



## National Bushfire Mitigation Program 2016-2017

---

### FUNDING AGREEMENT

---

between

The State Emergency Management Committee Secretariat  
(on behalf of the Department of Fire and Emergency Services)

and

**the Grantee**

**Project name**

**Project number**

This Funding Agreement is made on \_\_\_\_\_ 2016 between the State Emergency Management Committee Secretariat, ABN 44 378 307 277, of 20 Southport Street, West Leederville Western Australia 6007, known herein as the Grantor (and operating on behalf of the Department of Fire and Emergency Services), and Grantee, ABN, of Address, herein known as the Grantee.

## RECITAL

The Grantee has applied to the Grantor for financial assistance to undertake the Project and the Grantor agrees to provide Grant Funds subject to the terms and conditions of this Agreement.

## THE PARTIES AGREE as follows:

### 1. DEFINITIONS AND CONSTRUCTION

In this Agreement, unless the context otherwise requires:

**Acquittal Due Date** is the date by which the Grantee must submit the final report to the Grantor pursuant to item 3 of Schedule 2.

**Agreement** means this Funding Agreement, including its recitals and any schedules or annexures.

**Agreement Term** means the period of time commencing on the date this Agreement is executed by all Parties, and concluding upon the date the Grantor issues written acceptance of the Final Report, as defined by item 3 of Schedule 2.

**Application Form** means the application for funding lodged by the Grantee to the Grantor.

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

**Certificate of Currency** means a certificate issued to the Grantee by an insurer under a policy of insurance obtained by the Grantee, certifying the period from the date of its issue during which the Grantee is insured under the policy.

**Commencement Date** means the date for commencement of the Project as specified in item 4 of Schedule 1.

**Commonwealth** means the Commonwealth Government of Australia.

**Completion Date** means the earlier of the date the Project is actually completed by the Grantee or the date for completion of the Project, as specified in item 4 of Schedule 1.

**Confidential Information** means information in respect of this Agreement that:

- (a) is by its nature confidential; or
- (b) is specified by the Grantor or the Grantee to be confidential; or
- (c) the Grantor or the Grantee knows or should reasonably know is confidential.

**Copyright Act** means the *Copyright Act 1968 (Commonwealth)*.

**Determining Authority** means any Commonwealth, State or Local Government entity whose approval is required in order to enable a Project task to be carried out.

**Estimated Project Cost** means the total cost of completing the Project based on the estimated costs provided by the Grantee in application for funding.

**Event of Default** means an event of default as described in Clause 11.1.

**Existing Material** means a work (as defined in the Copyright Act), a product or any other material, which satisfies all of the following criteria:

- (a) the work, product or other material:
  - a. was created prior to the commencement of this Agreement; or
  - b. is to be created during the term of this Agreement outside the scope of this Agreement, including any subsequent modifications to such work, product or other material;
- (b) the Intellectual Property Rights in the work, product or other material are not owned by the Crown in right of the State of Western Australia; and
- (c) the work, product or other material is required specifically for, or in connection with, the Project.

**Grant Funds** means the amount or amounts specified in item 5 of Schedule 1.

**Grantee** means the legal entity having, for the time being, responsibility for the care, control and management of the Project and includes its officers, employees, agents, volunteers, subcontractors and successors.

**Grantor** means the State Emergency Management Committee Secretariat for the Department of Fire and Emergency Services.

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

- (a) An application is made to a court for an order that a Party be wound up, declared bankrupt or that a provisional liquidator or receiver and manager be appointed, unless the application is withdrawn, struck out or dismissed within seven (7) days of it being made;
- (b) A liquidator or provisional liquidator is appointed;
- (c) An administrator is appointed to any of the Party's assets;

- (d) The Party enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;
- (e) The Party proposes a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors, or its winding up or dissolution;
- (f) The Party is insolvent as disclosed in its accounts or otherwise states that it is insolvent or it is presumed to be insolvent under an applicable law;
- (g) The Party is taken to have failed to comply with a statutory demand;
- (h) A writ of execution is levied against the Party or the Party's property; or
- (i) Anything occurs under the law of any jurisdiction, which has a substantially similar effect to any of the above paragraphs of this definition.

**Intellectual Property Rights** means:

- (a) patents, copyright, rights in circuit layouts, registered designs, trademarks and the right to have confidential information (being information which is capable of being protected by way of an action for breach of confidence) kept confidential; and
  - (b) any application or right to apply for registration of any of those rights;
- but does not include Moral Rights.

**ISO 31000:2009** means the Australian/New Zealand Standard on risk management entitled *ISO 31000:2009 Risk management – Principles and guidelines*.

**Material** means Existing Material and New Material.

**New Material** means anything created by the Grantee under this Agreement in which Intellectual Property Rights subsist.

**Moral Rights** has the same meaning as in the Copyright Act.

**Party** means each of the Grantor or the Grantee, as the context requires, and **Parties** means both of them.

**Project** means the purpose or purposes set out in item 2 of Schedule 1 to be undertaken with the Grant Funds and with any other funds necessary for the Project.

**Project Material** means intellectual property developed and produced during the Project.

**Records** means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with, this Agreement, whether or not containing Confidential Information, and however such records and information are held, stored or recorded.

**State Government** means the State Government of Western Australia.

**Work Order** means a notice requiring the owner or occupier of the land to undertake specific actions issued under the *Local Government Act 1995* Section 3(25) or under the *Building Act 2011* Section 112.

## 1.1 Interpretation

- (a) A reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.
- (b) If the Grantee consists of a partnership or joint venture, then:
  - (i) An obligation imposed on the Grantee under this Agreement binds each person who comprises the Grantee jointly and severally;
  - (ii) Each person who comprises the Grantee is deemed to agree to do all things necessary to enable the obligations imposed on the Grantee under this Agreement to be undertaken;
  - (iii) The act of one person who comprises the Grantee binds the other persons who comprise the Grantee; and
  - (iv) An Event of Default by one person who comprises the Grantee constitutes an Event of Default by the Grantee.
- (c) A reference to this Agreement or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the Grantor or the Grantee.
- (d) A reference to a clause, schedule, attachment or appendix is a reference to a clause in, or a schedule, attachment, annexure or appendix to, this Agreement.
- (e) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (f) No rule of interpretation is to be applied to disadvantage the Grantor or the Grantee on the basis that it was responsible for preparing this Agreement.
- (g) If the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow.
- (h) A reference to writing includes all means of representing or reproducing words in visible form including by electronic means such as facsimile transmission.
- (i) A reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind.
- (j) A reference to a month is to a calendar month and a reference to a year is to a calendar year.

- (k) If a date stipulated for payment, or for doing an act, is not a business day, the payment must be made, or the act must be done, on the next business day.
- (l) A reference to a monetary amount means that amount in Australian currency.

## **2. PAYMENT AND USE OF GRANT FUNDS**

- (a) The Grantor will, subject to adequate monies being provided to the State Government by the Commonwealth under the *Project Agreement for National Bushfire Mitigation* and subject to the terms and conditions of this Agreement, pay to the Grantee the Grant Funds in accordance with items 8 of Schedule 1.
- (b) Payment of the Grant Funds will be made directly to the Grantee upon receipt of an invoice and will only be made if funds are used in accordance with this Agreement unless there has been written agreement otherwise between the Parties.
- (c) Payment will only be made once a valid claim as per item 7 Schedule 1 has been received.
- (d) At completion of the Project any unpaid portion of Grant Funds will remain the property of the Grantor.
- (e) Payment will only be issued for tasks undertaken within the Agreement Term specified in item 2 of Schedule 1.
- (f) The Grantee will use the Grant Funds solely for the Project as set out in Schedule 1.
- (g) The total funding by the Grantor will not exceed 50% of actual project costs.

## **3. OBLIGATIONS OF GRANTEE**

### **3.1 Application Form**

The Grantee has read, understood and signed the *National Bushfire Mitigation Program Application Form 2016-17* (the Application Form), attached as Annexure A and incorporated into this Agreement by this reference, and agrees to observe, perform and be bound by all the terms, conditions and provisions contained or implied in that document as if they were fully set out in this Agreement. For the avoidance of doubt, the express or implied terms and conditions of this Agreement shall overrule any inconsistency between this Agreement and the Application Form.

### **3.2 No changes**

The Grantee will not make any changes to the Project without the prior written consent of the Grantor. If vesting changes, a property or project is sold during the grant term, the Funding Agreement terminates. Where there is a change in company structure or death of a signatory, the Grantee must formally notify the Grantor.

### **3.3 Acknowledgement of Grantor and Commonwealth**

- (a) For the duration of the Project, the Grantee will acknowledge the source of funding towards this Project to include the State Government and Commonwealth logos as per Schedule 3. Where practicable, this acknowledgement will be in the form of signage.
- (b) Use of Grantor or Commonwealth logos must only be as depicted in Schedule 3.
- (c) The Grantee is required to coordinate with and acknowledge the Grantor and the Commonwealth in any planned media releases, promotional materials or publicity relating to the Project or activities related to it, outputs, outcomes, including on signs, through the use of coats of arms or logos and on plaques affixed to new or refurbished buildings.
- (d) The Grantee agrees to participate in any publicity relative to this Project, at the request of the Grantor, the State Government or the Commonwealth.
- (e) Appropriate Commonwealth and State Government representatives must be invited, with reasonable notice, to participate in opening ceremonies, product launches or similar events.

### **3.4 Request for information**

The Grantee is to provide the Grantor with any documents or information relating to this Agreement or the Project within thirty days of receiving a request from the Grantor.

### **3.5 Accounts and reporting**

- (a) The Grantee is to provide reports on the Project using the Grantor's prescribed forms, in accordance with Schedules 1 and 2, or as otherwise reasonably required by the Grantor.
- (b) In the event that the Grantor requires further information, detail, explanation or other clarification beyond that provided in a submitted claim or other document, the Grantor will notify the Grantee in writing of the particular information required and the time in which the Grantee is to provide that information, which shall not be less than 30 days from the date of receipt of the written notice from the Grantor.
- (c) The Grantee is to keep proper financial records in accordance with generally accepted accounting principles and practices.
- (d) The Grantee's failure to provide any report or additional information required under this Clause shall constitute an Event of Default.

- (e) The Grantor and its authorised representatives shall have the right to audit, to examine, and to make copies of all financial and related records (in whatever form they may be kept), relating to or pertaining to this project, kept by or under the control of the Grantee including, but not limited to those kept by the Grantee, its employees, agents, assigns, successors, and subcontractors.

### **3.6 Special conditions of grant**

The Grantee agrees to comply with all special conditions specified in item 9 of Schedule 1.

### **3.7 General undertaking of Grantee**

The Grantee must:

- (a) At all times duly perform and observe its obligations under this Agreement and promptly inform the Grantor of any occurrence which might adversely affect its ability to do so in a material way.
- (b) Undertake its responsibilities under this Agreement with integrity, good faith and probity in accordance with good corporate governance practices.
- (c) Not, nor attempt to, sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of its rights, entitlements and powers or obligations under this Agreement.
- (d) Comply with all Local, State and Commonwealth laws, rules, regulations and by-laws.
- (e) Cooperate fully with the Grantor in the administration of this Agreement.
- (f) Upon reasonable notice being at least 5 business days, provide the Grantor or its agents with access at any reasonable time and from time to time to the Grantee's premises, financial records, other documents, equipment and other property for the purpose of audit and inspection by the Grantor in order to verify compliance by the Grantee with this Agreement.
- (h) Undertake that the Project is not the subject of a Work Order.
- (i) Comply with all requests made by the Grantor in connection with this Agreement.
- (j) Commence the Project following execution of this Agreement as outlined in Schedule 1.

### **3.8 Grantee contribution**

- (a) The Grantee is required to contribute sufficient funds to ensure that the Project as detailed in item 1 of Schedule 1 is completed in full and to the satisfaction of the Grantor.
- (b) The minimum Grantee contribution is 50% of the total cost of the Project unless prior agreement between the Grantor and the Grantee is reached.
- (c) All payments will be reimbursed taking into account the expected Grantee contribution.

### **3.9 Suitably qualified personnel or contractors**

- (a) The Grantee must select suitably qualified personnel or contractors to undertake the Project tasks detailed in item 2 of Schedule 1. Where evidence of personnel or contractor qualifications has not been submitted with the Application, the Grantee must notify the Grantor of the appointment or selection of any personnel or contractors prior to commencing the Project and provide the required evidence.
- (b) To satisfy the evidence requirement, the Grantee must provide copies of contractor or employee qualifications, or a Statutory Declaration must be issued stating all personnel and or contractors are suitably qualified, accredited, registered, authorised, certified, licensed, trained or experienced to undertake the tasks required. Where applicable, this includes accreditation with *Australian Government Building and Construction Occupational Health and Safety Accreditation Scheme*.

### **3.10 Development approval for works**

- (a) The Grantee will obtain all necessary planning and building approvals required to carry out the Project before commencement of any works.
- (b) If planning approval is not required for the Project, the Grantee is required to obtain a written statement from the relevant Determining Authority advising no planning approval is required for the Project and submit full drawings and specifications direct to the Grantor for consideration prior to commencement of the Project tasks.

### **3.11 Carrying out Project**

- (a) The Grantee is to ensure that all Project tasks are carried out in accordance with the relevant professional standards including those set out in *ISO 31000:2009*.
- (b) The Grantee is to employ appropriate contractors to undertake the Project and to ensure that it is carried out to the satisfaction of the Grantor.

## **4. INTELLECTUAL PROPERTY RIGHTS**

### **4.1 Ownership of Intellectual Property Rights in New Material**

The Grantor acknowledges that the entire future Intellectual Property Rights in all New Material are to be owned by the Grantee upon their creation.

### **4.2 Licence of Intellectual Property Rights in New Material**

The Grantee:

- (a) Grants to the Grantor an irrevocable, perpetual royalty-free, non-exclusive licence to use the New Material during the remainder of the Intellectual Property Rights duration of that New Material; and
- (b) must, if a third party owns Moral Rights in any New Material, obtain a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable the Grantor to use the New Material without regard to the third party's Moral Rights.

#### **4.3 Existing Material - Licence**

Nothing in clause 4.2 affects the ownership of any Intellectual Property Rights in any Existing Material.

The Grantee:

- (a) grants, and the Grantee must ensure that any other owner of any Intellectual Property Rights in any Existing Material grants, to the Grantor in writing, an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the Existing Material during the remainder of the duration of the Intellectual Property Rights in that Existing Material; and
- (b) must, if a third party owns Moral Rights in any Existing Material, obtain a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable the Grantor to use the Existing Material without regard to the third party's Moral Rights.

#### **4.4 Warranty**

The Grantee warrants that:

- (a) the Grantee has the right to grant the licences granted under clause 4.3(a)
- (b) no Intellectual Property Rights or Moral Rights in any Material is or will be owned by any third party unless:
  - a. if a third party owns any Intellectual Property Rights in the Material, the Grantee has obtained a written licence from the third party owner to the same effect as the licence referred to in clause 4.3 (a); and
  - b. if a third party owns Moral Rights in the Material, the Grantee has obtained a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable the Grantor to use the Material without regard to the third party's Moral Rights;
- (c) the Material will not infringe the Intellectual Property Rights of any third party; and
- (d) all officers, employees, agents or contractors of the Grantee:
  - (i) who are employed or engaged solely for the purposes of this Agreement are employed or engaged under written agreements under which all Intellectual Property Rights in any New Material vest in the Grantee on the creation of that New Material; and
  - (ii) who are not employed or engaged solely for the purposes of this Agreement are employed or engaged under written agreements under which all Intellectual Property Rights in any work (as defined in the Copyright Act), product or other material created by the all officers, employees, agents or contractors of the Grantee vest in the Grantee on the creation of that work, product or other material.

#### **4.5 Intellectual Property Rights indemnity**

The Grantee indemnifies and will keep indemnified the Grantor, the State Government and the Commonwealth and all their respective officers, employees and agents from and against all costs, losses, expenses, actions, suits, demands, claims, damages and other liabilities resulting from the Grantee's failure to comply with this clause 4, including any breach of warranty under clause 4.4, or otherwise resulting from the actual or alleged infringement of the Intellectual Property Rights or the Moral Rights of any third party by the Grantee.

### **5. CONFIDENTIALITY**

#### **5.1 Contract disclosure**

The Grantor may publicly disclose the identity of the Grantee, the value of this Agreement and a general description of the Project.

#### **5.2 Confidentiality**

The Parties must keep Confidential Information confidential. The Parties must not use or disclose to any person Confidential Information except:

- (a) where necessary for the purpose of performing the Project; or
- (b) as authorised in writing; or
- (c) to the extent that the Confidential Information is public knowledge (other than because of a breach of this clause by the disclosing Party); or
- (d) as required by any law, judicial or parliamentary body or governmental agency; or

- (e) when required, and only to the extent required, to the disclosing Party's professional advisers, and that Party must ensure that such professional advisers are bound by the confidentiality obligations imposed on the disclosing Party under this clause 5.2.

### **5.3 Return of Confidential Information**

Except to the extent that a Party is required by law to retain any Records, the Parties must return all Records containing the Confidential Information immediately at the expiration or termination of this Agreement.

## **6. PRIVACY**

- (a) The Grantee agrees to comply with its obligations (if any) under or arising pursuant to the *Privacy Act 1988 (Commonwealth)* to the extent relevant to this Agreement.
- (b) The Grantee also agrees to comply with:
  - (i) such other Commonwealth, State or Territory legislation related to privacy, which is relevant to this Agreement;
  - (ii) any directions made by a Privacy Commissioner relevant to this Agreement; and
  - (iii) any other reasonable direction relating to privacy, which is given by the Grantor.
- (c) If the Grantee is exempt from compliance with the *Privacy Act 1988 (Commonwealth)*, and if the Grantee is not subject to an approved privacy code, the Grantee must comply with the *National Privacy Principles* set out in the *Privacy Act 1988 (Commonwealth)*, as if it were required to comply with that legislation.

## **7. INSURANCE**

### **7.1 Insurance requirements**

The Grantee must take out and maintain insurance in relation to all insurable liabilities of the Grantee under this Agreement.

### **7.2 Reputable and solvent insurer**

Any policy of insurance taken out by the Grantee must be taken out with a reputable and solvent insurer acceptable to the Grantor, which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company.

### **7.3 Maintenance of insurance**

The Grantee must:

- (a) punctually pay all premiums and amounts necessary for effecting and keeping current the insurance required under clause 7.1;
- (b) not vary or cancel any insurance required under clause 7.1 or as otherwise required under this Agreement or allow it to lapse during the term of this Agreement or otherwise do, or allow to be done, anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a claim; and
- (c) without limiting clause 7.3(b), promptly reinstate any insurance required under clause 7.1 if it lapses or if cover is exhausted.

### **7.4 Evidence of insurance**

The Grantee must give to the Grantor sufficient evidence of the insurances required under clause 7.1 (including, if requested, a copy of any policy) and provide a Certificate of Currency of insurance, as requested by the Grantor at any time.

### **7.5 Failure to prove insurance**

If the Grantee does not comply with clauses 7.1 to 7.4 then without limiting any other remedy available to the Grantor, the Grantor may withhold payment of any money due under this Agreement to the Grantee until the Grantee has complied.

### **7.6 Incidents and claims**

If the Grantee becomes aware of any event or incident occurring, which gives rise or is likely to give rise to a claim under any insurance required under clause 7.1, it must as soon as reasonably practicable notify the Grantor in writing of that event or incident.

Failure to comply with this clause 7.6 will not invalidate or otherwise affect any indemnities, liabilities and releases of this Agreement.

### **7.7 Continuing obligation**

The Grantee must maintain the insurance required under clause 7.1 for the period specified in this Agreement. If no period is specified in this Agreement, then:

- (a) the insurances (except for the professional indemnity insurance) required under clause 7.1 are to be maintained throughout the term of this Agreement; and

- (b) the professional indemnity insurance (if any) required under clause 7.1 is to be maintained throughout the term of this Agreement and for a period of six (6) years after the expiration or termination of this Agreement.

## **7.8 No limitation of other liabilities**

Nothing in this clause 7 limits the Grantee's other liabilities under this Agreement or restricts the Grantee from insuring for sums or risks greater than those required under this Agreement.

## **8. LIMITATION OF LIABILITY**

The Grantee shall indemnify and keep indemnified both the State of Western Australia, its agencies and instrumentalities and the Commonwealth of Australia from and against all or any actions, suits, claims, demands, proceedings, losses, expenses or liability arising from or in relation to the undertaking of the Project and in respect of the monies paid in relation to the Project.

## **9. THE FREEDOM OF INFORMATION ACT 1992 AND THE FINANCIAL MANAGEMENT ACT 2006**

- (a) The Grantee acknowledges and agrees that this Agreement and information held or compiled in relation to it are subject to the *Freedom of Information Act 1992* and that the Grantor, the State Government or the Commonwealth may publicly disclose information in relation to this Agreement, including its terms and the details of the Grantee.
- (b) The parties acknowledge and agree that, despite any provision of this Agreement to the contrary, the powers and responsibilities of the Auditor General under the *Financial Management Act 2006* are not limited or affected by this Agreement.
- (c) The Grantee must allow the Auditor General, or an authorised representative, to have access to and examine the Grantee's records and information concerning this Agreement.

## **10. NOTICES**

Any notice or other communication that may or must be given under this Agreement must be in writing and issued by an authorised officer of the Party giving notice. Notices are taken to be received:

- (a) In the case of hand delivery, on the date of delivery;
- (b) In the case of post, on the third business day after posting; and
- (c) In the case of facsimile or email, on the date of transmission.
- (d) If received after 5 pm or on a day other than a business day, is taken to be received on the next business day.

## **11. DEFAULT AND TERMINATION**

### **11.1 Event of Default by the Grantee**

An Event of Default occurs if:

- (a) The Grantee breaches any of its obligations under this Agreement which continues without remedy for ten (10) business days after notice in writing has been served on the Grantee by the Grantor;
- (b) The Grantor has reasonable grounds to believe that the Grantee is unwilling or unable to comply with its obligations under this Agreement;
- (c) The Grantee ceases to carry on business in Western Australia; or
- (d) An Insolvency Event occurs in respect of the Grantee.

### **11.2 Effect of Event of Default**

- (a) If an Event of Default occurs, the Grantor may either:
  - (i) Terminate the Agreement by providing a further ten (10) business days' notice in writing to the Grantee of the Event of Default; or
  - (ii) Suspend payment of the Grant Funds until the Event of Default is remedied.
- (b) The Grantor may, in its absolute discretion, recommence payment of the Grant Funds if and when the Grantee has rectified the Event of Default.

### **11.3 Repayment of Funds**

If any funds remain unspent (or funds cannot be shown to have been spent in accordance with this Agreement), the Grantor may issue a notice to the Grantee for repayment. Repayment must occur within 30 days of the date of the notice.

## **12. TERMINATION**

- (a) Unless earlier terminated, this Agreement will terminate immediately following the release of the final payment.
- (b) Any extension must be sought in writing and approved by the Grantor. Claims for payment, made by submission of the reports as detailed in Clause 3.5, must be submitted in accordance with the dates prescribed in item 1 of Schedule 2.



**13. GOODS AND SERVICES TAX (GST)**

- (a) For the purposes of this Agreement:
  - (i) "GST" means the goods and services tax applicable to any taxable supplies as determined by the GST Act;
  - (ii) "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) and includes all associated legislation and regulations; and
  - (iii) The terms "supply", "tax invoice", "taxable supply" and "value" have the same meanings as in the GST Act.
- (b) If the supply of anything under this Agreement is a taxable supply under the GST Act, the Grant Funds shall be exclusive of GST.
- (c) The obligation of the Grantor to pay the GST on any supply by the Grantee under this Agreement is conditional upon the prior issue by the Grantee to the Grantor of a tax invoice, which complies with the GST Act. This provision applies notwithstanding any law to the contrary.
- (d) The Grantee must pay GST on the return of any Grant Funds to the Grantor under this Agreement.
- (e) The obligation of the Grantee to pay the GST is conditional upon the prior issue by the Grantor to the Grantee of a tax invoice, which complies with the GST Act. This provision applies notwithstanding any law to the contrary.

**14. RELATIONSHIP AND NO ENDORSEMENT**

- (a) The Parties agree that nothing in this Agreement may be construed to make either of them a partner, agent, employee or joint-venturer of the other.
- (b) The Grantee agrees that nothing in this Agreement constitutes an endorsement by the Grantor of any goods or services provided by the Grantee.

**15. WAIVER**

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

**16. NO ONGOING COMMITMENT**

- (a) The Grantor makes no commitment to funding the Project except to the extent specified in this Agreement.
- (b) The Grantee acknowledges that it will be responsible for any ongoing costs as a result of the Project and that the Grantor will not be obliged to provide additional funds.

**17. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement.

**18. ASSIGNMENT**

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

**19. VARIATION**

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

**20. DISPUTE RESOLUTION**

Before resorting to external dispute resolution mechanisms, the Parties shall in good faith attempt to settle by negotiation any dispute in relation to this Agreement, and where practical, each Party shall refer the matter to personnel who have authority to intervene and facilitate some form of resolution.

If the matter is unable to be resolved within 30 days of notice of dispute, the parties agree to allow either party to refer the matter to an agreed independent mediator such as the Institute of Arbitrators and Mediators (WA Branch). The parties agree that if either party refers the matter to mediation both parties will participate in the mediation process in good faith.

**21. RIGHTS AND REMEDIES**

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

**22. COSTS**

The Grantor and the Grantee must each pay their own legal and other costs in connection with the preparation and signing of the Agreement.

**23. FURTHER ASSURANCES**

The Grantor and the Grantee must do everything reasonably necessary, including signing further documents, to give full effect to the Agreement.

**24. GOVERNING LAW**

This Agreement is governed by the laws of the State of Western Australia. The Grantor and the Grantee irrevocably submit to the non-exclusive jurisdiction and of the courts of Western Australia.

**25. SURVIVAL**

The following clauses survive the termination and expiry of this Agreement;

- i) Clause 3.3(c) – Acknowledgement of Grantor and Commonwealth;
- ii) Clause 3.7 – General Undertaking of Grantee;
- iii) Clause 4 – Intellectual Property Rights
- iv) Clause 5.2 – Confidentiality
- v) Clause 6(c) – Privacy
- vi) Clause 8 – Limitation of Liability;
- vii) Clause 9 – The *Freedom of information Act 1992* and the *Financial Management Act 2006*; and
- viii) Clause 14 – Relationship and No Endorsement.

**EXECUTION**

Executed by the Parties hereto:

For and on behalf of the State Emergency  
Management Committee Secretariat (on behalf  
of the Department for Fire and Emergency Services):

For and on behalf of the Grantee:

**X**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

**Malcolm Cronstedt AFSM**

**Name:**

**EXECUTIVE DIRECTOR,  
STATE EMERGENCY MANAGEMENT  
COMMITTEE SECRETARIAT**

**Position:**

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

**X**

\_\_\_\_\_  
*Signature*

**Name:**

**Position:**

\_\_\_\_\_  
*Date*

SAMPLE

**SCHEDULE 1**

**PROJECT AND FUNDING**

**1. PURPOSE OF GRANT**

This grant is being provided as part of Western Australia’s National Bushfire Mitigation Program. These funds are part of the Project Agreement for National Bushfire Mitigation between the State of Western Australia and the Commonwealth, signed on the 24 June 2015 by the Honourable Joe M. Francis MLA.

The National Bushfire Mitigation Program will allow for state-based bushfire mitigation activities to implement long term bushfire mitigation strategies and better fuel reduction programs.

**2. PROJECT**

**Name**

**Summary**

**Outputs**

- 

**Outcomes**

- 

**3. STRATEGIC PRIORITIES**

This project will work towards achieving the following Commonwealth priorities:

- a) Reduction in fuel loads by the creation of effective land management strategies
- b) Construction or maintenance of fire trails and associated measures
- c) Implementation of cost effective activities that reduce the impact of severe bushfires, and promote community resilience
- d) Generation of scientific information (including hazard mapping) to develop best practice strategies

This project will address the following priorities of Western Australia:

- a) Implementation of cost-effective activities
- b) Clear link to bushfire mitigation outcomes
- c) Completion of, or progress towards completion of, a bushfire mitigation plan (BRMP)

**4. MILESTONES or KEY PERFORMANCE INDICATORS**

The activity will commence on **x** (the Commencement Date) and end on **x** (the Completion Date)

<b>Project name – NBMPnumber</b>	
<b>Milestone</b>	<b>Due Date</b>
Final report	Project conclusion

**5. AMOUNT AND PURPOSE OF PROJECT FUNDING**

- (a) The Grantor will provide financial assistance to the Grantee to undertake the Project under the National Bushfire Mitigation Program 2016-17

- (b) The Grantor agrees, subject to compliance with the terms and conditions of this Agreement by the Grantee, to provide Grant Funds of up to \$x( no GST), being up to 50% of the Estimated Project Cost.
- (c) Grant Funds will be expended to undertake the Project tasks specifically outlined in item 2 of this Schedule.
- (d) Financial assistance will not be granted for requirements or tasks directly or indirectly related to the Project tasks that were not included in the Grant Application (for example: planning application, building permit, certification or surveying fees) or for Project tasks that were commenced prior to this Agreement.

**6. AGREEMENT TERM**

The Agreement Term commences on the date this Agreement is fully executed by all Parties and concludes on the date the Grantor issues written notification that the Final Report referred to in item 2 of Schedule 2 has been accepted, unless otherwise extended or terminated by the Grantor. The Grantor will consider the project complete upon receipt of the final report and acquittal documentation, and payment of the final instalment.

Any extension to the Agreement Term beyond the dates outlined in the Application Form must be sought in writing and approved by the Grantor. Acquittal documents, as detailed in Schedule 2 (Reporting Requirements) are to be provided by the Acquittal Due Date.

**7. PAYMENT OF GRANT FUNDS**

- (a) The payment process will be instigated following execution of the Funding Agreement by the Grantee and Grantor, in accordance with the hurdle requirements in item 8.
- (b) Payment will be made as per the payment schedule subsequent to receipt of a valid tax invoice from the Grantee stating the project number and the relevant banking information. Once approved by the Grantor, payments will be issued to the Grantee's bank account. Payment is generally issued 30 days after receipt of the required documentation, unless otherwise advised by the Grantor.
- (c) Satisfactory evidence is deemed to be the achievement of milestone 1 (as agreed), and can include approvals (planning, Council), engagement of contractors / personnel or consultation sessions. Independent verification may be required and if necessary, will be communicated.
- (d) The tax invoice must include the organisation's ABN and the following reference: NBMP1617-xx [organisation name] First / Final claim
- (e) The first payment will be 50% of the total approved amount, with the final payment to be no more than 50% of actual project cost.

**8. PAYMENT SCHEDULE**

Release of funds will be made as per the stages below once each stage has been achieved to the satisfaction of the Grantor, as detailed in Schedule 2.

Part	Hurdle requirement	Portion	Expected date	Amount (excl. GST)	GST	Total (incl. GST)
1.	<ul style="list-style-type: none"> <li>• Milestones mutually agreed</li> <li>• Funding Agreement signed and returned</li> <li>• Satisfactory evidence of project commencement</li> <li>• Milestone 1 achieved</li> <li>• Tax invoice received</li> </ul>	50%				
2.	<ul style="list-style-type: none"> <li>• Project complete</li> <li>• Milestones and objectives achieved</li> <li>• Project satisfactorily acquitted</li> <li>• Tax invoice received</li> </ul>	50%				
	TOTAL	100%				

**9. SPECIAL CONDITIONS OF GRANT**

A project specific risk assessment<sup>7</sup> is to be developed prior to the commencement of any physical works identified in Item 1 of this Schedule.

**10. NOTICE ADDRESSES**

	<b>Grantor</b>	<b>Grantee</b>
<b>Contact</b>	A/Superintendent, Emergency Management & Hazard Planning	
<b>Postal Address</b>	20 Stockton Bend COCKBURN CENTRAL WA 6164	
<b>Street Address</b>	As above	
<b>Phone</b>	08 9395 9401	
<b>Email</b>	<a href="mailto:nbmp@dfes.wa.gov.au">nbmp@dfes.wa.gov.au</a>	

SAMPLE

## SCHEDULE 2

### REPORTING REQUIREMENTS

#### 1. PROGRESS REPORTS

The Grantor will provide the Grantee with a progress report template which is to be completed and submitted every three months (or as requested by the Grantor) until the completion of the Project. It will include:

- (a) A report outlining the progress of the project based on milestones
- (b) A statement of income and expenditure to date, certified by the Chief Executive Officer or the nominated representative
- (c) Revised project management plan and timeframes (if required)
- (d) Estimated completion date (if date is different from Application – refer schedule 1)
- (e) Project specific deliverables, if achieved during the reporting period (e.g. draft report, consultant survey, evidentiary photos)
- (f) Promotional activities undertaken

Progress Reports are to be submitted by the Grantee within 14 days of the end of each quarter, as per the following schedule:

Reporting Period	Report Due
January – March	14 <sup>th</sup> April
April – June	14 <sup>th</sup> July
July – September	14 <sup>th</sup> October
October – December	14 <sup>th</sup> January

Reports are to be submitted electronically where possible, with the maximum size being 10MB. Quarterly progress reports will be required for the duration of the project until completed. In accordance with Clause 11 of the Agreement, failure to provide Progress Reports by the date required may be considered a default.

#### 2. FINAL REPORT

The Grant Funds must be acquitted by submitting the final report to the Grantors satisfaction, as well as the final invoice, in accordance with Clause 3.5 of the Agreement. The Grantor will provide the Grantee with a Final Report template, which must be completed and returned no later than 60 days following project completion. The Grantee must provide the Grantor with a completed and signed Final Report which will include:

- (a) A final statement of income and expenditure consisting of:
  - (i) an expenditure statement (exclusive of GST) signed by the Chief Executive Officer or Accountable Officer, detailing budgeted expenditure in accordance with the estimated costs stated in the Application and actual expenditure on the project described in the request; and
  - (ii) a record of all cash and in-kind contributions received for the Project.
- (b) A detailed report outlining:
  - (i) project outcomes and evaluation against objectives
  - (ii) stakeholder engagement activities undertaken
  - (iii) evidence of acknowledgement including media / promotion
  - (iv) inclusion of reports / studies / plans / research produced as part of the project.

The Grantor will advise in writing when the Final Report has been accepted.

#### 3. AUDIT

If requested, the Grantee agrees to provide the SEMC Secretariat with independently audited financial acquittal reports verifying that the Grant was spent in accordance with this Agreement.

### **SCHEDULE 3**

#### **USE OF LOGO AND SIGNAGE GUIDELINES**

The Grantee agrees to recognise the Department of Fire and Emergency Services (DFES) and the Commonwealth wherever practicable, by use of approved logos, brandings and/or acknowledgement statements. The Grantee will contact DFES' representative for approval prior to publication. Any logos provided by the Grantor must be used as agreed and for the purpose agreed, and may not altered or used for other purposes without prior authorisation.

Use of the *Disaster Resilient Australia* logos must be in compliance with the *Disaster Resilient Australia Brand Guidelines*. Copies are available online at <http://www.em.gov.au/DisasterResilientAustralia/>.

In general, placement and use of logos must comply with the *State Government Badge Style Guide* (<http://www.commonbadge.dpc.wa.gov.au/Pages/Downloads.aspx>). If signage is to be erected at site, projects should follow the combined project example in the *Capital Works Projects Signage Style Guide* ([http://www.finance.wa.gov.au/cms/uploadedFiles/Building\\_Management\\_and\\_Works/About\\_Us/signage\\_style\\_guide\\_1209.pdf?n=6293](http://www.finance.wa.gov.au/cms/uploadedFiles/Building_Management_and_Works/About_Us/signage_style_guide_1209.pdf?n=6293)).

The Grantee should contact the Grantor for the provision of logos, as well as approval of the final acknowledgement towards the State and Commonwealth.



SAMPLE