

Draft

Date: [

Time: [

Funding Deed for *[insert short name of project]*

Commonwealth of Australia acting through
the Department of Agriculture, Fisheries and
Forestry
(Commonwealth)

[Insert full name of Grantee]
(Grantee)

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DATE *[Insert the date in handwriting when the Deed is signed by the parties. This is not necessarily the same as the Commencement Date]*

PARTIES

Commonwealth of Australia ABN 24 113 085 695 for the purposes of this Deed, acting through the Department of Agriculture, Fisheries and Forestry (**Commonwealth**)

Address:

Facsimile:

Email:

Contact officer and Attention:
telephone number:

[Name of Grantee] ABN *[Insert the Grantee's ABN]* (**Grantee**)

Address:

Facsimile:

Email:

Contact officer and Attention:
telephone number:

BACKGROUND

- A. [*Name and description of funding program*].
- B. The Grantee has applied for funding under the funding program.
- C. The Commonwealth has agreed to provide funding to the Grantee to assist it with a project under that program.
- D. The Commonwealth must ensure accountability of the Funding and the Grantee is therefore required to be accountable for all Funding received.
- E. The Commonwealth's funding to the Grantee is subject to the terms and conditions set out in this Deed.

AGREED TERMS

1. DEFINED TERMS & INTERPRETATION

1.1 Defined terms

In this Deed, unless the context otherwise requires:

Asset means an asset acquired by the Grantee wholly or partly with the Funds which has a value of \$5000 or more and which is listed in the Schedule.

Bank Account means the bank account specified in the Information Table in the Schedule.

Budget means the budget for the Project as set out the Schedule.

Business Day means any day other than a Saturday, Sunday or a public holiday.

Commencement Date means the date specified in the Information Table in the Schedule.

Commonwealth Material means any material provided by the Commonwealth to the Grantee for the purposes of this Deed including, but not limited to, documents, equipment, information and data stored by any means and any material derived from such material.

Confidential Information means:

in relation to information of the Commonwealth, information that:

- (a) is by its nature confidential; or
- (b) is described in the Schedule to this Deed; or
- (c) the Grantee knows or ought to know is confidential (including information that is designated by the Commonwealth as confidential),

in relation to information of the Grantee, information that:

- (a) is described in the Schedule to this Deed; or
- (b) the Commonwealth otherwise agrees in writing is confidential information of the Grantee,

in relation to both information of the Commonwealth and the Grantee, confidential information does not include information which is or becomes public knowledge other than by breach of this Deed.

Electronic Communication has the same meaning as in the *Electronic Transactions Act 1999* (Cth).

Deed means this funding deed and includes any schedules and annexures.

Funding means the amount specified in the Information Table of the Schedule.

Grantee's Personnel includes contractors to the Grantee and their employees.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Information Privacy Principles are the principles set out in section 14 of the *Privacy Act 1988* (Cth).

Intellectual Property means all intellectual property rights including rights relating to know-how, copyright, inventions and patents, trademarks, registered designs, layouts and all other rights resulting from intellectual activity in industrial, scientific, literary or artistic fields.

Key Performance Indicators or KPIs mean the indicators specified in the Schedule.

Milestones means the milestones specified in the Schedule.

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).

Objectives means the objectives of the parties in entering into this Deed specified in the Schedule.

Other Contributions means contributions towards the Project, whether financial or otherwise, set out in the Schedule and which are obtained by the Grantee from persons other than the Commonwealth and, for the avoidance of doubt, includes the Grantee's own contributions.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Project means the project described in the Schedule.

Project Material means any material created for the purposes of this Deed or brought into existence for the purpose of undertaking the Project.

Reports means the reports to be provided to the Commonwealth relating to the Project containing the information described in the Schedule, and includes the final report required under clause 8.2.

Term means the period specified in the Information Table of the Schedule commencing on the Commencement Date.

1.2 Interpretation

In this Deed, unless the contrary intention is indicated:

- (a) the singular includes the plural and vice-versa;
- (b) a reference to one gender includes the other;
- (c) a reference to a person includes a body politic, body corporate or a partnership;
- (d) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- (e) a reference to a clause includes a reference to a subclause of that clause;
- (f) a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication, Commonwealth policy or document in effect on the Commencement Date, or alternatively, a reference to another version of the document if agreed in writing between the parties.

2. PROJECT PERFORMANCE

2.1 Project performance

The Grantee must undertake the Project during the Term in accordance with this Deed diligently, effectively and with due care and skill.

2.2 Milestones and KPIs

The Grantee must carry out the Project in accordance with the Milestones and the Key Performance Indicators.

2.3 Variation of the Project

The Grantee must not undertake activities that are inconsistent with activities that are encompassed in the Project without the prior written approval of the Commonwealth.

2.4 Assessment of the Project

The Grantee must:

- (a) provide to the Commonwealth such information concerning the Project as the Commonwealth reasonably requests from time to time; and
- (b) facilitate such visits by representatives of the Commonwealth as the Commonwealth reasonably requests for the purposes of assessing the Project.

2.5 Equal Opportunity for Women in the Workplace Act 1999 (Cth)

Without limiting any of its other obligations in this Deed, the Grantee must comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)* and must not enter into a contract under this Deed with a contractor named by the Director of Affirmative Action as an employer currently not complying with the Act.

3. GRANTEE'S WARRANTIES

3.1 Grantee capability

The Grantee warrants that it and the Grantee's Personnel:

- (a) have the necessary qualifications and experience to undertake and complete the Project;
- (b) will devote their efforts and attention to the performance of the Project; and
- (c) will complete the Project in a timely and efficient manner.

4. FUNDING PAYMENT

4.1 Payment of Funding by instalments

The Commonwealth will pay the Funding to the Grantee by instalments at the times and in the manner specified in the Schedule if:

- (a) the funds for the Funding have been appropriated;
- (b) the Grantee has performed the part of the Project to which the instalment relates, in accordance with the Milestones and Key Performance Indicators relevant to the instalment; and
- (c) the Commonwealth receives a tax invoice from the Grantee which sets out
 - (i) the total amount of the Funding instalment to which the invoice relates;
 - (ii) the project number
 - (iii) the name of the project officer, and
 - (iv) such other information as the Commonwealth requires.

4.2 Right to suspend payment

The Commonwealth may suspend payment of the Funding or an instalment of the Funding:

- (a) if the Grantee has not completed a Report that is due to be completed before the date for payment, until that Report is completed;
- (b) if the Grantee has not achieved a Milestone that was due to be completed before the date for payment, until that Milestone is completed;
- (c) if the Grantee has not otherwise performed the Project to the satisfaction of the Commonwealth, until the Grantee remedies its performance; or
- (d) if the Grantee is in breach of this Deed, until the breach is rectified.

4.3 Right to pay part of instalment

The Commonwealth may pay part of an instalment if the Grantee has failed to fulfil all the requirements of a milestone as set out in the Schedule. The Commonwealth will then pay the balance of the milestone as and when the omitted requirements have been met by the Grantee. The Commonwealth will determine, acting reasonably, what proportion of a payment will be withheld to reflect the failure by the Grantee to achieve all the requirements of the milestone.

4.4 The Funding and Other Contributions

- (a) The Grantee must obtain the Other Contributions set out in the Schedule.

- (b) The Grantee must notify the Commonwealth immediately if it does not obtain all or part of the Other Contributions.
- (c) If the Grantee fails to obtain the Other Contributions, the Commonwealth may:
 - (i) reduce the Funding by an amount equal to the proportion that the Other Contributions bear to the total Funding for the Project; or
 - (ii) suspend payment of the Funding or an instalment of the Funding until the Other Contributions are received; or
 - (iii) terminate this Deed by notice to the Grantee, in which case the provisions of clause 17.4 apply.

5. USE AND BANKING OF FUNDING MONEY

5.1 Funding to be used for Project purposes

The Funding must only be spent by the Grantee:

- (a) for the purposes of undertaking the Project and purposes that are incidental to the Project;
- (b) in accordance with the Budget; and
- (c) otherwise in accordance with the terms and conditions of this Deed.

5.2 Budget

- (a) The Grantee may, subject to clause 5.2(b), vary the Budget by re-allocating expenditure to items specified in the Budget.
- (b) Any variation under clause 5.2(a) which increases or decreases the amount allocated to an item of expenditure by more than 10 per cent or \$1,000 (whichever is the greater) cannot be made without the Commonwealth's prior approval.

5.3 Things Funding must not be used for

Subject to any agreement to the contrary, the Grantee must not spend the Funding on:

- (a) costs incurred before the Commencement Date;
- (b) capital works or the acquisition of major equipment; or
- (c) expert advice that is already provided through government businesses or government extension services.

5.4 Repayment of Funding

If the Grantee spends the Funding otherwise than in accordance with clause 5.1, the Grantee is liable to repay to the Commonwealth the amount of money so spent and the Commonwealth may recover that money from the Grantee as a debt due to the Commonwealth.

5.5 Payment of Funding into the Bank Account

- (a) All of the Funding paid by the Commonwealth to the Grantee must be deposited immediately into the Bank Account.

- (b) The Bank Account must only be used for the purposes of receiving and disbursing the Funding unless otherwise approved in writing by the Commonwealth.
- (c) When requested by the Commonwealth, the Grantee must immediately give the Commonwealth details of the Bank Account.
- (d) Any interest that is earned on the Funding is treated as Funding money and must be used for the Project.
- (e) The Grantee must identify the receipt and expenditure of the Funding separately within the Grantee's accounting records so that at all times the Funding is identifiable and ascertainable.

5.6 Spending the Funding

The Grantee must not spend any of the Funding moneys if it receives notice from the Commonwealth directing the Grantee not to spend the moneys. The Commonwealth may issue such a notice to the Grantee if the Grantee:

- (a) has not completed a Report that was due before the date of notification;
- (b) has not met a Key Performance Indicator that was due before the date of notification;
- (c) has not achieved a Milestone that was due to be achieved before the date of notification; or
- (d) is otherwise in breach of this Deed.

5.7 Unexpended Funding moneys

If at the end of the Term there is unspent and uncommitted Funding money, the Grantee must refund the unspent money to the Commonwealth within 10 Business Days of receiving the Commonwealth's request to do so.

6. GOODS AND SERVICES TAX

6.1 Interpretation

Words or expressions used in this clause which are defined in the GST Act have the same meaning in this clause.

6.2 Registration for GST

Each party is GST registered, has quoted its ABN to the other and must inform the other immediately of any changes to either.

6.3 Funding is GST inclusive

The Funding payable under this Deed is GST inclusive.

6.4 Reimbursements or indemnities

If a payment to a party under this Deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment must be inclusive of any GST payable and will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

6.5 Tax invoices

- (a) The Commonwealth need not make a payment for a taxable supply made under or in connection with this Deed until the Grantee has given the Commonwealth a tax invoice which complies with the GST Act for the supply to which the payment relates.
- (b) The Grantee must give the Commonwealth an adjustment note for an adjustment arising from an adjustment event relating to a taxable supply made under or in connection with this Deed within seven days after the date the Grantee becomes aware of the adjustment event.

7. ACCOUNTS AND RECORDS

7.1 Accurate record keeping

The Grantee must:

- (a) keep complete and accurate books and records that are separate from any other books and records of the Grantee's business (including any particular accounts specified by the Commonwealth):
 - (i) setting out details of all work carried out under this Deed;
 - (ii) recording the deposit and expenditure of the Funding;
 - (iii) recording the receipt of the Other Contributions and the date of receipt of those Other Contributions; and
 - (iv) clearly showing any interest earned on Funding or Other Contributions.
- (b) permit the Commonwealth at any time and without prior notice, through its officers, agents or advisers authorised on its behalf, to examine and inspect any material in the possession of the Grantee which is relevant to this Deed, including any books and records, and provide all necessary facilities for that purpose;
- (c) give full and accurate answers to any questions the Commonwealth or its representative may have concerning books or records relating to this Deed and provide all assistance reasonably requested by the Commonwealth in respect of any inquiry into or concerning the Project or this Deed. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Commonwealth), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee; and
- (d) retain for a period of seven years after termination or expiration of this Deed all books and records relating to the Funding.

7.2 Any contract to permit Commonwealth to have access

The Grantee must ensure that any contract entered into for the purpose of this Deed contains a clause permitting the Commonwealth and its representatives to have access to the contractor's premises, books and records, as specified in this clause.

7.3 Commonwealth may carry out an audit

The Commonwealth may arrange for the carrying out of an audit of the Grantee's books and records at the Commonwealth's cost.

7.4 Grantee to allow access

- (a) The Grantee must cooperate with the Commonwealth or its appointed auditors in the conduct of the audit and, for that purpose, must:
- (b) allow access to the Grantee's premises at reasonable times and on reasonable notice;
- (c) require the Grantee's Employees to produce books and records related to this Deed and allow any such documentation to be inspected and copied; and
- (d) provide full and accurate answers to any questions asked in relation to that documentation.

7.5 Grantee's audit

The Commonwealth may at any time request the Grantee to provide at its own expense a report of an independent auditor in accordance with the Schedule verifying that the Funding and, where applicable, Other Contributions have been spent in accordance with this Deed.

7.6 Clause survives termination

This clause applies for the Term and for a period of seven years from the date of expiration or termination.

8. REPORTS

8.1 Reports

The Grantee must give the Reports to the Commonwealth at the times and in the manner specified in the Schedule.

8.2 Final report

The Grantee must provide to the Commonwealth a final report as specified in the Schedule.

8.3 Failure to provide Reports

Without limiting the Commonwealth's rights under this Deed, a failure to provide Reports may result in:

- (a) suspension of payment of the Funding or any instalment of the Funding under clause 4.2;
- (b) withholding of part of a milestone payment under clause 4.3;
- (c) a liability to repay the Funding to the Commonwealth under clause 5.4;
- (d) a direction not to spend the Funding under clause 5.6;
- (e) termination of this Deed under clause 17.1;
- (f) the Commonwealth noting the Grantee's failure and taking this into account in any future grant applications that the Grantee may make.

9. ASSETS

9.1 Ownership of Assets

- (a) An Asset is owned by the Grantee except where the Grantee has leased the Asset or otherwise acquired it through financing arrangements that delay passing of title.
- (b) The Grantee must not acquire or lease any Asset not listed in the Schedule with Funding money unless the Commonwealth gives prior written approval.

9.2 Use of Assets

- (a) The Grantee must only use the Assets for a purpose consistent with the Objectives.
- (b) If the Grantee uses an Asset for a purpose inconsistent with the Objectives, the Commonwealth reserves the right to suspend the Funding or terminate this Deed.

9.3 Register of Assets

The Grantee must establish and maintain a register of Assets which must be provided to the Commonwealth on request.

9.4 Insurance and care of Assets

- (a) The Grantee must maintain insurance with an insurer approved by the Commonwealth for the full replacement value of any Asset.
- (b) The Grantee must care for Assets in the same manner as a responsible owner would.
- (c) The Grantee may, subject to Commonwealth prior written approval, dispose of an Asset at fair market value but must bring into account the Attributable Proportion of the value of the proceeds of disposal so that such proceeds are treated as part of the Funding.
- (d) **Attributable Proportion** means the proportion of the proceeds which are attributable to the proportion of the total purchase price that was from Funding money on acquisition of the Asset.

10. COMMONWEALTH MATERIAL

10.1 Ownership of material

Commonwealth Material remains the property of the Commonwealth and, on the expiration or earlier termination of this Deed, the Grantee will, at its cost, return it to the Commonwealth within 7 days.

10.2 Copyright

The Commonwealth must inform the Grantee of any Commonwealth Material produced for and on behalf of the Commonwealth in which third parties hold copyright and of any conditions attaching to the use of that material because of that copyright. The Grantee must use that material only in accordance with those conditions.

10.3 Safekeeping of Material

The Grantee is responsible for the safekeeping and maintenance of Commonwealth Material.

11. CONFIDENTIAL INFORMATION

11.1 Use by either party of Confidential Information

Each party must not:

- (a) use Confidential Information for any purpose other than the performance of the obligations under this Deed; or
- (b) disclose (and ensure that its officers, employees, agents and subcontractors do not disclose) Confidential Information to any third party, except in accordance with the procedures set out in this clause.

11.2 Disclosure to third parties of Confidential Information

A party may disclose Confidential Information to a third party if:

- (a) the party has obtained the prior written approval of the other party, which approval will not be unreasonably withheld if the party has procured a suitable confidentiality undertaking in respect of the information from the third party; or
- (b) disclosure is:
 - (i) necessary for a party to fulfil its obligations under this Deed (for example, to that party's personnel);
 - (ii) required or compelled by an order of a court or by any law; or
 - (iii) necessary for the conduct of any legal proceedings arising in relation to this Deed.

11.3 Confidentiality of provisions

The provisions of this Deed, if any, specified in the Schedule are considered by the parties to be confidential and their content must not be disclosed without the agreement of the parties, unless otherwise required by law or by Commonwealth accountability requirements.

11.4 Non-merger of this clause

This clause survives the expiration or termination of this Deed.

12. PERSONAL INFORMATION - GRANTEE TO COMPLY WITH PRIVACY OBLIGATIONS

- (a) The Grantee must comply with its privacy obligations under relevant legislation and warrants that it has not acted or omitted to act so as to expose the Commonwealth to a breach of privacy claim.
- (b) The Grantee must not do an act, or engage in a practice, that would breach an Information Privacy Principle if done or engaged in by the Commonwealth.
- (c) The Grantee must ensure that any subcontract includes a clause functionally equivalent to this clause 12.

13. INTELLECTUAL PROPERTY RIGHTS & ACKNOWLEDGEMENTS

13.1 Project Material

Subject to any agreement to the contrary, the title to, and Intellectual Property rights in any Project Material vests solely upon its creation in the Grantee.

13.2 Licence to the Commonwealth

The Grantee grants to the Commonwealth a non-exclusive, perpetual, royalty free licence (including a right to sub-licence) to use and adapt the Project Material.

13.3 Moral Rights

The Grantee warrants that it has done all that is necessary to ensure that the Commonwealth is not exposed to any Moral Rights claims.

13.4 Acknowledgements

- (a) In all publications, promotional materials, signage and activities relating to the Project and this Deed, the Grantee must acknowledge the financial and other support it has received from the Commonwealth in accordance with the Guidelines available from the Commonwealth's contact officer.
- (b) The Commonwealth may advise the Grantee that the Commonwealth's logo (coat of arms as depicted in the Schedule) must be included in all publications and promotional materials. The Grantee must not use the Commonwealth's logo on any material without first obtaining the permission of the Commonwealth.
- (c) All publicity, announcements and media releases relating to the Project must be cleared through the Commonwealth's contact officer with appropriate notice, before release to the media.
- (d) The Grantee must obtain the agreement of the Commonwealth in relation to, and prior to any launches or openings or the release of any publicity material relating to the Project.
- (e) Requests for Ministerial or other Commonwealth representation at launches and functions relating to the Project must be coordinated through the Commonwealth's contact officer.

14. INDEMNITY AND INSURANCE

14.1 Indemnity

The Grantee indemnifies the Commonwealth against all claims, expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against the Commonwealth) that the Commonwealth may sustain or incur as a result, whether directly or indirectly, of:

- (a) any breach of this Deed by the Grantee including, but not limited to, a breach in respect of which the Commonwealth exercises an express right to terminate this Deed; or
- (b) any loss of or damage to any property or injury to or death of any person or financial loss caused by any negligent act or omission or wilful misconduct of the Grantee or its officers and employees

except to the extent that any negligent act or omission of the Commonwealth contributed to the relevant loss or liability.

14.2 Insurance cover

In connection with the undertaking of the Project, the Grantee must have and maintain during the Term valid and enforceable insurance policies for:

- (a) public liability on a per occurrence basis, which must provide coverage, in respect of each occurrence, for at least \$10 million; and
- (b) workers' compensation.

14.3 Evidence of insurance required

The Grantee must give evidence of insurance required under this clause when the Commonwealth asks for it.

14.4 Non-merger of clause 14.1

The operation of clause 14.1 survives the expiration or termination of this Deed.

15. CONFLICT OF INTERESTS

15.1 Existence of conflict of interests

The Grantee warrants that, at the date of signing this Deed, no undisclosed conflict of interests exists or is likely to arise in the performance of its obligations under this Deed.

15.2 Notification of conflict of interests

If, during the Term, a conflict of interests arises, or appears likely to arise, the Grantee must:

- (a) notify the Commonwealth immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and
- (c) take such steps as the Commonwealth reasonably requires to resolve or otherwise deal with the conflict.

15.3 Meaning of conflict of interests

A conflict of interests includes a conflict of:

- (a) interest and duty; and
- (b) duty and duty.

16. DISPUTE RESOLUTION

16.1 Compulsory alternative dispute resolution

If a dispute arises between the parties under this Deed then, if the parties cannot resolve the dispute, they must, before resorting to litigation, submit their dispute to a mediator or expert mutually selected by the parties (or, failing agreement, selected by the President of the Australian Capital Territory Law Society from the advanced panel of LEADR (Lawyers Engaged in Alternative Dispute Resolution)) under the rules for the mediation of

commercial disputes or the expert determination rules (as the case may be) issued from time to time by the Institute of Arbitrators and Mediators.

16.2 Failure to resolve dispute

If the parties fail to resolve a dispute under clause 16.1 the Commonwealth may terminate this Agreement under clause 17.2.

17. TERMINATION

17.1 Default

In addition to its rights in clause 4.2, the Commonwealth may terminate this Deed with immediate effect by giving notice to the Grantee if:

- (a) the Grantee breaches any provision of this Deed and fails to remedy the breach within 14 days, or such longer period as the Commonwealth stipulates, after receiving notice requiring it to do so;
- (b) the Grantee breaches a material provision of this Deed and that breach is not, in the opinion of the Commonwealth, capable of remedy;
- (c) the Commonwealth is satisfied that the purposes, objectives and activities of the Grantee are incompatible with the Objectives;
- (d) the Commonwealth has received notice that the Other Contributions have not been received by the Grantee or that the Other Contributions have not been provided at the time or in the manner specified in this Deed;
- (e) the Grantee notifies the Commonwealth that the Project is not to proceed; or
- (f) an event referred to in clause 17.3 happens to the Grantee.

17.2 Termination for convenience

- (a) The Commonwealth may, at any time, by notice, terminate this Deed or reduce the scope of the Project for convenience.
- (b) Upon receipt of a notice of termination or reduction the Grantee must:
 - (i) stop work as specified in the notice;
 - (ii) take all available steps to minimise loss resulting from that termination and to protect Commonwealth Material and Project Material; and
 - (iii) continue work on any part of the Project not affected by the notice.
- (c) If this Deed is terminated under this clause, the Commonwealth is liable only for:
 - (i) payments under clause 4 for work undertaken before the effective date of termination; and
 - (ii) reasonable and unavoidable costs incurred by the Grantee and directly attributable to the termination.
- (d) If the scope of the Project is reduced, the Commonwealth's liability to pay the Funding abates in accordance with the reduction in the Project.

- (e) The Commonwealth is not liable to pay compensation under clause 17.2(c)(ii) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Grantee under this Deed, exceed the Funding.
- (f) The Grantee is not entitled to compensation for loss of prospective profits.
- (g) The Grantee must ensure that any contract entered into in connection with the Project includes a clause that is functionally equivalent to this clause 17.2.

17.3 Notification by the Grantee of certain events

The Grantee must notify the Commonwealth immediately if the Grantee:

- (a) being a company, enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
- (b) being a natural person, is declared bankrupt or assigns his or her estate for the benefit of creditors;
- (c) being a partnership, any step is taken to dissolve that partnership.

In this clause, controller, managing controller and administrator have the same meaning as in the *Corporations Act 2001* (Cth).

17.4 Consequences of termination

If the Commonwealth terminates this Deed, then:

- (a) the Commonwealth may recover from the Grantee any loss or damage suffered by the Commonwealth if the Commonwealth has terminated under clause 17.1;
- (b) the Commonwealth is not required to pay any outstanding amount of the Funding if the Commonwealth has terminated under clause 17.1;
- (c) the Commonwealth may recover from the Grantee any part of the Funding which:
 - (i) has not been spent by the Grantee in accordance with this Deed; or
 - (ii) has not been legally committed for expenditure by the Grantee;
- (d) the Grantee must immediately cease using any logo, emblem or other reference to the Department of Agriculture, Fisheries and Forestry or to the Commonwealth and, if the Commonwealth requires it, destroy or return to the Commonwealth any material bearing such logo, emblem or reference; and
- (e) the Grantee must deal with Commonwealth Material as directed by the Commonwealth.

17.5 Commonwealth not otherwise liable

Except as provided in this clause, the Commonwealth is not liable to the Grantee for termination of this Deed.

18. ASSIGNMENT

The Grantee may not assign or otherwise deal with all or any part of its rights under this Deed except with the prior written consent of the Commonwealth.

19. NO PARTNERSHIP OR EMPLOYMENT

19.1 No partnership

The Grantee must not represent itself, and must ensure that its officers, employees, agents and contractors do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

19.2 No employment relationship

This Deed does not create the relationship of employee and employer between the Grantee and the Commonwealth.

20. COMPLIANCE WITH LAW

The Grantee must comply with the provisions of all relevant statutes, regulations and by-laws and with the lawful requirements of any Commonwealth, State or Territory authority.

21. NOTICES

21.1 Giving of notices

A party giving notice or notifying under this Deed must do so in writing or by Electronic Communication:

- (a) directed to the recipient's address specified in this clause, as varied by any notice; and
- (b) hand delivered or sent by pre-paid post, facsimile or Electronic Communication to that address.

The parties' addresses and facsimile numbers are as specified in the Details or as notified from time to time.

21.2 Receipt of notice

A notice given in accordance with clause 21.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, three days after the date of posting;
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within one Business Day after that transmission, the recipient informs the sender that it has not received the entire notice; and
- (d) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth).

22. MISCELLANEOUS

22.1 Entire agreement

This Deed represents the parties' entire agreement in relation to its subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

22.2 Alteration

This Deed may only be altered in writing signed by each party.

22.3 Joint and several liability

If a party comprises two or more persons, the provisions of this Deed bind that party and those persons jointly and severally.

22.4 Governing law and forum

This Deed is governed by the law applicable in the Australian Capital Territory. The courts of the Australian Capital Territory shall have exclusive jurisdiction to decide any matter arising out of this Deed.

22.5 Advocacy

For the avoidance of doubt, no right or obligation arising from this Deed is to be read or understood as limiting the Grantee's rights to enter into public debate or criticism of the Australian Government, its agencies, employees, servants or agents that involve disclosure of information that is not Confidential Information.

22.6 Disclosure of terms of Deed

The parties acknowledge that details including but not limited to the name of the Grantee, value of the Funding, the Term, and location may be disclosed or published by the Commonwealth.

Schedule

PROJECT

INFORMATION TABLE

ITEMS

Item 1	Commencement Date:
(clause 1.1)	<i>[Insert date that Deed is to commence. This is not necessarily the same as the date the Deed is signed (above)]</i>
Item 2	Term:
(clause 1.1)	<i>[Insert term of Deed]</i>
Item 3	Funding:
(clauses 1.1 and 4)	<i>[Insert amount of funding inclusive of GST]</i>
Item 4	Bank Account:
(clauses 1.1 and 5.5)	<i>[Details of funding bank account - Note that this can be provided after the Funding Deed has been signed]</i>
Name of Project	<i>[Insert] (Project)</i>
Project Number	<i>[Insert]</i>

1.1 Project Description

[Describe the Project]

1.2 Project Key Performance Indicators, Project Objectives and activities

- (a) The Project Key Performance Indicators applicable to this Project are:
- (i) *[list]*.
- (b) The Project Objectives for this project are:
- (i) *[list]*; and
- (ii) *[list]*.
- (c) The Grantee must undertake the following activities in delivering the Project:
- (i) **[Name of activity]**
[activity description]

- (ii) **[Name of activity]**
 [activity description]

2. Milestones and Payment arrangements

Milestone Description	Schedule date that each Milestone is due by	Amount due (GST inclusive)
Signing	ASAP	\$ [insert]
Milestone/Progress Report No. 1 [Activity detail in period]	Within x days	\$
Milestone/Progress Report No. 2 [Activity detail in period]	Within x days	\$
Milestone/Progress Report No. 3 [Activity detail in period]	Within x days	\$
Milestone/Progress Report No. 4 [Activity detail in period]	Within x days	\$
Final report @ [completion date]	x days from completion date	\$
Total Funding GST Inclusive		\$

Note: Avoid ending a term in June. Use May or July

3. Budget and Other Contributions

[If applicable, set out proposed budget and Other Contributions (which include contributions by Grantee). Note: If DAFF funding is contingent on Other Contributions i.e. DAFF is funding on a dollar for dollar basis, then the Other Contributions (cash or in kind) must be listed here. If however, Other Contributions have been provided as part of an evaluation process only, and DAFF's funding is not linked to other contributions, then Other contributions should not be included in the budget and will not require to be acquitted as part of the reporting process.]

Budget Item	DAFF Funding	Other Contributions In-Kind	Other Contributions Cash
Item	\$	\$	\$
Item	\$	\$	\$
Item	\$	\$	\$
Total	\$	\$	\$

DRAFTER'S NOTE

All amounts are inclusive of GST. When drafting the payment schedule consider the following:

- link payment to the completion of milestones;
- is payment to be made on proof of expenditure by the Grantee, ie the Funding is to be paid on a reimbursement basis? If so, consider what other evidence you may require from the Grantee before authorising payment;
- if an initial payment is to be made, consider what amount is appropriate having regard to that part of the Project to be undertaken prior to the next instalment, ie minimise the Commonwealth's risk exposure;
- the amount of the final instalment should be an amount sufficient to ensure completion of the Project;
- whether the amount of the Funding is a fixed amount or a variable amount based on estimates provided by the Grantee, and which is capped and which is to be paid to the Grantee on the basis of the Grantee's actual costs.]

4. Assets

[If applicable, set out what Assets are to be purchased with the Funding. Include only stand alone assets (eg vehicle or computer) but not assets created with the Funding such as fencing or buildings.]

5. Confidential Information

[Specify each party's Confidential Information if any (decided by reference to Financial Management Guidance No 3: Guidance on Confidentiality in Procurement issued by the (former)

Department of Finance and Administration in July 2007) and any provisions of the Deed which the parties consider to be confidential. The period of confidentiality should be specified for each item. There should be a good reason for nominating provisions of the Deed as confidential. For further details please see the Senate Order on Departmental and Agency Contracts (Senate Order) at the Department of Finance and Deregulation website (Also note that under Commonwealth policy, and clause 22.6 of this Deed, the Department may be required to publish the name of the Grantee, the value of the Funding, the Term of the Deed, and the Funding location. These details should not therefore be listed as confidential information of the Grantee in this Schedule.]

Confidential information of The Commonwealth

Item	Period of Confidentiality
<i>[Insert confidential information of the Commonwealth and period of confidentiality. If none insert "nil"]</i>	

Confidential information of the Grantee

Item	Period of Confidentiality
<i>[Insert confidential information of the Grantee and period of confidentiality. If none insert "nil"]</i>	

6. Reports

<p>Activity performance reports or progress reports</p>	<p><i>[List all activity performance reports or progress reports that are to be submitted and specify the due dates for each report. Note: the following is a guide only and should be specific to the reports required for your program. Consider sending templates for the reports required and advise this in the Schedule i.e. The contact officer will provide templates for progress, milestone and final reports.]</i></p> <p>Examples:</p> <p>The Grantee must keep comprehensive records of the conduct of the Project including, without limitation, progress against the Milestones and Key Performance Indicators, the creation of Project Material, the creation or acquisition of Assets, and the receipt and use of funding and in-kind contributions specified in the Budget.</p> <p>The Grantee must provide Reports to the Commonwealth which must accompany each Milestone in a form specified by the Commonwealth.</p> <p>Progress Reports should contain:</p> <ul style="list-style-type: none"> • a description of Project progress during the period covered by the Report against the Objectives, Milestones and Key Performance Indicators; • an explanation of why any activity, outcome or Milestone specified in this Deed for the period covered by the Report was not conducted or achieved; • a description of how activities, Objectives or Milestones not conducted or achieved are to be conducted or achieved <p>Milestone Reports should contain</p> <ul style="list-style-type: none"> • information as required for Progress Reports; and
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	<ul style="list-style-type: none"> • copies of receipts and/or invoices of expenditure for the reporting period <p>A final report must be provided within [30] days after the end of the Term. The final report should contain the information as required in the Milestone Report together with:</p> <ul style="list-style-type: none"> • financial statements for the receipt, holding, expenditure and commitment of the Funding during the term, including a full reconciliation against the Budget and a statement of the balance of the Bank account; and • a statement as to whether the Project was carried out in accordance with the Objectives, Key Performance Indicators and Milestones, • a report of the receipt of Other Contributions (including the Grantee's own contributions) during the period covered by the Report, or, if such Other Contributions were not received as projected, an explanation of action taken by the Grantee in response to this shortfall; and • a report of all Project Material and all Intellectual Property in Project Material created or arising during the period covered by the Report; and • a report of all Assets created or acquired during the period covered by the Report. <p>The final report referred to above must be certified as being an accurate statement of the matters specified in the report by the chairperson, managing director, chief executive, or equivalent officer of the Grantee.</p> <p>The following audit option can be included at the end of each financial year or as part of final report or delete:</p> <p>If requested to do so by the Commonwealth, the Grantee must, at the Grantee's own cost, provide the Commonwealth with a report from an independent auditor verifying that:</p> <ul style="list-style-type: none"> (a) the auditor has reviewed the Grantee's books and records and financial statements, including those relating to the receipt, holding, expenditure and commitment of the Funding and Other Contributions; and (b) the Funding and Other Contributions were spent in accordance with this Deed
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EXECUTED as a Deed.

SIGNED SEALED AND DELIVERED for and
on behalf of the **COMMONWEALTH OF
AUSTRALIA** by a duly authorised
representative

Signature of witness

Signature of authorised representative

Name of witness (print)

Name of authorised representative (print)

SIGNED SEALED AND DELIVERED for and
on behalf of **[Name of Grantee]**

Signature of witness

Signature of duly authorised representative

Name of witness (print)

Name of duly authorised representative (print)