

FUNDING DEED

FUNDING DEED IN RELATION TO FUNDING FROM THE AUSTRALIAN
GOVERNMENT WATER FUND FOR THE FOLLOWING WATER SMART
AUSTRALIA PROJECT: STATUTORY WATER PLANNING IN THE PILBARA

COMMONWEALTH OF AUSTRALIA, as represented by and acting through
the National Water Commission, ABN 94 364 176 431

AND

STATE OF WESTERN AUSTRALIA, as represented by and acting through
the Water and Rivers Commission, ABN 60 061 300 220

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STATUTORY WATER PLANNING IN THE PILBARA

Parties

This Funding Deed is made between and binds the following parties:

1. **COMMONWEALTH OF AUSTRALIA** ('Commonwealth'), as represented by and acting through the **National Water Commission** ABN 94 364 176 431 ('Us', 'We' or 'Our' as the case requires)

AND

2. **STATE OF WESTERN AUSTRALIA**, as represented by and acting through the **Water and Rivers Commission**, ABN 60 061 300 220 ('You', or 'Your')

Context

This Funding Deed is made in the following context:

- A. The Commission, established under the *National Water Commission Act 2004* (Cth), administers the Water Smart Australia programme ('the Programme') on the Commonwealth's behalf.
- B. Through the Programme the Commission is able to provide funding from the Australian Government Water Fund for activities that assist in implementing the Intergovernmental Agreement on a National Water Initiative (the NWI) to which the Commonwealth and the State of Western Australia are a party.
- C. The NWI sets out objectives, outcomes and actions for the ongoing process of Australia's national water reform in the areas of: water access entitlements and planning; water markets and trading; best practice water pricing; integrated management of water for the environment and other public benefit outcomes; water resource accounting; urban water reform; knowledge and capacity building and community partnerships and adjustment. You and We agree that implementation of the Statutory Water Planning in the Pilbara, detailed in the Schedule to this Deed, will further our shared objectives set out in the NWI.
- D. To be eligible for funding a State or Territory government must have signed, and be actively implementing, the NWI.
- E. You are committed to helping achieve the Programme through Your contribution to and conduct of the Statutory Water Planning in the Pilbara Project ('the Project').
- F. You agree to contribute to the Project by providing financial and in-kind contributions to the Project and by being responsible for the Project and We agree

to contribute to the Project by providing the Funding to You subject to the terms and conditions of this Deed.

- G. We are required by law to ensure accountability for public money, and to be accountable for all Funds We provide.
- H. You agree to accept the Funding for the purposes, and subject to the terms and conditions, set out in this Deed.
- I. You acknowledge and agree that Our provision of Funding under this Deed is intended to support and complement Your existing and proposed strategies, management arrangements and frameworks relating to water and natural resource management and does not replace Your existing and proposed funding of water and natural resource management programs.

Operative provisions

In consideration of the mutual promises contained in this document, the parties to this Funding Deed agree as follows:

1. Interpretation

Definitions

- 1.1. Unless the contrary intention appears a term in bold type has the meaning shown opposite it:

ABN	has the same meaning as it has in section 41 of the <i>A New Tax System (Australian Business Number) Act 1999</i> (Cth);
Adjustment Note	has the meaning given in section 195-1 of the GST Act;
Advisers	means a Party's agents, contractors or advisers engaged in the performance or management of this Deed;
Annexure	means an annexure or attachment to the Schedule;
Approved Auditor	means a person who is: <ul style="list-style-type: none"> a. authorised by the Western Australia Auditor General to perform audit functions in accordance with the <i>Auditor General Act 2006</i> (WA); and b. registered as a company auditor under the <i>Corporations Act 2001</i>, or a member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants and who is not: <ul style="list-style-type: none"> A. a principal, member, shareholder, officer or employee of Yours or of a related body corporate (as defined in section 9 of the <i>Corporations Act 2001</i>); or B. Your Qualified Accountant.
Asset	means any item of tangible property, purchased, leased, created or otherwise brought into existence wholly, or in part, with the use of the Funds, and which has a value of over \$5,000 inclusive of GST, but does not include Project

	Material, any Capital Works (before or after completion), and Works Locations or any other tangible property once it is incorporated into any Capital Works or the Works Locations;
Auditor-General	means the office established under the <i>Auditor-General Act 1997</i> (Cth) and includes any other entity that may, from time to time, perform the functions of that office;
Australian Accounting Standards	refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth);
Australian Auditing Standards	refers to the standards of that name maintained by the Australian Auditing and Assurance Standards Board created by section 227A of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth);
Australian Government Material	means any Material provided to You by Us for the purposes of this Deed or which is copied or derived from Material so provided, except for Project Material;
Australian Government Water Fund (AGWF)	means the fund announced by the Prime Minister on 13 September 2004 and includes the Australian Water Fund Account established under section 40 of the <i>National Water Commission Act 2004</i> (Cth);
Australian Government Water Fund Funding Agreement	means a funding agreement (or deed) between You and the Commonwealth entered into under one or more of the following Australian Government programmes: <ul style="list-style-type: none"> a. Water Smart Australia Programme; or b. Raising National Water Standards Programme;
Budget	refers to a budget for expenditure of the Funding for the purposes of conducting the Project or performing obligations under this Deed, as stipulated in Item D of the Schedule;
Business Day	means in relation to taking any action in a place, any day other than a Saturday, Sunday or public holiday in that place;
Capital Works	means any part of the Project that comprises construction and building activities, including any capital works specified in Item A of the Schedule;
Commission	means the National Water Commission established under the <i>National Water Commission Act 2004</i> (Cth);
Commonwealth	means the Commonwealth of Australia;
Completion Date	means the day after all activities funded under this Deed (including the completion of all Milestones and provision of all Reports required by this Deed) are completed and fully acquitted in accordance with this Deed;
Confidential Information	means: <ul style="list-style-type: none"> a. the information described in Item I of the Schedule; and b. any other information that is agreed between the Parties after the Date of this Deed as constituting Confidential Information for the purposes of this Deed;

Conflict	refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through Your engagement in the Project or obtaining any interest that is likely to conflict with or restrict Your fair and independent performance of the Project;
Date of this Deed	means the date written on the execution page of this Deed, and if no date or more than one date is written there, then the date on which this Deed is signed by the last Party to do so;
Deed	means this deed and includes any Schedules and Annexures;
Depreciated	means the amount representing the reduction in value of an Asset calculated in accordance with Australian Accounting Standards;
Dispose	means to sell, lease or sub-lease, or otherwise transfer or give up ownership or the right to occupy or use, or to enter into an agreement to do any of the preceding acts and ' Disposal ' means the method of so disposing;
Evaluation Activities	means the Evaluation Activities (if any) specified in the Schedule that are required to be completed during the Evaluation Period (including, where applicable, the use, and the reporting on the use, of the Project's completed Capital Works (if any) for the purpose of meeting the Objectives);
Evaluation Period	is the period (if any) specified in item A of the Schedule during which You are responsible for ensuring that the Project's Evaluation Activities are completed.
Existing Material	means all Material in existence prior to the Date of the Deed: <ul style="list-style-type: none"> a. incorporated in; b. supplied with, or as part of; or c. required to be supplied with, or as part of, the Project Material;
Financial Year	means each period from 1 July to the following 30 June occurring during the Project Period, or any part of such a period occurring at the beginning or end of the Project Period;
Funding or Funds	means the amount or amounts (in cash or kind) payable under this Deed by Us as specified in Item B of the Schedule and includes Project Generated Income;
GST	has the meaning given in section 195-1 of the GST Act;
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Guidelines	refers to the Programme guidelines, which are available at http://www.nwc.gov.au/publications/docs/general_online.pdf ;
Input Tax Credit	has the meaning given in section 195-1 of the GST Act;
Intellectual Property Rights	includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, registered or unregistered trade marks (including service marks), designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields but does not include Moral Rights, the rights of performers or rights in relation to confidential information;

Interest	means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the <i>Tax Administration Act 1953</i> (Cth), plus 1%, on a daily compounding basis;
Laws	includes: <ul style="list-style-type: none"> a. Acts of the Commonwealth and the State(s) and Territory(s) in which the Project will be undertaken, and any other relevant State or Territory; b. ordinances, regulations, by-laws, orders and proclamations or other instruments of legal effect made under those Acts referred to in paragraph a; and c. directions by any person exercising statutory powers regarding the Project; d. where applicable to the Project, all the requirements and standards of a government department, authority, agency or regulatory body that commonly applies in respect of the building or construction industry in any State or Territory where the Project is carried out (including the need to obtain all applicable licences, permits and approvals); and e. where applicable to the Project, all applicable requirements of the Building Code;
Material	means the subject matter of any category of Intellectual Property Rights and includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same;
Milestone	means a stage of completion of the Project set out in Item A of the Schedule;
Moral Rights	includes the following rights of an author of copyright Material: <ul style="list-style-type: none"> a. the right of attribution of authorship; b. the right of integrity of authorship; c. the right not to have authorship falsely attributed;
National Water Initiative (NWI)	means the Intergovernmental Agreement on a National Water Initiative between the Australian Government and the Governments of New South Wales, Victoria, Queensland, South Australia, the Australian Capital Territory, Tasmania, Northern Territory and Western Australia, which contains the objectives, outcomes and actions for the ongoing process of Australia's national water reform;
Objectives	means the Project's objectives described in Item A of the Schedule;
Other Contributions	means the financial or in-kind resources (with in-kind resources valued at cost), other than the Funding or Your Contributions, which are used by You to perform the Project;
Party	means a party to this Deed;
Personal Information	has the same meaning as under the Privacy Act, which currently is information or an opinion (including information or an opinion forming part of a data base), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the

	information or opinion;
Privacy Act	refers to the <i>Privacy Act 1988</i> (Cth);
Privacy Commissioner	means the Office of the Privacy Commissioner established under the Privacy Act and includes any other entity that may, from time to time, perform the functions of that Office;
Programme	means the Water Smart Australia programme administered by Us and under which We are able to provide the Funding to You;
Project	means the project described in Item A of the Schedule, which aims to fulfil one or more of the goals of the Programme, and includes the provision of Project Material;
Project Generated Income	means any income earned or generated by You from Your use of the Funding, including: <ol style="list-style-type: none"> interest earned from the investment of the Funds; where the proceeds of insurance paid to You to replace an Asset exceed the amount actually paid by You to replace the Asset - the proportion of that excess that reflects the proportion of the total cost of acquiring the Asset that was met by the Funding; and the proportion of any income received by You as a result of Your use of an Asset that reflects the proportion of the total cost of acquiring the Asset that was met by the Funding;
Project Material	means all Material: <ol style="list-style-type: none"> brought into existence for the purpose of performing the Project; incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or copied or derived from Material referred to in paragraphs (a) or (b);
Project Period	means the period specified in Item A of the Schedule during which the Project (other than the Evaluation and Operation Activities) must be completed;
Qualified Accountant	means a person who is a member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the National Institute of Accountants;
Records	includes documents, information and data stored by any means and all copies and extracts of the same;
Report	means Project Material that is provided to Us for reporting purposes on matters as stipulated in Item E of the Schedule;
Schedule	refers to the schedule to this Deed and may include Annexures and incorporate other documents, including by reference;
Steering Committee	means the committee, if any, referred to in subclause 5.3 and described in Item A of the Schedule;
Tax Invoice	has the meaning given in section 195-1 of the GST Act;
Taxable Supply	has the meaning given in section 195-1 of the GST Act;
Term of this Deed	refers to the period described in subclause 2.1;

Undepreciated	in relation to the value of an Asset, means the value of the Asset which has not been Depreciated;
Us, We, Our	means the Commonwealth, as represented by and acting through the Commission (or any other Commonwealth authority, department or agency that is, from time to time, responsible for the administration of this Deed, where the context admits, its delegates, officers, employees and agents;
Works Location	means the locations identified in Item A of the Schedule where the Capital Works are to be constructed including any premises in, or land on, which those Capital Works are to be constructed;
You, Your	means the State of Western Australia, as represented by and acting through the Water and Rivers Commission ABN 60 061 300 220, and where the context admits, includes its officers, employees, agents, volunteers, subcontractors and its successors; it is understood that the Water and Rivers Commission trades as the Department of Water and will be succeeded by the Department of Water; and
Your Contributions	means the financial and/or in-kind contributions, if any, specified in Item C of the Schedule that You are required to provide for the purposes of the Project.

Interpretation

- 1.2. In this Deed, unless the contrary intention appears:
- a. words in the singular number include the plural and words in the plural number include the singular;
 - b. words importing a gender include any other gender;
 - c. words importing persons include a partnership and a body whether corporate or otherwise;
 - d. all references to clauses are clauses in this Deed;
 - e. all references to dollars are to Australian dollars and this Deed uses Australian currency;
 - f. reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, modified or repealed and other legislation substituted, is a reference to that statute or other legislation as amended, modified or substituted;
 - g. an uncertainty or ambiguity in the meaning of a provision of this Deed will not be interpreted against a Party just because that Party prepared the provision; and
 - h. where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.3. The Schedule (and Annexures and documents incorporated by reference, if any) form part of this Deed. In the event of any conflict or inconsistency between any part of:
- a. the terms and conditions contained in the clauses of this Deed;

- b. the Schedule;
- c. the Annexures, if any; and
- d. other documents including those incorporated by reference, if any,

then the material mentioned in any one of paragraphs (a) to (d) of this subclause 1.3 has precedence over material mentioned in a subsequent paragraph, to the extent of the conflict or inconsistency.

2. TERM OF THIS DEED

- 2.1. The Term of this Deed commences on the Date of this Deed and, unless terminated earlier, it expires on the Completion Date.
- 2.2. The Project Term is the Project Period, plus any Evaluation Period, specified in Item A of the Schedule

3. OTHER AUSTRALIAN GOVERNMENT FUNDING

- 3.1. Any payments under this Deed may be off-set, deferred or suspended by Us in whole or in part if:
 - a. You have outstanding or unacquitted moneys under any Australian Government Water Fund Agreement; or
 - b. Financial statements that you provide to Us as part of Your Reports, or any other information provided by You at Our request, indicate that You currently have unexpended and uncommitted Funds under this Deed.
- 3.2. Notwithstanding any such off-setting, deferral or suspension, You must continue to perform Your obligations under this Deed, unless We otherwise agree in writing.

4. PAYMENT OF FUNDING

- 4.1. Subject to sufficient appropriations being available for the Programme, and compliance by You with this Deed (including any invoicing requirements and performance indicators specified in Item B of the Schedule), We will provide You with the Funding at the times, on the conditions and in the manner specified in Item B of the Schedule.
- 4.2. Without limiting Our rights, We may withhold or suspend a payment of Funds in whole or in part until You have performed the Milestones (if any) that are a prerequisite for that payment.
- 4.3. Notwithstanding any such withholding or suspension of any payments, We may require You to continue performing Your obligations under this Deed to the extent You are able to do so with the Funding already provided to You and Your Contributions.

5. MANAGEMENT OF THE PROJECT

- 5.1. You agree to carry out the Project:
- a. within the Project Period and in accordance with this Deed and all applicable Laws;
 - b. diligently, effectively and to a high professional standard;
 - c. at all times in a manner that is consistent with the objectives and outcomes of the NWI; and
 - d. so as to meet the Milestones, Objectives and timeframes specified in Item A of the Schedule.
- 5.2. You agree to comply, and to ensure that the Project and all Your subcontractors comply, with all applicable requirements of the *Environment Protection and Biodiversity Conservation Act 1999*.
- 5.3. If required by Item A of the Schedule, You agree to establish, maintain and conduct a Steering Committee. You agree that:
- a. You are fully responsible for the performance of the Project in accordance with this Deed, even if your performance of the Project is subject to regular review by the Steering Committee; and
 - b. You will liaise with and report regularly to the Steering Committee, whose purpose, role, constitution and operation is described in Item A of the Schedule.
- 5.4. Both Parties acknowledge that there may be a need from time to time to vary some of the Project details described in the Schedule including in response to circumstances that may affect the scope, cost (and respective funding contributions) and expected timeline of the Project. If You consider there is a need to vary a material aspect of the Project, including the dates by which the Milestones are achieved, You agree to promptly notify Us in writing of the proposed variation, the reasons for it and its likely impact on the Project. We will discuss any proposed variations with You, however no variation notified or discussed under this subclause is effected until it is agreed to by the Parties in accordance with subclause 27.2.
- 5.5. You are responsible for the proper and efficient conduct of the Capital Works (if any) and, if requested by Us, agree to provide Us with written evidence regarding the proper completion of those Capital Works on or before the expiry of the Project Period.
- 5.6. You agree to ensure that each of Your subcontractors involved in the construction or use of the Capital Works (if any)
- maintains insurance that adequately covers their fixed and contingent obligations in relation to those Capital Works as well as death and injury of persons engaged by them. You must use Your best endeavours to ensure that any person engaged by Your subcontractors is similarly insured.

- 5.7. You also agree to comply with requirements specified in Item A of the Schedule regarding any Capital Works (before and after completion) and any Works Locations.
- 5.8. The operation of subclauses 5.2, 5.4, 5.6, 5.7 and 5.8 survive the expiration or earlier termination of this Deed.

6. MANAGEMENT OF THE FUNDING

- 6.1. If, after consultation with You, We reasonably consider that all or part of the Project is unable to be performed by You in accordance with this Deed, We may terminate, or reduce the scope of, this Deed in accordance with clause 22. In addition, if We reasonably consider that this inability is due to a reckless, negligent, fraudulent or illegal act or omission by You, We may require all Funding paid to You to perform the Project to be repaid to Us upon demand.
- 6.2. You agree to only spend the Funding:
- a. for the purposes of the Project;
 - b. in accordance with the Budget; and
 - c. in accordance with this Deed.
- 6.3. Unless otherwise specified in the Budget, You must not use the Funds to cover costs You incurred prior to the Date of this Deed.
- 6.4. You agree to:
- a. ensure that the Funds are held in an account in Your name, and which You solely control, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia;
 - b. unless otherwise stated in Item B of the Schedule, ensure that the account referred to in paragraph 6.4.a is:
 - A. established solely for the purposes of accounting for, and administering, any Funding provided by Us to You under this Deed;
 - B. an account that bears a rate of interest reasonably required by Us; and
 - C. separate from Your other operational accounts;
 - c. notify Us, in writing, prior to the receipt of any Funds, of details sufficient to identify the account and provide Us and the authorised deposit-taking institution with an authority for Us to obtain any details relating to any use of the account;
 - d. if the account changes, notify Us in writing, within 10 Business Days of the change occurring, of details sufficient to identify the new account;
 - e. ensure that at a minimum two signatories, who have Your authority to do so, are required to operate the account; and

- f. identify the receipt and expenditure of the Funds separately within Your accounting Records so that at all times the Funds are identifiable and ascertainable.
- 6.5. You agree to keep financial accounts and Records relating to the Project so as to enable:
- a. all receipts and payments related to the Project to be identified in Your accounts and reported in accordance with this Deed;
 - b. unless notified by Us, the preparation of financial statements in accordance with Australian Accounting Standards including:
 - A. an income and expenditure statement for the Financial Year(s) to date compared with the Budget; and
 - B. a schedule of the Assets acquired, written-off or Disposed of during the Financial Year(s) to date compared with the Budget; and
 - c. the audit of those accounts and Records in accordance with Australian Auditing Standards.
- 6.6. If, at any time during the Term of this Deed We reasonably determine that:
- a. there remains an amount of Funding in the account referred to in paragraph 6.4.a that has not been and will not be spent or legally committed for expenditure in accordance with this Deed; or
 - b. an amount of Funds has been spent other than in accordance with this Deed;
- then, at Our discretion, this amount must be:
- c. refunded to Us within 20 Business Days of a written notice from Us; or
 - d. otherwise dealt with as directed in writing by Us;
- or We may reduce further payments of Funding to You by up to this amount.
- 6.7. If We notify You that the amount is to be refunded to Us and the amount is not refunded to Us within 20 Business Days, Interest will accrue and be payable, unless We notify You otherwise, on the amount outstanding after the expiry of the 20 Business Days, until the amount is paid in full.
- 6.8. If at the completion of the Project Period You have Funds (not including those Funds legally committed for expenditure in accordance with this Deed and which fall due for payment thereafter), You agree to return those Funds to Us in accordance with subclause 6.9 unless We agree to Your retaining those Funds and using them for purposes agreed by Us.
- 6.9. Subject to subclause 6.8, You must return the Funds to Us within 20 Business Days of a notice requiring You to return the Funds and if the Funds are not refunded to Us within 20 Business Days, Interest will accrue and be payable, unless We notify You otherwise,

on the amount outstanding after the expiry of the 20 Business Days, until the amount is paid in full.

- 6.10. Any amount owed to Us under subclause 6.6 or 6.9, and any Interest owed under subclauses 6.7 or 6.9, will, without prejudice to any other rights available to Us under this Deed or at law or in equity, be recoverable by Us as a debt due to Us by You without further proof of the debt by Us being necessary.
- 6.11. You agree that We are not responsible for the provision of any money or resources in excess of the Funds. In addition, You acknowledge that:
- a. the provision of Funding for this Project does not give rise to any Commonwealth obligation to fund any other activities arising from or in relation to the Project; and
 - b. You will provide any additional funds or resources necessary to complete the Project within the Project Period.
- 6.12. The operation of this clause 6 survives the expiration or earlier termination of the Term of this Deed.

7. YOUR CONTRIBUTIONS AND OTHER CONTRIBUTIONS

- 7.1. You agree, subject to sufficient appropriations, to provide Your Contributions for the Project and that Your Contributions will not include any amount that has been provided to You by a third party (including a Commonwealth department, agency or authority).
- 7.2. If You do not provide Your Contributions by the time specified in Item C.1 of the Schedule, then We may:
- a. suspend payment of the Funds until You provide Your Contributions; or
 - b. terminate this Deed in accordance with clause 22.
- 7.3. You agree to inform Us in writing within 10 Business Days of entering into any arrangement (whether contractual or statutory) under which You are entitled to receive any additional monetary or in-kind contributions in respect of the Project that are not identified in Item C of the Schedule.
- 7.4. You agree that Your Contributions will be included in the Budget in Item D of the Schedule.

8. ASSETS

- 8.1. You agree not to use the Funding to create or acquire any Asset (apart from construction and other materials that are used for the Capital Works and Assets detailed in Item F of the Schedule), without getting Our prior written approval.
- 8.2. Unless it is specified in Item F of the Schedule, or We later agree, that We or a third party owns the Asset then, subject to this clause 8 and the terms of any

relevant lease, You own any Asset You create or acquire with the Funding, subject to:

- a. Your continued use of the Asset during the Project Period for the purposes of the Project and in accordance with this Deed; and
- b. Any reasonable requirement to transfer all or any of the Assets if You are required by Us to do so pursuant to this Deed.

8.3. If We or a third party owns the Asset, or the Asset is leased by You from a third party, then:

- a. if We or a third party owns the Asset, subclauses 8.5, 8.7 and 8.8 do not apply;
- b. if the Asset is leased, You agree to ensure that the terms of the lease are consistent with this clause 8 except for subclauses 8.5, 8.6, 8.7 and 8.8.

8.4. Throughout the Term of the Deed, You agree:

- a. not to encumber or Dispose of any Asset, or deal with or use any Asset other than in accordance with this clause 8, without Our prior written approval;
- b. to hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- c. to maintain all Assets in good working order;
- d. to maintain all appropriate insurances for all Assets to their full replacement value;
- e. if required by law, to maintain registration and licensing of all Assets;
- f. to be fully responsible for, and bear all risks relating to, the use or Disposal of all Assets;
- g. if specified in Item F of the Schedule, to maintain an Assets register in the form and containing the details as described in Item F of the Schedule; and
- h. as and when requested by Us, to provide copies of the Assets register to Us.

8.5. If You Dispose of an Asset during the Term of the Deed (which must be with Our prior written consent and subject to any reasonable conditions We may impose), the proportion of the Asset's market value that is equivalent to the proportion of the cost of the Asset that was met by the Funding must be accounted for as Project Generated Income.

8.6. If any of the Assets are lost, damaged or destroyed, You agree to promptly reinstate the Assets including from the proceeds of the insurance and this clause 8 continues to apply to the reinstated Assets. The proportion of any surplus from the proceeds of the insurance, which reflects the proportion of the acquisition cost of the Asset that was met by the Funding, must be notified to Us and used and accounted for as Project Generated Income under this Deed.

8.7. If, on completion of the Project Period, or the earlier termination of the Term of this Deed, an Asset has not been fully Depreciated We may require You to:

- a. pay to Us within 20 Business Days after completion of the Project or earlier termination of the Term of this Deed, an amount equal to the proportion of the Undepreciated value of the Asset that is equivalent to the proportion of the price or cost of the Asset that was met by the Funding; or
 - b. continue to use the Asset for the purposes, and in accordance with any conditions, specified by Us.
- 8.8. Amounts payable to Us under subclause 8.7 form part of the Funds and are recoverable as such. If You do not make payment as required by subclause 8.7, You agree:
 - a. to pay Us the Interest on the outstanding part of the relevant amount from the date it was due, for the period it remains unpaid; and
 - b. that the relevant amount, and Interest owed under this clause, will, without prejudice to any other rights available to Us under this Deed or at law or in equity, be recoverable by Us as a debt due to Us by You.
- 8.9. Our approval under subclause 8.1 and paragraph 8.4.a will not be unreasonably withheld. A decision as to whether an approval will be provided will be made within a reasonable time of the request.
- 8.10. The operation of subclauses 8.2, 8.7 and 8.8 survives the expiration or earlier termination of the Term of this Deed.

9. RECORDS

- 9.1. You agree to keep full and accurate accounts and Records of the conduct of the Project including, without limitation, progress against the Milestones, the receipt and use of Funding, Your Contributions (if any) and Other Contributions (if any), the acquisition of Assets, the progress of the Capital Works and the creation of Intellectual Property Rights in Project Material.
- 9.2. You agree to retain Records and accounts maintained under subclause 9.1 for a period of no less than 7 years after the end of the Project Period.
- 9.3. The operation of subclause 9.2 survives the expiration or earlier termination of the Term of this Deed.

10. REPORTING

- 10.1. You agree to provide Us with written Reports at the times, and containing the information, specified in Item E of the Schedule.
- 10.2. In addition, within 60 Business Days after:
 - a. the expiry of the Project Period, completion of the Project or any termination of the Term of this Deed, whichever is the earliest; and
 - b. the completion of each Financial Year in which a payment of Funding is made,

You agree to provide Us with:

- c. audited financial statements of income and expenditure for the Funding (and any Your Contributions and Other Contributions) that includes a definitive statement as to whether:
 - A. the financial information for the Project is true and fair and is based on proper accounts and Records; and
 - B. the Funding was spent for the purposes of the Project and in accordance with this Deed; and
- d. a statement of the balance of Your account referred to in paragraph 6.4a; and
- e. any other financial information specified in Item E of the Schedule.

10.3. The information required to be provided under subclause 10.2 must be accompanied by a certificate (from Your CEO or Your senior executive officer who has primary responsibility for managing Your audit functions) that:

- a. all Funding received was spent for the purposes of the Project and in accordance with the Deed and that You have complied with this Deed;
- b. salaries and allowances paid to persons involved in the Project are in accordance with any applicable award or agreement in force under any relevant Law;
- c. unless the Project Period has expired or the Deed has been terminated, the unspent portion of the Funds (if any) is available for use within the next reporting period;
- d. any financial information required is presented in accordance with any other financial reporting requirements about which We may notify You; and
- e. where Assets have been acquired with the Funding, that You have complied with clause 8 in respect of those Assets.

10.4. You agree that the financial statements referred to in subclause 10.2 will comply with Australian Accounting Standards and will be prepared by a Qualified Accountant.

10.5. You agree that the audit referred to in subclause 10.2 will be carried out by an Approved Auditor and comply with the Australian Auditing Standards.

10.6. You agree that the audit referred to in subclause 10.2 and the certificate referred to in subclause 10.3 will also include the information, if any, described in Item E.3 of the Schedule.

10.7. The operation of this clause 10 survives the expiration or earlier termination of the Term of this Deed.

11. TAXES, DUTIES AND GOVERNMENT CHARGES

- 11.1. Subject to this clause 11, You agree to bear all taxes, duties and government charges ("Taxes") imposed or levied in Australia or overseas in connection with this Deed.
- 11.2. All consideration for any supply You make to Us under this Deed includes any GST imposed on the supply.
- 11.3. You agree to give Us a Tax Invoice for any Taxable Supply You make to Us prior to Our payment of Funds for that supply.
- 11.4. No party may claim from the other an amount for which the first Party may claim an Input Tax Credit.

12. AUSTRALIAN GOVERNMENT MATERIAL

- 12.1. Ownership of all Australian Government Material, including Intellectual Property Rights in that Material, remains vested at all times in Us but We grant You a licence to use, copy and reproduce that Material only for the purposes of this Deed and in accordance with any conditions or restrictions specified in Item G of the Schedule.
- 12.2. Upon the expiration of the Project Period or earlier termination of the Term of the Deed, You may retain all Australian Government Material remaining in Your possession, unless otherwise specified in Item G of the Schedule.
- 12.3. You agree to keep safely and maintain Australian Government Material You have been given for the purposes of this Deed.
- 12.4. The operation of this clause 12 survives the expiration or earlier termination of the Term of this Deed.

13. INTELLECTUAL PROPERTY

- 13.1. Subject to this clause 13, as between Us and You (but without affecting the position between You and a third party) Intellectual Property Rights in Project Material vest immediately in You.
- 13.2. You grant Us a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt and exploit the Intellectual Property Rights in Project Material for any Commonwealth purpose.
- 13.3. This clause 13 does not affect the ownership of any Intellectual Property Rights in any Existing Material specified in Item H of the Schedule. You, however, grant to Us or agree to arrange for the grant to Us of a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sub-licence) to use, copy, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Existing Material for any Commonwealth purpose.

- 13.4. You:
- a. agree, if requested by Us to do so and at Your own cost, to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 13;
 - b. warrant that You are entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Project Material and the Existing Material in accordance with this clause 13; and
 - c. except as expressly provided for in this Deed, agree not to deal with the Intellectual Property Rights in the Project Material during the Term of this Deed.
- 13.5. For the purposes of this clause 13, 'Specified Acts' means any of the following classes or types of acts or omissions by or on behalf of Us:
- a. using, reproducing, adapting or exploiting all or any part of the Project Material, with or without attribution of authorship;
 - b. supplementing the Project Material with any other Material;
 - c. using the Project Material in a different context to that originally envisaged,
- but does not include false attribution of authorship.
- 13.6. You agree:
- a. to obtain from each author of any Project Material a written consent which extends directly or indirectly to the performance of the Specified Acts by Us or any person claiming under or through Us (whether occurring before or after the consent is given); and
 - b. upon request, to provide the executed original of any such consent to Us.
- 13.7. This clause 13 does not apply to any Australian Government Material incorporated in the Project Material.
- 13.8. The operation of this clause 13 survives the expiration or earlier termination of the Term of this Deed.

14. CONFIDENTIAL INFORMATION

- 14.1. Subject to subclause 14.5, a Party must not, without the written consent of the other Party, use or disclose any Confidential Information of the other Party.
- 14.2. In giving written consent to use or disclose its Confidential Information, a Party may impose such conditions as it thinks fit, and the other Party agrees to comply with those conditions.
- 14.3. A Party may at any time require the other Party to arrange for:
- a. the other Party's employees, officers, volunteers or Advisers;

- b. any person (other than You or Us) who has a legal or equitable right, interest, power or remedy in connection with the Agreement, including without limitation any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest,

to give a written undertaking in the form of a deed relating to the use and non-disclosure of the first Party's Confidential Information.

- 14.4. If a Party receives a request under subclause 14.3, it must promptly arrange for all such undertakings to be given.
- 14.5. The obligations on a Party under this clause 14 will not be taken to have been breached to the extent that Confidential Information:
 - a. is disclosed by a Party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
 - b. is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of Agreement-related activities;
 - c. is disclosed by Us to the Prime Minister or another Minister of the Commonwealth or You to Your Premier or another Minister of the State;
 - d. is shared within the Commission, or by Us with another Commonwealth department or agency, where this serves the Commission's legitimate interests;
 - e. is disclosed by a Party, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or the State Parliament;
 - f. is authorised or required by law to be disclosed;
 - g. is disclosed by a Party and is information in a material form in respect of which an interest, whether by licence or otherwise, in the Intellectual Property Rights in relation to that material form, has vested in, or is assigned to, the Party under this Agreement or otherwise, and that disclosure is permitted by that licence or otherwise; or
 - h. is in the public domain otherwise than due to a breach of this clause 14.
- 14.6. Where a Party discloses Confidential Information to another person:
 - a. pursuant to paragraphs 14.5.a, 14.5.b or 14.5.d – the disclosing Party must:
 - A. notify the receiving person that the information is Confidential Information; and
 - B. not provide the information unless the receiving person agrees to keep the information confidential; or
 - b. pursuant to paragraphs 14.5.c or 14.5.e – the disclosing Party must notify the receiving person that the information is Confidential Information.

- 14.7. The Parties may agree in writing after Date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement.
- 14.8. Where the Parties agree in writing after the Date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement, that documentation is incorporated into, and becomes part of, this Agreement (and the Schedule is deemed to be varied accordingly), on the date by which both Parties have signed that documentation.
- 14.9. The obligations under this clause 14 continue, notwithstanding the expiry or termination of the Term of this Agreement:
- a. in relation to an item of information described in Item I of the Schedule – for the period set out in Item I of the Schedule in respect of that item; and
 - b. in relation to any information which the Parties agree in writing after the Date of this Agreement is to constitute Confidential Information for the purposes of this Agreement – for the period agreed by You and Us in writing in respect of that information.
- 14.10. Nothing in this clause 14 derogates from any obligation which You may have either under the Privacy Act, or under this Agreement, in relation to the protection of Personal Information.

15. PROTECTION OF PERSONAL INFORMATION

- 15.1. This clause 14.1 applies only where You deal with Personal Information when, and for the purpose of, conducting the Project under this Deed.
- 15.2. You agree to be treated as a 'contracted service provider' within the meaning of section 6 of the Privacy Act, and agree in respect to the conduct of the Project under this Deed to comply with the requirements specified in Item L of the Schedule.
- 15.3. You agree to ensure that any subcontract (as defined in section 95B (4) of the Privacy Act) entered into for the purpose of fulfilling Your obligations under this Deed contains provisions to ensure that the subcontractor has the same awareness and obligations as You have under this clause and Item L of the Schedule, including the requirement in relation to subcontracts.
- 15.4. You agree to indemnify Us in respect of any loss, liability or expense We suffer or incur which arises directly or indirectly from a breach of any of Your obligations under this clause 14.1, or from a subcontractor under the subcontract provisions referred to in subclause 15.3.
- 15.5. The operation of this clause 14.1 survives the expiration or earlier termination of the Term of this Deed.

16. INDEMNITY

- 16.1. You indemnify Us (and keep Us indemnified) against any:
- a. loss or liability We incur;
 - b. loss of or damage to Our property; or
 - c. loss or expense We incur in dealing with any claim, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by Us,
- arising from:
- d. any act or omission by You or Your employees, officers, volunteers, partners or Advisers in connection with the Assets or this Deed, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense;
 - e. any breach by You of Your obligations or warranties under this Deed; or
 - f. Our use of the Project Material or Existing Material, including any claims by third parties about the ownership or right to use Project Material or Existing Material.
- 16.2. Your liability to indemnify Us under this clause 16 will be reduced proportionally to the extent that any fault on Our part contributed to the relevant loss, damage, expense, or liability.
- 16.3. Our right to be indemnified under this clause 16 is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant liability, damage, loss, or expense.
- 16.4. In this clause 16, "fault" means any negligent or unlawful act or omission or wilful misconduct.
- 16.5. This operation of this clause 16 survives the expiration or earlier termination of the Term of this Deed.

17. INSURANCE

- 17.1. You agree that, for as long as any obligations remain in connection with this Deed, You will have insurance as specified in Item J of the Schedule.
- 17.2. Whenever requested, You agree to provide Us, within 10 Business Days of the request, with evidence satisfactory to Us that You have complied with Your obligation to insure.
- 17.3. The operation of this clause 17 survives the expiration or earlier termination of the Term of this Deed.

18. CONFLICT OF INTEREST

- 18.1. You warrant that, to the best of Your knowledge after making diligent inquiry, at the Date of this Deed no Conflict exists or is likely to arise in the performance of Your obligations under this Deed.
- 18.2. Without limiting the operation of this clause 18, You agree to ensure that, during the Term of this Deed, no Conflict arises through Your involvement with the parties or programs, if any, specified in Item K of the Schedule.
- 18.3. If during the Term of this Deed, a Conflict arises, You agree to:
- a. immediately notify Us in writing of that Conflict and of the steps You propose to take to resolve or otherwise deal with the Conflict;
 - b. make full disclosure to Us of all relevant information relating to the Conflict; and
 - c. take such steps as We may, if We choose to, reasonably require to resolve or otherwise deal with that Conflict.
- 18.4. If You fail to notify the Commission under this clause 18, or are unable or unwilling to resolve or deal with the Conflict as required, We may terminate or reduce the scope of this Deed in accordance with clause 22.

19. ACCESS TO PREMISES AND RECORDS

- 19.1. You agree to give Us, the Auditor-General, the Privacy Commissioner and persons authorised by Us (referred to in this clause 19 collectively as 'those permitted') access to all premises at which accounts, Records and Material associated with this Deed are stored or work under the Project is undertaken at all reasonable times and allow those permitted to inspect and copy accounts, Records and Material, in Your possession or control, for purposes associated with this Deed or any review of performance under this Deed. You also agree to give those permitted access to any Assets, and any Capital Works and Works Locations, wherever they may be located, and reasonable access to Your employees, for the same purposes.
- 19.2. You agree to provide all reasonable assistance requested by those permitted when they exercise the rights under subclause 19.1.
- 19.3. You agree to ensure that any subcontract entered into for the purpose of this Deed contains an equivalent clause allowing those permitted to have access as specified in this clause 19.
- 19.4. The rights referred to in subclause 19.1 are subject to:
- a. the provision of reasonable prior notice by those permitted (except where they have evidence that an actual and material breach of the law has occurred); and
 - b. Your reasonable security procedures.

- 19.5. The requirement for access as specified in subclause 19.1 does not in any way reduce Your responsibility to perform Your obligations in accordance with this Deed.
- 19.6. This clause 19 applies for the Term of this Deed and for a period of 7 years from the date of the expiration or earlier termination of the Term of this Deed.

20. DELAY

- 20.1. You agree to take all reasonable steps to minimise delay in completion of the Project.
- 20.2. If performance by a Party of its obligations under this Deed is delayed or prevented due to any circumstances beyond its reasonable control, then that Party shall be excused from performance of such obligations for so long as the delay or prevention continues.
- 20.3. If You become aware that You or a subcontractor will be delayed in progressing or completing a Milestone of the Project in accordance with this Deed, You agree to immediately notify Us in writing of the cause and nature of the delay and the steps You will take to contain the delay.
- 20.4. On receipt of a notice of delay, We will discuss the matter with You and may either:
- a. notify You in writing of a period of extension to complete the Project and vary this Deed accordingly; or
 - b. notify You in writing of reduction in the scope of the Project and any adjustment to the Funds for You to complete the reduced Project and vary this Deed accordingly;
 - c. terminate this Deed under clause 22 or take such other steps as are available under this Deed.

Where there is a delay in meeting in a Milestone We may also withhold a payment of Funds in accordance with subclause 4.2.

- 20.5. Unless We take action under subclause 20.44, You are required to comply with the time frame for progressing and completing the Project as set out in this Deed.
- 20.6. If You do not notify Us of a delay that occurs in progressing or completing the Project in accordance with subclause 20.3, We may, subject to reasonable discussion with You and consideration of Our other options, terminate or reduce the scope of this Deed under clause 22.

21. TERMINATION WITH COSTS

- 21.1. We may, at any time by written notice to You, terminate this Deed in whole or reduce the scope of this Deed in line with Our common law right of executive necessity without prejudice to the rights, liabilities, or obligations of either Party accruing prior to the date of termination. If this Deed is terminated or reduced in scope We will only be liable for:

- a. subject to subclause 21.3, payments under the payment provisions of this Deed; and
- b. subject to subclauses 21.4, 21.5 and 21.6, any reasonable costs incurred by You and directly attributable to the termination of the Term of this Deed or reduction in scope of the Deed.

21.2. Upon receipt of a notice of termination or reduction in scope You agree to:

- a. cease or reduce the performance of Your obligations under this Deed in accordance with the notice; and
- b. immediately do everything possible to mitigate all losses, costs, and expenses, arising from the termination or reduction in scope contained in the notice; and
 - A. immediately return to Us any Funds in accordance with paragraph 21.3.b; or
 - B. deal with any such Funds as We may direct in writing.

21.3. Where We terminate the Term of this Deed under subclause 21.1, We:

- a. will not be obliged to pay You any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by You in accordance with this Deed and payable by You as a current liability (written evidence of which will be required) by the date on which the notice of termination given under subclause 21.1 is deemed to be received in accordance with subclause 32.2; and
- b. will be entitled to recover from You any part of the Funds which:
 - A. has not been legally committed for expenditure by You in accordance with this Deed and payable by You as a current liability (written evidence of which will be required) by the date on which the notice of termination given under subclause 21.1 is deemed to be received in accordance with subclause 32.2; or
 - B. has not, in Our reasonable opinion, been expended by You in accordance with the terms and conditions of this Deed,
- c. and all such Funds will, without prejudice to any other rights available to Us under this Deed or at law or in equity, be regarded as a debt due to Us by You capable of being recovered as such in any court of competent jurisdiction.

21.4. If there is a reduction in scope of the obligations under this Deed, Our liability to pay any part of the Funding will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Deed.

21.5. Our liability to pay any compensation under or in relation to this clause 21 is subject to:

- a. Your strict compliance with this clause 21; and
- b. Your substantiation of any amount claimed under paragraph 21.1.b.

- 21.6. We will not be liable to pay compensation for loss of prospective profits for a termination or reduction in scope under this clause 21 or loss of any benefits that would have been conferred on You had the termination or reduction not occurred.

22. TERMINATION FOR DEFAULT

- 22.1. If:
- a. You fail to fulfil, or commit a material breach of, any of Your obligations under this Deed, and do not rectify the omission or breach within 20 Business Days of receiving a notice in writing from Us to do so;
 - b. We are reasonably satisfied that any statement made in Your application for Funding is materially incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funding;
 - c. You, by written notice to Us, withdraw from the Project;

then, in the case of any one or more of these events, We may immediately terminate the Term of this Deed by giving written notice to You of the termination.

- 22.2. Where We terminate the Term of this Deed under subclause 22.1, We:

- a. will not be obliged to pay You any outstanding amount of the Funds except to the extent that those monies have been legally committed for expenditure by You in accordance with this Deed and are payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under subclause 22.1 is deemed to be received in accordance with subclause 32.2; and
- b. will be entitled to recover from You any part of the Funds which:
 - A. has not been legally committed for expenditure by You in accordance with this Deed and payable by You as a current liability (written evidence of which will be required) by the date the notice of termination given under subclause 22.1 is deemed to be received in accordance with subclause 32.2; or
 - B. has not been expended by You in accordance with the terms and conditions of this Deed.

- 22.3. If You do not repay to Us the amount referred to in paragraph 22.2.b within 10 Business Days of receipt of the notice of termination (or if a different period is stated in the notice of termination, that period) You must also pay Us Interest on the outstanding amount which You acknowledge represents a reasonable pre-estimate of the loss incurred by Us as a result of the loss of investment opportunity for, or the reasonable cost of borrowing other money in place of, the amount which should have been repaid. The amount set out in the notice, and Interest owed under this clause will, without prejudice to any other rights available to Us under this Deed or at law or in equity, be recoverable by Us as a debt due to Us by You.

- 22.4. Subclause 22.2 does not limit or exclude any of Our other rights, including the right to recover any other amounts from You on termination of the Term of this Deed.

23. SUBCONTRACTING

- 23.1. You agree that You are fully responsible for the performance of the Project in accordance with this Deed, even though You may have subcontracted all or any part of the performance of the Project. You are responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Deed.
- 23.2. You remain liable to perform all of Your obligations under this Deed and for the past acts or omissions of Your subcontractors as if they were current subcontractors.
- 23.3. You agree that in any subcontract You will reserve a right of termination to take account of Our right of termination under clauses 21 and 22, and You agree, where appropriate, to make use of that right in the event of a termination or revocation by Us.
- 23.4. You agree not enter into a subcontract under this Deed with a subcontractor named by the Director of the Australian Government's Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).

24. ACKNOWLEDGMENT AND PUBLICITY

- 24.1. The Parties agree that in:
- a. all publications, promotional and advertising materials, public announcements and activities by You or on Your behalf in relation to the Project; and
 - b. any products, processes or inventions developed as a result of the Project,
- they will acknowledge the financial and other support each has provided to the Project in the form and containing the information which, if not set out in Item 13 of the Schedule, is approved by both Parties prior to the use of the publication, material, announcement or Project.
- 24.2. Each Party reserves the right to publicise and report on the awarding of Funding or allocation of Your Contributions under this Deed. We may do this by including in media releases, general announcements about the Funding and in annual reports Your name, the amount of the Funds given to You and the title and a brief description of the Project.
- 24.3. Where You have been provided with Funding to produce any publication, You agree to provide a copy of the publication to Us.
- 24.4. This clause 24 applies for the Term of this Deed and for a period of 7 years from the date of expiration or earlier termination of the Term of this Deed.

25. NEGATION OF LEGAL RELATIONSHIP OF EMPLOYMENT, PARTNERSHIP AND AGENCY

- 25.1. You and Your employees, officers, volunteers, partners and Advisers will not, by virtue of this Deed, be or for any purpose be deemed to be Our legal employees, partners or agents.
- 25.2. You agree to ensure that You do not, and that Your employees, officers, volunteers, partners and Advisers do not, represent You or themselves as being Our employees, officers, volunteers, partners or Advisers or as otherwise able to bind or represent Us.

26. ENTIRE AGREEMENT, VARIATION AND SEVERANCE

- 26.1. This Deed records the entire agreement between the Parties in relation to its subject matter.
- 26.2. Except for action We are expressly authorised to take elsewhere in this Deed, no variation of this Deed is binding unless it is agreed in writing and signed by the Parties.
- 26.3. If a court or tribunal says any provision of this Deed has no effect or interprets a provision to reduce an obligation or right, this does not invalidate any other provision.

27. WAIVER

- 27.1. If either Party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- 27.2. A single or partial exercise by a Party of any of its rights does not prevent the further exercise of any right.
- 27.3. Waiver of any provision of, or right under, this Deed:
- a. must be in writing signed by the Party entitled to the benefit of that provision or right; and
 - b. is effective only to the extent set out in the written waiver.
- 27.4. In this clause 27, 'rights' means rights or remedies provided by this Deed or at law.

28. ASSIGNMENT AND NOVATION

- 28.1. You agree not to assign Your rights under this Deed without Our prior written approval.
- 28.2. You agree not to enter into negotiations with any other person for the purposes of entering into an arrangement that will require novation of this Deed without first obtaining Our prior written approval.

29. DISPUTE RESOLUTION

- 29.1. Subject to subclause 31.2, both Parties agree not to commence any legal proceedings in respect of any dispute arising under this Deed, which cannot be resolved by informal discussion, until the procedure provided by this clause has been utilised.
- 29.2. Both Parties agree that any dispute arising during the course of this Deed is dealt with as follows:
- a. the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
 - b. the Parties will try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;
 - c. the Parties have 10 Business Days (or such longer period as agreed between the Parties before the expiration of the 10 Business Days) from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
 - d. if:
 - A. there is no resolution of the dispute;
 - B. there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - C. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 Business Days,then, the dispute shall be referred to the Parties respective Ministers as soon as is practicable for the purposes of resolving the dispute. If the Ministers are unable to resolve the dispute within 20 Business Days (or such other period as is agreed between the Parties) We may terminate or reduce the scope of this Deed or in accordance with clause 22 (or, where the termination is for reasons of executive necessity, clause 21) and this clause 31 ceases to apply.
 - e. This clause 29 does not apply if either Party commences legal proceedings for urgent interlocutory relief.
- 29.3. Despite the existence of a dispute, You agree to (unless requested in writing by the other Party not to do so) continue to perform Your obligations in accordance with this Deed.
- 29.4. The operation of this clause 29 survives the expiration or earlier termination of the Term of this Deed.

30. APPLICABLE LAW AND JURISDICTION

- 30.1. The laws of Western Australia apply to this Deed.

- 30.2. Both Parties agree to submit to the non-exclusive jurisdiction of the courts of Western Australia in respect to any dispute under this Deed.

31. LIAISON AND MONITORING

- 31.1. You agree to:
- a. liaise with and provide information to Us as reasonably required by Us; and
 - b. comply with all of Our reasonable requests, directions, or monitoring requirements.
- 31.2. We may nominate, from time to time, a person within the Commission who has Our authority to liaise with You, receive and sign notices and written communications for Us under this Deed and give any request or direction in relation to the Project.
- 31.3. You may nominate, from time to time, a person who has authority to liaise with Us, receive and sign notices and written communications for You under this Deed and accept any request or direction in relation to the Project.
- 31.4. At the Date of this Deed, the persons referred to in subclauses 31.2 and 31.3 are the persons specified in Item N of the Schedule.

32. NOTICES

- 32.1. A Party giving notice or notifying under this Deed must do so in writing or by electronic mail or facsimile transmission:
- a. directed to the recipient's address, as varied by any notice; and
 - b. hand delivered or sent by pre-paid post or transmitted by electronic mail or facsimile transmission ('electronically') to that address. If a notice is sent electronically a copy is also to be sent to the addressee by pre-paid post.
- The Parties' address details as at the Date of this Deed are specified in Item N of the Schedule.
- 32.2. A notice given in accordance with subclause 32.1 is taken to be received:
- a. if hand delivered, on delivery;
 - b. if sent by pre-paid post, 5 Business Days after the date of posting unless it has been received earlier;
 - c. if transmitted electronically, upon actual receipt by the addressee.

33. REVIEW

- 33.1. You agree to:
- a. provide all reasonable assistance required by Us;
 - b. respond to all Our reasonable requests; and
 - c. provide any information We reasonably require,

in relation to conducting a review and final evaluation of the Programme.

- 33.2. The operation of this clause 33 survives the expiration or earlier termination of the Term of this Deed.

SCHEDULE

A. TERM, PROGRAMME AND PROJECT (Recital A, subclause 1.1 and clause 5)

TERM

- A.1. The Project Period commences on the Date of this Deed and ends on **30 June 2010**. You are required to complete the Project (other than any Evaluation and Operation Activities) during the Project Period.

BACKGROUND

- A.2. The Commission administers the Water Smart Australia programme ('the Programme') on the Commonwealth's behalf. Through the Programme the Commission is able to provide funding from the Australian Government Water Fund for activities that assist in implementing the National Water Initiative (NWI).
- A.3. The objectives, outcomes and actions of the NWI include national water reform in the areas of: water access entitlements and planning; water markets and trading; best practice water pricing; integrated management of water for the environment and other public benefit outcomes; water resource accounting; urban water reform; knowledge and capacity building and community partnerships and adjustment.

PROGRAMME

- A.4. The objective of the Programme is to accelerate the development and uptake of smart technologies and practices in water use across Australia for purposes that include improving river flows, on-farm water efficiency, recycling and re-use of stormwater and 'grey' water, water storage, sewerage management, water desalination, irrigation infrastructure and water-efficient house design.

PROJECT

- A.5. In conducting the Project, You agree to perform the work and achieve the Milestones specified in this Item A of the Schedule.

Project Overview:

A.6. Statutory Water Planning in the Pilbara

This project will support the statutory water resource planning required to allow the sustainable and timely expansion of the resource sector in the Pilbara. The aim of the project is to significantly progress sustainable development of the Pilbara Region by identifying and removing water supply impediments to expansion of the mining industry and associated development during the current resources boom and permitting statutory planning within NWI timelines. This work will support long-term monitoring and entitlement arrangements to ensure the continued economic growth of the mining sector as well as the provision of sufficient water to support sustainable local environmental and cultural features.

This project will include comprehensive investigation and assessment of water resources and associated infrastructure in the Pilbara Region. The investigation and assessment components of the project will focus on six key areas (including the West Canning Basin, the lower Fortescue Alluviums, Robe River Alluviums, Maitland River Alluviums, George River Alluviums and the Turner River Alluviums) where there may be significant viable water supply for the region. Investigations will also examine groundwater and surface water interactions and relationships to dependent ecosystems. The investigations will aim to determine the water regimes necessary to maintain ecological and cultural values at a low level of risk within the context of a variable climate. This information will support the development of a Statutory Water Management Plan(s) for the Pilbara.

Objectives

A.7. The environmental, economic, social and other Objectives of the Project are:

- a. The ability to develop water sharing plans for the Pilbara with identified water shares for the mining and resources processing industry;
- b. The completion of investigation and assessment programs to support regional water accounting objectives and thus ensure the sustainable use of the water resources;
- c. Technical support towards the establishment of a statutory plan in which the rules and processes for recouping over-allocated systems will be clearly defined;
- d. An improved understanding of water abstraction from region groundwater sources to support future cost recovery programs which will be promoted through water management and planning objectives;
- e. Significant progress against clause 34 of the NWI referring to the special management requirements to support the mining sector;
- f. To define the surface water/groundwater interactions of aquifer systems which support local features with environmental, cultural and social values. The understanding will lead to better management strategies to protect the valued ecosystems and surface water features which may be impacted by water abstraction;
- g. The improved understanding of dynamic flow systems and the environmental flow requirements which are subject to climatic variations ranging from monsoon flooding to prolonged periods of drought;
- h. The assessment of cost/supply relationships for potential new supplies that may be developed in support of coastal centres which directly support the mining industry;
- i. The development of allocation limits of major new sources to foster the sustainable extraction of water in support of regional development. and the evaluation of currently over allocated systems that may be at risk by 2014;

- j. Support of a water trading environment through the increased understanding of regional water supply options utilised by water providers or other significant industries; and
- k. To provide a better understanding of water resources to assess if limitations to trading may exist in the Pilbara region

Capital Works and Works Locations

- A.8. The Capital Works will include a number of bores, the locations of which are yet to be determined. Complete details of the bores will be recorded in the Department of Water's groundwater monitoring database and the details of the locations will be available upon request.
- A.8.A You will own the Capital Works provided You construct and use them for the purposes of performing this Project.
- A.8.B You must ensure that:
 - a. all parts of the Capital Works (whether undertaken before, on or after the Date of this Deed) have been (if applicable) and will be carried out in accordance with all applicable Laws;
 - b. the Works Locations and the completed Capital Works comply with all Laws relating to their ongoing use for the Project in accordance with the Objectives;
 - c. the use of the Works Location for the Project, and the Works Location and the completed Capital Works for the purposes of the Project in accordance with the Objectives, does not infringe any condition of their ownership or occupation;
 - d. the Capital Works (both during and after completion) are safeguarded and insured against damage and unauthorised use; and
 - e. the completed Capital Works are used, and are fit to be used, for the purposes of the Project in accordance with the Objectives.
- A.8.C If You neither own a specific Works Location, nor hold statutory powers capable of supporting the discharge of Your obligations under this Deed at that Works Location, You must:
 - a. enter into a written agreement with each owner of the Works Locations to:
 - A. use the Works Locations to undertake the Capital Works; and
 - B. use the completed Capital Works for the purpose of the Project in accordance with the Objectives; and
 - b. not do anything that would give an owner of a Works Location the right to terminate or forfeit Your rights in relation to that Works Location or the completed Capital Works.
- A.8.D You agree not to encumber or Dispose of the Works Locations or the Capital Works before the Completion Date or within 5 years of the Completion Date

without Our written agreement. Such written agreement may not unreasonably be withheld, but may be given subject to reasonable conditions.

Project activities

- A.9. The Project requires You to undertake the activities listed in this item A.9 to Our satisfaction, including all actions that are incidental to the achievement of those activities.

Investigation and assessment of coastal alluvial Aquifers

Undertake technical investigation and assessment work of four alluvial aquifer systems in the Pilbara coastal region. The proposed sites are the: Lower Fortescue, Lower Robe, Maitland and the George River alluvial aquifers. The methods of investigation will include desk top studies, surface geophysical surveys and transects, down hole geophysical logging; water chemistry testing, elevation surveys, water level monitoring, water quality monitoring and numerical modelling.

The sites vary in the level of previous investigative work that has been completed to date. The focus of the proposed investigation and assessment work is to determine the viability of each site for future development, increase the understanding of the groundwater and surface water interactions, support the determination of ecological water requirements and the level of risk to environmental and cultural values associated with the potential development of the resource. The project will support regional environmental flow studies.

Drilling investigation and assessment of alluvial aquifers

Undertake drilling investigations and hydrogeological modelling of the Turner River alluvial aquifer and the Millstream alluvial aquifer on the upper Fortescue River. The methods of investigation will include surface geophysical surveys, bore drilling, pump testing; down hole geophysical logging; water chemistry testing, elevation surveys and monitoring. The focus of the investigation drilling will be to assess the hydrogeology of the Turner River aquifer system and to further the knowledge of the Millstream aquifer system. The information will allow for the creation of a hydrogeological model of the Turner River and to improve on the hydrogeological modelling for the Millstream aquifer. The project will support regional environmental flow studies.

Numerical modelling of the West Canning Basin

Develop a numerical groundwater model of the West Canning Basin based on the current information available from previous studies. The project will also include Carbon 14 and Chlorine 36 sampling, surface geophysical surveys, pump testing; downhole geophysical logging; water chemistry testing, elevation surveys and monitoring. The focus of the investigation drilling will be the modelling of the Broome and Wallal Sandstones. The project will support regional environmental flow studies.

Ecological Water Requirements

In parallel to the hydrogeological investigations and assessments undertaken in the three areas above, ecological investigations will be conducted to confirm

the distribution of groundwater dependent ecosystems and determine the ecological water requirements of these systems. This work will build on previous investigations which conducted preliminary mapping and assessment of Groundwater Dependent Ecosystems in the Pilbara coast area. Methodologies to determine ecological water requirements suited to the Pilbara climate (highly variable) and the level of available information will be developed. Ecological water requirements will be determined for groundwater dependent ecosystems for water resources identified as potential future sources.

Cultural and Social Values Study

Through consultation with Traditional Owners, an assessment of the values placed on water dependent features by Aboriginal people will be made. This will provide the information to develop water allocations to sustain the identified values. A community reference group will be established to determine cultural water requirements for each potential resource. Through examination of outputs from hydrogeological investigations including conceptual and numerical models, the water regimes necessary to sustain those values at a low level of risk will be determined.

Environmental Reference Sites

Development of a network of well-monitored reference sites across the Pilbara to distinguish the impacts of groundwater or surface water abstraction from those caused by climate variability or climate change. The network will monitor impacts on aquifers or surface water systems and the ecosystems they sustain. The project will be undertaken in close consultation with academic and industry representatives.

East Pilbara Water Study

In 2001, the Water and Rivers Commission completed a report on the water resources of the central Pilbara. In June of 2007, the Department of Water will complete a second comprehensive report on the water resources along the coastal portion of the Pilbara. It is proposed that a third study be funded to cover the eastern portion of the Pilbara. The project will consist of a desktop study that will review all investigated supplies in the eastern Pilbara area and make recommendations for potential new supply sources.

Backlog of Bore and Mining Reports

This project will process the backlog of bore and mining reports from the last 10 years, so that the digital water bore database is up to date and groundwater management is based on up to date data.

Significant Infrastructure-based Supplies Study

Some individual mining sites dewatering programs pump up to 30 GL per year of potable water. The water is often allowed to flow down drainage channels, but it could be put to better use to address future mining industry demand. This project will fund a consultancy to look at desalination and other options for water supply to better understand the economic, social and environmental costs of adoption. The work will require an engineering focus with appropriate

technical input to define environmental and social outcomes of major water source development proposals. The technical viability of the options will be identified and established through this work, allowing inclusion in future planning or immediate detailed design works.

Enhanced Recharge Study

The project will investigate the potential to construct a barrage across selected rivers upstream of the alluvial aquifer system. During flood flows, some water would be retained behind the barrage and released after the event has passed to enhance aquifer recharge. The work will comprise site investigation, modelling and reporting.

Project Management

A.10. In performing the Project, You agree:

- a. To conduct a fair and defensible competitive recruitment and procurement process to select any staff and/or subcontractors for involvement in the Project;
- b. To ensure that the tender documentation contains detailed and measurable performance indicators, including design requirements, to assess the successful tenderer's performance of the Project;
- c. To manage all aspects of the performance of the Project including by developing a Project implementation plan (which may take the form of a GANTT chart and must be provided to Us and, if We require, approved by Us);
- d. To develop a communications and consultation strategy and a program which will be implemented and updated annually. The communications and consultation strategy and program must be submitted to Us by 1 November of each year and approved by Us;
- e. To ensure that the Project is also monitored by the Steering Committee;
- f. To conduct (and revise as required) risk assessments (including environmental, economic and legal risk assessments) for the Project in accordance with AS/NZS 4360:2004 and to Our reasonable satisfaction; and
- g. To continually seek to apply available technologies that may reduce the capital cost of the Project; and
- h. To implement a bore metering policy for licensed bores extracting above 50 megalitres per year by December 2008;
- i. To commence implementing cost recovery charging for water planning and management by December 2008, with further charging elements to be in place by July 2009
- j. That the project water information and data be freely and openly available to the Australian Government for management by the Bureau of Meteorology, consistent with the National Plan for Water Security;

- k. That the collection, management and dissemination of water information and data meets nationally agreed standards and protocols, as these standards and protocols are developed by the Bureau of Meteorology;
- l. That consistency with a State water resource monitoring and water use metering plan must be demonstrated.

Steering Committee

- A.11. You are also required to establish a Steering Committee for the Project. The purpose of the Steering Committee is to:
- a. coordinate and oversee the performance of the Project; and
 - b. enable the members and observers of the Steering Committee to obtain information regarding the progress of the Project and to provide comment and guidance regarding the performance of the Project.
- A.12. The membership of the Steering Committee will comprise of the following DoW staff:
- Corporate Executive
 - WSA Strategic Projects Manager
 - Manager Water Allocation Planning
 - Manager Strategic Water Planning
 - Manager Water Resource Assessment
 - Manager Measurement and Water Information
 - Manager Corporate Communications
- A.13. You agree that Our representatives may attend and participate (via telephone if We so require) as observers at meetings of the Steering Committee. You agree to provide Us with agenda papers and minutes for all meetings of the Steering Committee.
- A.14. At each Steering Committee meeting You agree to provide updates on the progress of the Project.
- A.15. You agree to convene the Steering Committee a minimum of 4 times per year.
- A.16. You agree to establish, organise and facilitate meetings of the Steering Committee at Your own cost.

Independent Third Party Evaluation

- A.17. If an independent third-party evaluation of the Project is required by Us, You agree to assist the third party with the evaluation and to provide reasonable access to Your premises, work-sites and Records. You agree to provide this assistance and access free of charge.

Milestones

A.18. The Milestones for the Project are set out in the following tables:

Milestone Number	Milestone Detail	Indicative Date
	Communications Plan	
	Completion of a communications and consultation strategy and program which meets Our reasonable satisfaction	1-Nov-07
	Completion of a communications and consultation strategy and program which meets Our reasonable satisfaction	1-Nov-08
	Completion of a communications and consultation strategy and program which meets Our reasonable satisfaction	1-Nov-09
1	Pilbara Coast alluvial aquifer assessment and review – Lower Fortescue, Lower Robe, Maitland, George Rivers	
1.1	Completion of preliminary work by external consultant	01-May-08
1.2	Completion of modelling work on Lower Fortescue and Lower Robe Rivers by external consultant	01-May-09
1.3	Completion of final reports on Lower Fortescue, Lower Robe, Maitland and George Rivers by external consultant	01-May-10
2	Millstream Aquifer and Turner River drilling and modelling program	
2.1	Completion of preliminary work by external consultant	01-May-08
2.2	Completion of the drilling program at Millstream and Turner River by external consultant	01-May-09
2.3	Completion of model for Millstream / Turner by external consultant	01-May-10
3	West Canning Basin	
3.1	Completion of preliminary work by external consultant	01-May-08
3.2	Completion of hydrogeological model by external consultant	01-May-09
3.3	Completion of final hydrogeological report, resource assessment and modelling by external consultant	01-May-10
4	Ecological Water Requirements (EWR)	
4.1	Completion of Stage 1 of interim EWR	01-Nov-07
4.2	Completion of Stage 1 of detailed EWR	01-May-08
4.3	Completion of Stage 2 of interim EWR	01-Nov-08
4.4	Completion of Stage 2 of detailed EWR	01-May-09
4.5	Completion of Stage 3 of interim EWR	01-Nov-09
4.6	Completion of Stage 3 of detailed EWR	01-May-10
5	Cultural and Social Water Values Study	

5.1	Completion of Stage 1 of assessment of cultural and social water values	01-May-08
5.2	Completion of Stage 2 of assessment of cultural and social water values	01-May-09
5.3	Completion of Stage 3 of assessment of cultural and social water values	01-May-10
6	Environmental Reference Sites	
6.1	Completion of Stage 1 of establishment and monitoring of reference sites	01-May-08
6.2	Completion of Stage 2 of establishment and monitoring of reference sites & project completion	01-May-09
6.3	Completion of Stage 3 of establishment and monitoring of reference sites	01-May-10
7	East Pilbara Water Study	
	Completion of contract by external consultant	01-May-09
8	Backlog of Bore and Mining Reports	
8.1	Completion of Stage 1 of contract to update backlog	01-May-08
8.2	Completion of Stage 2 of contract to update backlog	01-May-09
8.3	Completion of Stage 3 of contract to update backlog	01-May-10
9	Significant Infrastructure-based Supplies Study	
9.1	Detailed work on additional evaluations run	01-May-08
9.2	Final work on additional evaluations run	01-May-09
9.3	Reporting	01-May-10
10	Enhanced Recharge Study	
10.1	Completion of detailed assessment by external consultant	01-May-08
10.2	Completion of contract by external consultant	01-May-09

B. FUNDING AND PAYMENT (subclauses 1.1, 4.1 and clause 6)

- B.1. The maximum funding for the Project is \$3,656,504 which represents \$3,324,095 being the amount of Funding to be provided by Us for the Project and \$332,409 being the total GST, payable in accordance with clause 4. The Funding provided by Us will be credited to Your agency bank account; however a separate project will be identifiable in Your agency business systems, established solely for the purposes of accounting for, and administering, the Funding provided.
- B.2. Subject to the terms of this Deed, including the requirements of Item B.3, the Funding will be paid by electronic funds transfer in the manner specified in this Item B.2 of the Schedule and within 20 Business Days of Our receiving a correctly rendered Tax Invoice from You:

Payment Number and Type	Milestone	Amount (excluding GST)	Amount of GST included in each payment	Total amount (including GST)
Pay 1	On-signature payment (10% of total project budget)	\$332,409	\$33,241	\$365,650
Pay 2	Completion of Milestone 4.1 Project Management Payment	\$10,000 \$47,942	\$1,000 \$4,794	\$11,000 \$52,736
Pay 3	Completion of Milestone 1.1 Completion of Milestone 2.1 Completion of Milestone 3.1 Completion of Milestone 4.2 Completion of Milestone 5.1 Completion of Milestone 6.1 Completion of Milestone 8.1 Completion of Milestone 9.1 Completion of Milestone 10.1 Project Management Payment	\$113,795 \$73,795 \$110,000 \$71,800 \$25,000 \$23,200 \$50,000 \$25,000 \$50,000 \$47,942	\$11,380 \$7,380 \$11,000 \$7,180 \$2,500 \$2,320 \$5,000 \$2,500 \$5,000 \$4,794	\$125,175 \$81,175 \$121,000 \$78,980 \$27,500 \$25,520 \$55,000 \$27,500 \$55,000 \$52,736
Pay 4	Completion of Milestone 4.3 Project Management Payment	\$10,000 \$48,912	\$1,000 \$4,891	\$11,000 \$53,803
Pay 5	Completion of Milestone 1.2 Completion of Milestone 2.2 Completion of Milestone 3.2 Completion of Milestone 4.4 Completion of Milestone 5.2 Completion of Milestone 6.2 Completion of Milestone 7 Completion of Milestone 8.2 Completion of Milestone 9.2 Completion of Milestone 10.2 Project Management Payment	\$360,000 \$610,000 \$240,000 \$90,000 \$47,500 \$50,400 \$50,000 \$50,000 \$12,500 \$25,000 \$48,912	\$36,000 \$61,000 \$24,000 \$9,000 \$4,750 \$5,040 \$5,000 \$5,000 \$1,250 \$2,500 \$4,891	\$396,000 \$671,000 \$264,000 \$99,000 \$52,250 \$55,440 \$55,000 \$55,000 \$13,750 \$27,500 \$53,803
Pay 6	Completion of Milestone 4.5 Project Management Cost	\$33,200 \$52,693	\$3,320 \$5,269	\$36,520 \$57,962
Pay 7	Completion of Milestone 1.3 Completion of Milestone 2.3 Completion of Milestone 3.3 Completion of Milestone 4.6 Completion of Milestone 5.3 Completion of Milestone 6.3 Completion of Milestone 8.2 Completion of Milestone 9.3 Project Management Payment	\$200,000 \$150,000 \$50,000 \$35,000 \$57,500 \$6,400 \$50,000 \$12,500 \$52,693	\$20,000 \$15,000 \$5,000 \$3,500 \$5,750 \$640 \$5,000 \$1,250 \$5,269	\$220,000 \$165,000 \$55,000 \$38,500 \$63,250 \$7,040 \$55,000 \$13,750 \$57,962
Total - PILBARA		\$3,324,095	\$332,409	\$3,656,504

B.3. Any payment under this Deed is subject to:

- a. Your compliance with the Reporting requirements falling up to and on the date the payment is due (see clause 10 and Item E). It is a precondition to each payment of Funds that You provide Us with a satisfactory progress Report that demonstrates that the Milestone(s) to which the payment relates has/have been met to Our satisfaction;
- b. Your meeting the following performance indicators for the Project:
 - A. Your performing the Project on time and in accordance with the Budget;
 - B. Your adherence to the defined scope of the Project; and
 - C. the Steering Committee being satisfied with Your performance of the Project to date; and
- c. You demonstrating that the Funds already provided by Us have been fully spent or will be fully spent in the near future.

B.4. By the due date of each Milestone, if Milestone/s are to be delayed, You must provide Us with a report outlining the reasons for any delays to Milestones and upon our reasonable consideration we may reduce the payment for delayed Milestones, upon their completion by up to 15%. We would apply a test of reasonableness when considering the delay and any reduced payment. The test would include recognition of effort undertaken to address delays and consideration that some aspects are beyond the control of the project managers.

C. YOUR CONTRIBUTIONS AND OTHER CONTRIBUTIONS (subclause 1.1 and clause 7)

YOUR CONTRIBUTIONS

C.1. The GST-inclusive amount of Your Contributions is specified in the following table.

Your Contribution	Amount and date on which You will make each payment of Your Contributions			
		Amount (excluding GST)	Amount of GST included	Total amount (including GST)
In-kind contribution including staff and associated resources to manage the Project	2007/08	\$600,000	\$60,000	\$660,000
	2008/09	\$700,000	\$70,000	\$770,000
	2009/10	\$500,000	\$50,000	\$550,000
Total		\$1,800,000	\$180,000	\$1,980,000

Other Contributions

- C.2. The GST-inclusive amount and a description of the Other Contributions for the Project are specified in the following table of this Item C.2:

Source and Type of Other Contribution	Total Amount of Other Contribution and dates on which it will be paid
Name of Provider and type of contribution (eg: cash or in-kind)	N/A

- C.3. All Your Contributions and Other Contributions must be shown in the Budget in Item D of this Schedule.

D. BUDGET (subclauses 1.1, 6.2 and 7.4)

- D.1. The GST-inclusive Budget for the entire Project is set out in the table below. Please note that while expenditure of Your Contributions will be acquitted excluding GST, Your Contributions have been represented as GST-inclusive amounts for Our reporting purposes.

Overall Project Budget (inclusive of GST)

Expenditure Item	WSA Funding	Your Contribution	Total Cost
Pilbara Coast alluvial aquifer assessment and review - Lower Fortescue, Lower Robe, Maitland, George Rivers	\$924,000	\$352,000	\$1,276,000
Award contract to external consultant	\$308,000	\$121,000	\$429,000
Completion of Modelling, Lower Fortescue, Lower Robe Rivers	\$396,000	\$165,000	\$561,000
Final reporting on Lower Fortescue, Lower Robe, Maitland and George Rivers -completion of project	\$400,000	\$66,000	\$466,000
Millstream Aquifer and Turner River drilling and modelling program	\$1,100,000	\$385,220	\$1,485,220
Award contract to external consultant	\$264,000	\$165,000	\$429,000
Completion of drilling program at Millstream and on the Turner River	\$671,000	\$88,000	\$759,000
Model Development for Millstream / Turner, Project Completion	\$165,000	\$132,220	\$297,220
West Canning Basin	\$440,000	\$297,000	\$737,000
Award of contract to external consultant - Commencement of project	\$121,000	\$55,000	\$176,000
Hydrogeological model development	\$264,000	\$198,000	\$462,000
Final Hydrogeological report, resource assessment and modelling	\$100,000	\$44,000	\$144,000

completed			
Ecological Water Requirements	\$275,000	\$231,000	\$506,000
Detailed EWR	\$216,480	\$175,230	\$391,710
Interim EWR	\$58,520	\$55,770	\$114,290
Cultural and Social Water Values Study	\$143,000	\$126,500	\$269,500
Assessment of cultural and social water values	\$143,000	\$126,500	\$269,500
Environmental Reference Sites	\$88,000	\$16,280	\$104,280
Establishment and monitoring of reference sites	\$76,560	\$16,280	\$92,840
Project completion	\$11,440	\$0	\$11,440
East Pilbara Water Study	\$55,000	\$27,500	\$82,500
Award of contract to external consultant - Commencement of project	\$38,500	\$22,000	\$60,500
Project completion	\$16,500	\$5,500	\$22,000
Backlog of Bore and Mining Reports	\$165,000	\$115,500	\$280,500
Project implementation (Appoint M&WIB staff or contractor)	\$110,000	\$60,500	\$170,500
Project completion	\$55,000	\$55,000	\$110,000
Significant Infrastructure-based Supplies Study	\$55,000	\$77,000	\$132,000
Additional evaluations run	\$41,250	\$63,250	\$104,500
Reporting	\$13,750	\$13,750	\$27,500
Enhanced Recharge Study	\$82,500	\$55,000	\$137,500
Award of contract to external consultant - Commencement of project	\$55,000	\$33,000	\$88,000
Project completion	\$27,500	\$22,000	\$49,500
Project Management¹	\$329,004	\$297,000	\$626,004
Total for PILBARA	\$3,656,504	\$1,980,000	\$5,634,504

Annual Budgets

- D.2. You agree to provide a detailed draft budget for the second and each later Financial Year of the Project Period for Our consideration and acceptance two months prior to the beginning of that Financial Year.

¹ The Project Management heading combines three separate elements: i) actual Project Management; ii) preparation of a Statutory Water Plan; and iii) Your Contributions to the Project that have not been identified specifically by line item.

D.3. Payment of Funds for these Financial Years is subject to the terms of this Deed and Our acceptance of the draft budget for the Financial Year.

D.4. If We accept a draft budget it will become the Budget for the relevant Financial Year of the Project Period and be deemed to be incorporated into this Item D of the Schedule as at the date We notify You that the draft budget is approved.

Budget for the First Financial Year of the Project Period

D.5. The GST inclusive annual Budget for the first Financial Year of the Project is set out in the following table: The GST-inclusive Budget for the entire Project is set out in the table below. Please note that while You normally account for Your Contributions excluding GST, they have been represented as GST-inclusive amounts for Our reporting purposes.

Expenditure Item	WSA funding	Your Contributions	Total Cost
Pilbara Coast alluvial aquifer assessment and review - Lower Fortescue, Lower Robe, Maitland, George Rivers	\$308,000	\$121,000	\$429,000
Award contract to external consultant	\$308,000	\$121,000	\$429,000
Completion of Modelling, Lower Fortescue, Lower Robe Rivers	\$0	\$0	\$0
Final reporting on Lower Fortescue, Lower Robe, Maitland and George Rivers - completion of project	\$0	\$0	\$0
Millstream Aquifer and Turner River drilling and modelling program	\$264,000	\$165,000	\$429,000
Award contract to external consultant	\$264,000	\$165,000	\$429,000
Completion of drilling program at Millstream and on the Turner River	\$0	\$0	\$0
Model Development for Millstream / Turner, Project Completion	\$0	\$0	\$0
West Canning Basin	\$121,000	\$55,000	\$176,000
Award of contract to external consultant - Commencement of project	\$121,000	\$55,000	\$176,000
Hydrogeological model development	\$0	\$0	\$0
Final Hydrogeological report, resource assessment and modelling completed	\$0	\$0	\$0

Ecological Water Requirements	\$89,980	\$72,730	\$162,710
Funding submission, project scoping, budget development, draft deed	\$0	\$0	\$0
Detailed EWRs	\$78,980	\$65,230	\$144,210
Determination of EWRs for GDEs	\$0	\$0	\$0
Interim EWRs	\$11,000	\$7,500	\$18,500
Cultural and Social Water Values Study	\$27,500	\$11,000	\$38,500
Scoping - Confirmation of target resources	\$0	\$0	\$0
Assessment of cultural and social water values	\$27,500	\$11,000	\$38,500
Environmental Reference Sites	\$25,520	\$14,520	\$40,040
Scoping - Site selection	\$0	\$0	\$0
Establishment and monitoring of reference sites	\$25,520	\$14,520	\$40,040
Project completion	\$0	\$0	\$0
East Pilbara Water Study	\$0	\$0	\$0
Award of contract to external consultant - Commencement of project	\$0	\$0	\$0
Project completion	\$0	\$0	\$0
Backlog of Bore and Mining Reports	\$55,000	\$33,000	\$88,000
Project implementation (Appoint M&WIB staff or contractor)	\$55,000	\$33,000	\$88,000
Project completion	\$0	\$0	\$0
Significant Infrastructure-based Supplies Study	\$27,500	\$55,000	\$82,500
Identification of additional evaluation options/requirements	\$0	\$0	\$0
Additional evaluations run	\$27,500	\$55,000	\$82,500
Reporting	\$0	\$0	\$0
Enhanced Recharge Study	\$55,000	\$33,000	\$88,000
Award of contract to external consultant - Commencement of project	\$55,000	\$33,000	\$88,000
Project completion	\$0	\$0	\$0
Project Management²	\$105,473	\$99,000	\$204,473
Totals - PILBARA	\$1,078,973	\$660,000	\$1,738,973

² The Project Management heading combines three separate elements: i) actual Project Management; ii) preparation of a Statutory Water Plan; and iii) Your Contributions to the Project that have not been identified specifically by line item.

E. REPORTS (subclauses 1.1 and clause 10)

- E.1. You agree to provide the Reports, in the form and manner, specified in this Item E to the Commission.
- E.2. Three (3) copies of all Reports must be provided to the Commission - one bound copy, one unbound copy and one electronic copy.

Financial Reports

- E.3. You agree to provide the financial information, at the times and in the manner, specified in subclauses 10.2 and Item E.4. The financial Reports must be accompanied by the certificate referred to in subclause 10.3.
- E.4. You also agree to provide the following financial information:
- a. a statement as to whether the Project is proceeding within Budget and if it is not an explanation of why the Budget is not being met and the action You propose to take to address this;
 - b. a schedule of the Assets acquired for the Project as compared to the Budget; and
 - c. if specifically requested by Us, a statement regarding the amount and the use of Project Generated Income to date.

Progress Reports

- E.5. Payment is subject to Your providing Us with progress Reports that demonstrate satisfactory progress of the Project against the Milestones. It is therefore a precondition to each payment of Funds that You provide Us with a satisfactory progress Report to demonstrate that the Milestone(s) to which the payment relates has/have been met to Our satisfaction.
- E.6. You agree to include the following information in each progress Report in respect of the period of the Project to which each Report relates:
- a. the full Project title;
 - b. the Milestones to which the Report relates;
 - c. a description and analysis of the progress of the Project to date, including details and evidence of any Milestones achieved during the period to which the Report relates and any difficulties You have encountered in meeting any of the Milestones;
 - d. promotional activities undertaken and media coverage during this reporting period;
 - e. a description of the work to be undertaken to complete the Milestones during the next reporting period, and the estimated completion date of the Milestones during the next reporting period;

- f. any potential difficulties, issues or risks anticipated in the next reporting period;
- g. promotional opportunities which are expected to arise in the next reporting period.
- h. a discussion and statement as to whether the timeframes and Objectives for the Project are being met, an explanation of any delays that have occurred and the action You propose to take to address the delay. Where delays have occurred, You should also discuss the effects (if any) the delay is expected to have on the Project (including subsequent Milestones and the overall completion of the Project). Note this information will be used for Us to evaluate whether payments will be reduced for Milestones which are delayed (Item B.3), unless a report is provided to us separately as outlined in item B.3.

E.7. In addition, each progress Report should contain the following financial information for the Project to date together with supporting documentation:

- a. a statement of the Funds, Your Contributions and Other Contributions paid to date;
- b. a statement as to whether the Project is proceeding within Budget, and if it is not, an explanation of why the Budget is not being met and the action You propose to take to address this;
- c. a statement of the balance of Your account referred to in paragraph 6.4.a;
- d. an income and expenditure statement for the Project to date (and as compared with the Budget) that specifies the manner in which, and the purposes for which the Funds, Other Contributions, Your Contributions and Project Generated Income have been spent;
- e. an estimate of the expenditure required to complete the Milestones during the next reporting period;
- f. a schedule of any Assets created, acquired, Disposed of or written off for the Project as compared with the Budget;
- g. a statement regarding the amount of the Project Generated Income to date; and
- h. a statement of how much You need to meet current liabilities under legal commitments entered into by You pursuant to this Deed.

Final Progress Report

E.8. The final progress Report is due within 60 Business Days of the earliest of:

- a. the end of the Project Period;
- b. completion of the Project; or
- c. termination of this Deed.

E.9. The final progress Report must be a stand-alone document that can be used for public information dissemination purposes on the operation, mechanisms and processes employed by You to perform the Project and achieve the Objectives.

E.10. The final progress Report must cover the entire Project Period and describe the conduct, benefits and outcomes of the Project as a whole. The final progress Report must evaluate the Project to date and include a detailed discussion of the extent to which each of the Objectives of the Project has to date been achieved. The final progress Report must contain an explanation of why any Objectives were not achieved (noting that the Objectives may not be achieved until the Capital Works are operational).

E.11. You also agree to include in the final progress Report a discussion of any other matters, relating to the evaluation of the Project to date, which We notify You should be included in the final progress Report. Any such requirement will be notified to You at least 30 days before the final progress Report is due.

Other Reports

E.12. The Commission may require You to provide ad-hoc Reports concerning:

- a. any significant developments concerning the Project; and
- b. any significant delays or difficulties encountered in performing the Project in accordance with the Deed.

E.13. You agree to provide any such ad-hoc Reports within the timeframe specified by Us and to report to the Steering Committee as required under clause 5 and Item A.

Evaluation Reports

E.14. If applicable, by 30 June each financial year of the Evaluation Period, You agree to provide a report regarding the extent to which the Project (including Your use of the completed Capital Works) has met the Objectives for the Project.

F. ASSETS (subclause 1.1 and clause 8)

F.1. For the duration of the Project Period, You agree to maintain an Asset register in the following form and containing the following information.

Asset number	Description of Asset	Purchase price or total lease cost	Date of purchase or lease	Term of lease	Location of Asset	Method of and Date on which the Asset was Disposed of or written-off

G. AUSTRALIAN GOVERNMENT MATERIAL (subclauses 1.1 and clause 12)

G.1. Not Applicable.

H. INTELLECTUAL PROPERTY (subclause 1.1 and subclause 13.3)

H.1. Nil

I. CONFIDENTIAL INFORMATION

I.1. Our Confidential Information is:

Nil

I.2. Your Confidential Information is:

Nil

J. INSURANCE (subclause 17.1)

J.1. You agree to maintain:

- a. workers' compensation insurance for an amount required by the relevant State or Territory legislation;
- b. public liability insurance for \$20,000,000 (twenty million dollars) or more per claim or occurrence giving rise to a claim, in respect to activities undertaken under this Deed;
- c. professional indemnity insurance for \$10,000,000 (ten million dollars) or more per claim or occurrence giving rise to a claim, in respect of activities undertaken under this Deed; and
- d. insurance against any loss or damage to an Asset, the Capital Works (before and after completion) and the Works Locations for its full reinstatement or replacement cost including, where relevant, the costs of demolition and removal of debris and the cost of architects, engineers and other consultants.

K. CONFLICT OF INTEREST (Subclause 18.2.)

K.1. Nil

L. PROTECTION OF PERSONAL INFORMATION (subclause 1.1 and clause 14.1)

L.1. You agree to:

- a. use or disclose Personal Information obtained during the course of conducting the Project under this Deed, only for the purposes of this Deed;
- b. not do any act or engage in any practice that would breach an Information Privacy Principle (IPP);
- c. carry out and discharge the obligations contained in the IPPs as if You were an agency under that Act;
- d. notify individuals whose Personal Information You hold, that complaints about Your acts or practices may be investigated by the Privacy Commissioner who has power to award compensation against You in appropriate circumstances;
- e. not use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing), a National Privacy Principle

(NPP) (particularly NPPs 7 to 10) or an Approved Privacy Code (APC), where that section, NPP or APC is applicable to You, unless:

- A. in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Deed; or
- f. in the case of an NPP or an APC - the Project or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Deed;
- g. disclose in writing to any person who asks, the content of the provisions of this Deed (if any) that are inconsistent with an NPP or an APC binding a Party to this Deed;
- h. immediately notify Us if You become aware of a breach or possible breach of any of the obligations contained in, or referred to in clause 14.1 and this Item L, whether by You or any subcontractor;
- i. comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are not inconsistent with the requirements of clause 14.1 and this Item L; and
- j. ensure that any of Your employees, officers, Advisers or volunteers who are required to deal with Personal Information for the purposes of this Deed are made aware of Your obligations set out in clause 14.1 and this Item L.

L.2. In this Item L of the Schedule, the terms 'agency', 'Approved Privacy Code' (APC), 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the Privacy Act, and 'subcontract' and other grammatical forms of that word has the meaning given in section 95B(4) of the Privacy Act.

M. ACKNOWLEDGMENT AND PUBLICITY (subclause 24.1)

- M.1. In all Project activities, You agree to acknowledge the provision of Funding by Us. You agree to ensure that at all times the support from the Australian Government Water Fund for the Project is adequately acknowledged.
- M.2. You agree to ensure that:
 - a. any publication, article, newsletter or other literary work prepared or commissioned by You for the Project displays the Commission's logos or badging. You agree to provide a copy of any such Project Material to Us prior to releasing that Material;
 - b. at launches and other public forums - signs, posters or other appropriate means as approved by Us are used to acknowledge the support provided to the Project by the Australian Government Water Fund and the Commission; and
 - c. each Party's role in the Project is acknowledged at all Project-related forums and conferences.

N. CONTACT and NOTICES (subclause 31.4 and subclause 32.1)

N.1. The Commission's contact and notice details are as follows:

Laura Phipps
Water Programmes Group
National Water Commission
95 Northbourne Avenue
Canberra ACT 2600

Phone: 02 6102 6061
Fax: 02 6102 6056
Email: Laura.Phipps@nwc.gov.au

N.2. Your contact and notice details are as follows:

Susan Worley
Manager Water Allocation Planning
Department of Water
Ground Floor, 168 St Georges Terrace
Perth WA 6000

Phone: 08 6364 6849
Fax: 08 6364 6526
Email: susan.worley@water.wa.gov.au

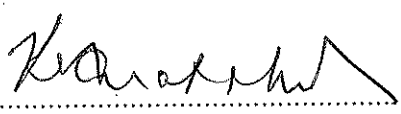

O. Compliance with Laws (Clause 35)

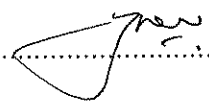
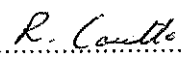
O.1. You agree to comply with all Laws, including the following laws in carrying out the Activity:

- a. Equal Opportunity for Women in the Workplace Act 1999;
- b. *Racial Discrimination Act 1984*;
- c. *Sex Discrimination Act 1984*;
- d. *Disability Discrimination Act 1992*;
- e. *Crimes Act 1914*;
- f. *Criminal Code Act 1995*;

THIS DEED is made on the 21st day of September 2007

EXECUTION CLAUSES

<p>Executed for and on behalf of the COMMONWEALTH OF AUSTRALIA represented by the National Water Commission, ABN 94 364 176 431 by Ken Matthews</p>	<p></p> <p>sign and date here</p>
<p>in the presence of:</p> <p>CRAIG BRADLEY</p> <p>print name of witness</p>	<p></p> <p>witness sign here</p>

<p>Executed for and on behalf of the State of Western Australia, as represented by the Water and Rivers Commission ABN 60 061 300 220 by Paul Frewer.</p>	<p></p> <p>sign and date here</p>
<p>in the presence of:</p> <p>RODNEY COULTON</p> <p>print name of witness</p>	<p></p> <p>witness sign here</p>