
FUNDING AGREEMENT

AA DAM PROGRAM

Cranbrook Integrated Water Access

**THE STATE OF WESTERN AUSTRALIA AS REPRESENTED BY THE
DEPARTMENT OF WATER AND ENVIRONMENTAL REGULATION**

AND

THE SHIRE OF CRANBROOK

TABLE OF CONTENTS

RECITALS	6
OPERATIVE PART	7
1. DEFINITIONS AND INTERPRETATION	7
1.1 Definitions	7
1.2 Interpretation	12
2. TERM	13
2.1 This Agreement shall commence on the Commencement Date and, subject to clause 12, shall continue until the Completion Date, or until the final Instalment is paid, whichever is longer.	13
2.2 The Term of this Agreement may be extended by written agreement of the Parties.	13
3. OBLIGATIONS OF RECIPIENT	13
3.1 The Project	13
3.2 The Recipient's General Undertakings	14
3.3 Negation of Employment, Partnership and Agency	14
4. FUNDING	15
4.1 Use of Funding	15
4.2 Project Funding	16
4.3 Funding Request and Payment	16
4.4 Waiver of Condition Precedent	16
4.5 Recovery of Mis-Spent or Unspent Project Funding	16
4.6 Right to Suspend Payment	17
The Department may suspend payment of the Funding, or any Instalment of the Funding if:	17
4.7 Recipient Contributions	17
If the Recipient is required to make Contributions under this Agreement:	17

4.8	Withdrawal of Funding	17
4.9	No Further Funding and Recovery of Funding	18
5.	REPORTING	18
5.1	Reports Generally	18
5.2	Milestone Report	19
6.	PUBLICATIONS AND PUBLICITY	19
6.1	Department approval	19
6.2	Acknowledgement of the Parties	20
7.	FREEDOM OF INFORMATION ACT 1992, FINANCIAL MANAGEMENT ACT 2006 AND AUDITOR GENERAL ACT 2006	20
8.	AGREEMENT BETWEEN THE RECIPIENT AND A THIRD PARTY	21
8.1	Where the Recipient subcontracts any part of its obligations under this Agreement, it must notify the Department in writing of:	21
8.2	If the Recipient enters into an agreement with any other party relating in any way to either or both of this Agreement and the Funding (Third Party Agreement), where a third party is to receive any of the Funding from the Recipient to undertake the whole or part of the Project on the Recipient's behalf, the Recipient must ensure that the third party agrees to be bound by terms and conditions consistent with the terms and conditions set out in this Agreement, to the extent that those terms and conditions relate to the obligations that have been assumed by the third party.	21
8.3	If the Recipient:	21
	the Recipient remains liable for its obligations under this Agreement, notwithstanding the use of any third parties the Recipient may engage to undertake work on behalf of the Recipient for the purposes of complying with the terms and conditions of this Agreement.	21
9.	INTELLECTUAL PROPERTY	21
9.1	Pre-existing Material	21
9.2	Third Party Rights	22
9.3	Ownership of Milestone Reports	22
9.4	Ownership of Project Material	22

10. CONFIDENTIAL INFORMATION	22
10.1 Except as otherwise provided in this clause, each Party must keep confidential and not disclose any of the other Party's Confidential Information.	22
10.2 Each Party may:	22
who have a need to know for the purposes of carrying out the Project (and only to the extent that they need to know);	23
10.3 The obligations imposed on a Party by this clause will not apply to Confidential Information which:	23
10.4 A Party must not;	23
without the prior written consent of the other Party.	23
11. DISPUTE RESOLUTION	23
12. DEFAULT, TERMINATION AND FORCE MAJEURE	24
12.1 Event of Default by the Recipient	24
12.2 Effect of Event of Default	25
12.3 Force Majeure	26
13. LIMITATION OF LIABILITY	27
14. INDEMNITY	27
15. NOTICES	28
16. TAXES, DUTIES AND GOVERNMENT CHARGES	29
17. INSURANCES	29
18. STATE'S INTEREST AND STATUTORY FUNCTIONS	31
19. GENERAL	31
19.1 Waiver	31
19.2 Entire Agreement	32
19.3 Assignment	32
19.4 Variation	32
19.5 Rights, Powers and Remedies	32
19.6 Governing Law	32

19.7	Representations and warranties	32
19.8	Schedules	33
19.9	Counterparts	33
19.10	Severability	33
19.11	Administration	34
19.12	Costs	34
19.13	Further Assurances	34
19.14	Survival	34
Clauses 4.5, 6, 9, 10, 12, 13, 14, 16, 17 and 19.7 and this clause 19.14 shall survive the expiry or termination of this Agreement.		34
SCHEDULE 1 – CONTACT OFFICERS		35
SCHEDULE 2 – PROJECT DETAILS		36

THIS Agreement is made on the 19th day of June 2026

BETWEEN:

The State of Western Australia as represented by the **Department of Water and Environmental Regulation** of Prime House, 8 Davidson Terrace, Joondalup WA 6027, (**Department**)

AND

The Shire of Cranbrook (ABN 80 377 127 550) of 19 Gathorne Street, Cranbrook WA 6321 (**Recipient**).

RECITALS

- (a) The Department is the State government agency which supports Western Australia's community, economy and environment by managing and regulating the State's environment and water resources. The Department is responsible for delivery of the Community Water Supplies Partnerships program with local governments.
- (b) The Recipient is a local government that manages its district's affairs in accordance with the Local Government Act 1995 (WA).
- (c) The Recipient has agreed to undertake the Project.
- (d) The Department has agreed to provide, and the Recipient has agreed to accept, the Funding on the terms and conditions set out in this Agreement.

OPERATIVE PART

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Affected Party is defined in clause 12.3(a).

Agency means the Commonwealth and/or State department, agency or other body from which the Department receives funding to undertake the Department Project, and as specified in item 1 of Schedule 2.

Agreement means this funding agreement, including its recitals, Schedules and annexures.

Application means the Recipient's application for funding under the Community Water Supplies Partnerships program which is further specified in item 1 of Schedule 2.

Auditor means a suitably qualified and experienced auditor approved by the Department.

Australian Accounting Standards refers to the standards of that name maintained by the Australian Accounting Standards Board, such standards being made under section 334 of the *Corporations Act 2001* (Cth).

Auditor General means the Auditor General for the State of Western Australia.

Authorisation means any consent, authorisation, registration, filing, agreement, notarisation, clearance, certificate, permission, licence, permit, waiver, approval, authority or exemption from, by or within a Government Agency required under any Laws, and includes any renewal of, or variation to, any of them.

Authorised Officer means an officer authorised by a Party to act on the Party's behalf.

Budget means a description of the intended allocation of the Funding for the undertaking of the Project, as further specified in item 5 of Schedule 2.

Business Day means a day which is not a Saturday, Sunday or public holiday in the State of Western Australia.

Claim means any claim, proceeding, cause of action, action, demand or suit (including by way of a claim for contribution or an indemnity).

Commencement Date means the date of this Agreement or, if this Agreement is undated, the date on which the last party to execute this Agreement does so.

Completion Date means the date by which the Recipient must complete the Project set out in item 1 of Schedule 2.

Confidential Information means information that:

- (a) is by its nature confidential; or
- (b) is specified by either the Department or the Recipient to be confidential, including any information specified to be confidential in this Agreement; or
- (c) the Recipient or Department knows or ought to know is confidential,

but does not include information that:

- (d) is or becomes public knowledge other than by breach of this Agreement or by other unlawful means;
- (e) was in the possession of the other Party without any restriction in relation to disclosure before the date of disclosure to the other Party; or
- (f) has been independently developed or acquired by a Party.

Contact Officer means the officer of a Party as set out in item 2 of Schedule 1;

Contributions means the cash, assets, personnel, equipment, facilities, and in-kind contributions to be provided by the Recipient for the purposes of the Project as specified in the Project Brief, but does not include Intellectual Property Rights.

Department Project means the project described in item 2.1 of Schedule 2.

Event of Default has the meaning given to it in clause 12.1.

Force Majeure means an event which is both unforeseeable and beyond the reasonable control of a Party that prevents that Party from performing its obligations in whole or part under this Agreement, including:

- (a) fire (other than fire caused by the Affected Party), flood, a category 3 or above tropical cyclone (as defined by the Australian Bureau of Meteorology) affecting the area, earthquake, tsunami or explosion;
- (b) war, insurrection, civil disturbance or acts of terrorism;
- (c) act of God; or
- (d) impact of vehicles or aircraft,

but does not include:

- (e) lack of or inability to use funds for any reason;
- (f) any occurrence which results from the wrongful or negligent act or omission of the Affected Party;

- (g) an event or circumstance where the event or circumstance or its effects on the Affected Party or the resulting inability of the Affected Party to perform its obligations could have been prevented, overcome or remedied by the exercise by the Affected Party of the standard of care and diligence consistent with that of a reasonable and prudent contractor;
- (h) breakdown of equipment belonging to the Affected Party or any contractor or sub-contractor engaged either directly or indirectly by the Affected Party;
- (i) if the Affected Party is the Recipient, strikes or industrial action:
 - (i) by any of the Recipient's contractors or sub-contractors;
 - (ii) in any way directed at the Recipient's contractor or sub-contractor; or
 - (iii) directed at the Project;
- (j) weather conditions or any effects of weather conditions, other than as described in sub-paragraph (a) above;
- (k) if the Affected Party is the Recipient, act or omission of the Recipient's contractor or sub-contractor (including if any contractor or sub-contractor becomes insolvent);
- (l) a failure by a third party to fulfil a contract commitment to an Affected Party other than as a result of an event in paragraph (a) to (d) above;
- (m) lack of resources; or
- (n) any epidemic or pandemic, and shortages caused thereby, and any government response/s to such epidemic, pandemic or shortages.

Funding means the amount of funding (excluding GST), specified in item 1 of Schedule 2, which will be provided by the Department to the Recipient in the manner and within the timeframes outlined in Schedule 2, and includes where the context requires any Instalment.

Government Agency means the State of Western Australia, the Commonwealth of Australia and any government or any governmental, semi governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, agency, entity or Parliament and includes any part of, or entity comprising, the State.

GST has the meaning given in the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any legislation substituted for, replacing or amending that Act.

GST Law has the meaning that it bears in section 195-1 of the GST Act.

Indemnified has the meaning given to it in clause 14(a).

Insolvency Event means the happening of any of the following events:

- (a) a receiver, receiver and manager, administrator or similar official is appointed, or steps are taken for an appointment of that kind over any of the assets or undertakings of the Recipient;
- (b) the Recipient suspends payments of its debts generally;
- (c) the Recipient is unable to pay its debts when they are due or is unable to pay its debts within the meaning of the *Corporations Act 2001* or is presumed insolvent under the *Corporations Act 2001*;
- (d) the Recipient enters into, or resolves to enter into, an arrangement, composition or compromise with, or assignment for the benefit of, its creditors or a class of them;
- (e) the Recipient ceases, or threatens to cease, to carry on business;
- (f) a person is appointed under legislation in respect of incorporated associations or companies to investigate the affairs of any member of the Recipient;
- (g) an application or order is made for the winding up or dissolution of the Recipient or a resolution is passed, or steps are taken to pass a resolution for the winding-up or dissolution of the Recipient otherwise than for the purpose of an amalgamation or reconstruction which has the prior written consent of the Department; and
- (h) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any jurisdiction.

Instalment means a periodic payment of Funding as set out in item 3 of Schedule 2.

Instalment Date means the date specified for payment of an Instalment as set out in item 3 of Schedule 2.

Intellectual Property Rights means all copyright, (including rights in relation to phonograms and broadcasts), database rights, 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 of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields as well as traditional First Nations peoples' knowledge, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

Law means all applicable present and future laws including:

- (a) all acts, ordinances, regulations by-laws, orders, awards and proclamations of the State of Western Australia or the Commonwealth of Australia;
- (b) Authorisations;
- (c) principles of law or equity;

- (d) standards, codes, policies and guidelines; and
- (e) the Australian Securities Exchange listing rules.

Liability means any debt, obligation, cost (including legal costs), expense, Loss, damage, compensation, charge or liability of any kind (whether arising in negligence or otherwise), including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.

Loss includes any loss, cost, expense, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, ascertained, unascertained, actual, prospective or contingent or any fine or penalty.

Material means anything in relation to which Intellectual Property Rights subsist.

Milestone means a milestone set out in item 4 of Schedule 2, with each milestone in relation to an Obligation of the Recipient being the date by which that Obligation must be completed, and includes the Completion Date.

Milestone Completion Date means the date by which a Milestone must be completed, and is as specified for each Milestone in item 4 of Schedule 2.

Milestone Report means a report required to be submitted by the Recipient under clause 5.2.

Minister means the Minister for Water.

Obligation means an obligation in this Agreement.

Party means each of the Department or the Recipient as the context requires, and **Parties** has the corresponding meaning.

Plan means the plan, or plans, of the works proposed to be provided under the Project and as specified in the Application.

Pre-existing Material means any Material created prior to the Commencement Date or independently of the Project.

Project mean the initiatives or activities described in item 2.2 of Schedule 2 and **Projects** has the corresponding meaning.

Project Brief means the project and the works to be undertaken under this Agreement, as described in the Application.

Project Material means all Material created by or on behalf of the Recipient in the course of and as a direct result of carrying out the Project under this Agreement, excluding Pre-existing Material and Milestone Reports and any improvements to them.

Provision means any term, condition, undertaking, promise, obligation or warranty of, made or given by the Recipient, or otherwise applicable to the Recipient, under this Agreement.

Recipient's Personnel includes the Recipient's agents and contractors.

Related Body Corporate has the meaning given to it in the *Corporations Act 2001* (Cth).

Relevant Time has the meaning given to it in clause 19.7(b).

Schedule means any schedule to, and forming part of, this Agreement.

State means the State of Western Australia and includes any department, agency or instrumentality of the State of Western Australia, the Parliament and any Minister, whether body corporate or otherwise, and their respective employees, officers, directors, agents, contractors and consultants.

Supply has the meaning given to it in the GST Act.

Tax Invoice has the meaning given to it in the GST Act.

Term means the term of this Agreement described in clause 2.

Third Party Agreement has the meaning given to it in clause 8.2.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to a person include an individual, the estate of an individual and any type of entity or body of persons, including a corporation, an incorporated or unincorporated association or parties in a joint venture, a partnership or a trust and the legal personal representatives, successors and assigns of that person;
- (d) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (e) references to this Agreement or any other instrument include this Agreement or other instrument as varied or replaced, and notwithstanding any change in the identity of the Parties;
- (f) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include e-mail and facsimile transmission;
- (g) an Obligation incurred in favour of two or more persons is enforceable by them jointly and severally;
- (h) if a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (i) references to this Agreement include its recitals, Schedules and annexures;

- (j) headings are inserted for ease of reference only and are to be ignored in construing this Agreement;
- (k) references to time are local time in Perth, Western Australia;
- (l) where time is to be reckoned from a day or event, that day or the day of that event is to be included;
- (m) references to currency are to Australian currency unless otherwise stated;
- (n) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Agreement or any part thereof;
- (o) a reference to any thing is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (p) when the day or last day for doing an act is not a Business Day, then the day or last day for doing the act will be the directly preceding Business Day;
- (q) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;
- (r) the phrases "described in", "set out" and "specified in" shall all read as if the words "expressly or impliedly" appeared immediately before them; and
- (s) reference to a contractor or sub-contractor means a contractor or sub-contractor at any tier.

2. TERM

- 2.1** This Agreement shall commence on the Commencement Date and, subject to clause 12, shall continue until the Completion Date, or until the final Instalment is paid, whichever is longer.
- 2.2** The Term of this Agreement may be extended by written agreement of the Parties.

3. OBLIGATIONS OF RECIPIENT

3.1 The Project

- (a) The Recipient must carry out the Project in accordance with the Project Brief and the Plan.
- (b) The Recipient must complete each Milestone by no later than the Milestone Completion Date listed for that Milestone.

- (c) The Parties may amend the Project Brief by agreement in writing.

3.2 The Recipient's General Undertakings

The Recipient must:

- (a) promptly inform the Department of any occurrence which might materially adversely affect its ability to perform and observe its obligations under this Agreement;
- (b) conduct itself efficiently and with integrity and probity, operate ethically and in accordance with good governance practices;
- (c) obtain all Authorisations which are or will be required in connection with the performance by the Recipient of its obligations under this Agreement;
- (d) arrange and obtain all necessary land access consents and authorisations required to access land for the purposes of the Project;
- (e) comply with all Laws and Authorisations;
- (f) ensure that information provided by the Recipient to the Department relating to the Recipient's affairs and this Agreement is true, accurate and complete in all material respects and, without limiting this clause, all financial information provided by or on behalf of the Recipient to the Department is, in all material respects, a true, fair and accurate statement of its financial position as at the date of preparation of the information;
- (g) permit officers of the Department or any other person authorised by the Department to enter the offices of the Recipient on reasonable notice at any reasonable times to determine whether the Recipient is performing its obligations under this Agreement, provided that any person so entering does so in a manner so as to cause minimal disruption to the Recipient and subject to the Recipient's security, confidentiality, health, safety and environment requirements;
- (h) meet all reasonable requests from the Department for access to Project Material, relevant financial and other records as necessary to determine whether the Recipient is performing its obligations under this Agreement, and provide all reasonable assistance requested by the Department in respect of any such request, subject to the Recipient's security, confidentiality, health, safety and environment requirements;
- (i) acknowledge the Department as the source of the Funding in relation to any relevant announcements, logos or badging on any promotional material, including any publication, article, newsletter, brochure, other literary work, website, sign, poster and other material or literary work produced with the Funding, and at relevant forums, conferences, functions and events in a manner to be agreed with the Department.

3.3 Negation of Employment, Partnership and Agency

- (a) The Recipient must not represent itself, and must ensure that its employees, contractors, sub-contractors or agents do not represent themselves, as being an employee, partner or agent of the State or the Department or as otherwise able to bind or represent the State or Department.
- (b) The Recipient will not, by virtue of this Agreement, be or for any purpose be deemed to be, an employee, partner, or agent of the State or the Department, or have any power or authority to bind or represent the State or the Department.

4. FUNDING

4.1 Use of Funding

- (a) The Recipient must:
 - (i) use the Funding (and any interest which accrues on the Funding) for the carrying out of the Project in accordance with this Agreement. All of this expenditure must be effected in a commercially prudent, sensible and reasonable manner;
 - (ii) in carrying out the Project, comply with and meet all Milestones including completing the Project by the Completion Date; and
 - (iii) maintain separate cost centres within its financial system for each Project funded and any interest which accrues on the Funding.
- (b) The Funding may only be used by the Recipient:
 - (i) for the purpose of carrying out the Project in accordance with the Project Brief and this Agreement and for no other purpose;
 - (ii) in accordance with the Budget for the Project;
 - (iii) for reasonable administrative costs up to the value specified in the Budget; and
 - (iv) in accordance with the terms and conditions of this Agreement.
- (c) Notwithstanding the above, the Funding must not be used by the Recipient for:
 - (i) work carried out on the Project, or work relating to the Project prior to the Commencement Date; or
 - (ii) administrative costs that exceed the value assigned in clause 4.1(b)(iii),unless the Recipient has the prior written approval of the Department.

4.2 Project Funding

- (a) The Department shall pay the Recipient the Funding in Instalments (if applicable) as set out in item 3 of Schedule 2.
- (b) It shall be a condition precedent to the Department's obligation to pay each Instalment under clause 4.2(a) that:
 - (i) the Recipient has completed all Milestones due for completion on or before the Instalment Date to the satisfaction of the Department;
 - (ii) the payment procedures in clause 4.3(a) have been complied with; and
 - (iii) the Recipient has made all Contributions required to be made on or before the Instalment Date under the Project Brief.
- (c) The Department shall not pay the Recipient more than the Funding.
- (d) All the amounts set out in Schedule 2 are exclusive of GST.

4.3 Funding Request and Payment

- (a) No earlier than 30 calendar days before an Instalment Date, the Recipient must provide the Department with a Tax Invoice in relation to the Instalment.
- (b) If all conditions precedent in clause 4.2(b) have been met, or the Department exercises its discretion under clause 4.4, the Department must pay the Instalment to the Recipient within 30 calendar days of receipt of the Tax Invoice.
- (c) If all conditions precedent in clause 4.2(b) have not been met, the Department may request that the Recipient provide any further information reasonably necessary.
- (d) Where a request has been made under the clause 4.3(c), the Department shall not be obliged to make any payment until all conditions precedent in clause 4.2(b) have been met.

4.4 Waiver of Condition Precedent

Notwithstanding clause 4.2(b)(i), the Department retains the right, which may be exercised in its absolute discretion, to pay all or part of an Instalment to the Recipient notwithstanding that a Milestone has not been completed.

4.5 Recovery of Mis-Spent or Unspent Project Funding

- (a) The Recipient shall be immediately liable to repay to the Department any Funding spent otherwise than in accordance with clause 4.1 and this amount may be recovered as a debt due to the Department.

- (b) If at the end of the Term there is unspent and uncommitted Funding, the Recipient must refund the unspent money together with any interest earned to the Department within 10 Business Days of receiving a request from the Department to do so.

4.6 Right to Suspend Payment

The Department may suspend payment of the Funding, or any Instalment of the Funding if:

- (a) the Recipient has failed to make a Contribution to the Project by the date specified in the Project Brief, until that Contribution is made;
- (b) the Recipient has not achieved a Milestone by the date specified for completion of the Milestone in the Item 4 of Schedule 2, or if no date is specified in Item 4 of Schedule 2, the Project Brief, until that Milestone is completed;
- (c) the Recipient has not otherwise performed the Project in accordance with the Project Brief, or this Agreement, until the Recipient remedies its performance; or
- (d) if the Recipient is in breach of this Agreement and has received a written notice from the Department identifying the breach and requiring it to be remedied, until the breach is rectified.

4.7 Recipient Contributions

If the Recipient is required to make Contributions under this Agreement:

- (a) The Recipient must make its Contributions available for the Project at the times and in the manner specified in the Project Brief, and if not so specified, so as to enable the Project to be carried out in accordance with the Project Brief.
- (b) The Recipient shall perform its obligations and provide its Contributions to the Project using its own resources and at its own cost and risk unless otherwise specified in this Agreement.

4.8 Withdrawal of Funding

The Recipient acknowledges and agrees that:

- (a) the Department receives funding from the Agency to enable the Department's undertaking of the Project; and
- (b) the provision of funding to the Department is subject to availability of funds through the Agency budget and mid-year review of the Agency budget each financial year; and
- (c) as a result, the Agency, and the Department, may cease to provide the Funding at any time during the Term; and
- (d) in the event that the Department is notified by the Agency that it will cease to provide funding, or reduce the amount of funding to be provided, to the Department for the undertaking of the Project, the

Department may terminate this Agreement by providing one months' notice in writing to the Recipient and this Agreement is then terminated from the date specified in that notice; and

- (e) on receipt of a notice of termination under clause 4.8(d), the Recipient agrees to:
 - (i) stop the performance of the Recipient's Obligations as specified in the notice; and
 - (ii) take all available steps to minimise loss resulting from the termination.

4.9 No Further Funding and Recovery of Funding

If this Agreement is terminated under clause 4.8 wholly or in part:

- (a) the Department will be liable only for:
 - (i) payments under the payment provisions of this Agreement for work undertaken before the effective date of termination; and
 - (ii) payments proportional to the extent of work undertaken and contractually committed to before the effective date of termination.
- (b) the Department will not be liable to pay any amount that would, in addition to any amounts paid or due, or becoming due, to the Recipient for the Project, exceed the total Funding set out in this Agreement;
- (c) subject to this clause 4.9, the Department has no further obligation to pay the Recipient any part of the Funding which has not yet been paid to the Recipient; and
- (d) the Recipient must remit to the Department within 20 Business Days from the termination date specified by the Department all Funding paid to the Recipient under this Agreement that has not been spent or committed in accordance with this Agreement by the termination date specified by the Department and any interest which has accrued on that Funding.

5. REPORTING

5.1 Reports Generally

- (a) The Recipient must keep full and accurate records in accordance with Australian Accounting Standards that identify receipts and expenditure of the Project Funding and Contributions.
- (b) The Recipient must ensure that any report required to be submitted under this clause 5 is:

- (i) certified by the Chief Financial Officer or other accountable officer of the Recipient; and
 - (ii) audited by an Auditor,
- prior to the submission of the report to the Department.
- (c) The information required to be provided in a Milestone Report may be varied by the Department from time to time in its absolute discretion and the Department may request the provision of further information from the Recipient.
- (d) The Recipient agrees to provide any further information reasonably requested by the Department within 30 calendar days of receiving such a request.

5.2 Milestone Report

- (a) The Recipient must prepare and submit a Milestone Report for each Milestone within 30 calendar days of the Milestone Completion Date for that Milestone.
- (b) The Recipient must ensure that each Milestone Report:
 - (i) is submitted in the form and manner as required by the Department; and
 - (ii) includes the information and evidence requested by the Department.
- (c) The Department may accept or reject a Milestone Report, and if the Department rejects a Milestone Report, the Department must provide its reasons for doing so and the Recipient must have regard to those reasons when preparing another Milestone Report. This process may be repeated until the Department accepts a Milestone Report.
- (d) Once a Milestone Report is accepted, the Milestone to which the Milestone Report relates will be considered to be completed and the Recipient may issue a Tax Invoice to the Department in accordance with clause 4.3.

6. PUBLICATIONS AND PUBLICITY

6.1 Department approval

- (a) The Recipient may not make any media release, publish any report or article, make oral presentations or publish any information concerning the Project or the outcomes of the Project unless it has provided the Department with a copy of the proposed publication, presentation or information for comment at least 30 calendar days prior to proposed publication.

- (b) The Department may, within 21 calendar days of receiving the draft under clause 6.1(a), direct the Recipient in writing to remove from the draft publication any Confidential Information of the Department and the Recipient shall comply with the direction.
- (c) If the Department does not respond in writing within the period specified in clause 6.1, it will be deemed to have consented to the draft publication being published without amendment.

6.2 Acknowledgement of the Parties

- (a) Any publication made under clause 6.1(a) must acknowledge the involvement and contributions of both Parties to the Project in a manner and form reasonably required by each Party.
- (b) Any communications in relation to the Project and this Agreement including presentations, publications, signage, articles, newsletters, or other literary works relating to the Project must:
 - (i) equally represent the Parties when Project logos are displayed, including containing the Department's and Recipient's logos and names in an equally prominent position; and
 - (ii) be consistent with the policies for marketing, communications and acknowledgements which the Department notifies to the Recipient from time to time.
- (c) The respective roles of the Department and the Recipient must be acknowledged at relevant forums, conferences, and project launches where the Projects are promoted.
- (d) All media events relating to the Project must be coordinated with, and agreed upon with, the Department in writing.
- (e) Without limiting any of the above, the Recipient must notify the Department of any planned events relating to the Project and provide opportunity for the Minister to attend.

7. FREEDOM OF INFORMATION ACT 1992, FINANCIAL MANAGEMENT ACT 2006 AND AUDITOR GENERAL ACT 2006

- (a) The Parties acknowledge and agree that the Department is subject to the *Freedom of Information Act 1992* (WA) and must comply with its obligations under that Act.
- (b) This Agreement and information regarding it, is subject to the *Freedom of Information Act 1992*. The Department may publicly disclose information in relation to this Agreement, including its terms and the details of the Recipient.

- (c) Despite any express or implied provision of this Agreement to the contrary, nothing in this Agreement in any way alters, limits or affects the operation of the *Auditor General Act 2006*, the *Financial Management Act 2006* or the Recipient's obligations (if any) in relation to these Acts. To the extent permitted by law, the Recipient must allow the Auditor General, or an authorised representative, to have access to and audit (or otherwise review, examine or evaluate) the Recipient's records and information concerning either or both of this Agreement and the Project.

8. AGREEMENT BETWEEN THE RECIPIENT AND A THIRD PARTY

8.1 Where the Recipient subcontracts any part of its obligations under this Agreement, it must notify the Department in writing of:

- (a) the identity of the subcontractor;
- (b) the obligations that have been subcontracted; and
- (c) any other information reasonably requested by the Department in relation to that subcontractor.

8.2 If the Recipient enters into an agreement with any other party relating in any way to either or both of this Agreement and the Funding (**Third Party Agreement**), where a third party is to receive any of the Funding from the Recipient to undertake the whole or part of the Project on the Recipient's behalf, the Recipient must ensure that the third party agrees to be bound by terms and conditions consistent with the terms and conditions set out in this Agreement, to the extent that those terms and conditions relate to the obligations that have been assumed by the third party.

8.3 If the Recipient:

- (a) subcontracts any part of its obligations under this Agreement under clause 8.1; or
- (b) enters into an agreement with a third party to undertake whole or part of the Project on the Recipient's behalf under clause 8.2,

the Recipient remains liable for its obligations under this Agreement, notwithstanding the use of any third parties the Recipient may engage to undertake work on behalf of the Recipient for the purposes of complying with the terms and conditions of this Agreement.

9. INTELLECTUAL PROPERTY

9.1 Pre-existing Material

- (a) Each Party retains ownership, and the right to use, exploit and grant licences of its Pre-existing Material including any improvements to them that arise during the course of the Project.

- (b) The Recipient grants to the Department a non-exclusive, royalty-free licence to use such of its Pre-Existing Material (if any) as are required for the Project.

9.2 Third Party Rights

The Recipient warrants that, at the date of signing this Agreement, and throughout the Term of this Agreement, to its actual and constructive knowledge, it is entitled, and has obtained all licences, consents and approvals required from third parties necessary, to grant the rights and licences granted by it to the Department under this Agreement in relation to the Pre-existing Material, each Milestone Report and Project Material.

9.3 Ownership of Milestone Reports

- (a) All Intellectual Property Rights in any Milestone Report vest immediately in the Department upon their creation.
- (b) To the extent necessary to give effect to clause 9.3(a), the Recipient hereby assigns to the Department all its right, title and interest in any Milestone Report it generates, creates or develops during the Term.
- (c) Where the Recipient subcontracts with other parties to carry out the Project, the Recipient will ensure that these parties agree to be bound by clauses 9.3(a) and 9.3(b) as if those parties were the Recipient.

9.4 Ownership of Project Material

- (a) All Intellectual Property Rights in any Project Material vest immediately in the Recipient upon their creation.
- (b) The Recipient grants to the Department an irrevocable, non-exclusive, royalty-free licence to use such of its Project Material (if any) as is required for the Project and for any non commercial purpose.

10. CONFIDENTIAL INFORMATION

10.1 Except as otherwise provided in this clause, each Party must keep confidential and not disclose any of the other Party's Confidential Information.

10.2 Each Party may:

- (a) use Confidential Information for the purpose of this Agreement and carrying out the Project;
- (b) disclose Confidential Information to its:
 - (i) employees;
 - (ii) directors and officers; and
 - (iii) legal, financial or other professional advisors,

who have a need to know for the purposes of carrying out the Project (and only to the extent that they need to know);

- (c) use and disclose Confidential Information where authorised to do so by the Party to whom the Confidential Information belongs;
- (d) disclose Confidential Information to the extent required by Law but in each case of such disclosure, the Party must notify the Party to whom the Confidential Information belongs in writing as soon as reasonably practicable and must disclose only that part of the information as is necessary to comply with the relevant requirements;
- (e) disclose Confidential Information to the extent necessary for the conduct of any legal proceedings arising in relation to this Agreement; and
- (f) where applicable, disclose Confidential Information to its responsible Minister or in response to a request by Cabinet, or a House or Committee of Parliament.

10.3 The obligations imposed on a Party by this clause will not apply to Confidential Information which:

- (a) prior to the disclosure is in the public domain or subsequent to disclosure to the Party becomes part of the public domain other than as a result of an unauthorised act or failure of a Party; or
- (b) is received by the Party from a third party without any obligation to hold in confidence and which has not been obtained by that third party directly or indirectly from any Party.

10.4 A Party must not;

- (a) use the name of the other Party (except, where relevant, to the extent required to describe the nature or location of the Party's business) in any public communication, except where disclosure of the Party's name is required by Law, or is in response to a request from a House or Committee of Parliament; or
- (b) use any registered or unregistered trademark of the other Party, without the prior written consent of the other Party.

11. DISPUTE RESOLUTION

- (a) Subject to clause 11(c), the parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement until the procedure in this clause 11 has been followed.
- (b) The Parties agree that any dispute arising during the Term of this Agreement that has not been resolved between the Contact Officers will be dealt with as follows:

- (i) the Party claiming that there is a dispute will send the other Party a written notice setting out the nature of the dispute;
 - (ii) the Parties will try to resolve the dispute through direct negotiation between one or more senior representatives from each Party; and
 - (iii) if the Parties fail to resolve the dispute within 10 Business Days of receipt of a notice under clause 11(b)(i), the Parties may agree a dispute resolution process for the resolution of the dispute in which case the dispute will be resolved in accordance with such process.
- (c) If the dispute is not resolved through the negotiations contemplated by clause 11(b)(ii), either Party may commence court proceedings in respect of the dispute.
- (d) Nothing in this clause 11 prevents a Party from seeking urgent interlocutory, injunctive relief without first complying with this clause 11.
- (e) Despite the existence of a dispute, each Party must (unless the Parties otherwise agree in writing) continue to perform their respective obligations under this Agreement.

12. DEFAULT, TERMINATION AND FORCE MAJEURE

12.1 Event of Default by the Recipient

An Event of Default occurs if:

- (a) the Recipient breaches any Provision, which breach (if remediable) continues without remedy for 5 Business Days after notice in writing of the breach has been served on the Recipient by the Department. This subclause does not limit any other part of this clause 12.1 in any way; or
- (b) the Recipient breaches any Provision and such breach cannot be remedied. This subclause does not limit any other part of this clause 12.1 in any way; or
- (c) the Recipient fails to comply with or meet a Milestone set by the Department in accordance with this Agreement; or
- (d) the Recipient suffers, or is or becomes subject to, an Insolvency Event; or
- (e) the Department believes, in its absolute discretion, that the Recipient is unwilling or unable to comply with any one or more of the Provisions; or
- (f) the Recipient repudiates this Agreement; or

- (g) a material warranty given by or representation made by the Recipient is or becomes untrue, or found to be incorrect or misleading; or
- (h) the Recipient persistently, regularly, consistently or continually breaches the Provisions. This subclause does not limit any other part of this clause 12.1 in any way; or
- (i) the Recipient, or any of its officers, employees, contractors and agents, is found to be in breach of any Law, Authorisation, or standard applicable to the Project; or
- (j) where this Agreement provides for or contemplates the Parties reaching further agreement in relation to anything the subject of, or related to, either or both of this Agreement and the Project, this further agreement is not reached and recorded in writing within a reasonable time.

12.2 Effect of Event of Default

- (a) If an Event of Default occurs, the Department may, in its absolute discretion either:
 - (i) provide written notice to the Recipient to suspend or cease work on the Project, nominating an appropriate course of action to rectify the Event of Default within a specified timeframe; or
 - (ii) terminate this Agreement by providing notice in writing to the Recipient and this Agreement is then terminated from the date specified in that notice.
- (b) Without limiting the Department's rights under clause 12.2(a), if the Recipient is in breach of this Agreement, the Department may suspend the performance of the Department's Obligations until such time as it is satisfied in its absolute discretion that the Recipient has remedied that breach.
- (c) Upon receipt of such notice under clause 12.2(a) the Recipient must immediately implement the action(s) specified in the notice.
- (d) If this Agreement is terminated under this clause 12.2, or terminated unlawfully by the Recipient:
 - (i) the Department has no further obligation to pay the Recipient any part of the Funding which has not yet been paid to the Recipient; and
 - (ii) the Recipient must remit to the Department within 20 Business Days from the termination date specified by the Department, all Funding paid to the Recipient under this Agreement that has not been spent or committed in accordance with this Agreement, by the termination date specified by the Department and any interest which has accrued on that Funding.

- (e) If this Agreement is terminated wholly or in part, the Department will be liable only for:
 - (i) payments under the payment provisions of this Agreement for work undertaken before the effective date of termination; and
 - (ii) payments proportional to the extent of work undertaken and contractually committed to before the effective date of termination.
- (f) The Department will not be liable to pay any amount that would, in addition to any amounts paid or due, or becoming due, to the Recipient for the Project, exceed the total Funding set out in this Agreement.

12.3 Force Majeure

- (a) If, because of Force Majeure, any Party becomes wholly or partly unable to perform its Obligations (**Affected Party**), then, subject to the Affected Party complying with clause 12.3(b):
 - (i) and subject to clause 12.3(e), this Agreement shall continue in full force and effect;
 - (ii) the Affected Party is not in default for as long as it continues to be prevented or delayed from performing by the Force Majeure; and
 - (iii) the time within which the Affected Party is required to perform any work or satisfy any Obligation is extended by a period equivalent to that during which such prevention or delay continues.
- (b) The Affected Party must use its reasonable endeavours to mitigate the effect of the Force Majeure and to resume performance of its Obligations as soon as practicable.
- (c) The Affected Party must give notice to the other Party of the occurrence of a Force Majeure as soon as practicable after the Force Majeure occurs. The notice must:
 - (i) specify the Obligations it cannot perform;
 - (ii) fully describe the event of Force Majeure;
 - (iii) estimate the time during which the Force Majeure will continue; and
 - (iv) specify the measures proposed to be adopted to remedy or abate the effects of the Force Majeure and to resume performance of its Obligations.
- (d) The Affected Party must give notice of its intention to resume all or part of its Obligations affected by the Force Majeure as soon as practicable.

- (e) Whilst the Affected Party is prevented from performing its Obligations on account of Force Majeure, the other Party may suspend the performance of its Obligations.
- (f) If the Project is halted by reason of an event of Force Majeure for a period of more than 180 calendar days, the Department may, by giving at least 20 Business Days' notice to the Recipient, terminate this Agreement. If this Agreement is terminated under this clause 12.3(f) the Recipient must repay the Department any portion of the Funding paid by the Department to the Recipient that has not been spent in accordance with this Agreement.

13. LIMITATION OF LIABILITY

- (a) The Department is not responsible or liable in any way for the success or otherwise of the Project or for any losses suffered by the Recipient in undertaking the Project. The Recipient releases the Department and the State from all Liability in relation to the Project, this Agreement and any related matter and agrees that neither it nor any Related Body Corporate will make a Claim against the Department or the State arising directly or indirectly in relation to the Project, this Agreement and any related matter. This clause 13 may be pleaded by the Department or the State as a bar to any proceedings commenced by the Recipient against the Department or the State in relation to the Project, this Agreement and any related matter.
- (b) If the Funding (and any interest which accrues on the Funding) is insufficient for the Recipient to properly fulfil all of its Obligations, then the Recipient must still fulfil its Obligations at its own cost.

14. INDEMNITY

- (a) The Recipient must indemnify and must keep it indemnified, the Department, the State and all of its respective officers, employees and agents (the **Indemnified**) and hold the Indemnified harmless from and against all Claims or Liability, suffered or incurred by or brought against the Indemnified whether before or after the date of this Agreement caused by, arising out of or relating directly or indirectly to any:
 - (i) breach of any Provision by the Recipient;
 - (ii) act or omission of the Recipient or its employees, contractors, officers or agents; or
 - (iii) breach of a Law by the Recipient or any of its employees, contractors, officers or agents.
- (b) The Recipient's liability under clause 14 will be reduced proportionally to the extent that the relevant cost, loss, expense, claim, damage and

other liability is caused by the negligence, breach of this Agreement, or unlawful act or omission of the Indemnified.

- (c) The right of the Indemnified to be indemnified under this clause 14 is in addition to, and not exclusive of any other right, power or remedy provided by Law.
- (d) The Indemnified are not liable to the Recipient or any third party for any loss, liability, cost or expense that is caused, directly or indirectly, by anything the Indemnified does or does not do under this Agreement except where there has been wilful misconduct, fraud or gross negligence on the part of the Indemnified.

15. NOTICES

In order for any notice or other communication (including any request, approval or the like) that may or must be given under this Agreement to be effective, that notice or other communication:

- (a) must be in writing;
- (b) must be given by the Contact Officer of the Party giving notice or by another authorised officer of that Party if the Contact Officer is unable to give a notice or communication in a particular instance;
- (c) must be:
 - (i) hand-delivered or sent by prepaid post to the address of the Party receiving that notice or other communication set out in item 1 of Schedule 1;
 - (ii) sent by email in the form of a PDF file letter to the nominated email address of the Party receiving the notice set out in item 1 of Schedule 1; or
 - (iii) where this Agreement provides that the Recipient must notify the Department of, or provide it with, any occurrence or thing, hand-delivered or sent by prepaid post to the address of the Department set out in item 1 of Schedule 1 or sent by email to the email address of the Department set out in item 1 of Schedule 1;
- (d) subject to paragraph (e) of this clause, is taken to be received:
 - (i) in the case of hand delivery, on the date of delivery;
 - (ii) in the case of post, on the seventh Business Day after posting; and
 - (iii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email;

- (e) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.
- (f) In connection with notices or other communications sent by email only the letter in PDF format attached to the email and any attachments to such letter which are referred to in the letter, will form part of the notice or other communication in accordance with this clause 15. Any text in the body of the email or the subject line will not form part of the notice or other communication.

16. TAXES, DUTIES AND GOVERNMENT CHARGES

- (a) 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.
- (b) The Department will pay the Recipient the amount of GST that the Recipient pays or is liable to pay in relation to the Funding at the same time and in the same manner as paying the Funding.
- (c) The Tax Invoice provided by the Recipient under clause 4.3 must include any additional amount payable under this clause and the Recipient's ABN.

17. INSURANCES

- (a) In connection with the undertaking of the Project, the Recipient must have and maintain valid and enforceable insurance policies for:
 - (i) public liability insurance with indemnity cover of not less than \$20,000,000.00 per occurrence and unlimited as to the number of occurrences; and
 - (ii) workers' compensation insurance in accordance with the provisions of and for an amount required by the relevant State legislation covering their employees and contractors including common law liability of not less than \$50,000,000.00 per any one event; and
 - (iii) professional indemnity insurance covering the legal liability of the Recipient and the Recipient's Personnel under this Agreement, arising out of any act, negligence, error or omission made or done by or on behalf of the Recipient, or any of the Recipient's Personnel or any subcontractor in connection with this Agreement for a sum of \$1,000,000.00 for any one claim and in the annual aggregate with a provision of one automatic reinstatement of the full sum insured in any one period of insurance. Professional indemnity insurance required under this clause must include:
 - (A) Fraud and dishonesty;

- (B) Defamation;
 - (C) Infringement of intellectual property rights;
 - (D) Loss of or damage to documents and data; and
 - (E) Breach of Australian Consumer Law.
- (iv) motor vehicle third party insurance covering legal liability against property damage and bodily injury to, or death of, persons (other than compulsory third-party motor vehicle insurance) caused by motor vehicles used in connection with the Project for an amount of not less than \$30,000,000.00 for any one occurrence or accident;
 - (v) compulsory third party insurance as required under any statute relating to motor vehicles used in connection with the Project; and
 - (vi) such other insurance policies as reasonably appropriate in relation to liability resulting from any claim arising out of or in connection with this Agreement and the Recipient's obligation to indemnify the Department and the State.
- (b) The insurance which the Recipient is required to have in place under this clause 17 must be maintained until this Agreement ends except that any professional indemnity insurance must be maintained for a period of 7 years after this Agreement ends.
 - (c) Any policy of insurance taken out by the Recipient must be taken out with a reputable and solvent insurer acceptable to the Department which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company.
 - (d) The Recipient must:
 - (i) punctually pay all premiums and amounts necessary for effecting and keeping current the insurance required under clause 17(a);
 - (ii) not vary or cancel any insurance required under clause 17(a) or as otherwise required under this Agreement or allow it to lapse during the period in which the Recipient is required to maintain the insurance or otherwise do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a claim; and
 - (iii) without limiting clause 17(d)(ii), promptly reinstate any insurance required under clause 17(a) if it lapses or if cover is exhausted.
 - (e) The Recipient must give to the Department sufficient evidence of the insurances required under clause 17(a) (including, if requested, a copy

of any policy) and provide a certificate of currency of insurance as requested by the Department at any time.

- (f) If the Recipient does not comply with clauses this clause 17 then without limiting any other remedy available to the Department, the Department may withhold payment of any money due under this Agreement to the Recipient until the Recipient has complied.
- (g) If the Department or the Recipient becomes aware of any event or incident occurring which gives rise or is likely to give rise to a claim under any insurance required under clause 17(a), it must as soon as reasonably practicable notify the Department and the Recipient (as applicable) in writing of that event or incident. Failure to comply with this clause 17(g) will not invalidate or otherwise affect any indemnities, liabilities and releases of this Agreement.

18. STATE'S INTEREST AND STATUTORY FUNCTIONS

- (a) **(State's rights):** Any right of the Department may be exercised for the benefit of any other part of the State.
- (b) **(State's interests):** To the extent permitted by Law, nothing in this Agreement gives rise to any duty on the part of the Department to consider interests other than the Department's interests or the interests of the State (including the public interest) when exercising any of its rights or performing any of its obligations.
- (c) **(No fetter):** Nothing contained in this Agreement or contemplated by this Agreement has the effect of constraining the Department or any other part of the State or placing any fetter on the Department's or any other part of the State's statutory rights, duties, powers or functions.
- (d) **(Department's powers, functions and duties):** Notwithstanding anything contained or implied in this Agreement to the contrary, the Parties agree that the Department is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any Government Agency, or to influence, over-ride or direct any Government Agency in the proper exercise and performance of its legal duties and functions.
- (e) **(No Claim):** The Recipient is not entitled to make any Claim against the Department for any Loss or Liability in respect of any exercise or failure by the Department to exercise its statutory rights or duties.

19. GENERAL

19.1 Waiver

- (a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by the Party to be bound by or subject to the waiver.
- (b) A waiver by either Party will not prejudice that Party's rights in relation to any further breach of this Agreement by the other Party.
- (c) Subject to this Agreement, any failure to enforce any part of this Agreement, or any forbearance, delay or indulgence granted by one Party to the other Party, will not be construed as a waiver of any rights under this Agreement or under any Law.

19.2 Entire Agreement

This Agreement constitutes the entire, full and complete understanding and agreement between the Parties in relation to its subject matter and supersedes all prior communications, negotiations, arrangements and agreements between the Parties with respect to the subject matter of this Agreement.

19.3 Assignment

- (a) This Agreement is personal to the Recipient and may not be assigned by the Recipient without the Department's consent, which may be withheld in the Department's absolute discretion. The Department may at any time, in its absolute discretion, assign or transfer its rights and Obligations under this Agreement as it sees fit.
- (b) For the purposes of this clause 19.3, the Recipient shall be deemed to have assigned this Agreement if any act, matter or thing is done or occurs, the effect of which is, in the opinion of the Department, to transfer, directly or indirectly, the management or control of the Recipient.

19.4 Variation

Any modification, amendment or other variation to this Agreement must be made in writing and be duly executed by both Parties.

19.5 Rights, Powers and Remedies

The rights, powers and remedies in this Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

19.6 Governing Law

This Agreement is governed by the laws in force in the State of Western Australia. Each Party irrevocably submits unconditionally to the exclusive jurisdiction of the Courts of Western Australia and of all Courts competent to hear appeals therefrom in relation to any legal action, suit or proceeding arising out of or with respect to this Agreement.

19.7 Representations and warranties

- (a) The Recipient represents and warrants, for the benefit of the Department that, to the best of its knowledge at the Commencement Date:
 - (i) it is duly authorised and has the power to enter into and observe its obligations under this Agreement;
 - (ii) there is no litigation, arbitration or administrative proceedings currently taking place, pending or threatened against the Recipient which could have a materially adverse effect on the Recipient's ability to perform under this Agreement;
 - (iii) all conditions and things required by applicable Law to be fulfilled or done (including the obtaining of any necessary Authorisations) in order to enable it lawfully to enter into, exercise its rights and perform its obligations under this Agreement have been fulfilled or done; and
 - (iv) this Agreement and the Recipient's performance under it does not, and will not, violate its constituent documents, any Law, Authorisation or any agreement, order or award binding on the Recipient; and
 - (v) it is unaware of any act, matter, thing or circumstance by reason of which it would be unable to perform any obligation under this Agreement.
- (b) The Recipient must promptly notify the Department if at any time during the Term (**Relevant Time**) the Recipient would be unable to give any of the representations and warranties made by it under clauses 9.2 or 19.7(a) if it were required to give them as at the Relevant Time. Without limiting its other rights, on receipt of such notice the Department may terminate this Agreement with immediate effect by giving written notice to the Recipient.

19.8 Schedules

Any express or implied Provision of any Schedule to this Agreement is hereby deemed to be a provision of this Agreement and therefore must be complied with (by the relevant Party) in accordance with its terms.

19.9 Counterparts

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each party and delivered to the other party.

19.10 Severability

The invalidity or unenforceability of any one or more of the provisions of this Agreement shall not invalidate or render unenforceable the remaining provisions of this Agreement. Any illegal or unlawful provision of this Agreement shall be severable and all other provisions shall remain in full force and effect.

19.11 Administration

The Recipient acknowledges and agrees that the Department may administer this Agreement, exercise the rights of the State under this Agreement and perform the obligations of the State under this Agreement, and any such administration, exercise or performance by the Department will be deemed to be administration, exercise or performance by the State for the purposes of this Agreement.

19.12 Costs

The Department and the Recipient must pay their own legal and other costs in connection with the preparation and signing of this Agreement.

19.13 Further Assurances

The Department and the Recipient must do everything reasonably necessary, including signing further documents, to give full effect to this Agreement.

19.14 Survival

Clauses 4.5, 6, 9, 10, 12, 13, 14, 16, 17 and 19.7 and this clause 19.14 shall survive the expiry or termination of this Agreement.

SCHEDULE 1 – CONTACT OFFICERS**1. Notice Addresses**

1.1 Department

Registered Mail:	7 Ellam Street VICTORIA PARK WA 6100
Email:	ruralwater@dwer.wa.gov.au

1.2 Recipient

Registered Mail:	Shire of Cranbrook 19 Gathorne Street Cranbrook WA 6321
Email:	ceo@cranbrook.wa.gov.au

2. Contact Officers

2.1 Department

Name:	Sandy Turton-Parkinson
Job Title:	Senior Natural Resource Management Officer
Phone:	(08) 9841 0109
Email:	Sandy.Turton-Parkinson@dwer.wa.gov.au
Postal Address:	5 Bevan Street Albany WA 6330
Street Address:	5 Bevan Street Albany WA 6330

2.2 Recipient

Name:	Linda Gray
Job Title:	Chief Executive Officer
Phone:	(08) 9736 2400
Email:	ceo@cranbrook.wa.gov.au
Postal Address:	PO Box 21 Cranbrook WA 6321
Street Address:	19 Gathorne Street Cranbrook WA 6321

SCHEDULE 2 – PROJECT DETAILS

1. Particulars

Particular	Details
Agency	Commonwealth of Australia as represented by the Department of Climate Change, Energy, the Environment and Water Department of Primary Industries and Regional Development
Application	Job 2493.1
Completion Date	31 st December 2026
Funding ex gst	\$145,137.20

2. Detailed Description of Project

2.1 Department Project Background

The Department is responsible for delivery of the AA Dams / Strategic Community Water Supply (SCWS) programs.

The Recipient has applied to the Department for funding under the AA Dams program, which the Department has agreed to provide on the terms and conditions set out in this Agreement, in order for the Recipient to carry out the Project detailed in item 2.2 below.

2.2 Project Description

The Shire of Cranbrook is undertaking the development and installation of a Strategic Community Water Supplies (SCWS) in the Cranbrook townsite to provide reliable access to emergency non-potable water.

The supply is designed to support firefighting operations, emergency stock water needs, and overall community resilience during periods of water shortage.

This AA dams / SCWS project will implement the following components;

Cranbrook Townsite SCWS

Tank

- Installation of one GT200 storage tank on Shire-managed land, with tank level monitoring equipment.
- The tank will be located on Shire land, with email approval in place to utilise Elders' downpipes from the shed. The tank will be plumbed into the downpipes

off the 315 m² roof catchment from the newly constructed Elders Agribusiness 'storage shed'

- A swipecard unit will be installed at the tank to ensure appropriate user access and site management along with swipecards with subscription.

Pump

- There will also be a major [electric] pump upgrade, which will shift the town stormwater collected in the "CBH Dam" to the Cranbrook town dams along existing pipework. This pipeline feeds Cranbrook town dams; 1. Railway Dam & 2. Airport Dam – which currently rely on a manual diesel transfer pump at the CBH dam for transfers
- Included in this project, there will be a piped spur line (approx. 82m of 50mm HDPE pipeline) off the dam transfer pipeline to feed a second manifold at the SCWS tank. This will be ultimately for a faster truck fill during fire emergency events utilising the CBH Dam water.

This design maximises the use of existing infrastructure while ensuring that the SCWS system is robust, secure, and easy for users to access. By leveraging the new Elders shed, the Shire can deliver cost-effective and efficient solutions to addressing water shortages with minimal need for new structural works.

The project represents a critical step for the Shire, which currently relies on limited and expensive scheme water. With increasing pressure on scheme supply to the Shire, the need for alternative, cost-effective community water sources have become urgent.

By establishing this SCWS site, the Shire will significantly improve local water security, reduce operational costs, and strengthen regional preparedness for emergencies such as bushfires and extended dry seasons.

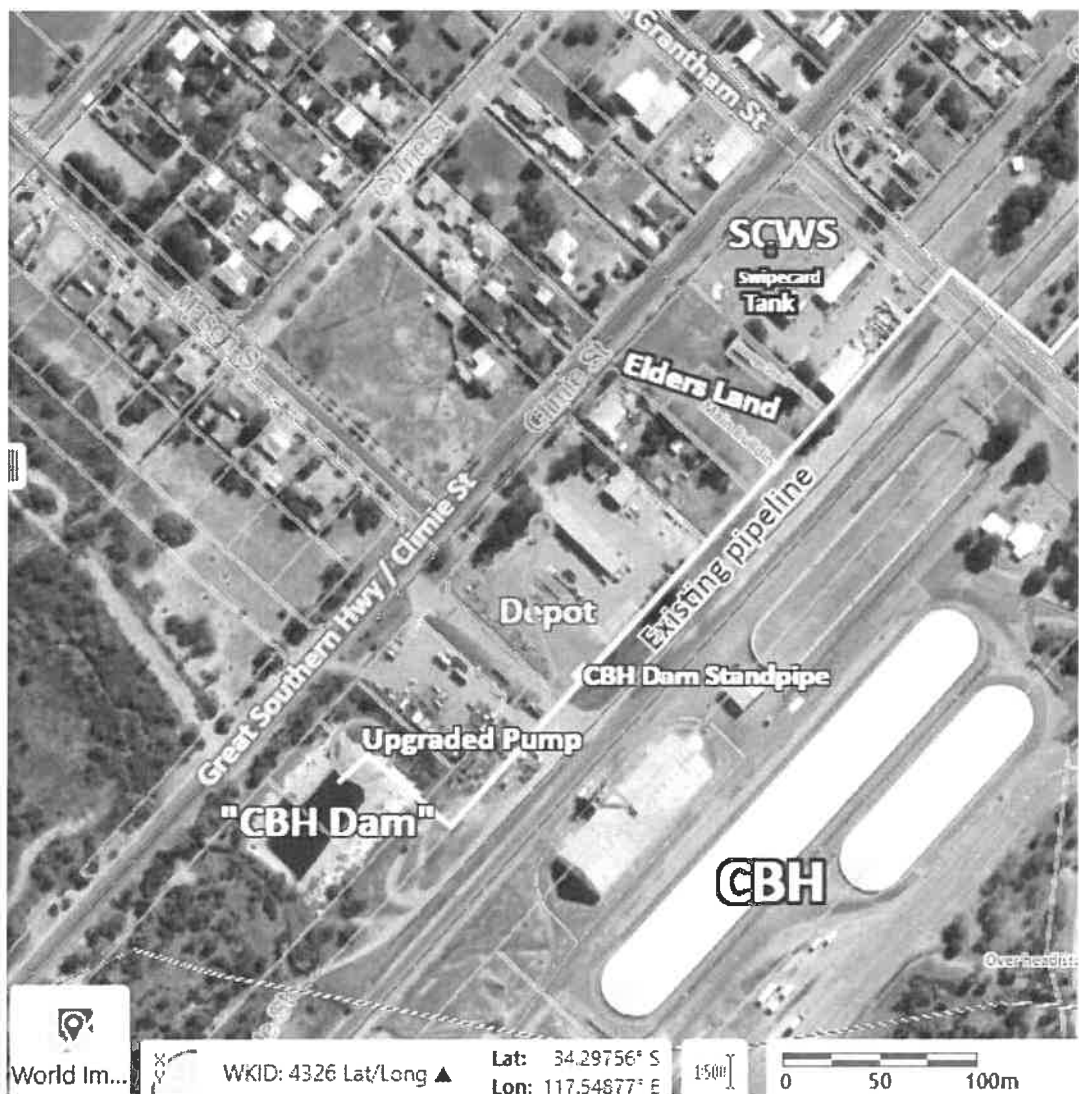
Through pump upgrades at the CBH Dam (on Shire land) it will also enable a highly efficient water transfer system between the three major dams in the Shire, for non-potable water usage.

Cranbrook SCWS maps following:

The Site of the tank & storage shed it will access;



CBH Dam to the SCWS site map;



3. Project Funding

Instalment/deliverable	Instalment date	Amount Ex GST \$
Instalment 1	On execution of this Agreement (Milestone 1)	\$100,000.00
Instalment 2	On completion of Milestone 2	\$45,137.20
Total Payment		\$145,137.20

4. Milestones

Project Milestone	Evidence	Performance Measure Method	Milestone Completion Date
Milestone 1:	- Executed Agreement - Provision of purchase order and/or emails evidencing engagement of contractors	Submission of a Milestone Report for Milestone 1.	30 th June 2026
Milestone 2: Final Completion / Project Close	- Provision of purchase order and/or emails evidencing engagement of contractors - Photographic evidence demonstrating any works required to be undertaken under this Milestone have been completed - Acquittal of expenses.	Submission of a Milestone Report for Milestone 2.	31 st December 2026

5. Budget

The Budget for the Project is specified in Table 1: Budget. Table 1 provides a project cost breakdown (exclusive of GST).

Table 1: Budget

Work item	Work description (including costs per hour or unit)	WISER AA Dams Funding	Recipient in-kind Contribution	Recipient cash Contribution	Total Ex GST
1	Thinkwater QU 807675; Elders Shed SCWS 1x GT200 Tank, plumbing, swipecard & electric pump at 'CBH Dam'	\$145,137.20			\$145,137.20
2	Shire of Cranbrook Works; site prep/gravel, crossovers, signage & sand pads		\$8,160.00		\$8,160.00
	Total Project cost	\$145,137.20	\$8,160.00		\$153,297.20

EXECUTED BY THE PARTIES AS AN AGREEMENT

Signed on behalf of the **State of**)
Western Australia as represented by)
the **Department of Water and**)
Environmental Regulation ABN 28)
420 443 065 by a duly authorised)
officer in the presence of:

Sandy Turton-Parkinson

Signature of witness

SandyTurton-Parkinson
Name of witness (print)



Signature
Director Statewide Delivery

Title of authorised officer
19 June 2026

Signed on behalf of the **Shire of**)
Cranbrook (Recipient ABN 80 377)
127 550), by a duly authorised officer)
in the presence of:

Jennifer Ceishivelli
Signature of witness

Jennifer Ceishivelli
Name of witness (print)

L Gray
Signature of authorised officer
Chief Executive Officer
Title of authorised officer

