



Our ref: CORP F2020/000252

4 August 2020

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Dear Mr Loussikian

Determination under the *Freedom of Information Act 1991*

I refer to your application made under the *Freedom of Information Act 1991* which was received by Primary Industries and Regions SA (PIRSA) on 6 July 2020, seeking access to the following:

- "1. The original agreement between PIRSA/South Australian government and the Orana Foundation as first mentioned in the mid-year budget update 2016-17*
 - 2. Any update to that agreement to date*
 - 3. Any correspondence between the Orana Foundation, including Jock Zonfrillo, and PIRSA including by text message and WhatsApp on July 5, 2020"*
- Timeframe: 1/07/2016 to 6/07/2020*

Accordingly, the following determination has been finalised.

I have located four documents that are captured within the scope of your request.

Determination 1

I have determined that access to the following documents is **granted in full**:

Doc No.	Description of document	No. of Pages
1	Funding Deed between Minister for Agriculture, Food and Fisheries and The Orana Foundation Limited dated 17/5/2017	16
2	Instrument to Vary No 1 to Funding Deed between Minister for Primary Industries and Regional Development and The Orana Foundation Limited dated 30/6/2020	15
3	Email from J Zonfrillo to M Palmer (PIRSA) dated 5/7/2020 re Journalist query	2

Determination 2

I have determined that access to the following document is **granted in part**:

Doc No.	Description of document	No. of Pages
4	Text messages between J Zonfrillo and M Palmer (PIRSA) dated 5/7/2020 re media enquiry	3

The information removed from the above document is pursuant to Clause 6(1) of Schedule 1 of the Freedom of Information Act which states:

"6 - Documents affecting personal affairs

(1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead)."

The information removed consists of the mobile telephone number of a third party. Accordingly, it is considered that disclosure of this information would be an unreasonable intrusion into the privacy rights of the individual concerned.

If you are dissatisfied with this determination, you are entitled to exercise your right of review and appeal as outlined in the attached documentation <https://archives.sa.gov.au/finding-information/information-held-sa-government/making-freedom-information-application#Review>, by completing the "FOI Application Form for Internal Review of a Determination" and returning the completed form to:

Freedom of Information Principal Officer
Primary Industries and Regions SA
GPO Box 1671
ADELAIDE SA 5001

or via email PIRSA.FOI@sa.gov.au

In accordance with the requirements of Premier and Cabinet Circular PC045, details of your application, and the documents to which you are given access, will be published in PIRSA's disclosure log. A copy of PC045 can be found at http://dpc.sa.gov.au/data/assets/pdf_file/0019/20818/PC045-Disclosure-Log-Policy.pdf

If you disagree with publication, please advise the undersigned in writing within fourteen calendar days from the date of this determination.

Should you require further information or clarification with respect to this matter, please contact Ms Lisa Farley, Freedom of Information and Privacy Officer on (08) 8429 0422 or email PIRSA.FOI@sa.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Darren Humphrys', written over the printed name.

Darren Humphrys
Accredited Freedom of Information Officer
PRIMARY INDUSTRIES AND REGIONS SA

DATED 17TH DAY OF MAY 2017

FUNDING DEED

BETWEEN

MINISTER FOR AGRICULTURE, FOOD AND FISHERIES
(ABN 53 763 159 658)
("Minister")

-AND-

THE ORANA FOUNDATION LIMITED
(ACN 612 366 533)
("Recipient")



CROWN SOLICITOR
Level 9, 45 Pirie Street, Adelaide SA 5000

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SCHEDULE

ATTACHMENT A	MILESTONE SCHEDULE
ATTACHMENT B	REPORTS
ATTACHMENT C	KEY PERFORMANCE INDICATORS

DEED dated 17TH day of MAY 2017

PARTIES:

MINISTER FOR AGRICULTURE, FOOD AND FISHERIES a body corporate pursuant to the *Administrative Arrangements Act 1994 (SA)* (ABN 53 763 159 658) of Level 10, 1 King William Street, Adelaide, South Australia 5000 ("Minister")

AND

THE ORANA FOUNDATION LIMITED (ACN 612 366 533) of 1/285 Rundle St, Adelaide SA 5000 ("Recipient").

BACKGROUND:

- A. The Recipient is a Not-for-Profit organisation with the purpose of developing and leading research, cultivation and production of Australian native wild foods for direct benefit to both Aboriginal communities and South Australia.
- B. The Recipient is to undertake the Project. The Minister wishes to support the Project, and has agreed to provide financial assistance (the Funding) to the Recipient on the terms and conditions set out in this Deed.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed unless the contrary intention is apparent:

- 1.1.1 "Business Day" means any day which is not a Saturday, Sunday or a public holiday in the State under the *Holidays Act 1910 (SA)*;
- 1.1.2 "Commencement Date" means the date specified in the Schedule;
- 1.1.3 "Confidential Information" means information disclosed by or on behalf of a Party that:
 - (a) is by its nature confidential or by the circumstances in which it is disclosed is confidential; or
 - (b) is designated by the disclosing Party as confidential or identified in terms connoting its confidentiality;
 but does not include this Deed or information which is or becomes known to the recipient other than by a breach of this Deed;
- 1.1.4 "Deed" means this Funding Deed between the Parties and includes the Schedule and the Attachments;
- 1.1.5 "Expiry Date" means the date specified in the Schedule;

- 1.1.6 "Funding" means the amount specified in the Schedule;
- 1.1.7 "Funding Period" means the period commencing on the Commencement Date and ending on the Expiry Date;
- 1.1.8 "General Purpose Financial Statements" has the meaning given in the Australian Accounting Standards;
- 1.1.9 "Governmental Agency" means any State government department, authority, instrumentality or agency;
- 1.1.10 "GST" means the tax imposed by the GST Law;
- 1.1.11 "GST Law" has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;
- 1.1.12 "Insolvency Administration" means:
 - (a) an administrator is appointed to the Recipient or action is taken to make such an appointment;
 - (b) the Recipient resolves to be wound up;
 - (c) an application is made to a court for an order or an order is made that the Recipient be wound up (whether on grounds of insolvency or otherwise);
 - (d) the Recipient ceases to carry on business;
 - (e) a receiver or a receiver and manager of property of the Recipient is appointed whether by court or otherwise;
 - (f) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Recipient or any one of them is appointed, whether or not under an order;
 - (g) the Recipient enters into a compromise or arrangement with its creditors or a class of them;
 - (h) the Recipient is or states that it is unable to pay its debts when they fall due; or
 - (i) the Recipient is wound up by a court, voluntarily or under the *Associations Incorporation Act 1986 (SA)* or the *Corporations Act 2001 (Cth)*, or an application is made to a court to wind up the Recipient;
- 1.1.13 "Intellectual Property Rights" means any patent, copyright, trademark, tradename, design, trade secret, know how, semi conductor, circuit layout or other form of confidential information, or any right to registration of such rights and any other form of intellectual property right whether arising before or after the execution of this Deed and the right to registration and renewal of those rights;
- 1.1.14 "Milestone Achievement Dates" means the milestone achievement dates specified in Attachment A;
- 1.1.15 "Milestones" means the milestones specified in Attachment A;
- 1.1.16 "Milestones Schedule" means the schedule set out in Attachment A;
- 1.1.17 "Minister's Representative" means the person named in the Schedule;

- 1.1.18 **"Parties"** means the Minister and the Recipient and **"Party"** means either one of them;
- 1.1.19 **"Prescribed Rate"** means:
- (a) the Reserve Bank of Australia official daily cash rate;
 - (b) plus 1% per annum;
- 1.1.20 **"Project"** means the project described in the Schedule and includes the Project Activities.
- 1.1.21 **"Project Activities"** means the activities described in Attachment A;
- 1.1.22 **"Project Commencement Date"** means the date specified in the Schedule;
- 1.1.23 **"Project Completion Date"** means the date specified in the Schedule;
- 1.1.24 **"Purpose"** means the purpose specified in the Schedule;
- 1.1.25 **"Recipient's Representative"** means the person named in the Schedule;
- 1.1.26 **"Repayment Amount"** means:
- (a) the amount of the Funding paid to the Recipient; and
 - (b) interest on such amount (or so much of that amount as remain unpaid for the time being) calculated at the Prescribed Rate from the date upon which the Minister made demand upon the Recipient for payment of that amount to the date upon which that amount is paid in full;
- 1.1.27 **"Repayment Event"** means any of the events described in clause 4;
- 1.1.28 **"Report"** means a report required pursuant to clause 8;
- 1.1.29 **"Special Conditions"** means the special conditions set out in the Schedule (if any);
- 1.1.30 **"State"** means the State of South Australia;
- 1.1.31 **"Taxable Supply"** has the meaning attributed in the GST Law;
- 1.1.32 **"Tax Invoice"** has the meaning attributed in the GST Law;
- 1.2 **Interpretation**
- In this Deed unless the contrary intention is apparent:
- 1.2.1 the clause headings are for convenience only and do not form part of this Deed;
 - 1.2.2 a reference to a clause number is a reference to all its subclauses;
 - 1.2.3 a reference to a clause, subclause, or Schedule is a reference to a clause, subclause or schedule of this Deed;
 - 1.2.4 a word in the singular includes the plural and a word in the plural includes the singular;
 - 1.2.5 a word importing a gender includes any other gender;
 - 1.2.6 a reference to a person includes a partnership and a body corporate;

- 1.2.7 a reference to legislation includes legislation repealing, replacing or amending that legislation;
- 1.2.8 a reference to dollars is a reference to Australian dollars;
- 1.2.9 where a word or phrase is given a particular meaning other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- 1.2.10 a reference to a Party includes that Party's successors and permitted assigns;
- 1.2.11 a reference to a document or agreement includes that document or agreement as novated, altered, supplemented or replaced;
- 1.2.12 no provision or expression is to be construed against a Party on the basis that the Party (or its advisers) was responsible for the drafting of this document;
- 1.2.13 if a Party consists of more than one person, this Deed binds them jointly and each of them severally; and
- 1.2.14 in resolving inconsistencies in this Deed:
 - (a) this Deed (excluding the Schedule and the Attachments);
 - (b) the Schedule to this Deed;
 - (c) the Attachments to this Deed,
 shall have precedence in that order.

2. PROVISION OF FUNDING

- 2.1 Subject to the terms and conditions of this Deed, the Minister agrees to provide the Funding to the Recipient for the Purpose and in the manner specified in the Schedule.
- 2.2 Any interest earned by the Recipient on the Funding must be expended by the Recipient towards the Purpose.
- 2.3 The Minister's obligation to provide the Funding is subject to the provisions of this Deed, and no provision contained in this Deed shall be construed as creating any obligation, commitment or undertaking by the Minister to provide additional funding or assistance beyond that expressly provided for under this Deed.

3. GST

- 3.1 The Parties acknowledge that compliance with obligations or the grant of rights under this Deed by the Recipient will be a Taxable Supply as defined in the GST Law and the Recipient will be liable to pay GST on the Taxable Supply.
- 3.2 The Minister will pay in addition to the Funding an amount (the **"GST payment"**) calculated by multiplying the Funding by the rate at which GST is levied at the time of this Deed.
- 3.3 The Recipient warrants that:
 - 3.3.1 the ABN shown in the Schedule is the Recipient's ABN; and

3.3.2 it is registered under the GST Law.

4. REPAYMENT EVENTS

The occurrence of any of the following events are Repayment Events:

- 4.1 If the Recipient is subject to any form of Insolvency Administration; or
- 4.2 If the Recipient breaches:
 - 4.2.1 any of its warranties or representations under this Deed; or
 - 4.2.2 any of its obligations or undertakings under this Deed and where that breach is capable of rectification, has not rectified such breach within a reasonable time frame specified in a notice given in writing by the Minister to the Recipient requiring rectification of the breach.
- 4.3 If there occurs any material adverse change in the condition or stability of the Recipient which in the reasonable opinion of the Minister could result in the Recipient being unable to perform its obligations under this Deed.

5. CONSEQUENCES OF REPAYMENT EVENT

5.1 The Recipient acknowledges:

- 5.1.1 that the Minister has concluded that it is in the interests of the public of the State that the Minister should provide the Funding to the Recipient but only upon the terms and conditions of this Deed;
- 5.1.2 that it is essential to the purpose for which the Funding is advanced pursuant to this Deed that:
 - (a) the Recipient uses the Funding for the Purpose; and
 - (b) the Recipient does not permit a Repayment Event to occur;
- 5.1.3 that if a Repayment Event occurs the extent of the loss or damage sustained by the Minister will be extremely difficult to assess or quantify accurately or to otherwise determine precisely;
- 5.1.4 that the Repayment Amount represents a genuine pre-estimate by the Minister of the compensation which the Minister believes is fair and reasonable; and
- 5.1.5 that any amounts payable pursuant to this clause 5 are not and will not be construed or deemed to be a penalty payable by the Recipient for the purposes of any applicable legal rule or norm.
- 5.2 Subject to the provisions of this Deed, if a Repayment Event occurs at any time, then notwithstanding any previous delay or waiver on the Minister's part, the whole of the Repayment Amount shall immediately become due and payable by the Recipient to the Minister as liquidated damages upon demand by the Minister.
- 5.3 The Recipient enters into the obligation to pay the Repayment Amount pursuant to this clause 5 with the intention that it is a legally binding, valid and enforceable contractual provision against the Recipient.

5.4 The Parties intend to exclude, to the extent permissible, the application and operation of any legal rule or norm, whether statutory or common law, relating to;

- 5.4.1 the characterisation as penalties of liquidated amounts payable under a contract on a breach occurring; or
- 5.4.2 the enforceability or revocability of such liquidated amounts.

5.5 The Recipient's obligation to pay the Repayment Amount to the Minister in accordance with this clause 5 shall not be subject to any set off or counterclaim by the Recipient and the Repayment Amount shall be paid by the Recipient to the Minister free and clear of any withholding of whatever nature.

6. THE RECIPIENT'S REPRESENTATIONS

The Recipient represents to the Minister that:

- 6.1 the financial statements disclosing the financial position of the Recipient given to the Minister (if any) present a true and fair view of the financial condition of the Recipient as at the Commencement Date and as at the date upon which the Funding is advanced and that there has been no material adverse change in the condition of the Recipient, financial or otherwise, since the giving of those statements; and
- 6.2 all authorisations, approvals, consents, licences, exemptions, filings, registrations and other requirements with respect to the Recipient of governmental, judicial and public bodies and authorities required in connection with the execution, delivery and performance by the Recipient of this Deed have been obtained or effected or will be obtained or effected within any relevant time or statutory period and are or will be in full force and effect and there has been no default by the Recipient in the performance of any of the terms and conditions thereof.

7. THE RECIPIENT'S WARRANTIES

The Recipient warrants to the Minister that:

- 7.1 at the Commencement Date and as at the date upon which the Funding is advanced to the Recipient no Repayment Event has occurred or is occurring;
- 7.2 the Recipient has the power to enter into and perform its obligations under this Deed and has taken the necessary corporate action to authorise the entry into and performance of this Deed;
- 7.3 to the best of its knowledge and belief, there are no threatened actions or proceedings before any Court or other body which will or are likely to materially adversely affect the financial position of the Recipient or its ability to perform its obligations under this Deed; and
- 7.4 this Deed constitutes legal, valid and binding obligations on the part of the Recipient which are enforceable against it in accordance with its terms.

8. THE RECIPIENT'S OBLIGATIONS AND UNDERTAKINGS

- 8.1 The Recipient must ensure that any activity carried out by it in connection with its use of the Funding complies with the laws from time to time in force in the State.
- 8.2 Where the Recipient receives any form of funding or assistance in connection with the Project from any Government Agency, other than any such funding or assistance which has been disclosed in writing by the Recipient to the Minister prior to the Commencement Date:
- 8.2.1 the Recipient must immediately notify the Minister in writing of the receipt of that funding or financial assistance and of the identity of the Governmental Agency from whom it has been received;
- 8.2.2 the Minister may (in the Minister's absolute discretion) elect to:
- reduce the amount of Funding to be paid to the Recipient under this Deed by an amount not exceeding the amount of the funding or financial assistance received by the Recipient from the Governmental Agency in connection with the Project; or
 - recover from the Recipient an amount equivalent to the amount of the funding or financial assistance received by the Recipient from the Governmental Agency in connection with the Project.
- 8.3 The Recipient must comply with each of the Special Conditions specified in the Schedule (if any).
- 8.4 The Recipient undertakes to the Minister that:
- 8.4.1 it will promptly inform the Minister in writing immediately on the Recipient becoming aware of or when the Recipient ought reasonably to have become aware of the happening of a Repayment Event;
- 8.4.2 it will keep separate accounts and financial records in relation to the Funding;
- 8.4.3 it will provide the Minister with such information as the Minister may reasonably require to enable the Minister to monitor the Recipient's performance of its undertakings and obligations under this Deed;
- 8.4.4 all records and other documentation required to be kept by the Recipient under this Deed and under any legislation or statutory instrument will upon the giving of five (5) Business Days notice be available to the Minister for inspection at Adelaide at all times during normal business hours;
- 8.4.5 it will, upon reasonable notice, permit the Minister or the Minister's employees or agents, to have access to its premises for the purpose of conducting an audit of the performance by the Recipient of its obligations under this Deed;
- 8.4.6 it will where requested by the Minister provide management accounts, annual reports, financial statements and any other information or documents relevant to its operations;
- 8.4.7 it will prepare financial statements at the end of each financial year during the Funding Period in accordance with the Australian Accounting Standards signed by an appropriate senior office holder of the Recipient, and submit the financial statements to the Minister;

- 8.4.8 it will provide timely advice to the Minister's Representative of any significant changes to the nature or scope of the activities conducted by the Recipient;
- 8.4.9 it will comply with any constitution which governs the Recipient's operations.
- 8.5 The Recipient must provide to the Minister the Reports specified in the Schedule at the intervals specified in the Schedule.
- 8.6 The Recipient must prepare its financial statements in the nature of a General Purpose Financial Statement.
- 8.7 The Recipient must carry out each of the tasks and other activities related to the Project specified in the Schedule and Attachments.
- 8.8 The Recipient must:
- 8.8.1 commence the Project by no later than the Project Commencement Date; and
- 8.8.2 complete the Project by no later than the Project Completion Date.
- 8.9 The Recipient agrees that the Minister may direct that the Recipient's financial accounts be audited, and that the Minister may also specify the minimum qualifications to be held by a person appointed to conduct such an audit.
- 8.10 The Recipient must ensure that all information provided by or on behalf of the Recipient to the Minister pursuant to this Deed, including, but not limited to information contained in the Reports, is, to the best of the Recipient's knowledge and belief (having made all reasonable enquiries), true, accurate and complete in all respects.
- 8.11 The Recipient must complete each Milestone by no later than the Milestone Achievement Date specified for that Milestone in Attachment A.
- 8.12 There must not be any change in the control (as defined in section 50AA of the Corporations Act 2001 (Cth)) of the Recipient during the Funding Period.
- 8.13 The Recipient must as soon as practicable after becoming aware of any matter or circumstance which may adversely affect or which has adversely affected the scope, timing or carrying out of the Project, give written notice to the Minister detailing the matter or circumstance and its anticipated effect on the Project.
- 8.14 The Recipient must not use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest:
- 8.14.1 the Funding;
- 8.14.2 this Deed or any contract between the Minister and the Recipient;
- 8.14.3 any obligations owed under this Deed or under any contract between the Minister and the Recipient.
- 8.15 The Recipient must ensure that the Funding is not applied towards any arrangement that is not on an arm's length commercial basis or any arrangement that the Minister considers to be a sham arrangement.

9. INSURANCE

- 9.1 The Recipient must effect and maintain in its own name, and at its own expense, the policies of insurance specified in the Schedule for not less than the amounts specified in Schedule
- 9.2 The Minister in specifying levels of insurance in this Deed accepts no liability for the completeness of their listing, the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect to how they may or may not respond to any loss, damage or liability. The Recipient acknowledges and agrees that it is the Recipient's responsibility to assess and consider the risks and scope of insurances required under this Deed.

10. RECTIFICATION OF DEFECTS IN THE DEED

If any provision of this Deed is, or becomes defective, and the Minister consequently is unable to enforce any of the Recipient's obligations under this Deed, and the defect is capable of remedy, the Recipient must do all things and sign all documents which the Minister may reasonably require the Recipient to do or sign to remedy the defect.

11. READING DOWN AND SEVERANCE

- 11.1 Where a word, phrase, sentence, clause or other provision of this Deed would otherwise be illegal, void, voidable or unenforceable the effect of that provision shall, so far as possible, be limited and read down so that it is not illegal, void, voidable or unenforceable.
- 11.2 If despite clause 11.1 any part of this Deed is or becomes illegal, void, voidable or unenforceable or if this Deed would, if any part were not omitted, be or become illegal, void, voidable or unenforceable then:
- 11.2.1 that part will be severable without affecting the remainder of this Deed and this Deed will then be read as if that part were not contained in it;
- 11.2.2 the Parties will attempt to renegotiate that part in good faith; but
- 11.2.3 any failure of the Parties to reach an agreement on the replacement of the severed part of this Deed will not affect the enforceability of this Deed.

12. NOTICE

- 12.1 A "notice" means:
- 12.1.1 a notice in writing; or
- 12.1.2 a consent, approval or other communication required to be in writing under this Deed.
- 12.2 A notice must be signed by or on behalf of the sender addressed to the recipient and be delivered to the recipient:
- 12.2.1 personally, in which case the notice is deemed to have been received upon delivery;

12.2.2 by pre-paid post to the recipient's address, in which case the notice is deemed to be received at the time at which it would be delivered in the ordinary course of the post;

12.2.3 by facsimile transmission to the recipient's address, in which case the transmission is deemed to be received when the sending machine confirms notice that it has been sent except if the transmission is not completed until after 4:00 pm on a Business Day, in which case the notice will be deemed to be received on the next Business Day; or

12.2.4 by email transmission, in which case the notice will be deemed to be received on the Business Day on which it is sent if sent before 5:00 pm on that Business Day and the sender does not receive a message from its internet service provider or the recipient's mail server indicating that it has not been successfully transmitted, otherwise on the next Business Day.

12.3 The addresses and numbers for service are set forth in the Schedule.

12.4 A Party may from time to time change its address for service by notice to the other Party.

13. CONTRACT DISCLOSURE AND PUBLICITY

- 13.1 The Minister may disclose this Deed and/or information in relation to this Deed in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request.
- 13.2 Nothing in this clause derogates from:
- 13.2.1 the Recipient's obligations under any provisions of this Deed; or
- 13.2.2 the provisions of the Freedom of Information Act 1991 (SA).
- 13.3 Subject to any requirement at law, the Recipient must not, without the prior written approval of the Minister, issue or participate in any media release or publicity in relation to:
- 13.3.1 the amount of the Funding; or
- 13.3.2 the terms and conditions on which the Funding is advanced to the Recipient.
- 13.4 The Recipient agrees to participate in all promotional or publicity activities in relation to the Deed as reasonably required by the Minister.
- 13.5 The Recipient must ensure that the Recipient's employees, agents and subcontractors are aware of and comply with the provisions of this clause.

14. CONFIDENTIAL INFORMATION

- 14.1 Subject to this Deed, a Party to this Deed to whom Confidential Information is disclosed ("Receiving Party") must not disclose the Confidential Information to any person without first obtaining the written consent of the Party disclosing the Confidential Information ("Disclosing Party").
- 14.2 There will be no breach of the obligations of the Receiving Party under this Deed if the Confidential Information is legally required to be disclosed or permitted to be disclosed by this Deed.

- 14.3 The Receiving Party may disclose Confidential Information to its employees, advisers, agents, consultants and sub-contractors ("Authorized Persons") if:
- 14.3.1 the Authorized Person needs to know the Confidential Information for the performance of his or her duties under this Deed;
 - 14.3.2 the Receiving Party notifies the disclosure to the Disclosing Party; and
 - 14.3.3 the Receiving Party first makes the Authorized Person aware of the confidential nature of the Confidential Information and requires the Authorized Person to treat it confidentially.
- 14.4 Notwithstanding anything else in this Deed, it is a condition to any permitted disclosure that the Receiving Party must notify the Disclosing Party promptly if the Receiving Party becomes aware of any unauthorised disclosure by a third party. The Receiving Party must give the Disclosing Party all assistance reasonably required by that party in connection with any proceedings which it may institute against any persons for the disclosure.
- 14.5 The Receiving Party indemnifies the Disclosing Party against any loss or damage of third parties for which the Disclosing Party may become liable as the result of:
- 14.5.1 any disclosure or use of the Confidential Information in breach of this Deed by the Receiving Party; or
 - 14.5.2 any unauthorised disclosure or use by an Authorized Person of Confidential Information.
- 14.6 The Recipient acknowledges that the Minister may disclose Confidential Information:
- 14.6.1 to Parliament, the Governor, Cabinet or a Parliamentary or Cabinet committee or subcommittee;
 - 14.6.2 to any agency, authority, instrumentality, minister or officer of the State of South Australia to whom it is customary for the Minister to disclose the Confidential Information (whether or not the Minister is legally obliged to do so); or
 - 14.6.3 for the purposes of prosecuting or defending any legal proceedings.
15. **COSTS**
- 15.1 The Recipient must pay on the basis of a full indemnity, any costs incurred by the Minister in enforcing the Minister's rights under this Deed.
 - 15.2 Each Party will bear its own costs of and incidental to the negotiation, preparation and execution of this Deed.
16. **AUDITOR GENERAL**
- Nothing in this Deed derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987 (SA)*.

17. **PROPER LAW**

The laws in force in South Australia, including laws with respect to capacity to contract and the manner of performance, apply to this Deed.

18. **JURISDICTION OF COURTS**

18.1 The courts of South Australia will have exclusive jurisdiction to determine any proceeding in relation to this Deed.

18.2 Any proceeding brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.

19. **COMPLIANCE WITH LAW**

The Recipient must comply with the laws in force in South Australia in the course of performing its obligations under this Deed.

20. **NO MUTUAL LIABILITY**

Nothing in this Deed constitutes a partnership, joint venture or agency of any kind between the Recipient and the Minister or renders them liable for the debts or liabilities incurred by each other.

21. **NO ASSIGNMENT**

The Recipient's must not assign, novate or encumber any of its rights or obligations under this Deed.

22. **NO WAIVERS BY THE MINISTER**

22.1 No waiver of any right under this Deed is effective unless given in writing and signed by the Party waiving its rights.

22.2 The rights and remedies contained in this Deed are cumulative and not exclusive of any rights or remedies provided at law.

23. **MODIFICATION**

Any modification of this Deed must be in writing and signed by each Party.

24. **ENTIRE AGREEMENT**

24.1 This Deed incorporates the Schedule and the Attachments.

24.2 This Deed contains the entire agreement between the Parties with respect to its subject matter.

24.3 This Deed supersedes any prior agreement or understanding of the Parties on the subject matter.

25. CONSENTS AND APPROVALS

Where the Recipient requires the Minister's consent or approval under this Deed, the Minister may in its absolute discretion give or withhold its consent or approval (subject to any provision in this Deed to the contrary) and if giving consent or approval, the Minister may impose any condition on that consent that it considers appropriate and the Minister's consent or approval will not be effective unless it is in writing and signed.

26. SET OFF

Any amount due and payable by the Recipient to the Minister or the Crown in right of the State pursuant to:

26.1 this Deed; or

26.2 any other agreement that the Recipient may have with the Crown in right of the State,

may be set off against any amount due and payable by the Minister to the Recipient under this Deed.

27. TIME IS OF THE ESSENCE

Time is of the essence in respect of any time, date, or period specified either in this Deed or in any notice served under this Deed.

28. CONTRACT ADMINISTRATION

28.1 The Parties appoint the persons named in the Schedule as their respective Representatives. Subject to this Deed, each Representative has authority to:

28.1.1 exercise all of the powers and functions of his or her Party under this Deed, including the power to amend this Deed; and

28.1.2 bind his or her Party in relation to any matter arising out of or in connection with this Deed.

28.2 A Party may change its Representative by giving five (5) Business Days' notice of that change to the other Party.

29. INDEMNITY

The Recipient must indemnify and keep the Minister and the Crown in right of the State of South Australia indemnified from and against any costs, loss, expense or liability of any kind in respect of any loss of life, personal injury or disability, loss of or damage to property, or any other loss whatsoever arising out of:

29.1 any negligence or wrongful act or omission of the Recipient or the Recipient's employees, contractors or agents in connection with or incidental to this Deed;

29.2 any breach of the Deed by the Recipient; or

29.3 any act or omission of the Recipient or the Recipient's employees, contractors or agents in connection with or incidental to the Project,

29.4 except to the extent that such loss or damage is caused or contributed to by the negligence of the Minister.

30. ACKNOWLEDGMENT

30.1 The Recipient must in all its publications, promotional materials, communications, advertising and other forms of publicity (including media releases, reports, newsletters, interviews and electronic media) which refer to the Project ("**Promotional Material**"), acknowledge the financial support it has received from the Minister under this Deed.

30.2 The Recipient must before it publishes, releases or issues any Promotional Material obtain the consent in writing of the Minister.

31. USE OF GOVERNMENT LOGO

The Recipient must not use the Government of South Australia "Piping Shrike" logo or the Department of Primary Industries and Regions logo in any manner whatsoever, without the prior written consent of the Minister's Representative.

32. RISK

The Recipient undertakes the Project at its sole risk in all things and the Recipient shall be exclusively liable for all costs and expenses incurred for losses sustained by the Recipient in undertaking the Project.

33. RELEASE

The Recipient releases and discharges, to the extent permitted by law, the Minister and the Crown in right of the State of South Australia and their employees, officers, agents and contractors from any claims, demands, actions, remedy, or liability made, against, suffered or incurred by the Recipient in respect of any loss of or damage to property, injury or any other loss of any nature in connection with the undertaking of the Project.

34. INTELLECTUAL PROPERTY

34.1 Any Intellectual Property Rights created by the Recipient as part of the Project vests in the Recipient. The Recipient grants to the Minister a non exclusive, perpetual, royalty free licence to use such Intellectual Property Rights, subject to the Minister seeking the prior written approval of the Recipient.

34.2 The Recipient must:

34.2.1 not knowingly infringe the Intellectual Property Rights of any person in undertaking the Project; and

34.2.2 keep the Minister indemnified against all costs, expenses and liabilities whatsoever arising out of or in connection with any claim that the undertaking of the Project by the Recipient infringes the Intellectual Property Rights of any person.

35. STATE BRAND

35.1 The Recipient must:

- 35.1.1 apply to Brand South Australia Incorporated (ABN 54 133 455 322) for registration to use the State Brand administered by that organisation in relation to the Business; and
- 35.1.2 if registration is obtained by the Recipient, use the State Brand in relation to the carrying on of that Business, and for the conduct of the Project, to the extent that this is appropriate.


36. SURVIVAL

36.1 The following clauses survive the termination or expiry of this Deed:

- 36.1.1 this clause 36;
- 36.1.2 Clause 5 : Consequences of Repayment Event;
- 36.1.3 Clause 11: Reading Down and Severance;
- 36.1.4 Clause 14 : Confidential Information;
- 36.1.5 Clause 17 : Proper Law;
- 36.1.6 Clause 18 : Jurisdiction of Courts;
- 36.1.7 Clause 21 : No assignment by Recipient;
- 36.1.8 Clause 29 : Indemnity;
- 36.1.9 Clause 33 : Release;
- 36.1.10 Clause 34 : Intellectual Property.

EXECUTED AS A DEED

THE COMMON SEAL of the MINISTER FOR)
 AGRICULTURE, FOOD AND FISHERIES was)
 hereunto affixed in the presence of:)


 Witness

[Print Name: W.C. ANDERSON]



THIS DEED is executed as a deed by THE ORANA)
 FOUNDATION LIMITED (ACN 612 366 533) by two)
 of its Directors or by one of its Directors and the)
 Company Secretary in accordance with section 127)
 of the Corporations Act 2001 (Cth):)

Signed: 

Name: Stock Zonfrillo

[Print Name: Stock Zonfrillo]

Signed: 

Name: Lauren Fried

[Print Name: Lauren Fried]

SCHEDULE**1. COMMENCEMENT DATE**

1 May 2017

2. EXPIRY DATE

30 June 2020

3. FUNDING

One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000)
(GST exclusive).

4. MANNER OF PAYMENT OF FUNDING

- 4.1 The Minister will pay the Funding to the Recipient within five (5) Business Days of the Commencement Date subject to receipt of a valid Tax Invoice (as defined in the GST law) from the Recipient.
- 4.2 The Recipient must use the Funding for the Purpose in accordance with the following project costs:

PROJECT COSTS

Indigenous Food Database	100,000 + 125,000 in-kind
Food Qualities Assessment	125,000 + 125,000 in-kind
Food Flavours Assessment	125,000 + 125,000 in-kind
Plant Production Assessment	100,000 + 125,000 in-kind
Set up costs (sunk)	100,000
Ethics model and framework	10,000
Consultant costs	100,000
Finance, legal, insurance, admin	60,000
Travel & filming	80,000
Media / Social Media / PR Development	50,000
Indigenous Enterprise project development	400,000
Total	\$1,250,000 ex GST

5. PURPOSE

This initiative provides \$1.25 million to enable South Australia to gain a leadership position in the research, cultivation and production of Australian native wild foods. The initiative will create specialised science and research based jobs and promote South Australia as a centre for food innovation. This will be achieved by combining traditional Aboriginal knowledge with food science and contemporary culinary practice.

The Recipient must develop 'reasonable benefit-sharing arrangements' to include 'protection for, recognition of and valuing of any indigenous peoples knowledge' to be used. The benefit-sharing agreements must also seek to achieve Aboriginal employment and financial benefit.

Benefits to the indigenous community must also include the preservation of traditional knowledge of the land and native ingredients. It must aim to reconnect young Aboriginal people through education and training through the creation of sustainable commercial enterprises within remote indigenous communities. The Recipient will undertake the Project based around the core cultural importance of knowledge and relationships to the land and native foods.

6. PROJECT**6.1 Project Overview:**

- 6.1.1 The creation of a comprehensive native food database to capture and preserve knowledge gathered from indigenous communities, early settlers, anthropologists and botanist, to be accessible online.
- 6.1.2 Establish an Australian Food Culture Enterprise which will assess both food qualities (including nutritional profile and potential for bioactives) and flavours (with the potential of up to 50 species to be assessed). The enterprise will employ an innovative combination of culinary and food science experts to identify test and analyse a wider range of ingredients suitable for food preparation and health products.
- 6.1.3 Creation of an enterprise hub to directly support product cultivation projects, skills and leadership training, market development and produce placement and supply.

6.2 Project Activities:

As set out in Attachment A.

7. PROJECT COMMENCEMENT DATE

1 May 2017

8. PROJECT COMPLETION DATE

30 June 2020

9. REPRESENTATIVES

9.1 Minister:

Justin Ross
Director
Agriculture, Food and Wine Division
Department of Primary Industries and Regions

9.2 Recipient:

Jock Zonfrillo
Director
The Orana Foundation Limited

10. REPORTS

- 10.1 The Recipient must deliver to the Minister's Representative each of the Reports specified in Attachment B to this Deed in relation to each of the Milestones for the Project.
- 10.2 Each such Report must include the contents specified in Attachment B in such detail as the Minister's Representative shall require and must be provided by the Due Date specified in Attachment B for the Report.

11. SPECIAL CONDITIONS

11.1 The Recipient must:

- 11.1.1 meet each of the Key Performance Indicators described in Attachment C by the Due Date specified for the Key Performance Indicator ("KPI");
- 11.1.2 develop and establish 'benefit-sharing arrangements' with Aboriginal communities and groups to include 'protection for, recognition of and valuing of any indigenous peoples knowledge';
- 11.1.3 establish an Aboriginal Advisory Committee to:
- (a) ensure the view of Indigenous peoples are considered in all aspects of the projects; and
 - (b) to provide advice and guidance to the Recipient on matters relating to the interests of persons of Aboriginal descent;
- 11.1.4 consult with and develop partnerships with relevant Aboriginal bodies to develop and implement activities consistent with the cultural requirements of the community; and
- 11.1.5 continue collaboration and engagement with the South Australian Native Foods Industry Working Group to be convened by Primary Industries and Regions South Australia;
- 11.1.6 must ensure in-kind contributions as detailed in Attachment A are reported as per project reporting

11.2 The Recipient must:

- 11.2.1 not divulge information contrary to Aboriginal tradition other than is reasonably necessary in pursuance of the Project;

- 11.2.2 ensure all knowledge received from relevant Aboriginal communities is used strictly in accordance with any conditions or restrictions specified by the particular Aboriginal community; and

- 11.2.3 acknowledge the involvement of the Aboriginal community in any materials produced pursuant to the Project.

12. NOTICES

12.1 Minister:

Justin Ross
Director
Agriculture, Food and Wine Division
Department of Primary Industries and Regions
15th Floor, 25 Grenfell Street, Adelaide, SA, 5000
Tel. 84290446
email: Justin.ross@sa.gov.au

12.2 Recipient:

Jock Zonfrillo
Director
The Orana Foundation Limited
1/285 Rundle St, Adelaide SA 5000
Tel. 0477118833
email: jz@zonfrillo.com

13. RECIPIENT'S ABN

64 612 366 533

14. INSURANCE

Public Liability Insurance for Twenty Million Dollars (\$20,000,000) - QBE (168U274572BPK)

ATTACHMENT A
MILESTONE SCHEDULE

Project Name	Description	Deliverables	Timeline (months)	Budgeted Funds (ex GST)
Indigenous Foods database (Project 1)	<ul style="list-style-type: none"> Document top 1000 plants used as food by Aboriginal communities In-kind support from the University of Adelaide to provide: <ul style="list-style-type: none"> - supervisory staff, laboratory and office accommodation 	<ul style="list-style-type: none"> Web accessible and searchable database List of top 500 plants Literature review of foods used by Aboriginal populations Benefit sharing agreement with Aboriginal interests reached Website with data goes live Explore potential for major exhibition on 'Taste' with SA Museum Engage of Aboriginal communities to capture detail on food preparation and use to fill gaps in knowledge List of top 800 plants Launch final database with top 1000 plants through partners Publish thesis 	0-6 12 0-18 6-9 3-12 0-30 24 30-36 30-36	\$100,000 (\$125,000 in-kind- University of Adelaide)
Food Qualities Assessment (Project 2)	<ul style="list-style-type: none"> Assess the nutritional profile and potential for bioactive compound identification of up to 100 Aboriginal food plants, in particular; sugars, proteins, vitamins, anti-oxidants, fibres, glycaemic index In-kind support 	<ul style="list-style-type: none"> Establish approach to any benefit sharing among IP and knowledge owners Foods identified and sources of food can be found, review published literature on the nutritional profiles and expected health benefits of food identified in the 'Indigenous Food Database' project and enter information into 	18-30 18-30	\$125,000 (\$125,000 in-kind- University of Adelaide)

	<ul style="list-style-type: none"> from the University of Adelaide to provide: <ul style="list-style-type: none"> - supervisory staff, laboratory and office accommodation 	<ul style="list-style-type: none"> database For foods with missing information, conduct high throughput testing of nutritional profiles and enter into database For species with functional food potential provide assessment of antioxidant and vitamin levels For species with bioactivity, test for antibacterial and antifungal activity Identify lead species for full compound identification for ongoing research 		
Food Flavours Assessment (Project 3)	<ul style="list-style-type: none"> For foods with high nutritional profiles and or highly prospective in terms of taste and flavor, the potential of up to 50 plant species will be assessed Determine optimal preparation and cooking requirements of the 50 plant species In-kind support from the University of Adelaide to provide: <ul style="list-style-type: none"> - supervisory staff, laboratory and office accommodation 	<ul style="list-style-type: none"> Benefit sharing agreement with Aboriginal interests reached Flavour, test and texture profiling methodology of native foods Review of traditional Aboriginal recipes and preparation Flavour, test and texture profiles for raw ingredients and recipes for 50 plant species Publish thesis 	0-12 6-18 12-36 30-36	\$125,000 (\$125,000 in-kind- University of Adelaide)
Plant Production Assessment	<ul style="list-style-type: none"> Assess bioclimatic envelope and optimal growth 	<ul style="list-style-type: none"> Benefit sharing agreement with Aboriginal interests 		\$100,000 (\$125,000 in-kind- University

(Project 4)	<ul style="list-style-type: none"> conditions for up to 200 plants for commercial horticulture. Assess the optimal climatic growth envelope and horticultural practices of up to 200 plants using online databases Conduct growth trials over 2 years under covered horticulture for top 25 plants using 'dry' undercover production facilities In-kind support from the University of Adelaide to provide: <ul style="list-style-type: none"> - supervisory staff, laboratory and office accommodation 	<ul style="list-style-type: none"> reached List of bioclimatic and horticultural preferences for up to top 200 plants identified from projects 1-3. Comparative growth trials for up to top 25 identified from projects 1-3 using examples from key plant family groups with a focus on annuals 		of Adelaide)
Indigenous Enterprise project development	<ul style="list-style-type: none"> Creation of ingredient specific development projects which will lead to commercial enterprises directly engaging Aboriginal communities 	<ul style="list-style-type: none"> Geraldton Wax development <ul style="list-style-type: none"> - Varietal development for flavour and aroma - Identify optimum growing conditions Cherabin development <ul style="list-style-type: none"> - Collect brood stock from wild populations in 4-6 independent locations - Create comprehensive program around raising cherabin under captivity to be implemented in communities 	0-12 12-24 0-6 12-24	\$400,000

		<ul style="list-style-type: none"> - Close the breeding cycle of the species creating a new product to Australian and export markets NT Mollusc <ul style="list-style-type: none"> - Exploration of previously unused mollusc varieties for gastronomy using hand harvesting and sustainable practices in Aboriginal communities 		
Set up establishment costs (sunk)	<ul style="list-style-type: none"> Direct and receipted set-up costs of The Orana Foundation (TOF) 		3	\$100,000
Ethics model and framework	<ul style="list-style-type: none"> Develop best practice ethical principles in all aspects of Aboriginal engagement and practices Independent expert advice on best practice tailored to project outcomes Work with government advisory agencies to ensure optimum outcomes and benefits for Aboriginal communities 		0-6	\$10,000
Consultant costs	<ul style="list-style-type: none"> Consultancy costs as required 		0-6	\$100,000
Finance, Legal, Insurance, Administration	<ul style="list-style-type: none"> Costs associated with services required by TOF 		0-6	\$60,000
Travel & Filming	<ul style="list-style-type: none"> Missions to remote Aboriginal communities for direct engagement with the source of the 		0-24	\$80,000

	knowledge on native foods and Aboriginal practice			
Media/ social media / PR Development	<ul style="list-style-type: none"> Establish a website, ongoing social media and mainstream media management around events and releases 		0-24	\$50,000
			Total	\$1,250,000 ex GST

ATTACHMENT B**REPORTS**

Report	Report Contents	Due Date
Indigenous Foods database (Project 1)	Detailed project plan	31 August 2017
	Project update	31 December 2017
	Project update	30 June 2018
	Project update	31 December 2018
	Project update	30 June 2019
	Project update	31 December 2019
	Project update	30 June 2020
Food Qualities Assessment (Project 2)	Detailed project plan	31 August 2017
	Project update	31 December 2017
	Project update	30 June 2018
	Project update	31 December 2018
	Project update	30 June 2019
	Project update	31 December 2019
	Project update	30 June 2020
Food Flavours Assessment (Project 3)	Detailed project plan	31 August 2017
	Project update	31 December 2017
	Project update	30 June 2018
	Project update	31 December 2018
	Project update	30 June 2019
	Project update	31 December 2019
	Project update	30 June 2020
Plant Production Assessment (Project 4)	Detailed project plan	31 August 2017
	Project update	31 December 2017
	Project update	30 June 2018
	Project update	31 December 2018
	Project update	30 June 2019
	Project update	31 December 2019
	Project update	30 June 2020
Indigenous Enterprise Project Development	Progress report on:	
	- Geraldton Wax	30 September 2017
	- Cherabin	30 September 2017
	- NT Mollusc	30 September 2017
Other Project	Report on other project costs outlined in	As above

Costs	Attachment A to be included in Project reports In-kind contributions from the University of Adelaide to be reported as per project update reports	As above
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ATTACHMENT C**KEY PERFORMANCE INDICATORS**

Key Performance Indicator Number	Key Performance Indicator Description	Due Date
1. Establish an Aboriginal Advisory Committee	<ul style="list-style-type: none"> - Ensure the view of Indigenous peoples are considered in all aspects of the projects. - To provide advice and guidance to The Orana Foundation on matters relating to the interests of persons of Aboriginal descent. - Consult with and develop partnerships with relevant Aboriginal bodies to develop and implement activities consistent with the cultural requirements of the community. - Establish the Aboriginal Advisory Committee with the assistance of the Aboriginal Partnership Unit- Primary Industries and Regions South Australia. 	31 August 2017
2. Continued consultation with Aboriginal Advisory Committee	- Continued consultation with the established Aboriginal Advisory Committee to guide projects and their outcomes.	1 September 2017- 31 December 2020
3. Continued collaboration with the South Australian Native Foods Industry Working Group	- Continue collaboration and engagement with the South Australian Native Foods Industry Working Group as convened by Primary Industries and Regions South Australia.	31 December 2017
4. Develop and establish 'benefit-sharing arrangements' with Aboriginal communities and groups	<ul style="list-style-type: none"> - Develop and establish 'benefit-sharing arrangements' with Aboriginal communities and groups to include 'protection for, recognition of and valuing of any indigenous peoples knowledge'. - Benefit-sharing agreements should also seek to achieve Aboriginal employment and financial benefit outcomes. 	30 June 2018

DATED 30th DAY OF June **2020**

INSTRUMENT TO VARY NO. 1
TO FUNDING DEED

BETWEEN

MINISTER FOR PRIMARY INDUSTRIES AND REGIONAL DEVELOPMENT

(Minister)

AND

THE ORANA FOUNDATION LIMITED

(ACN 612 366 533)

(Recipient)

TABLE OF CONTENTS

1.	VARIATION OF THE FUNDING DEED	1
2.	OPERATION OF THIS INSTRUMENT TO VARY	2
3.	CONFIRMATION OF THE FUNDING DEED	2
4.	COUNTERPARTS	2

ANNEXURE A (Schedule)

ANNEXURE B (Attachment A) - (Milestone Schedule)

ANNEXURE C (Attachment B) - (Reports)

ANNEXURE D (Attachment C) - (Key Performance Indicators)

PARTIES:

MINISTER FOR PRIMARY INDUSTRIES AND REGIONAL DEVELOPMENT a body corporate pursuant to the *Administrative Arrangements Act 1994* (SA) (ABN 53 763 159 658) of Level 10, 1 King William Street, Adelaide, South Australia 5000 (**Minister**)

AND

THE ORANA FOUNDATION LIMITED (ACN 612 366 533) of 1/285 Rundle Street, Adelaide, South Australia 5000 (**Recipient**).

BACKGROUND:

- A. The Minister and the Recipient entered into a funding deed on 17 May 2017 to undertake a project as described in the Schedule to that deed (**Funding Deed**).
- B. The Minister and the Recipient have now agreed to vary the terms of the Schedule to the Funding Deed in accordance with this Instrument to Vary.
- C. The Minister and the Recipient have now agreed to vary the terms of Attachment A (Milestone Schedule) to the Funding Deed in accordance with this Instrument to Vary.
- D. The Minister and the Recipient have now agreed to vary the terms of Attachment B (Reports) to the Funding Deed in accordance with this Instrument to Vary.
- E. The Minister and the Recipient have now agreed to vary the terms of Attachment C (Key Performance Indicators) to the Funding Deed in accordance with this Instrument to Vary.

IT IS AGREED:

1. VARIATION OF THE FUNDING DEED

- 1.1 The Schedule to the Funding Deed is deleted and replaced with the Schedule annexed to this Instrument to Vary and marked "Annexure A".
- 1.2 Attachment A to the Funding Deed is deleted and replaced with the Attachment A annexed to this Instrument to Vary and marked "Annexure B".
- 1.3 Attachment B to the Funding Deed is deleted and replaced with the Attachment B annexed to this Instrument to Vary and marked "Annexure C".

1.4 Attachment C to the Funding Deed is deleted and replaced with the Attachment C annexed to this Instrument to Vary and marked "Annexure D".

2. **OPERATION OF THIS INSTRUMENT TO VARY**

The variations effected by this Instrument to Vary shall operate from the date of execution of this Instrument to Vary.

3. **CONFIRMATION OF THE FUNDING DEED**


Subject only to the variations contained in this Instrument to Vary and such other alterations (if any) as made necessary to make the Funding Deed consistent with this Instrument to Vary, the Funding Deed remains in full force and effect and will be read and construed and be enforceable as if the terms of this Instrument to Vary were inserted therein by way of addition or substitution (as the case may be).

4. **COUNTERPARTS**


This Instrument to Vary may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one instrument. An executed counterpart may be delivered by facsimile or email.

EXECUTED AS A DEED


SIGNED for and on behalf of the **MINISTER**)
FOR PRIMARY INDUSTRIES AND)
REGIONAL DEVELOPMENT by a person)
duly authorised pursuant to a Power of)
Attorney (whereby that person is appointed)
as the Minister's attorney) in the presence of:)

.....
Witness signature


.....**NAOMI BAILEY**.....
Witness name

.....
Attorney signature
.....**Michelle Edge**.....
Attorney name

EXECUTED by **THE ORANA FOUNDATION**)
LIMITED (ACN 612 366 533) by two)
directors or by one director and the company)
secretary in accordance with section 127)
of the *Corporations Act 2001* (Cth):)

.....
Director signature

.....**JOCK ZONFRILLO**.....
Director name

.....
Director/Company Secretary signature
.....**LAUREN ZONFRILLO**.....
Director/Company Secretary name

ANNEXURE A**(Schedule)****1. COMMENCEMENT DATE**

1 May 2017

2. EXPIRY DATE

31 October 2020

3. FUNDING

One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000) (GST exclusive).

4. MANNER OF PAYMENT OF FUNDING

- 4.1 The Minister will pay the Funding to the Recipient within five (5) Business Days of the Commencement Date subject to receipt of a valid Tax Invoice (as defined in the GST law) from the Recipient.
- 4.2 The Recipient must use the Funding for the Purpose in accordance with the following project costs:

PROJECT COSTS

<i>Indigenous Food Database</i>	<i>100,000 + 125,000 in-kind</i>
<i>Food Qualities Assessment</i>	<i>125,000 + 125,000 in-kind</i>
<i>Food Flavours Assessment</i>	<i>125,000 + 125,000 in-kind</i>
<i>Plant Production Assessment</i>	<i>100,000 + 125,000 in-kind</i>
<i>Set up costs (sunk)</i>	<i>100,000</i>
<i>Ethics model and framework</i>	<i>10,000</i>
<i>Consultant costs</i>	<i>100,000</i>
<i>Finance, legal, insurance, admin</i>	<i>60,000</i>
<i>Travel & filming</i>	<i>80,000</i>
<i>Media / Social Media / PR Development</i>	<i>50,000</i>
<i>Indigenous Enterprise project development</i>	<i>400,000</i>
Total	\$1,250,000 ex GST

5. PURPOSE

This initiative provides \$1.25 million to enable South Australia to gain a leadership position in the research, cultivation and production of Australian native wild foods. The initiative will create specialised science and research based jobs and promote South Australia as a centre for food innovation. This will be achieved by combining traditional Aboriginal knowledge with food science and contemporary culinary practice.

The Recipient must develop 'reasonable benefit-sharing arrangements' to include 'protection for, recognition of and valuing of any indigenous peoples knowledge' to be used. The benefit-sharing agreements must also seek to achieve Aboriginal employment and financial benefit.

Benefits to the indigenous community must also include the preservation of traditional knowledge of the land and native ingredients. It must aim to reconnect young Aboriginal people through education and training through the creation of sustainable commercial enterprises within remote indigenous communities. The Recipient will undertake the Project based around the core cultural importance of knowledge and relationships to the land and native foods.

6. PROJECT**6.1 Project Overview:**

- 6.1.1 The creation of a comprehensive native food database to capture and preserve knowledge gathered from indigenous communities, early settlers, anthropologists and botanist, to be accessible online.
- 6.1.2 Establish an Australian Food Culture Enterprise which will assess both food qualities (including nutritional profile and potential for bioactives) and flavours (with the potential of up to 50 species to be assessed). The enterprise will employ an innovative combination of culinary and food science experts to identify test and analyse a wider range of ingredients suitable for food preparation and health products.
- 6.1.3 Creation of an enterprise hub to directly support product cultivation projects, skills and leadership training, market development and produce placement and supply.

6.2 Project Activities:

As set out in Attachment A.

7. PROJECT COMMENCEMENT DATE

1 May 2017

8. PROJECT COMPLETION DATE

30 September 2020

9. REPRESENTATIVES

9.1 Minister:

Matthew Palmer
Assistant Director Industry and Economic Insights
Agriculture, Food and Wine Division
Department of Primary Industries and Regions
Tel. 8429 0493

9.2 Recipient:

Jock Zonfrillo
Director
The Orana Foundation Limited
Tel. 0477 118 833

10. REPORTS

- 10.1 The Recipient must deliver to the Minister's Representative each of the Reports specified in Attachment B to this Deed in relation to each of the Milestones for the Project.
- 10.2 Each such Report must include the contents specified in Attachment B in such detail as the Minister's Representative shall require and must be provided by the Due Date specified in Attachment B for the Report.

11. SPECIAL CONDITIONS

11.1 The Recipient must:

- 11.1.1 meet each of the Key Performance Indicators (KPIs) described in Attachment C by the Due Date specified for the KPI;
- 11.1.2 develop and establish 'benefit-sharing arrangements' with Aboriginal communities and groups to include 'protection for, recognition of and valuing of any indigenous peoples knowledge';
- 11.1.3 establish an Aboriginal Advisory Committee to:
- (a) ensure the view of Indigenous peoples are considered in all aspects of the projects; and
 - (b) to provide advice and guidance to the Recipient on matters relating to the interests of persons of Aboriginal descent;
- 11.1.4 consult with and develop partnerships with relevant Aboriginal bodies to develop and implement activities consistent with the cultural requirements of the community; and
- 11.1.5 continue collaboration and engagement with the South Australian Native Foods Industry Working Group to be convened by Primary Industries and Regions South Australia;
- 11.1.6 must ensure in-kind contributions as detailed in Attachment A are reported as per project reporting

11.2 The Recipient must:

- 11.2.1 not divulge information contrary to Aboriginal tradition other than is reasonably necessary in pursuance of the Project;
- 11.2.2 ensure all knowledge received from relevant Aboriginal communities is used strictly in accordance with any conditions or restrictions specified by the particular Aboriginal community; and
- 11.2.3 acknowledge the involvement of the Aboriginal community in any materials produced pursuant to the Project.

12. **NOTICES**

12.1 **Minister:**

Matthew Palmer
Assistant Director Industry and Economic Insights
Agriculture, Food and Wine Division
Department of Primary Industries and Regions
15th Floor, 25 Grenfell Street, Adelaide, SA, 5000
Email: Matthew.Palmer@sa.gov.au

12.2 **Recipient:**

Jock Zonfrillo
Director
The Orana Foundation Limited
1/285 Rundle St, Adelaide SA 5000
Email: jz@zonfrillo.com

13. **RECIPIENT'S ABN**

64 612 366 533

14. **INSURANCE**

Public Liability Insurance for Twenty Million Dollars (\$20,000,000) – QBE
(168U274572BPK)

ANNEXURE B**(Attachment A) - (Milestone Schedule)**

Project Name	Description	Deliverables	Timeline (months)	Budgeted Funds (ex GST)
Indigenous Foods database (Project 1)	<ul style="list-style-type: none"> Document top 1000 plants used as food by Aboriginal communities In-kind support from the University of Adelaide to provide: <ul style="list-style-type: none"> supervisory staff, laboratory and office accommodation 	<ul style="list-style-type: none"> Web accessible and searchable database List of top 500 plants Literature review of foods used by Aboriginal populations Benefit sharing agreement with Aboriginal interests reached Website with data goes live Explore potential for major exhibition on 'Taste' with SA Museum Engage of Aboriginal communities to capture detail on food preparation and use to fill gaps in knowledge List of top 800 plants Launch final database with top 1000 plants through partners Publish thesis 	0-6 12 0-18 6-9 3-12 0-30 24 30-41 30-41 41	\$100,000 (\$125,000 in-kind- University of Adelaide)
Food Qualities Assessment (Project 2)	<ul style="list-style-type: none"> Assess the nutritional profile and potential for bioactive compound identification of up to 100 Aboriginal food plants, in particular; sugars, proteins, vitamins, anti-oxidants, fibres, glycaemic Index In-kind support from the University of Adelaide to provide: <ul style="list-style-type: none"> supervisory staff, laboratory and office accommodation 	<ul style="list-style-type: none"> Establish approach to any benefit sharing among IP and knowledge owners Foods identified and sources of food can be found, review published literature on the nutritional profiles and expected health benefits of food identified in the 'Indigenous Food Database' project and enter information into database For foods with missing information, conduct 	18-41 18-41	\$125,000 (\$125,000 in-kind- University of Adelaide)

		<p>high throughput testing of nutritional profiles and enter into database</p> <ul style="list-style-type: none"> For species with functional food potential provide assessment of antioxidant and vitamin levels For species with bioactivity, test for antibacterial and antifungal activity <p>Identify lead species for full compound identification for ongoing research</p>	<p>18-41</p> <p>18-41</p> <p>18-41</p>	
Food Flavours Assessment (Project 3)	<ul style="list-style-type: none"> For foods with high nutritional profiles and or highly prospective in terms of taste and flavor, the potential of up to 50 plant species will be assessed Determine optimal preparation and cooking requirements of the 50 plant species In-kind support from the University of Adelaide to provide: supervisory staff, laboratory and office accommodation 	<ul style="list-style-type: none"> Benefit sharing agreement with Aboriginal interests reached Flavour, test and texture profiling methodology of native foods Review of traditional Aboriginal recipes and preparation Flavour, test and texture profiles for raw ingredients and recipes for 50 plant species Publish thesis 	<p>0-12</p> <p>6-18</p> <p>12-41</p> <p>30-41 41</p>	<p>\$125,000 (\$125,000 in-kind- University of Adelaide)</p>
Plant Production Assessment (Project 4)	<ul style="list-style-type: none"> Assess bioclimatic envelope and optimal growth conditions for up to 200 plants for commercial horticulture. Assess the optimal climatic growth envelope and horticultural practices of up to 200 plants using online databases 	<ul style="list-style-type: none"> Benefit sharing agreement with Aboriginal interests reached List of bioclimatic and horticultural preferences for up to top 200 plants identified from projects 1-3. Comparative growth trials for up to top 25 identified from projects 1-3 using examples 	<p>41</p> <p>41</p>	<p>\$100,000 (\$125,000 in-kind- University of Adelaide)</p>

	<ul style="list-style-type: none"> Conduct growth trials over 2 years under covered horticulture for top 25 plants using 'dry' undercover production facilities In-kind support from the University of Adelaide to provide: supervisory staff, laboratory and office accommodation 	from key plant family groups with a focus on annuals	41	
Indigenous Enterprise project development	<ul style="list-style-type: none"> Creation of ingredient specific development projects which will lead to commercial enterprises directly engaging Aboriginal communities 	<ul style="list-style-type: none"> Geraldton Wax development <ul style="list-style-type: none"> Varietal development for flavour and aroma Identify optimum growing conditions Cherabin development <ul style="list-style-type: none"> Collect brood stock from wild populations in 4-6 independent locations Create comprehensive program around raising cherabin under captivity to be implemented in communities Close the breeding cycle of the species creating a new product to Australian and export markets 	0-12 12-24 0-6 12-24 41	\$400,000
Set up establishment costs (sunk)	<ul style="list-style-type: none"> Direct and receipted set-up costs of The Orana Foundation (TOF) 		3	\$100,000
Ethics model and framework	<ul style="list-style-type: none"> Develop best practice ethical principles in all aspects of Aboriginal engagement and practices Independent expert advice on best practice tailored to project outcomes Work with government advisory 		0-6 41	\$10,000

	agencies to ensure optimum outcomes and benefits for Aboriginal communities		41	
Consultant costs	<ul style="list-style-type: none"> Consultancy costs as required 		0-6	\$100,000
Finance, Legal, Insurance, Administration	<ul style="list-style-type: none"> Costs associated with services required by TOF 		0-6	\$60,000
Travel & Filming	<ul style="list-style-type: none"> Missions to remote Aboriginal communities for direct engagement with the source of the knowledge on native foods and Aboriginal practice 		0-24	\$80,000
Media/ social media / PR Development	<ul style="list-style-type: none"> Establish a website, ongoing social media and mainstream media management around events and releases 		0-24	\$50,000
			Total	\$1,250,000 ex GST

ANNEXURE C**(Attachment B) - (Reports)**

Report	Report Contents	Due Date
Indigenous Foods Database (Project 1)	Detailed project plan Project update Project update Project update Project update Project update Project update	31 August 2017 31 December 2017 30 June 2018 31 December 2018 30 June 2019 31 December 2019 30 September 2020
Food Qualities Assessment (Project 2)	Detailed project plan Project update Project update Project update Project update Project update Project update	31 August 2017 31 December 2017 30 June 2018 31 December 2018 30 June 2019 31 December 2019 30 September 2020
Food Flavours Assessment (Project 3)	Detailed project plan Project update Project update Project update Project update Project update Project update	31 August 2017 31 December 2017 30 June 2018 31 December 2018 30 June 2019 31 December 2019 30 September 2020
Plant Production Assessment (Project 4)	Detailed project plan Project update Project update Project update Project update Project update Project update	31 August 2017 31 December 2017 30 June 2018 31 December 2018 30 June 2019 31 December 2019 30 September 2020
Indigenous Enterprise Project Development	Progress report on: - Geraldton Wax - Cherabin	30 September 2017 30 September 2017

Other Project Costs	Report on other project costs outlined in Attachment A to be included in Project reports.	As above
	In-kind contributions from the University of Adelaide to be reported as per project update reports.	As above

ANNEXURE D**(Attachment C) - (Key Performance Indicators)**

Key Performance Indicator	Key Performance Indicator Description	Due Date
1. Establish an Aboriginal Advisory Committee	<ul style="list-style-type: none"> - Ensure the view of Indigenous peoples are considered in all aspects of the projects. - To provide advice and guidance to The Orana Foundation on matters relating to the interests of persons of Aboriginal descent. - Consult with and develop partnerships with relevant Aboriginal bodies to develop and implement activities consistent with the cultural requirements of the community. - Establish the Aboriginal Advisory Committee with the assistance of the Aboriginal Partnership Unit- Primary Industries and Regions South Australia. 	31 August 2017
2. Consultation with Aboriginal Advisory Committee	<ul style="list-style-type: none"> - Consult with the established Aboriginal Advisory Committee to guide projects and their outcomes. 	1 September 2017
3. Continued collaboration with the South Australian Native Foods Industry Working Group	<ul style="list-style-type: none"> - Continue collaboration and engagement with the South Australian Native Foods Industry Working Group as convened by Primary Industries and Regions South Australia. 	31 December 2017
4. Develop and establish 'benefit-sharing arrangements' with Aboriginal communities and groups	<ul style="list-style-type: none"> - Develop and establish 'benefit-sharing arrangements' with Aboriginal communities and groups to include 'protection for, recognition of and valuing of any Indigenous peoples knowledge'. - Benefit- sharing agreements should also seek to achieve Aboriginal employment and financial benefit outcomes. 	30 June 2018

Farley, Lisa (PIRSA)

From: Jock Zonfrillo <jz@zonfrillo.com>
Sent: Sunday, 5 July 2020 12:57 PM
To: Palmer, Matthew (PIRSA)
Subject: Journalist query

I was told by Network Ten that these queries are best to come to you. Are you able to assist us reach Jock Zonfrillo for a piece we intend to run tomorrow? Have tried to call.

In 2016, Zonfrillo's Orana Foundation was given \$1.25 million by the South Australian government to help establish the state's native food industry. The key component was to be a native foods database. It has now been four years, and the database is still not available..

The University of Adelaide has said it completed its share of the work and handed it to the Orana Foundation. A separate group of Indigenous representatives was also briefly involved, meeting in early 2018 with Zonfrillo and others at the Orana Foundation, but all withdrew.

The Orana Foundation has paid key management personnel and companies related to Zonfrillo and other directors more than \$800,000 in those four years.

- What is the status of this project?
- Why has it taken more than four years to create this database?
- Why has such a substantial amount of money been paid to companies like Zonfrillo Consulting Pty Ltd? What work has Zonfrillo Consulting Pty Ltd done for this charity?

A response by 5.30pm would be most appreciated. Please contact me on the number below if you would prefer to speak by phone.

Regards,

Kylar

--

KYLAR LOUSSIKIAN

National Chief of Staff

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Jock Zonfrillo

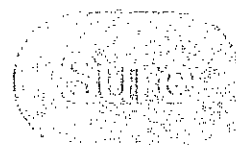


Phone: +61 8 8232 3444 | 285 Rundle Street, Adelaide SA 5000
restaurantorana.com | theoranafoundation.org

Jock

iMessage
Yesterday 12:45 pm

Hey mate it's jock have you got
5mins for a quick chat?



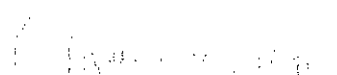
Victoria Laurie



Email is in your inbox now

Norman is also formally
responding to her too so there
isn't any ambiguous nature to
the piece she writes. Again it
would be great for you guys to
respond also to avoid any mud
slinging towards the SA
government and PIRSA

Yesterday 3:16 pm



Jock

Yesterday 3:16 pm

Hi Jock - we should be able to
get something done for the 10th ball at
today. Could you please
forward a copy of your
response.
Cheers
Matthew

Yesterday 9:44 pm

We didn't respond via email
however we did talk to her,
much of which she has
transcribed incorrectly. We
have clarified on our side the
facts in preparation to respond
if necessary.

Please find the article below



Jock

Yesterday 9:44 pm

We didn't respond via email however we did talk to her, much of which she has transcribed incorrectly. We have clarified on our side the facts in preparation to respond if necessary.

Please find the article below



A master chef in a stew over bushfood

theaustralian.com.au

