



The Crown in Right of the State of New South Wales  
acting through  
Resilience NSW

and

Upper Deua Catchment Landcare Group

for the

Upper Deua Catchment Landcare Group BCRRF Stream 2

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**Funding Deed of Agreement**

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## KEY DETAILS

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### Item 1. Parties

|                  |   |
|------------------|---|
| <b>Us/We/Our</b> | The Crown in right of the State of New South Wales acting through Resilience NSW, ABN 11 518 388 739 of GPO Box 5434, Sydney NSW 2001 |
| <b>You/Your</b>  | Upper Deua Catchment Landcare Group<br>ABN 78721547112<br>6181 Araluen Road, Araluen, New South Wales, 2622, Australia                |

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### Item 2 Background

We have agreed to enter into this Deed with you under which We will provide You with the Funding to assist You to undertake the Project as specified in Your grant application or proposal (**Application**) and any additional information provided.

The Funding is from the Bushfire Resilience and Recovery Fund (**Program**).

Phase Two of the Bushfire Community Recovery and Resilience Fund (BCRRF) is making \$25 million in funding available to support sustained economic recovery and community resilience following the 2019-2020 bushfire season.

The funding is being provided through the joint Commonwealth-State Disaster Recovery Funding Arrangement (DRFA). Funding will be available to areas of NSW impacted by the unprecedented bushfires from 31 August 2019 onwards.

The BCRRF Phase Two is designed to support community recovery by funding projects and initiatives that will promote community well-being, social and broader recovery and future disaster resilience following the bushfires.

You have agreed to deal with the Funding on the terms and conditions of this Deed.

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### Item 3. Project

The Project is as described in the Application and any additional information provided that has been agreed by Us.

A copy of the agreed milestones is at Attachment A.

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### Item 4. Special Conditions

NIL

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**Item 5. Key Dates** This Deed commences on the Commencement Date and will continue until the Completion Date, unless terminated earlier in accordance with this Deed.

Commencement Date Upon execution of this Agreement

Completion Date 30/08/2022

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**Item 6. Funding** \$290,000.00

Total Amount Payable in 3 payments as outlined below.  
A copy of your agreed budget is at Attachment B.

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**First Payment  
(70%)**

Amount \$203,000.00  
(70% of the Funding in advance)

Payment Trigger This Deed signed by the Parties.

Documentation Required Any other supporting documents reasonably requested by Us.

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**Second Payment  
(20%)**

Amount \$58,000.00  
(20% of the Funding in arrears)

Payment Trigger Upon provision of evidence of expenditure of 70% of the project value

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**Final Payment  
(10%)**

Amount

\$29,000.00  
(10% of the Funding in arrears)

Payment Trigger

The Project is completed and You have submitted to Us satisfactory acquittal documents. Or, expiry or termination of this Deed, if funds are still owing.

Acquittal  
Documentation  
Required

- A Completion Report of the Project
- An Income & Expenditure Certificate
- An Acquittal Certificate
- A Payment Request Form
- An electronic copy of or links to all the Project Materials, Report, Photos, etc. (if applicable)
- Any additional documents requested by Us

Acquittal documents must be submitted online by You within two (2) months of the completion of the Project.

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**Item 7. Scheduled  
Reporting**

Projects will be monitored for compliance and progress during delivery in alignment with the guideline and the funding agreement requirements.

Periodic reporting is required. The frequency of reporting is quarterly

This frequency is subject to change if, following the first reporting period, a determination is made that more/less frequent reporting is required.

You must submit to Us online reports of work undertaken during the reporting period on the Project (**Reports**). Reports will include information on how the ongoing and completed activities have met the Disaster Recovery Outcomes of the BCRRF, in addition to financial reports and operational records and registers.

This includes reporting of actual expenditure under the grant including the provision of evidence of the expenditure such as receipts, invoices etc. Failure to do so may affect an organisation's eligibility for continued funding through the BCRRF Program.

A template for reporting will be provided to You prior to the first reporting period.

All reports will be assessed. If a report is deemed unsatisfactory, additional reporting may be required.

A completion report will be required within two (2) months after the completion of the project.

EXECUTION

This Deed is executed on \_\_\_\_\_

Signed, sealed and delivered for and on behalf of the Crown in Right of the State of New South Wales, but not so as to incur any personal liability:

\_\_\_\_\_  
Executive Director, Disaster Recovery,  
Resilience NSW

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Print name

Signed for and on behalf of Upper Deua  
Catchment Landcare Group by its authorised  
representative in the presence of:

AS Peters  
\_\_\_\_\_  
Signature

R Clubb  
\_\_\_\_\_  
Signature of witness

ANTHONY J PETERS  
\_\_\_\_\_  
Print name and position  
PRESIDENT

ROBYN CLUBB  
\_\_\_\_\_  
Print name

## TERMS OF DEED

### 1. Definitions

In this Deed, unless the context otherwise requires:

**Application** means Your grant application or proposal and any additional information provided as specified in Item 2 of the Key Details.

**Confidential Information** of a Party means any written or oral information of a technical, business or financial nature disclosed to You by Us (whether orally or in writing), whether before or after the Commencement Date, that:

- (a) is by its nature confidential; or
- (b) is designated as confidential; or
- (c) You know or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Deed; or
- (e) is in Your lawful possession without restriction in relation to disclosure before the date of receipt of the information; or
- (f) is required to be disclosed by law, government policy or legal process.

**Funding** means the amount specified in Item 6 of the Key Details including any interest earned on those funds.

**GST Law** means *A New Tax System (Goods & Services Tax) Act 1999 (Cth)*, related legislation and any delegated legislation made pursuant to such legislation.

**Intellectual Property** means all copyright, patents, registered and unregistered trademarks (including service marks), registered designs and other rights resulting from intellectual activity (other than moral rights under the *Copyright Act 1968 (Cth)*).

**Moral Rights** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968 (Cth)*, and rights of a similar nature anywhere in the world whether existing at

the Commencement Date or which may come into existence on or after the Commencement Date.

**Payment Request Form** means the form required to be provided pursuant to clause 2.7.

**Program** means the Grants Program specified in Item 2 of the Key Details.

**Project** means the project as described in the Application and specified in Item 3 of the Key Details.

**Project Materials** means documents, equipment, software (including source code and object code versions), goods, information and data stored by any means including all copies and extracts of them relating to the Project.

**Reports** means all material which You are required to provide to Us for reporting purposes as specified in Items 6 and 7 of the Key Details.

**Unexpended Funding** means Funding paid to You that is unspent at the end of the Funding Period and includes Funding that is committed but unspent.

### 2. Funding

#### 2.1 The Project

You agree that you will carry out the Project, and will ensure that the Funding is expended in accordance with this Deed.

#### 2.2 Budgetary funds allocation

You acknowledge that the payment of the Funding to You by Us is conditional upon the New South Wales Parliament making all necessary appropriations.

#### 2.3 Expenditure of Funding

You must use the Funding solely for the Project and in accordance with this Deed.

#### 2.4 Right to withhold Funding

Without limiting Our rights under this Deed, if You have not satisfied any of Your obligations under this Deed, we may, upon reasonable notice to You, withhold Payment of the Funding (or any part of it) until:

- (i) You comply with each and every obligation under this Deed;
- (ii) all other conditions precedent to the payment of Funding are otherwise met to Our satisfaction; or

- (iii) this Deed is terminated by Us.

### 2.5 Changes to Funding

We may change the Funding to be provided to You at any time acting reasonably by issuing you with a written notice setting out the details of the changes.

### 2.6 Provision of Funding

The Funding will be provided in instalments as specified in Item 6 of the Key Details.

### 2.7 Claiming payment

You will claim payment by submitting the supporting documentation as specified in Item 6 of the Key Details along with a completed Payment Request Form.

### 2.8 Payment of Funding

Subject to this Deed, We will endeavour to pay the Funding within 30 days of receiving all supporting documentation from You as specified in the Key Details.

### 2.9 Repayment of Funding

You must repay to Us on demand:

- (i) any part of the Funding spent in breach of this Deed;
- (ii) all of the Funding if the Project does not commence within 60 days from the date that this Deed has been signed by both Parties;
- (iii) any part of the Funding which remains unspent if the Project has been inactive for 60 days or more; or
- (iv) all Unexpended Funding.

### 2.10 GST

- (a) The Parties acknowledge that the provision of the Funding may constitute a taxable supply under the GST Law.
- (b) If any GST is payable, we will provide You the amount of GST in addition to the Funding.

### 2.11 Recipient Created Tax Invoice

If the Parties agree to a Recipient Created Tax Invoice (RCTI) arrangement, then the Parties agree that:

- (i) a RCTI will be issued each time a payment is made; and
- (ii) You warrant that You are registered for the purposes of GST.

## 3. Banking

- (a) To process and record all expenditure and receipts relating to the Funding, You must ensure that the Funding is held in a bank account in Your name and which You control, with an authorised deposit-taking institution authorised under the *Banking Act 1959 (Cth)* to carry on banking business in Australia.
- (b) Any accrued interest becomes part of the Funding to be used in accordance with this Deed.

## 4. Records

- (a) You must provide to Us a copy of Your Constitution or Memorandum and Articles of Association, if requested.
- (b) You are required to maintain organisational records under the various forms of incorporation legislation in external scrutiny of Your yearly activities.
- (c) You must keep and maintain proper financial and operational records and registers, including such financial records and books of account as are necessary to provide a complete record of all receipts and expenditure of the Funding (**Funding Records**).

## 5. Records, controls and inspection

### 5.1 Records

You must create and maintain the Funding Records for at least 7 years after the end of the Funding Period.

### 5.2 Controls

You must ensure that effective internal management and financial controls are in place to safeguard all funds, property and other assets relating to the Funding and to ensure they are used solely for their authorised purpose.

### 5.3 Inspection

- (a) You must make all records relating to the Funding, including but not limited to the Funding Records, available for inspection, copying and audit by Us upon reasonable notice, and provide all reasonable assistance to inspect, copy and audit any such records (including access to personnel and photocopying equipment, where relevant).
- (b) You acknowledge that records which are to be made available to Us for inspection, copying and audit may also include financial or other records not directly dealing with the Funding,

but which nevertheless assist in determining how the Funding has been managed.

- (c) You acknowledge that We may also inspect and audit your internal management and financial controls related to the Funding and referred to in clause 5.2.

#### **5.4 Non-compliance with Deed**

If at any time We consider that the Funding is not being used by you in accordance with this Deed, We may request that you take steps or make changes as are specified in writing by Us to You to achieve compliance within a reasonable timeframe as decided by Us in consultation with You.

#### **5.5 Exercise of rights**

The rights under this Deed may be exercised by Us at any time during the Funding Period or in the 7 year period following the Funding Period.

### **6. Conduct of the Project**

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#### **6.1 Requirements**

The Project must be performed in accordance with the:

- (i) Application and any amendments approved by Us;
- (ii) Special Conditions specified in Item 4 of the Key Details; and
- (iii) Our reasonable directions.

#### **6.2 Project scope**

The scope and timeframes of the Project may only be modified with our written permission.

#### **6.3 Completion**

The Project must be completed on or before the Completion Date specified in Item 5 of the Key Details.

#### **6.4 Compliance with law**

You must ensure that all aspects of the Project are completed in accordance with all relevant laws and regulatory requirements, including ensuring that consents and/or licences are procured (and complied with) where required.

### **7. Personnel**

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#### **7.1 Skills and qualifications**

You must ensure that the Project is carried out by persons who have the appropriate skills, qualifications and experience.

#### **7.2 Responsibility**

You acknowledge that all personnel employed or otherwise engaged by You or acting on Your behalf in the conduct of the Project will be Your sole responsibility.

### **8. Research and surveys**

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You are required to participate and contribute to any requests for the provision of statistical and program information for the purpose of research and surveys conducted by Us or an authorised representative. No such request will require the breach of any duty of confidentiality owed by You to clients.

### **9. Publicity**

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#### **9.1 Disclosure of Program**

You must acknowledge the funding contributions of the Australian Government and New South Wales Governments at any public events, in announcements, or any other promotional material or publicity relating to the projects funded the Bushfire Community Recovery and Resilience Funding Program. These publications must also include both the Australian Government and State Government logos as well as a disclaimer.

A set of guidelines will be provided outlining these requirements and must be adhered to.

#### **9.2 Our right to publicise**

We may publish the awarding of the Funding including:

- (i) Your name;
- (ii) the amount of the Funding; and
- (iii) the title and description of the Project.

### **10. Intellectual Property and Project Materials**

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#### **10.1 Ownership of Intellectual Property**

You own the Intellectual Property in the Project Materials.

#### **10.2 Grant of licence**

You must provide to Us a permanent, nonexclusive, irrevocable, royalty-free and transferable licence to use, reproduce, publish and adapt the Project Materials, at no cost to Us.



### 10.3 Moral Rights

You must make best endeavours to procure consents from all authors of the Project Materials for use of the Project Materials by Us, and authorship will be attributed.

## 11. Indemnity and release

### 11.1 Indemnity

You must at all times indemnify, hold harmless and defend Us and our officers, employees and agents (Those Indemnified) from and against liability or loss (including reasonable legal costs and expenses), which may be suffered or incurred by any of Those Indemnified by reason of or in connection with any:

- (i) infringement or alleged infringement of any Intellectual Property (including Moral Rights) arising from the activities of the Project, other than any Intellectual Property supplied by Us; and
- (ii) unlawful, wrongful, wilful or negligent act or omission by You, or any of your officers, employees, agents, contractors and volunteers, except to the extent that any such loss was caused or contributed by Our negligent act or omission.

### 11.2 Release

You release us from any claims against, and loss incurred by, You in connection with this Deed including (without limitation) in relation to any failure to provide the Funding or the termination of this Deed.

## 12. Insurance

### 12.1 Required insurance

You must ensure that adequate broad-form public liability insurance and workers compensation insurance policies covering all activities associated with the Project are taken out and maintained with a reputable insurance company throughout the Funding Period.

### 12.2 Evidence of insurance

You must produce on demand satisfactory evidence that any or all of the insurance policies required under this Deed are current.

### 12.3 Our insurance

You must not knowingly do anything that may invalidate any insurance policy held by Us and or any indemnity to which we may be entitled from the New South Wales Treasury Managed Fund.

## 13. Confidentiality

### 13.1 Obligations of confidentiality

Subject to clause 13.2, the Party to which Confidential Information is given (**Recipient**) must not:

- (i) disclose Confidential Information directly or indirectly in any form to any person; or
- (ii) use or make a copy of any Confidential Information, except to perform any of its obligations under this Deed or in relation to any of the transactions contemplated by it.

### 13.2 Exceptions

Either Party may disclose Confidential Information of the other Party:

- (i) if the disclosure is necessary for the purpose of this Deed and;
- (ii) if it is with the prior consent of the Disclosing Party; or
- (iii) to the extent of any law.

### 13.3 Use of Confidential Information

You:

- (i) must use the Confidential Information solely for the purposes of carrying out the Project and for no other purpose;
- (ii) must not permit the Confidential Information to be copied or reproduced without the express prior written permission of the Disclosing Party, except for such copies or reproductions as may be reasonably required to undertake the Project;
- (iii) must take all necessary precautions to prevent loss, unauthorised access to, copying, misuse, modification or disclosure of the Confidential Information;
- (iv) must comply with any of the Disclosing Party's directions about the safekeeping and storage of Confidential Information; and

- (v) must comply with any applicable Obligations under the *State Records Act 1988 (NSW)* in relation to the Confidential Information.

#### **13.4 Notification of breach**

You must immediately notify Us in writing upon becoming aware of any breach of this clause.

### **14. Termination**

#### **14.1 Termination**

(a) If we believe that:

- (i) the Project is not carried out diligently and competently, to Our satisfaction and/or in accordance with the Application;
- (ii) part or all of the Funding has been used for purposes other than those authorised by this Deed;
- (iii) We consider that the Project is no longer viable; and/or
- (iv) You have breached a provision of this Deed,

then We will provide You with written notice requiring you to rectify the issue. If you do not rectify the issue within 14 days of the date of Our letter, then we may terminate this Deed by providing You with 7 days written notice.

- (b) We may terminate this Deed at any time by giving You written notice if:
  - (i) You become bankrupt or insolvent; or
  - (ii) the Funding is no longer available for any reason.

#### **14.2 Insolvency**

- (a) You must notify Us immediately if you become bankrupt or enter into any form of insolvency administration.
- (b) We will not continue to provide the Funding if You become bankrupt or insolvent.

#### **14.3 Delivery of Reports and return of Confidential Information**

Upon termination of this Deed, You must ensure that, except to the extent agreed to by Us in writing, the following are provided to Us within 7 days of termination:

- (i) any Reports or other information due under this Deed, or otherwise requested by Us; and
- (ii) Our Confidential Information provided under or in connection with this Deed (including all copies).

#### **14.4 Survival**

The following clauses survive termination of this Deed: Clauses 4 to 15 inclusive.

### **15. Dispute resolution**

#### **15.1 Obligation to act in good faith and no litigation**

- (a) The Parties agree to attempt to resolve any dispute in good faith.
- (b) The Parties must attempt to settle any dispute in relation to this Deed in accordance with this clause prior to initiating court proceedings or any other dispute resolution process.

#### **15.2 Notice of dispute**

Either Party may give written notice to the other specifying the nature and details of the dispute. Each Party will take responsible steps to resolve the dispute within 14 days.

#### **15.3 Mediation**

If the dispute is not resolved within 14 days, or within such longer period as the Parties agree, either Party may refer the dispute to the Australian Disputes Centre (ADC) for mediation. The mediation must be conducted in accordance with the current ADC Mediation Guidelines.

#### **15.4 Litigation and other processes**

If the dispute is not resolved within 28 days of referral to the ADC, or within such longer period as the Parties agree, the Parties may initiate proceedings or any other procedure for resolution of the dispute.

#### **15.5 Obligations unaffected**

During the dispute resolution process, You must continue to perform Your obligations under this Deed at Our request.

#### **15.6 Summary or urgent relief**

Nothing in this clause prevents either Party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a dispute.

### **16. General**

#### **16.1 Legal costs**

Subject to any express provision in this Deed to the contrary, each Party must bear its own legal and

other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under this Deed.

#### **16.2 Entire Deed**

This Deed constitutes the entire Deed and understanding between the parties as to the subject matter of this Deed.

#### **16.3 Further assurance**

Each Party must promptly execute all documents, and do all things that any other Party from time to time reasonably requires of it, to effect, perfect or complete the provisions of this Deed and any transaction contemplated by it.

#### **16.4 Conflict of interest**

You warrant that, as at the date of this Deed, no conflict of interests exists or is likely to arise in relation to execution of the Deed or its subject matter. You must notify Us, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest and will comply with Our reasonable directions to appropriately manage the conflict of interest within the timeframe We stipulate.

#### **16.5 Relationship**

- (a) Nothing in the Deed is intended to create a partnership, joint venture or agency relationship between Us and You.
- (b) You must ensure You do not hold yourself out to be Our employee, partner, agent or representative.
- (c) All work performed and all contracts made by You in the course of undertaking the Project shall be performed and made by You as principal, and not as agent for Us.

#### **16.6 Compliance with laws**

- (a) The Parties will not be in breach of this Deed where a legislative obligation prevents them from complying with a clause of the Deed.

(b) You and any of Your agents must:

- (i) comply with all applicable standards, laws and regulations;
- (ii) not do anything that would cause Us to breach Our obligations under any law; and
- (iii) hold all rights and consents as required to conduct services or do any other thing paid for with the Funding and otherwise fulfil Your obligations under this Deed.

#### **16.7 Variation of Deed**

This Deed can only be varied by written agreement of the Parties.

#### **16.8 Extension of Deed**

This Deed may be extended at Our discretion for a period and on such amended terms as agreed between the Parties in writing.

#### **16.9 Severability**

If any part of this Deed is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Deed but without affecting the continued operation of the remainder of this Deed.

#### **16.10 Governing law and jurisdiction**

This Deed is governed by, and is to be construed in accordance with, the Laws in force in New South Wales and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts.

#### **16.11 Assignment**

You must not dispose of or encumber any or all rights under this Deed without Our prior written consent.

#### **16.12 Counterparts**

This Deed may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

**Attachment A: Contract Milestones**

| <b>Task Title</b>   | <b>Task Start Date</b> | <b>Task Due Date</b> |
|---|------------------------|----------------------|
| Engagement of REF contractor and project co-ordinator LLS or Landcare Council     | 30/05/2021             | 30/06/2021           |
| Purchase of erosion control materials   | 30/05/2021             | 30/07/2021           |
| Construction plan timeline developed with contractors and landowners for 20 sites | 30/06/2021             | 30/11/2021           |
| Publicity for project (local and regionally)                                      | 30/06/2021             | 30/10/2021           |
| Project completed final sites inspection by UDCLG, LLS and Landcare council       | 30/05/2022             | 30/08/2022           |
| Construction on sites completed and on farm fencing and water systems completed   | 30/05/2022             | 30/06/2022           |

**Attachment B: Project Costs**

| <b>Title</b>  | <b>Requested</b>  | <b>In Kind</b> | <b>Other</b> | <b>Approved Amount</b> |
|---|-------------------|----------------|--------------|------------------------|
| Erection of erosion control structures                    | 50,000.00         | 0.00           | 0.00         | 50,000.00              |
| Erection of erosion control structures                    | 50,000.00         | 0.00           | 0.00         | 50,000.00              |
| Review of Environmental Factors by expert contractor.     | 5,000.00          | 0.00           | 0.00         | 5,000.00               |
| Project officer   | 40,000.00         | 0.00           | 0.00         | 40,000.00              |
| Fencing material  | 30,000.00         | 0.00           | 0.00         | 30,000.00              |
| Purchase of tanks, troughs and piping                     | 20,000.00         | 0.00           | 0.00         | 20,000.00              |
| Five field workshops                                      | 5,000.00          | 0.00           | 0.00         | 5,000.00               |
| Engagement of Soil Conservation as contractor and manager | 10,000.00         | 0.00           | 0.00         | 10,000.00              |
| Purchase and deployment of weed control strategies        | 10,000.00         | 0.00           | 0.00         | 10,000.00              |
| Re-vegetation   | 15,000.00         | 0.00           | 0.00         | 15,000.00              |
| Promotional video of project                              | 5,000.00          | 0.00           | 0.00         | 5,000.00               |
| Soil Conservation construction of erosion structures      | 50,000.00         | 0.00           | 0.00         | 50,000.00              |
| <b>TOTAL</b>  | <b>290,000.00</b> | <b>0.00</b>    | <b>0.00</b>  | <b>290,000.00</b>      |