
 - (a) In this circumstance, all promotional activity relating to your project must be approved by the Department of Regional Development at communications@drd.wa.gov.au. The Royalties for Regions logo can also be obtained by contacting this email address.

17. Intellectual Property Rights, Project 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 and the Department grants to the Proponent a perpetual, royalty free and non-exclusive licence and authority to use and reproduce the Project Material including the Intellectual Property rights in all Project Material for the purposes of this Agreement, including further research, teaching and academic publications. This authority does not extend to purposes where financial benefits may accrue.

- (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 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.
- (a) Nothing in this Agreement constitutes the granting of a licence to use any of the Traditional Knowledge provided to the Project.
 - (b) The Department agrees that it will not disclose any Traditional Knowledge or Project Material to persons or bodies outside the State Government without the prior and informed written consent of the Proponent.
- 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 As recipients and beneficiaries of public funding, the Proponent and its officers, members, employees and agents must:
- (a) conduct themselves with integrity, probity and in an open and transparent manner;
 - (b) operate in accordance with the law;
 - (c) declare any private interest and pecuniary benefit they may gain from the Funding;
 - (d) utilise the Funding identified in the Schedule(s) for public benefit and not for private gain;
 - (e) provide advice and information to individuals involved or affected by any activity funded through this Agreement so they can make informed decisions and take appropriate action;
 - (f) commit to working with the Department and other State agencies to achieve the most effective and efficient use of Funding; and

- (g) ensure that appropriate processes and procedures are put in place to establish, maintain, operate and demonstrate an appropriate framework of business controls to cover all operational, technical, commercial, financial and administrative activities.

These include without limit:

- i. Governance
 - ensure roles and responsibilities are defined
 - ensure proper controls are in place to ensure compliance with laws, policies and procedures, and performance against organisational objectives and operational plans
 - maintain proper minutes and records
- ii. Risk management
 - identify and assess risks
 - maintain a register of risks
 - develop a prioritised action plan for managing risk exposures and insuring assets and resources
- iii. Human resource management
 - apply standards that are based on the Principles of Natural Justice and that encourage merit, equity and probity
 - ensure terms of employment for employees are consistent with the remuneration and terms of employment that reflect industry standards as expressed in awards and agreements and any code of practice that may apply to a particular industry
 - ensure occupational safety, health and welfare issues are considered and policies established
 - ensure persons have required level of training and competence for assigned activities
- iv. Procurement of goods and services
 - adopt a value for money approach
 - adopt an ethic of fair, open and accessible competition and ensure the purchasing process is transparent, free from bias or the perception of bias
 - ensure there is no actual or perceived conflict of interest in the purchasing process through past, present or proposed future relationships, connections or interests with providers of goods and services
 - avoid procurement practices or any other behaviours that induce conflict, corruption or which deny legitimate business opportunities to potential participants
- v. Financial management
 - ensure all moneys received are properly brought to account and all payments are correctly made and properly authorised – cheques should have two signatories
 - ensure budgets are accurately cash flowed and reported against actual performance on at least a monthly basis - material variances should be investigated and managed
 - ensure bank reconciliations are conducted on a regular basis
 - maintain a register of assets that have been purchased with Funding
- vi. Best practice techniques
 - encourage application of best practice techniques when implementing activities to ensure implementation is effective and safe