|  | Funding Deed | |
| --- | --- | --- |
|  | | |
| Department | | Department of Planning, Industry and Environment |
| Agency/Division | | Energy, Climate Change & Sustainability |
| Grantee | |  |
|  | |  |

Table of Contents

Details 2

Terms 1

Definitions and Term 1

What you must do 3

About the Grant 3

Material and Information 5

Impartiality 8

Dealing with Risk 9

Varying and Terminating the Deed 11

Other Legal Matters 12

Executed as a deed 16

Alternative Signature Blocks – Delete heading and pages before sending if not used 17

Schedule A – Activities 18

Schedule B – Description and frequency of Reports (refer to clause 8) 20

Details

|  |  |  |
| --- | --- | --- |
| **Department** | Name | The Crown in right of the State of New South Wales acting through the Department of Planning, Industry and Environment  (ABN 20 770 707 468). |
|  | Agency/ Division | Energy, Climate Change & Sustainability |
|  | Address | Level 13, 10 Valentine Avenue, Parramatta NSW 2150 |
| **Department Authorised Officer**  *(refer to clause 24- Notices)* | Name | Click or tap here to enter text. |
| Position | Unit Head, Circular Economy Programs |
| Address | Level 13, 10 Valentine Avenue, Parramatta NSW 2150 |
| Telephone | 02 9995 5735 |
| E-mail | Click or tap here to enter text. |
| **Grantee** (‘You’) | Name | Click here to enter name of recipient |
| Address | Click here to enter text. |
| ABN | Click here to enter text. |
| **Your Authorised Officer**  *(refer to clause 24 - Notices)* | Name | Click here to enter text. |
| Position | Click here to enter text. |
| Address | Click here to enter text. |
| Telephone | Click here to enter text. |
| E-mail | Click here to enter text. |
| **Project** | Means the project described in the Application Form (Attachment A to this Deed), with the title:  Click here to enter text. | |
| **Changes** | Insert any changes to project details from application form. | |
| **Grant** | A maximum total amount of Click here to enter total amount of Grant (GST exclusive) payable in Instalments. | |
| **Commencement Date**  *(refer to clause 2- Term)* | The date upon which the parties sign this Deed. | |
| **Special Conditions** | Click here to enter text. | |

## Additional Insurance Policies (refer clause 17)

| **Types of Insurances** | ***Minimum Sum Insured*** | ***Tick if Required*** |
| --- | --- | --- |
| Professional Indemnity | $5 million in respect of any one claim |  |

|  |  |
| --- | --- |
|  |  |

Terms

# Definitions and Term

## Definitions and Interpretation

1. Interpretation
   1. Unless the context requires otherwise, in this Deed:
      1. the terms set out in the left hand column of the Details have the meaning ascribed to them in the right hand column of the Details;
      2. where any time limit pursuant to this Deed falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;
      3. a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;
      4. the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
      5. references to persons include bodies corporate, government agencies and vice versa;
      6. references to the parties include references to respective directors, officers, employees and agents of the parties;
      7. nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or any part of it; and
      8. where an expression is defined, any other grammatical form of that expression has a corresponding meaning.
      9. monetary references are references to Australian currency.
   2. Definitions

**Activity** means the activity(s) described in **Schedule A – Activities**.

**Activity Date** means the date specified in **Schedule A – Activities** by which the Activity must be completed.

**Activity Report** means a report of the work you carry out to achieve the Activity as required under clause 8 of this Deed.

**Application Form** means the application as set out in Attachment A to this Deed

**Approved Project** means the Project as described in the Application Form,as amended by the Changes set out in the Detailsand as varied from time to time in accordance with clause 20.

**Budget** means the budget contained in Attachment B.

**Business Day** means any day other than a Saturday, Sunday or public holiday in New South Wales.

**Capital Equipment** means any item of tangible property, purchased, created or otherwise brought into existence wholly, or in part, with the use of the Grant, which has at that time a value of over $5,000 inclusive of GST, but does not include Project Material.

**Claim** means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising and includes legal costs on a full indemnity basis.

**Confidential Information** of a party means all trade secrets, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) which:

* + 1. is by its nature confidential;
    2. has been designated as confidential by a party;
    3. is capable of protection at common law or equity as confidential information; or
    4. is derived or produced partly from the information in paragraphs (a), (b) or (c) above

but does not include information that:

* + 1. is in the public domain; or
    2. is independently known or developed by the party receiving the information other than as a result of a breach of this Deed or any other obligation of confidentiality owed by or to any other person.

**Correctly Rendered Invoice** means an invoice rendered in accordance with the [Department’s Fact Sheet](https://www.industry.nsw.gov.au/__data/assets/pdf_file/0003/88158/fact-sheet-supplier-invoice-submission.pdf).

**Deed** means this funding deed document and includes the Details, Terms, Schedule A – Activities, Schedule B and any other schedules, attachments, annexures or other documents cross-referenced in this deed.

**EPA** means the NSW Environmental Protection Authority constituted under the *Protection of the Environment Administration Act 1991* (NSW).

**Final Outcomes Report** means the final report you must provide to the Department under clause 8.

**GST** **Law** means*A New Tax System (Goods and Services Tax) Act 1999.*

**Instalments** means that part of the Grant which the Department pays to you in the amounts and on the dates set out in Schedule A.

**Intellectual Property or IP** includes:

* + 1. all rights in relation to copyright, inventions, plant varieties, trademarks, designs, patents; and
    2. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including trade secrets and know-how,

but does not include Moral Rights.

**Moral Rights** has the same meaning as in the *Copyright Act 1968 (Cth)*.

**Notice** means any approvals, consents, instructions, orders, directions, statements, requests and certificates, or other communication one party gives to another party in writing under this Deed.

**Objectives** means the objectives of the Activities described in **Schedule A – Activities**, which are the agreed results you must achieve and ensure your subcontractors achieve.

**Personal Information** has the same meaning as in the *Privacy and Personal Information Protection Act 1998 (NSW)*.

**Project Material** means material created as part of or in performance of the Approved Project including any documents or data.

**Statement of Expenditure** is arecord showing the amounts of money coming into and going out for delivering the Approved Project, during the term of this Deed.

**Tax Invoice** means a request for payment that meets the requirements specified in clause 4 of this Deed.

1. Term
   1. This Deed will commence on the Commencement Date.
   2. Unless terminated earlier, this Deed will end on the date on which the Department notifies you that it accepts your Final Outcomes Report and any monies owing have been paid.

# What you must do

1. Your obligations
   1. You must:
      1. ensure the Grant or any Instalment is used only for the Approved Project;
      2. ensure each Activity is completed within the Activity Period in accordance with this Deed;
      3. comply with the reporting requirements set out in **Schedule B**;
      4. comply with the Special Conditions;
      5. comply with all Commonwealth, State and Local government laws that are relevant to the Project, this Deed, or your registration as an entity;
      6. comply with all policies, guidelines and reasonable directions the Department provides to you.

# About the Grant

1. Paying the Grant
   1. The Department will pay an Instalment for each Activity at the end of the Activity Period on condition that:
      1. the Department receives a Correctly Rendered Invoice from you that clearly identifies the Instalment you are claiming;
      2. you have provided the Department with the evidence of compliance required under **clause 8** and the Schedule(s) showing that you have performed the Activities at the times set out in the Schedules;
      3. the Activities have been performed to the satisfaction of the Department; and
      4. In the case that the grant relates to a licenced facility the EPA regulates, that the EPA is satisfied that the licensee has complied with its license conditions and all other environmental laws.
   2. Notwithstanding **clause 4.1**, if the Department pays you an Instalment, this does not constitute an admission that the performance of the Project is in conformity with this Deed and no payment will be deemed to release you from your obligations under this Deed.
2. Withholding, Suspension, Changes to Instalments and Repayment
   1. The Department may change the amount of the Instalment by issuing you with a Notice setting out the details of the changes.
   2. If you are not complying with this Deed the Department:
      1. may withhold or suspend payment of an Instalment until you comply with your obligations to the Department’s satisfaction; and
      2. may calculate the amount of any repayment you must make with regard to the extent the Department considers you have failed to complete the Activities of the Approved Project; and
      3. will consider any such amount as an overpayment which must be repaid under clause 5.3.
   3. You must repay within 28 days of a demand being sent:
      1. any Instalment spent in breach of this Deed;
      2. all unspent Instalments;
      3. any overpayment (including any repayment requested under clause 5.2)
      4. any interest earned on any Instalment required to be repaid
   4. If the Department withholds or suspends an Instalment you must continue to perform your obligations under this Deed.
   5. The Department may set off the amount of any overpayment or claim for repayment against any future Instalment due.
   6. Any repayment the Department claims from you under this clause 5 will be a debt due and owing by you to the Department.
3. Holding of Grant
   1. Each Instalment must be held in trust for the benefit of the Department from the date it is received either:
      1. in a separate bank account used solely in connection with the Grant; or
      2. into an interest bearing bank account provided that sufficient accounting controls are in place to track the expenditure of the Grant.
   2. Interest earned on the Grant becomes part of the Grant and you must use it for the Activities the Department has approved in writing. You must return unspent interest to the Department at the end of the Approved Project or on termination of this Deed.
4. GST
   1. Unless otherwise indicated, all consideration for any supply under this Deed is exclusive of any GST imposed in relation to the supply.
   2. If:
      1. despite any other provision of this Deed, GST is imposed on a supply you make to the Department under this Deed; and
      2. the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply,
      3. the Department will pay you an additional amount equal to the GST imposed on that supply, at the time and in the manner payment is otherwise payable under this Deed in relation to that supply.
   3. If you are not registered under the GST Law you will not be entitled to receive any additional amount as provided under this **clause 7**.
   4. If for any reason the Department pays you an amount under this **clause 7** which is more than the GST imposed on the supply, you must repay the excess to the Department on demand or the Department may set off the excess against any other amounts due to you.

# Material and Information

1. Reporting Requirements
   1. You agree to provide the Department with written progress reports at the times and containing the information specified in **Schedule B** (“Progress Reports”).
   2. If delays are likely to occur in achieving an Activity by the relevant due date as described in Schedule A, you must submit a status report to the Department no later than 5 days prior to the relevant due date. This report is to set out the reasons for the proposed delay, any revision to the due date(s) and the proposed action you intend to take to minimize the impact of the delay.
   3. You must also provide any other information the Department reasonably requires from time to time concerning the Project.
   4. You must participate and contribute to requests for the provision of statistical and program information for the purpose of research and surveys conducted by the Department or an authorised representative.
   5. If any Progress Report contains information confidential to you, you should mark the relevant parts of the report accordingly.
   6. You must keep financial accounts and records relating to the Approved Project so as to enable:
      1. all receipts and payments related to the Approved Project to be identified in your accounts and reported in accordance with this Deed;
      2. unless notified by the Department, the preparation of financial statements in accordance with Australian Accounting Standards; and
      3. generation of an income and expenditure statement for each financial year of the Approved Project with the Budget, including:
2. a schedule of the Capital Equipment acquired, sold, written-off or otherwise disposed of during each financial year; and
3. a comparison of the income and expenditure in each financial year against the Budget; and
4. the audit of those records in accordance with Australian Auditing Standards.
   1. You must arrange for:
      1. The Statement of Expenditure to accompany the Final Outcomes Report to be audited by a qualified public or chartered accountant and for the person conducting the audit to complete the Independent Auditor’s Report.
      2. an independent third person acceptable to the Department to verify any information contained in a Report if the Department considers that there is a significant error, omission or anomaly in the Report.
5. Intellectual Property
   1. Intellectual Property in all Project Material vests in you, unless otherwise stated in the Special Conditions.
   2. You grant the Department a perpetual, transferable, royalty free licence to use, reproduce, communicate to the public and adapt for its own purposes all IP in the Progress Reports and any other written material you provide to the Department about the Project.
6. Confidential Information
   1. Each party must maintain the confidentiality of all commercially sensitive information it receives from the other party, including the amount of the Grant, except in accordance with **clause 12** (Public Announcements) or as otherwise agreed in writing.
   2. The obligations on the Parties under clause 10.1 will not be taken to have been breached to the extent that Confidential Information:
      1. is disclosed by a Party to its legal and other professional advisers, auditors, contractors, consultants or employees in order to comply with obligations, or to exercise rights, under this Deed;
      2. is disclosed to a Party's internal management personnel to enable effective management or auditing of contract-related activities;
      3. is disclosed by the Department to a Minister of the Crown in right of the State of New South Wales;
      4. is disclosed by the Department in response to a resolution of a House of the Parliament of New South Wales calling for the production of the Confidential information official functions;
      5. is disclosed by the Department to an agency or instrumentality of the State of New South Wales, where reasonably necessary for the exercise of public official functions of that agency or instrumentality;
      6. is authorised or required by law (including under this Deed) to be disclosed; or
      7. is in the public domain otherwise than due to a breach of clause 10.1.
7. Privacy
   1. You will:
      1. ensure that Personal Information that is provided by the Department or collected by you under or in connection with this Deed is used only for the purposes of this Deed and is protected against loss, unauthorised access, use, modification and disclosure, or against other misuse;
      2. not disclose any Personal Information without the written consent of:
8. the individual to whom the Personal Information relates; or
9. the Department,

unless otherwise required or authorised by law;

* + 1. comply with the Information Protection Principles applying to NSW public sector agencies under the Privacy and Personal Information Protection Act 1998 (NSW) when doing any act or engaging in any practice in relation to Personal Information as if you were an agency directly subject to that Act; and
    2. include equivalent requirements regarding Personal Information (including this clause 11) in any subcontract entered into for the provision of any of the Activities under this Deed.

1. Public Announcements and Acknowledgement
   1. You must obtain prior approval from the Department for the content of each media release announcing or promoting this Grant.
   2. You must acknowledge the NSW Government’s contribution in any public statements about the Project or written material regarding the Project.
   3. Any publicity material relating to the Project including brochures, signage, advertising and invitations must use the acknowledgement statement:

*‘This project is a NSW Department of Planning, Industry and Environment, Waste Less Recycle More initiative’*

* 1. You must:
     1. use the Department’s waratah logo when acknowledging the Department’s support of the Project in compliance with the [NSW Government Brand Guidelines](https://communications.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/files/Communications-and-Engagement/0c7b202631/NSW-Government-Brand-Guidelines.pdf).
     2. prominently display the NSW Waratah logo on all signs and promotional material about the Project.
     3. issue an invitation to a NSW Government representative to any launch or public event associated with the Project and, where they are able to attend, acknowledge them as official guests and provide an opportunity for them to speak at such event.
  2. You must provide a copy of all press releases and related media, promotional publications and printed material and documentation related to the Project to the Department with the Final Outcomes Report.
  3. You must co-operate as the Department requires in the preparation of case study documentation based on the final outcomes of the Project.
  4. The Department may publish the title and brief description, including outcomes, of the Project and the amount of the Grant.

# Impartiality

1. Impartiality
   1. You acknowledge that:
      1. the Department must at all times be able to carry out its functions fully and impartially; and
      2. the funding relationship will not influence the Department’s exercise of its regulatory or inspection functions in relation to you.
   2. You must not state or imply that the Department endorses either you or your products.
2. Conflict of Interest
   1. You must immediately notify the Department if any actual, potential or perceived conflict of interest arises between you or the Project and the Department’s functions, policies, objectives or reputation.
   2. You must not carry on or be involved in any capacity in an activity or business, which may conflict with, or adversely affect, your ability to carry out your obligations under this Deed, and you will immediately notify the Department in writing if such a conflict or risk of such a conflict arises.
3. Warranties
   1. You warrant that, at the date of this Agreement, you are not aware of any of the following:
      1. actual, potential and/or perceived conflict of interest between you and the objectives, mission, interests or reputation of the Department;
      2. circumstances arising in connection with the Agreement that may limit the ability of the Department to carry out its functions fully and impartially.
   2. You must provide immediate written Notice to the Department if you become aware of any of the matters set out in **clause 15.1**.

# Dealing with Risk

1. Disclosure of Information
   1. You acknowledge that, under the *Government Information (Public Access) Act 2009*, the Department may be required to publicly disclose information about this Deed at [https://tenders.nsw.gov.au](https://tenders.nsw.gov.au/). None of the disclosure obligations require the disclosure of:
      1. the commercial-in-confidence provisions of a contract;
      2. any matter that could reasonably be expected to affect public safety or security; or
      3. information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009*.
   2. You may nominate any items you consider are confidential and why, to assist the Department in determining what items to disclose.
2. Insurance
   1. You must maintain, during the term of this Deed:
      1. a broadform public liability policy of insurance to the value of at least $20 million in respect of each claim and in the aggregate as to the number of occurrences in the policy period;
      2. workers’ compensation insurance as required by all relevant laws of Australia relating to workers compensation;
      3. the Additional Insurance Policies listed in the Details for the minimum sum provided.
   2. If specified as being required in the Details, a professional indemnity insurance policy must be maintained for a period of 7 years from the end of the Deed.
   3. You must not do, permit or suffer any act, matter or thing or omission whereby any of the policies referred to in this clause may be vitiated, rendered void or voidable.
   4. On request by the Department, you must provide a copy of valid and current certificates of currency for each or any of the policies described above.
   5. Without limitation to **clause 17.1**, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.
3. Indemnities
   1. You must indemnify and keep indemnified the Department, the Crown in right of the State of New South Wales and their officers, employees and agents from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:
      1. the Grant or the use of any outcomes from the Project;
      2. your breach of this Deed;
      3. any unlawful or negligent act or omission by you, your employees or your subcontractors in connection with this Deed;
      4. any illness, injury or death of any person you, your employees or your subcontractors cause or contribute to, in connection with this Deed;
      5. any loss or damage to real or personal property you, your employees or your subcontractors cause or contribute to, in connection with this Deed; or
      6. any act or omission by you, your employees or your subcontractors in connection with this Deed that is in infringement of any Intellectual Property, or privacy rights of the Department or any third party.
   2. Your liability to indemnify the Department under this clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Department, its officers, employees or agents contributed to the relevant loss or liability.
   3. Your liability to indemnify the Department under this clause does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Deed.
4. Capital Equipment
   1. Any Capital Equipment acquired with the Grant for the purposes of the Approved Project will become your property.
   2. You must not acquire any Capital Equipment with the Grant unless the Capital Equipment is specified in the Deed or the Department has provided you with prior written consent to acquiring that Capital Equipment.
   3. You must for the term of this Deed:
      1. use any Capital Equipment you acquire with the Grant for the Approved Project and in accordance with this Deed;
      2. not sell, encumber, loan, cease to use or otherwise dispose of any Capital Equipment acquired with the Grant without first obtaining written consent from the Department;
      3. at your own expense reinstate any Capital Equipment acquired with the Grant that is lost, damaged or destroyed;
      4. hold any Capital Equipment securely and safeguard them against theft, loss, damage, or unauthorised use;
      5. maintain all Capital Equipment in good working order;
      6. maintain all appropriate insurances for all Capital Equipment to its full replacement value;
      7. if required by law, maintain registration and licensing of all Capital Equipment;
      8. be fully responsible for, and bear all risks relating to, the use or disposal of all Capital Equipment; and
      9. ensure an asset register is maintained at all times and, when requested by the Department, provide copies of the asset register to the Department.

# Varying and Terminating the Deed

1. Variation
   1. This Deed may only be varied by agreement in writing including by an exchange of emails confirming the agreed variation.
   2. To vary the Approved Project you should send an email to the Department’s Authorised Officer setting out details of:
      1. the proposed change;
      2. the reasons for the proposed change; and
      3. how the proposed change will affect the Approved Project, the Activity Dates, the Completion Date and/or the Budget.
   3. Any variation only takes effect from the date the Department replies by email accepting the details of the proposed change. You must not take any action to amend the Activities prior to receipt of such confirmation.
   4. A Party must advise the other Party within seven (7) days of any changes to its contact details as set out in the Details.
2. Termination
   1. Where a party has breached this Deed:
      1. the other party may give a Notice to that party requiring it to rectify that breach within 30 days of receiving that Notice; and
      2. if the party which received the Notice fails to rectify that breach in time, the other party may terminate this Deed immediately by giving a further Notice.
   2. The Department may terminate this Deed by Notice, with effect on the date stated in the Notice, if:
      1. you breach any of the following provisions**: clause 3** (Your Obligations), **clause 6** (Holding of Grant), **clause 8** (Reporting Requirements), **clause 14** (conflict of interest) **clause 15** (Warranties) ), **clause 17** (Insurance), **clause 19** (Capital Equipment) or **clause 25.8** (Assignment);
      2. the Department considers the Approved Project no longer viable;
      3. the Department is of the opinion that you have provided intentionally misleading or incorrect information as part of the application for funding or as part of this Deed;
      4. you use the Grant funding for purposes other than the Approved Project;
      5. you, your project partner or a related entity transports waste or arranges the transportation of waste generated in NSW for disposal outside of NSW at any time during the Term of this Deed;
      6. the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity;
      7. you become, during the term of the Deed or within 12 months prior to its commencement, subject to regulatory action in relation to compliance with any environmental laws;
      8. the Department forms the reasonable opinion that you (or your directors, employees or contractors) have acted in a way that is prejudicial to the interests or good standing of the Department;
      9. the Department forms the reasonable opinion that there is a conflict of interest between you and the Department; or
      10. you become insolvent, are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966*, resolve to go into administration or liquidation, or if a summons for your winding up is presented to a Court or you enter into any scheme of arrangement with your creditors.
   3. This **clause 21** does not exclude or reduce the rights of a party to terminate the Agreement arising by operation of the common law or statute or the other terms of this Agreement.
3. Consequences of Termination
   1. On termination or expiry of this Deed:
      1. accrued rights and obligations are not affected; and
      2. the Department will pay any Instalments due (after taking into account any Instalments already made prior to that date)
      3. you must repay to the Department any overpayment.
   2. An overpayment may include:
      1. any amount you must repay to the extent the Department considers you have failed to complete the Activities of the Approved Project as calculated under clause 5.2(b);
      2. any Instalment spent in breach of this Deed;
      3. any Instalment the Department has paid to you prior to the Project being terminated under clause 21.2(c) or (e);
      4. all unspent Instalments;
      5. any overpayment (including any repayment requested under clause 5.3)
      6. any interest earned on any Instalment required to be repaid.
   3. The Department will calculate the amount of any repayment you must make with regard to the extent the Department considers you have failed to complete the Activities of the Approved Project.

# Other Legal Matters

1. Dispute Resolution
   1. If a dispute arises in relation to this Deed (“a Dispute”), a party must comply with this **clause 23** before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.
   2. A party  claiming that a dispute has arisen must notify the other party in writing giving details of the dispute (Dispute Notice) in accordance with the requirements of **clause 24** (Notices).
   3. Following receipt of a Dispute Notice, each party must refer the Dispute to a senior representative, who:
      1. does not have prior direct involvement in the Dispute; and
      2. has authority to negotiate and settle the Dispute.
   4. If the Dispute is not resolved within 10 Business Days, from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice under **clause 23.2** must refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.
   5. If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
   6. Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.
2. Notices
   1. Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered, posted or emailed to the Authorised Officer specified in the Details or as otherwise notified in writing.
   2. The receiving party will be deemed to have received the Notice as follows:
      1. if hand delivered, on the day on which it is delivered or left at the relevant address;
      2. if sent by post within Australia:
3. if posted using Express Post, the priority letter service option of regular post, or the priority service option for Registered Mail, on the fourth Business Day after the day on which it is posted;
4. if posted using the regular post option, on the tenth Business Day after the day on which it is posted;
   * 1. if sent by email before 5.00pm on a Business Day, the first of the following occurring:
5. when the sender receives an automated message confirming delivery; or
6. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not be delivered.
   * 1. if sent by email after 5.00pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
   1. Any such mode of service will be in all respects valid notwithstanding that the party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.
7. General
   1. **Survival**: The following clauses survive termination or expiry of this Deed: **clause 8** (Reporting Requirements), **clause 10** (Confidential Information), **clause 11** (Privacy), **clause 17** (Insurance), **clause 18** (Indemnities), **clause 21** (Termination), **clause 25.3** (Keeping of records), this **clause 25.1** and any other clause which by its nature is intended to survive this Deed.
   2. **Subcontractors:** You remain fully responsible for the performance of the Approved Project if you subcontract the performance of any part of the Approved Project.
   3. **Keeping of records, audit and rights of access to such records:** You:
      1. must keep complete and accurate records and books of account with respect to your performance of the Approved Project (the “Records”), and must retain such Records for a minimum of seven (7) years after expiry or termination of this Deed;
      2. authorise the Department and any State or Commonwealth Government department or agency (the “Auditors”) that has provided moneys to the Department for the purposes of the Approved Project, to undertake audits, to examine and inspect, at reasonable times and on reasonable Notice, any records held by you and Records, and allow any such Records to be copied; and
      3. provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.
   4. **Entire Deed:** This Deed states all the express terms agreed by the parties as to the matters referred to in this Deed. It supersedes all prior contracts, obligations, representations, conduct and understandings between the parties relating to the subject matter of this Deed.
   5. **Inconsistency:** If there is any inconsistency between provisions of this Deed then the order of precedence will be:
      1. the **Details**; then
      2. any **Special Conditions**; then
      3. these **Funding Terms**; then
      4. any **Schedules**; then
      5. any **Attachments**
   6. **Negation of employment, partnership or agency**
      1. This Deed does not create a relationship of agency, partnership, and/or employment between the parties.
      2. You must not represent yourself as being an employee or agent of the Department or as otherwise able to bind or represent the Department.
   7. **Waiver**
      1. If a party fails to exercise any of its rights under this Deed, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect estop a party from relying on the terms of this Deed to their full force and effect.
      2. Any waiver by a party of a breach of this Deed must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.
   8. **Assignment**: You must not assign or novate your obligations or interests under this Deed, without the prior written consent of the Department.
   9. **Counterparts**: This Deed may be signed in any number of counterparts which taken together will constitute one instrument.
   10. **Governing Law**: The laws of New South Wales govern this Deed and the parties submit to the non-exclusive jurisdiction of the courts in that State.

Executed as a deed

| **Department** |  | |
| --- | --- | --- |
| Signed, sealed and delivered for and on behalf of the Crown in right of the State of New South Wales acting through the **Department** by its authorised signatory but not so as to incur personal liability: | | |
|  | |  |  | |
| Signature of Authorised Signatory | |  | Signature of Witness | |
|  | |  |  | |
| Name of Authorised Signatory | |  | Name of Witness | |
| Position of Authorised Signatory | |  | Address of Witness | |
|  | |  | Date | |

| **You (Company/Organisation)** |  | |
| --- | --- | --- |
| Signed, Sealed and delivered for on and on behalf of Click here to enter name of recipient in accordance with section 127 of the *Corporations Act 2001* by: | | |
|  |  |  |
| Signature of Director(1) |  | Signature of Director(2)/Company Secretary |
|  |  |  |
| Name of Director (1) |  | Name of Director(2)/Company Secretary |
|  |  |  |
| Date |  | Date |

Alternative Signature Blocks – Delete heading and pages before sending if not used

| **You (Authorised Signatory eg University, Council)** | | |
| --- | --- | --- |
| By entering into this Deed the signatory warrants that the signatory is duly authorised to execute this Deed on behalf of | | |
| Signed, sealed and delivered for and on behalf of by its authorised signatory: | | |
|  | | |
| Signature of authorised signatory |  | Signature of Witness |
|  |  |  |
| Name of authorised signatory |  | Name of Witness |
| Position of authorised signatory |  | Address of Witness |
|  |  | Date |

PLEASE DO NOT DELETE SECTION BREAK. THIS TEXT WILL NOT PRINT

Schedule A – Activities

| Activity | Tasks to be completed | Reporting Requirements | Instalment  (excluding GST) | Instalment Percentage | Activity Date | When to send invoice |
| --- | --- | --- | --- | --- | --- | --- |
| *[insert short name of activity, and number, eg 1. Commence Project]* | *[Insert description/specification of Activity (including details of which tasks of Project are to be completed by this date), or if you need more room, cross reference an attachment. e.g. Annexed at Attachment 1]* | *[insert what documents (including invoices) and reports need to be provided to provide evidence tasks completed]* |  |  | *[Insert Activity timeframe - e.g. 1-2 business days]* | *[ e.g. on receipt of an invoice/ on a particular day/ on completion of a particular Activity]* |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
|  |  |  | Total | Total |  |  |

|  |  |
| --- | --- |
| Objectives of the Project |  |
| Invoicing Requirements | You must provide the following Supporting Documentation to the Department in support of a claim for payment of **First instalment:**   1. bank account details (BSB Number, Account Name & Account Number); 2. completed Tax Invoice ; and 3. any other documentation requested by the Department by notice in writing.   **Final instalment:**   1. completed Tax Invoice; 2. Activity Report; 3. Statement of Expenditure and 4. any other documentation requested by the Department by notice in writing |

Schedule B – Description and frequency of Reports (refer to clause 8)

1. You must provide to the Department reports meeting the description and requirements specified below.
2. The Department may from time to time vary the format of reports and manner of submission by written notice to the Recipient.
3. You must send all reports to the Department electronically (email preferred, or on a USB) to [infrastructure.grants@epa.nsw.gov.au](mailto:infrastructure.grants@epa.nsw.gov.au)
4. The Department may meet with you each quarter, at the Department’s discretion, to discuss progress on the Project.
5. The Department may undertake site visits from time to time to ascertain progress of the activities on providing reasonable notice to you.

| Report Name | Description | Frequency and Date Required |
| --- | --- | --- |
| **Activity Report** | A report of the work you perform to achieve an Activity.  You must prepare the report in the format supplied by the Department. | An Activity Report is required in relation to each Activity described in Schedule A, other than the first and last Activity.  You must submit the Activity Report to the Department within 5 Business Days of the applicable Activity Date. |
| **Statement of Expenditure** | A Statement of the Expenditure of the Grant.  You must prepare the report in the format supplied by the Department.  Evidence that the expenditure has been acquitted to the agreement including proof of evidence such as:   * Invoices and photos of purchased equipment * Invoices of contractors | You must submit a Statement of Expenditure to the Department:   1. with the Activity Report; and 2. with the Final Outcomes Report. |
| **Final Outcomes Report** | A summary report documenting completion of the Project in the format supplied by the Department.  The following documents must be attached to the Final Outcomes Report:   1. completed Statement of Expenditure prepared in the format supplied by the Department 2. electronic copies of all materials | You must submit the Final Outcomes Report to the Department within 14 days or the earlier of:   1. the completion of the Project; or 2. the termination of this Deed.   You must return all unspent Grant monies and interest to the Department with the Final Outcomes Report either by:   1. cheque submitted with the Final Outcomes Report; or 2. electronic funds transfer directly to the Department bank account on the same day as the Final Outcomes Report is submitted to the EPA |

**Attachment A – Application Form**

**Attachment B – Budget**