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## Funding Deed

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Between **Environment Protection Authority (ABN 43 692 285 758)  
(EPA)**

And

Grantee **[insert name of other Party and ABN]**

For **Approved Projects in Food Rescue Grants Program**

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## Details

Item No.	Description	Details	
1.	<b>Party 1: EPA</b>	Name	Environment Protection Authority
		Address	6 Parramatta Square 10 Darcy Street, Parramatta NSW 2150
		ABN	ABN 43 692 285 758
2.	<b>EPA Nominated Officer</b> (refer to clause 35 Notices)	Name	Click or tap here to enter text.
		Position	Organics Unit Head
		Address	Click or tap here to enter text.
		Telephone	Click or tap here to enter text.
		Email	Organics.grants@epa.nsw.gov. au
3.	<b>Party 2: Grantee</b> (‘You’, ‘Your’)	Name	Click or tap here to enter text.
		Address	Click or tap here to enter text.
		ABN	Click or tap here to enter text.
4.	<b>Grantee Nominated Officer</b> (refer to clause 35 Notices)	Name	Click or tap here to enter text.
		Position	Click or tap here to enter text.
		Address	Click or tap here to enter text.
		Telephone	Click or tap here to enter text.
		Email	Click or tap here to enter text.
5.	<b>Grant</b> (refer to clause 2)	Click or tap here to enter text. [insert the total Grant amount]	
6.	<b>Nominated bank account</b> (refer to clause 4.2)	Account name: Click or tap here to enter text. Financial institution: Click or tap here to enter text. BSB: Click or tap here to enter text. Account number: Click or tap here to enter text.	
7.	<b>Program</b> (refer to clause 2)	The Food Rescue Grants Program is a program which aims to: <ul style="list-style-type: none"> <li>increase the diversion of good quality food suitable for human consumption from landfill to the community; and</li> <li>support NSW Food Rescue Organisations and Food Relief Organisations to expand their Capacity to manage increasing amounts of Rescued Food to provide to the community.</li> </ul>	
8.	<b>Permitted Purpose</b> (refer to clause 2)	To carry out the Approved Project described at Schedule A and to complete the Activities in Table A at Schedule A.	
9.	<b>Term</b> (refer to clauses 2 and 3)	Click or tap here to enter text. [insert the Deed term; for example, 2 years following the Commencement Date. In nominating the Term, ensure it is a sufficient period having regard to the activities/obligations being carried out under the Deed and when payment of Instalments is due (including all milestone payments).]	

Item No.	Description	Details
10.	<b>Insurances</b> (refer to clause 16)	Default applies
11.	<b>Special Conditions</b> (refer to clause 2)	<b>Clause 10.2(c) – Use of Grant</b> <ul style="list-style-type: none"> <li>• [XX]% pf project management and administration costs.</li> </ul>

## Background

- A. The EPA is carrying out the Program.
- B. The EPA has agreed to provide the Grant to You for the Permitted Purpose.
- C. You agree to use the Grant for the Permitted Purpose and on the terms and conditions of this Deed.

## Operative Terms

### Interpretation

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#### 1. Interpretation

- 1.1 Unless the context requires otherwise, in this Deed:
  - (a) 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;
  - (b) 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;
  - (c) the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
  - (d) clause headings are for convenience only and do not affect interpretation;
  - (e) references to persons include bodies corporate, government agencies and vice versa;
  - (f) references to the Parties include references to respective directors, officers, and Personnel of the Parties;
  - (g) where an expression is defined, any other grammatical form of that expression has a corresponding meaning; and
  - (h) monetary references are references to Australian currency.
- 1.2 No term or provision of this Deed will be construed against a Party on the basis that the Deed or the term or provision in question was put forward or drafted by or on behalf of that Party.

#### 2. Definitions

**Activity or Activities** means each activity for the Approved Project as described in Schedule A.

**Activity Completion Date** means the date specified in Schedule A by which each Activity must be completed or such alternative date that is agreed to by the EPA in accordance with this Deed.

**Activity Report** means the report of the Activities that You and Your Personnel have carried out, which includes the details required under this Deed (including as specified in Schedule A).

**Approved Project** means the project approved by the EPA and as described in Schedule A.

**Australian Accounting Standards** means the standards of that name made by the Australian Accounting Standards Board in accordance with section 334(1) of the *Corporations Act 2001* (Cth).

**Brand Guidelines** has the meaning given to that term in clause 21.3.

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

**Capacity** means the amount of a Rescued Food that is physically able to be rescued, stored, processed and/or redistributed by You.

**Capital Equipment** means any non-current assets, purchased, created or otherwise brought into existence wholly, or in part, with the use of the Grant, but does not include Project Material.

**Change Request Form** means a written document, in substantially the form of the template at Schedule B, or such other form as advised by the EPA to You.

**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.

**Commencement Date** means the date the Parties sign this Deed, or if this Deed is signed on different dates, the date of last execution.

**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:

- (a) is by its nature confidential;
- (b) has been designated as confidential by a Party;
- (c) is capable of protection at common law or equity as confidential information; or
- (d) is derived or produced partly from the information in paragraphs (a), (b) or (c) above,

but does not include information that:

- (e) is in the public domain; or
- (f) 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.

**Conflict of Interest** means a conflict of interest (whether personal, financial or otherwise) that You or Your Personnel have (whether proven or alleged) in respect of the Approved Project or this Deed (including any circumstances that may conflict with Your or Your Personnel's ability to carry out the obligations under this Deed fairly and independently and consistent with the EPA's objectives, functions and policies).

**Coordinating Organisation** means individual not-for-profit organisations, local councils, local government regional waste groups or regional organisation of councils acting on behalf of or

coordinating a group of three or more Food Rescue Organisations and/or Food Relief Organisations.

**Correctly Rendered Invoice** means an invoice that is correctly addressed and rendered in accordance with this Deed and includes:

- (a) the words “tax invoice” stated prominently;
- (b) Your name and ABN;
- (c) the EPA’s name and address;
- (d) the date of issue of the invoice;
- (e) the title of this Deed;
- (f) the total amount of the Instalment(s) payable; and
- (g) such other information as reasonably required by the ETA.

**Deed** means this document and includes the Details, Operative Terms, Schedules and any attachments or other documents expressly incorporated into this Deed.

**Details** means the Deed details specified in the Details table on pages 3 and 4.

**Food Donor** means a business who donates good quality food suitable for human consumption to a Food Rescue Organisation and/or Food Relief Organisation.

**Eligible Entity** means an entity that meets all relevant EPA eligibility criteria for the Grant, including any eligibility criteria specified in any relevant Program guidelines.

**EPA** means the NSW Environment Protection Authority (ABN 43 692 285 758) constituted under the *Protection of the Environment Administration Act 1991* (NSW).

**EPA Nominated Officer** means the person identified in item 2 of the Details or such other person as notified by the EPA to You in writing.

**Existing Materials** means any Material that is in existence at the Commencement Date or is subsequently brought into existence, other than as a result of the performance of the Activities and this Deed.

**Final Outcomes Report** means the report of the final outcomes of the Approved Project that You and Your Personnel have carried out, which includes the details required under this Deed (including as specified in Schedule A).

**Food Relief Organisation** is a not-for-profit organisation that provides Rescued Food directly to the community, and meets the following criteria. A Food Relief Organisation must:

- Operate, and have operated, in NSW with an active Australian Business Number (ABN) for at least 6 months;
- Be actively listed on <https://askizzy.org.au/> under food support; and
- Be registered on <https://www.acnc.gov.au/charity/charities>.

**Food Rescue Organisation** is a not-for-profit organisation that collects and distributes Rescued Food from Food Donors and delivers it directly to Food Relief Organisations or stores it in warehouses, ready for distribution to Food Relief Organisations and meets the following criteria.. A Food Rescue Organisation must:

- operate, and have been operating, in NSW with an active Australian Business Number (ABN) for at least 6 months; and
- Be registered on <https://www.acnc.gov.au/charity/charities>

**Force Majeure Event** means any of the following events or circumstances to the extent not within the reasonable control of the Party affected by it (**Affected Party**):

- (a) acts of God, including storms, cyclones, landslides, epidemics, earthquakes, floods, and other natural disasters;
- (b) strikes, stoppages, labour restraints and other industrial disturbances, except for those only affecting the Personnel of the Affected Party;
- (c) acts of the public enemy, including wars, blockades and insurrections; and
- (d) riots, malicious damage, sabotage, civil disturbance and acts of terrorism,

the incidence of which is not (or would not be reasonably expected to be) generally known to the Affected Party as at the Commencement Date and which the Affected Party is not reasonably able to prevent or overcome, or the effects of which the Affected Party is not reasonably able to predict and take measures to avoid, by the exercise of reasonable diligence and prudence.

**Grant** means the funding amount specified in item 5 of the Details, and where the context requires, includes any interest earned or generated by You from Your use of the Grant, including interest earned from the investment of the Grant.

**Grantee Nominated Officer** means the person identified in item 4 of the Details or such other person as notified by You and approved by the EPA in writing.

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

**Instalments** means that part of the Grant which, subject to the terms of this Deed, the EPA pays to You in the amounts and on the dates set out in Schedule A.

**Intellectual Property** includes:

- (a) all rights in relation to copyright, inventions, plant varieties, trade marks, designs, patents; and
- (b) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including know-how,

but does not include Moral Rights.

**Law** means any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated from time to time in any relevant jurisdiction (including the Commonwealth or any State or Territory government) and any applicable common law and rule or principle of equity.

**Loss** means any loss, damage, liability, cost (including all legal and other professional costs on a full indemnity basis), charge, expense, Claim, outgoing, fine or payment of any nature or kind.

**Materials** means all materials, works, documents, information, and anything else that is the subject matter of Intellectual Property rights.

**Moral Rights** has the same meaning as in the *Copyright Act 1968* (Cth) and includes analogous moral rights existing elsewhere in the world.

**Nominated Officer** means the EPA Nominated Officer and the Grantee Nominated Officer, as the case may be.

**Notice** or **Notify** means any approvals, consents, instructions, orders, directions, statements, requests and certificates, or other communications that one Party is required to give, or gives, to another Party in writing under this Deed.

**Objectives** means the objectives of the Approved Project and the Activities as set out in Schedule A.

**Operative Terms** means clauses 1 to 36 to this Deed.

**Party** means each Party to this Deed as specified in item 1 and item 3 of the Details.

**Permitted Purpose** means carrying out the Activities for the Approved Project and to achieve the Objectives (or such other purpose(s) as specified in item 8 of the Details).

**Personal Information** means:

- (a) information or an opinion about an identified individual (that is, a natural person) or an individual who is reasonably identifiable whether the information or opinion is:
  - (i) true or not; and
  - (ii) recorded in a material form or not; and
- (b) information defined as such under applicable Privacy Laws.

**Personnel** means in relation to a Party, its employees, sub-contractors, agents, volunteers, executives and representatives.

**Privacy Laws** means all applicable privacy Laws, including:

- (a) the *Privacy Act 1988* (Cth);
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);
- (c) the *Health Records and Information Privacy Act 2002* (NSW);
- (d) any legislation (to the extent that such legislation applies to the EPA or You or any other recipient of Personal Information) from time to time in force in:
  - (i) any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and

- (ii) any other jurisdiction (to the extent that the EPA or any Personal Information or You is subject to the laws of that jurisdiction),

affecting privacy or Personal Information, provided that You ensure that You comply at all times with the Privacy Laws applicable in New South Wales, Australia; and

- (e) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a), (b), (c) and (d), as amended from time to time.

**Program** means the program as described or referenced in item 7 of the Details.

**Project Material** means any Material (other than Existing Materials):

- (a) developed or created by You or Your Personnel under this Deed, including as part of performing the Activities; or
- (b) incorporated in, or supplied as part of, or for the purpose of, You or Your Personnel carrying out Your obligations under this Deed or performing the Activities.

**Public Statement** has the meaning given to that term in clause 21.1.

**Records** has the meaning given to that term in clause 27.1.

**Rescued Food** means good quality food suitable for human consumption rescued from a Food Donor and so avoiding it from being disposed to landfill.

**Schedule** means a schedule to this Deed.

**Special Conditions** means the terms and conditions specified, or referenced, in item 11 of the Details.

**Statement of Expenditure** is a record showing the use and expenditure of the Grant (including all amounts of money coming into and going out of the bank account that holds the Grant).

**Term** means the term of this Deed as specified in item 9 of the Details.

**You/Your** means the entity specified at item 3 of the Details.

## Term and Grant

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### 3. Term

- 3.1 This Deed will commence on the Commencement Date.
- 3.2 Unless terminated earlier, this Deed will end at the end of the term specified in item 9.

### 4. Paying the Grant

4.1 Subject to the other provisions of this Deed, the EPA will pay the Grant to You in the Instalments set out in Schedule A on the condition that:

- (a) You remain an Eligible Entity;
- (b) the Instalment is due and payable;

- (c) the EPA receives a Correctly Rendered Invoice from You in accordance with this Deed that:
    - (i) is issued in accordance with any timeframes specified in Schedule A;
    - (ii) is addressed and sent to the EPA Nominated Officer (or such other person as notified by the EPA to You); and
    - (iii) clearly identifies the Instalment You are claiming;
  - (d) if requested by the EPA, You have (where applicable) provided the EPA with evidence showing that You have performed the Activities and any milestones to which the Instalment relates at the times set out in Schedule A; and
  - (e) the Activities to which the Instalment relates have (where applicable) been performed to the satisfaction of the EPA and in accordance with this Deed.
- 4.2 The EPA will pay a Correctly Rendered Invoice that is issued in accordance with this Deed within 30 days of receipt or within such other timeframe as specified in Schedule A. Payment will be made to Your nominated bank account as specified in item 6 of the Details.
- 4.3 Notwithstanding clauses 4.1 and 4.2, if the EPA pays You an Instalment, this does not constitute an admission that Your performance of the Activities and Your other obligations under this Deed is in conformity with this Deed and no payment will be deemed to release You from Your obligations under this Deed.

## **5. Co-contributions**

- 5.1 In the event that this Deed is a co-contribution model, this clause 5 applies:
- (a) You must make any contributions (whether financial or in-kind) as specified in Schedule A and within the timeframes specified in that Schedule or as otherwise agreed by the EPA in writing.
  - (b) Your entitlement to the Grant is conditional upon You making all necessary contributions as specified in Schedule A.
  - (c) You must immediately Notify the EPA in writing if You become aware that You will be unable to make any contribution as and when due.
- 5.2 Without limiting its other rights and remedies at Law and under this Deed, the EPA reserves the right (at its sole discretion) to immediately with Notice to You:
- (a) terminate or reduce the scope of this Deed if You fail to comply with clause 5.1 or if the EPA determines (acting reasonably) that You cannot make a contribution in accordance with clause 5.1; or
  - (b) reduce the Grant amount and Instalments proportionately to any reduction in Your contributions as stated in Schedule A.

## **6. Withholding, Suspension and Repayment**

- 6.1 If You are not complying with this Deed, the EPA:
- (a) may withhold or suspend payment of an Instalment until You comply with Your obligations to the EPA's satisfaction;

- (b) may calculate the amount of any repayment You must make with regard to the extent the EPA considers You have failed to complete the Activities; and
- (c) will consider any such amount as an overpayment which must be repaid under clause 6.2.

6.2 You must repay to the EPA within 28 days of a demand being sent:

- (a) any Instalment spent in breach of this Deed (including any Instalment spent on activities that have not been carried out for the Permitted Purpose or in accordance with this Deed);
- (b) all unspent Instalments as at the date of termination or expiry of this Deed;
- (c) any overpayment (including under clause 6.1); and
- (d) any interest earned by You on any Instalment required to be repaid under this Deed.

6.3 If the EPA withholds or suspends an Instalment You must continue to perform Your obligations under this Deed.

6.4 The EPA may set off the amount of any overpayment or claim for repayment against any future Instalment due.

6.5 Any repayment the EPA claims from You under this clause 6 will be a debt due and owing by You to the EPA in accordance with clause 6.2.

## **7. Holding of Grant**

7.1 Each Instalment must be held for the benefit of the EPA from the date it is received either:

- (a) in a separate interest bearing bank account used solely in connection with the Grant which You solely control; or
- (b) into an interest bearing bank account of which You solely control, provided that sufficient accounting controls are in place to identify and track the expenditure of the Grant at all times.

7.2 All Instalments must be held with an institution that is authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia.

7.3 Interest earned on the Grant (including all Instalments of it) becomes part of the Grant and You must use any such interest for the Permitted Purpose. You must return unspent interest to the EPA within 28 days following the expiry or earlier termination of this Deed or at such other times as required by this Deed.

## **8. GST**

8.1 Unless otherwise indicated, all consideration for any supply under this Deed is exclusive of any GST imposed in relation to the supply.

8.2 If:

- (a) despite any other provision of this Deed, GST is imposed on a supply You make to the EPA under this Deed; and

- (b) the EPA is, or will be, entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply,

the EPA 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.

- 8.3 If You are not registered under the GST Law You will not be entitled to receive any additional amount as provided under this clause 8.
- 8.4 If for any reason the EPA pays You an amount under this clause 8 which is more than the GST imposed on the supply, You must repay the excess to the EPA on demand or the EPA may set off the excess against any other amounts due to You under this Deed.

## Scope of Activities

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### 9. Approved Project

- 9.1 The Parties acknowledge and agree that, as at the Commencement Date of this Deed, You are responsible for carrying out the Activities for the Approved Project, as described in Schedule A.
- 9.2 You must carry out the Activities for the Permitted Purpose and in furtherance of the Objectives.
- 9.3 The EPA will have no liability or responsibility with respect to the cost of carrying out the Activities and the costs incurred by You in discharging Your responsibilities and performing Your obligations, under this Deed beyond the Grant.

### 10. Use of the Grant

- 10.1 The Grant must only be used by You for the Permitted Purpose and in accordance with this Deed. Your entitlement to, and use of, the Grant is conditional upon You being an Eligible Entity.
- 10.2 The Parties agree that the Grant can be applied to the following costs as they relate to the Permitted Purpose:
  - (a) the purchase or lease of Capital Equipment, including infrastructure and equipment that will facilitate an increased Capacity which includes, but is not limited to the:
    - (i) purchase or lease of delivery vehicles such as refrigerated vans or small trucks, forklifts and stationary machinery;
    - (ii) purchase of in-vehicle refrigeration;
    - (iii) purchase of, or upgrade to, refrigeration and/or freezer equipment to improve energy efficiency; and
    - (iv) warehouse shelving.

all Capital Equipment must be owned or leased by You, and must be registered and insured by You.

  - (b) project management and administration costs if specified as a percentage of total grant funding in the Special Conditions;

- (c) food rescue, relief and donation related education and resources;
- (d) costs associated with increased volumes of Rescued Food;
- (e) costs associated with technology and/or system development to improve operational efficiency, including collection and storage of data
- (f) costs associated with feasibility studies to assess opportunities for building a Food Rescue Organisation's and/or Food Relief Organisation's operational Capacity to manage increasing amounts of Rescued Food.

10.3 Except to the extent expressly agreed by the EPA in writing, the Grant cannot be used for, or in connection with, any of the following:

- (a) infrastructure, equipment and activities that:
  - (i) are already purchased before the Deed of Agreement is signed;
  - (ii) are outside NSW;
  - (iii) do not relate to Rescued Food;
  - (iv) are intended for use for non-food items;
  - (v) are intended for use for food other than for human consumption;
- (b) food waste disposal or composting equipment;
- (c) food waste reuse opportunities which includes but is not limited to, remanufacture, valorisation, animal feed production;
- (d) the purchase of food or land;
- (e) operational expenses which includes but is not limited to rent, fuel, electricity, insurance, services, housekeeping;
- (f) for early termination fees or end of lease fees for Capital Equipment leased under the Grant;
- (g) statutory requirements such as development consent fees, operating licenses fees, or compliance costs;
- (h) financial auditor costs such as third-party accountants providing endorsement on the Approved Project's expenditure and costs associated with the development of the grant application;
- (i) education, research and marketing costs not directly related to the Approved Project;
- (j) carrying out activities once this Deed expires or is terminated;
- (k) activities other than the Activities for the Permitted Purpose;
- (l) activities that have been funded or otherwise resourced by another organisation;
- (m) as security to obtain, or comply with, any form of loan or other interest;
- (n) the preparation, or in the course, of any litigation;

- (o) travel and related expenses;
- (p) education activities, except those related to the Approved Project and for the Permitted Purpose; and
- (q) the provision of loans or gifts to any person or entity.

10.4 You must:

- (a) budget and manage the Grant (including all Instalments) to ensure the diligent use and allocation of the Grant;
- (b) have and maintain sufficient systems, controls and processes in place to protect the Grant amounts from loss, theft, fraud and other misuse; and
- (c) immediately Notify the EPA if You become aware of any loss, theft, fraud or other misuse of a Grant amount or any breach of this clause 10.

10.5 You remain fully responsible for compliance with this Deed and will not be relieved or discharged of that obligation because of the payment of the Grant.

## Your Obligations

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### 11. Your General Obligations

11.1 You must:

- (a) ensure each Activity is completed by the relevant Activity Completion Date specified in Schedule A or by another date as agreed by the EPA in writing;
- (b) ensure each Activity is carried out in accordance with all relevant Laws, including:
  - (i) any COVID-19 related public health orders made under the *Public Health Act (NSW) 2010* (NSW); and
  - (ii) all Laws that are relevant to the Activities, this Deed or Your registration as an entity;
- (c) comply with all reporting and other requirements under this Deed;
- (d) comply with all policies and guidelines referenced in this Deed or such other policies, guidelines and reasonable directions related to this Deed that the EPA provides to You; and
- (e) undertake the Activities in a diligent, effective and timely manner.

11.2 You must not engage in any fraud in relation to this Deed (including the use of the Grant). The EPA or its nominee may investigate any fraud in relation to this Deed. You must co-operate and provide assistance to the EPA or its nominee in connection with any such investigation.

### 12. Coordinating Organisation Obligations

12.1 The Coordinating Organisation is to provide the EPA with a signed letter or Memorandum of Understanding (MoU) with each participating Food Rescue Organisation and/or Food Relief Organisation before the signing this Deed.

- 12.2 The Coordinating Organisation must maintain participation of at least three Food Rescue Organisations and/or Food Relief Organisations throughout the term of the Approved Project. If the Approved Project is a multi-year project, the number of participating Food Rescue Organisation and/or Food Relief Organisation is expected to increase each year of the Approved Project.
- 12.3 The Coordinating Organisation is to notify the EPA in writing of any material changes to the arrangements described in the MOU and ensure the requirements in clause 12.2 are met.
- 12.4 The Coordinating Organisation is to demonstrate how it's Activities have increased the amount of Rescued Food and/or food relief provided to the community.

### **13. Reporting Obligations**

- 13.1 You agree to provide the EPA with a written Activity Report, as well as such other written reports as specified in Schedule A. All reports must be provided to the EPA Nominated Officer at the times, in the manner and containing the information specified in Schedule A and elsewhere under this Deed.
- 13.2 If delays are likely to occur in achieving an Activity by the Activity Completion Date or in completing a written report by its due date as described in Schedule A, You must submit a status report to the EPA no later than 5 days prior to the relevant due date. This report is to set out the reasons for the proposed delay, any proposed revision to the due date(s) and the proposed action You intend to take to minimise the impact of the delay.
- 13.3 A revised reporting date proposed by You is to be agreed to by the EPA in writing and if agreed to, the Activity or written report is to be provided by the revised due date.
- 13.4 If a proposed revised date is not agreed to by the EPA, the date specified in Schedule A will continue to apply.
- 13.5 In addition to Your other reporting obligations under this Deed, You must also provide any other information the EPA reasonably requires from time to time concerning the Activities.
- 13.6 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 EPA or an authorised representative.
- 13.7 If any report contains Confidential Information, You must, acting reasonably, mark the relevant parts of the report as such.
- 13.8 Except where otherwise agreed by the EPA in writing, You must arrange for:
- (a) the Statement of Expenditure to accompany the Activity Report to be audited by a qualified public or chartered accountant and for the person conducting the audit to complete the relevant section of the Statement of Expenditure; and
  - (b) an independent third person acceptable to the EPA to verify any information contained in a report if the EPA considers that there is an error, omission or anomaly in the report (other than that of a minor and non-trivial nature).

## **14. Subcontractors**

- 14.1 You must not subcontract the performance of the Activities or the other obligations under this Deed without the prior written consent of the EPA (which may be given or withheld at the EPA's sole discretion and subject to such conditions as the EPA may reasonably require).
- 14.2 You remain fully responsible for the performance of the Activities and the other obligations under this Deed despite subcontracting the performance of any part of the Activities or this Deed.
- 14.3 You will be vicariously liable to the EPA for all acts, omissions and defaults of Your subcontractors (and its Personnel) relating to, or in any way connected with, the Activities and this Deed.

## **15. Work Health and Safety**

- (a) You must (and must ensure that Your Personnel) comply at all times with all:
- (i) Laws with respect to work health, safety and security (including in relation to COVID-19); and
  - (ii) policies and reasonable directions of the EPA in respect of the above mentioned matters.
- (b) At any time on request by the EPA (including prior to any of Your Personnel visiting, working or controlling work on a location in relation to the Activities or this Deed), You must promptly provide evidence of Your and Your Personnel's compliance with this clause 15.
- (c) You acknowledge and agree (and must procure that any subcontractor and agent acknowledges and agrees) that the EPA is excluded from all liability arising out of or in connection with this clause 15, whether in contract, tort (including negligence), statute or any other cause of action.
- (d) You release (and must procure that each subcontractor and agent releases) the EPA from any Claim arising out of or in connection with this clause 15.

## **Your Obligations – Managing Risk**

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### **16. Insurance**

- 16.1 You must maintain:
- (a) for the Term, a broad form public liability policy of insurance to the value of at least \$20 million in respect of each occurrence (or such other amount specified in item 10 of the Details);
  - (b) unless otherwise specified in the Key Details, for the Term and a period of seven years thereafter, professional indemnity insurance to the value of at least \$5 million in respect of each occurrence and in the aggregate (or such other amount specified in item 10 of the Details);
  - (c) for the Term, workers' compensation insurance as required by all relevant Laws;

- (d) any insurances specified in item 10 for the period and for the amount specified in item 10 of the Details; and
  - (e) all other insurances that a prudent entity would have and hold having regard to the Activities and the obligations under this Deed.
- 16.2 You must not do, permit or suffer any act, matter or thing or omission whereby any of the policies referred to in this clause 16 may be vitiated, rendered void or voidable.
- 16.3 On request by the EPA, You must promptly provide the EPA with a copy of valid and current certificates of currency for the policies described above.
- 16.4 You warrant and represent that You have and will maintain all necessary insurances as required by this clause 16.

## **17. Indemnities**

- 17.1 You must indemnify and keep indemnified the EPA and its officers and Personnel 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 as a result of or in connection with:
- (a) the Grant or the Activities;
  - (b) Your failure to use and manage the Grant for the Permitted Purpose and in accordance with this Deed (including any breach of clause 10);
  - (c) any unlawful, fraudulent or negligent act or omission by You or Your Personnel in connection with this Deed;
  - (d) any illness, injury or death of any person You or Your Personnel cause or contribute to, in connection with this Deed;
  - (e) any Loss or damage to real or personal property You or Your Personnel cause or contribute to, in connection with this Deed;
  - (f) infringement of the Intellectual Property rights of the EPA or any third party;  
or
  - (g) any breach of confidence or privacy.
- 17.2 Your liability to indemnify the EPA under this clause 17 will be reduced proportionately to the extent that any negligent or unlawful act or omission by the EPA or its Personnel contributed to the relevant Loss or liability.
- 17.3 Your liability to indemnify the EPA under this Deed 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.
- 17.4 The indemnities in this Deed are continuing obligations, independent from Your other obligations under this Deed and continue after this Deed ends.

## **18. Capital Equipment**

- 18.1 You acknowledge and agree that each item of Capital Equipment that You purchase with the Grant is held in trust for the EPA's benefit. You must:
- (a) do all things reasonably requested by the EPA, including the execution of any necessary documents to give full effect to, and protect, this arrangement;

- (b) if requested by the EPA, co-operate with the EPA to enable the EPA to protect its interest in respect of the Capital Equipment, including (if required by the EPA) enabling the EPA to register a security interest on the Commonwealth's personal property securities register in respect of the Capital Equipment; and
  - (c) comply with any Special Conditions in relation to the Capital Equipment or the EPA's interests in respect of the Grant monies and the Capital Equipment.
- 18.2 Risk in each item of Capital Equipment will transfer and remain with You from the date the Capital Equipment comes into Your possession or control.
- 18.3 Subject to You:
- (a) fully complying with Your obligations under this Deed; and
  - (b) completing the Activities to the EPA's satisfaction,
- all Capital Equipment becomes Your property at the expiry of the Term.
- 18.4 You must for the Term:
- (a) use any Capital Equipment You acquire with the Grant for the Permitted Purpose and in accordance with this Deed;
  - (b) not sell, encumber, create a security interest over, loan, or otherwise dispose of any Capital Equipment acquired with the Grant without first obtaining written consent from the EPA;
  - (c) at Your own expense reinstate any Capital Equipment acquired with the Grant that is lost, damaged or destroyed;
  - (d) hold any Capital Equipment securely and safeguard them against theft, loss, damage and unauthorised use;
  - (e) maintain all Capital Equipment in good working order;
  - (f) maintain all appropriate insurances for all Capital Equipment to its full replacement value;
  - (g) if required by Law, maintain registration and licensing of all Capital Equipment;
  - (h) be fully responsible for, and bear all risks relating to, the use or disposal of all Capital Equipment; and
  - (i) keep and maintain at all times an asset register of all Capital Equipment and, when requested by the EPA, promptly provide copies of the asset register to the EPA.

## Managing Information and Project Material

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### 19. Confidential Information

- 19.1 Each Party must maintain the confidentiality of all Confidential Information it receives from the other Party, including the amount of the Grant, except in accordance with

clause 21 (Public Announcements and Acknowledgment) or as otherwise agreed in writing between the Parties.

- 19.2 The obligations on the Parties under clause 19.1 will not be taken to have been breached if that Confidential Information is:
- (a) disclosed by a Party to its legal and other professional advisers, auditors, related bodies corporate, contractors, relevant joint venture partners and/or clients, consultants or Personnel in order to comply with obligations, or to exercise rights, under this Deed, provided they are, in Your case, required by agreement with You to maintain the confidentiality of the Confidential Information as required by clause 19.1;
  - (b) disclosed to a Party's internal management Personnel to enable effective management or auditing of Deed-related activities;
  - (c) disclosed by the EPA to a Minister of the Crown in right of the State of New South Wales;
  - (d) disclosed by the EPA in response to a resolution of a House of the Parliament of New South Wales calling for the production of the information;
  - (e) disclosed by the EPA 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; or
  - (f) authorised or required by Law or under this Deed to be disclosed.

## **20. Privacy**

- 20.1 The EPA collects and manages Personal Information in accordance with all relevant Laws, including the *Privacy and Personal Information Protection Act 1998* (NSW).
- 20.2 If You or Your Personnel is provided with, obtains access to, or collects any Personal Information in connection with this Deed (including any Activity), You must:
- (a) ensure that Personal Information is used only for the purposes of this Deed and is protected against loss, unauthorised access, use, modification and disclosure and against other misuse;
  - (b) not disclose any Personal Information without the written consent of:
    - (i) the individual to whom the Personal Information relates; or
    - (ii) the EPA,unless otherwise required or authorised by Law;
  - (c) comply with all relevant Privacy Laws when doing any act or engaging in any practice in relation to Personal Information as if You were an agency directly subject to those Privacy Laws;
  - (d) not transfer the Personal Information outside New South Wales, Australia or access it, or allow it to be accessed, from outside New South Wales, Australia unless agreed to by the EPA in writing;
  - (e) immediately Notify the EPA upon becoming aware of any privacy breach or breach of this clause 20;

- (f) Notify the EPA as soon as reasonably possible if You are approached by any privacy commissioner or government authority concerning any Personal Information; and
- (g) include equivalent requirements regarding Personal Information (including this clause 20) in any subcontract entered into for the provision of any of the Activities or other obligations under this Deed.

20.3 Nothing in this clause 20 limits or excludes Your obligations at Law in relation to privacy and the protection of Personal Information.

## **21. Public Announcements and Acknowledgement**

21.1 You must obtain prior written approval from the EPA for the content of each public statement or media release that refers to, announces or promotes this Deed, the Activities, the Approved Project or the Grant (**Public Statement**). Approval must be obtained by emailing the EPA Nominated Officer at the email address specified in item 2 of the Details (or such other person or contact details as advised by the EPA in writing).

21.2 You must acknowledge (to the extent applicable) the Commonwealth and NSW Government's contribution in any EPA approved Public Statements in the form and including the content advised by the EPA to You.

21.3 Except where otherwise directed by the EPA in writing, You must:

- (a) use the EPA's and NSW Government logos when acknowledging the EPA's contribution or support of the Approved Project in compliance with:
  - (i) the EPA brand and logo guidelines available at <https://www.epa.nsw.gov.au/about-us/epa-logo>;
  - (ii) the "NSW Government Brand Framework" available at <https://www.nsw.gov.au/branding/nsw-government-brand-framework>; or
  - (iii) such other brand guidelines as notified by the EPA to You,  
**(Brand Guidelines)**;
- (b) prominently display the EPA's logo on all Public Statements (subject to compliance with the Brand Guidelines); and
- (c) issue an invitation to the EPA Nominated Officer (or such other person(s) as nominated by the EPA Nominated Officer) to any launch or public event associated with the Activities or the Approved Project and, where they are able to attend, acknowledge them as official guests and provide an opportunity for them to speak at such event.

21.4 You must co-operate as the EPA requires in the preparation of case study documentation based on the final outcomes of the Activities and the Approved Project.

21.5 Unless otherwise directed by the EPA, You must provide a copy of all Public Statements and case study documentation related to the Activities and the Approved Project to the EPA with the Activity Report (except where the Public Statement or documentation has previously been provided as part of a prior Activity Report).

21.6 Without limiting the EPA's Intellectual Property rights under this Deed, the EPA may publish in any forum the title and a description, including outcomes, of the Activities, the Approved Project and the amount of the Grant.

## **22. Disclosure of Information**

22.1 You acknowledge and agree that information contained in, or provided under, this Deed may be used or disclosed by the EPA where required or authorised by Law or for public governance or reporting purposes, including to:

- (a) meet any accountability requirements in relation to the expenditure of the Grant; and
- (b) comply with the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**).

22.2 You must, at Your sole cost, co-operate with the EPA in respect of any use or disclosure in accordance with clause 22.1.

22.3 Without limiting any other provision of this clause 22, You:

- (a) authorise the EPA to make information concerning You available to other government agencies for any purpose in connection with facilitating the EPA's exercise of its rights under this Deed or the carrying out, or exercise, of the functions or powers of the EPA or the Crown in right of the State of NSW. Such information may include any information provided by You to the EPA and any information relating to Your performance under this Deed;
- (b) acknowledge that information about You from any source, including substantiated reports of unsatisfactory performance, or any conduct including, any civil and/or criminal or alleged criminal conduct, by any officers or associates of You or a related body corporate may be taken into account by government agencies considering whether to offer You future grant or other future opportunities, for assessing the terms of their own contracts (or proposed contracts) with You or any other third party, for governance or reporting purposes or for any other reasonable business or government purposes;
- (c) agree that the communication of such information to any government agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
- (d) release and indemnify the EPA and the State of New South Wales from and against any Claim in respect of any matter arising out of such communications, including the use of such information by the recipient.

## **23. Intellectual Property**

23.1 Nothing in this Deed affects the Intellectual Property rights of the Parties in relation to Existing Materials.

23.2 For the Term, the EPA grants to You a non-exclusive, revocable and royalty-free licence to use the EPA's Existing Materials for the Permitted Purpose.

23.3 You grant to, or must procure for, the EPA a perpetual, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right to sublicense) to use, reproduce,

communicate and adapt Your Existing Materials for any one or more of the following purposes:

- (a) the EPA exercising or enforcing its rights at Law and under this Deed;
- (b) the EPA or any other government agency administering, monitoring, reporting on, publicising and evaluating the Activities or the Grant;
- (c) the performance of audits in relation to the Activities and the Grant;
- (d) the EPA carrying out tasks or activities to meet the Program objectives;
- (e) the EPA or any other government agency discharging their regulatory, inspection or statutory functions or responsibilities; and
- (f) such other purposes as set out in the Special Conditions.

23.4 Intellectual Property in all Project Material vests in You, unless otherwise stated in the Special Conditions.

23.5 Where Project Materials vests in You, You grant to, or must procure for, the EPA a perpetual, transferable, royalty-free, worldwide, non-exclusive licence (including a right to sublicense) to use, reproduce, communicate, and adapt the Project Materials for any one or more of the following purposes:

- (a) the EPA exercising or enforcing its rights at Law and under this Deed;
- (b) the EPA or any other government agency administering, monitoring, reporting on, publicising and evaluating the Activities or the Grant;
- (c) the performance of audits in relation to the Activities and the Grant;
- (d) the EPA carrying out tasks or activities to meet the Program objectives;
- (e) the EPA or any other government agency discharging their regulatory, inspection or statutory functions or responsibilities; and
- (f) such other purposes as set out in the Special Conditions.

23.6 Where the Special Conditions states that Project Material will be owned by the EPA, the EPA grants to You for the Term a non-exclusive, revocable, royalty-free licence to use the Project Materials for the Permitted Purpose.

23.7 Before providing any Materials (including Existing Material and Project Material) to the EPA, You must obtain all necessary consents from all authors to any act or omission that would otherwise infringe their Moral Rights.

23.8 Without limitation, the consent provided under clause 23.7 must be consistent with the EPA being able to conduct any act it is licensed or authorised to conduct under this Deed.

23.9 Before providing any Materials to the EPA, You must:

- (a) ensure that You procure all applicable rights, licences and other authorisations to enable the EPA to obtain the Intellectual Property rights and licences pursuant to this Deed; and
- (b) otherwise not use any such Intellectual Property in connection with this Deed.

## Governance

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### 24. Impartiality

24.1 You acknowledge that:

- (a) the EPA must at all times be able to carry out its functions fully and impartially; and
- (b) the funding relationship will not influence the EPA's exercise of its statutory functions and responsibilities or any regulatory and inspection functions in relation to You.

24.2 You and Your Personnel must not state or imply that the EPA endorses You or Your Personnel or any of Your products or services.

### 25. Conflict of Interest

25.1 You must immediately Notify the EPA if any actual, potential or perceived Conflict of Interest arises.

25.2 You must not carry on, or be involved in any capacity in, an activity or business, which may create a Conflict of Interest or adversely affect the EPA's reputation or Your ability to carry out Your obligations under this Deed. You must:

- (a) immediately Notify the EPA in writing if such a matter arises; and
- (b) take any such steps the EPA reasonably requires to deal with the matter.

### 26. Warranties

26.1 You warrant that, at the date of this Deed:

- (a) You are an Eligible Entity;
- (b) You have all requisite legal and corporate power to enter into and execute this Deed;
- (c) You have taken all action necessary for the authorisation, execution and delivery of this Deed;
- (d) You enter into this Deed based on Your own investigations, interpretations, deductions, information and determinations; and
- (e) You are not aware of any of the following:
  - (i) an actual, potential and/or perceived Conflict of Interest; or
  - (ii) circumstances arising in connection with this Deed that may limit the ability of the EPA to carry out its functions fully and impartially.

26.2 You must provide immediate Notice to the EPA if You become aware that any of the warranties provided under this clause 26 are false or misleading.

### 27. Record Keeping and Audit

27.1 You must keep complete and accurate records, books of account and Project Material with respect to Your performance of the Activities and this Deed (the **Records**) to

enable the proper auditing of those Records. You must retain such Records for a minimum period of seven years after the expiry or termination of this Deed or such longer period as may be required by Law.

- 27.2 Without limiting Your obligations at Law, You must keep financial Records to enable:
- (a) all receipts and payments related to the Grant and the Activities to be identified in Your accounts and reported in accordance with this Deed;
  - (b) the preparation of financial statements in accordance with Australian Accounting Standards; and
  - (c) generation of an income and expenditure statement for each financial year, including:
    - (i) a Statement of Expenditure;
    - (ii) a schedule of the Capital Equipment acquired, and to the extent it has occurred, any Capital Equipment that has been sold, written-off or otherwise disposed of (including in breach of this Deed) during each financial year; and
    - (iii) the audit of those records in accordance with Australian Auditing Standards.
- 27.3 You authorise the EPA and any State or Commonwealth Government department or agency (the **Auditors**) that has provided monies to the EPA for the purposes of the Activities or the Approved Project, to undertake audits, to examine and inspect, at reasonable times and on reasonable notice, any Records and allow any such Records to be copied.
- 27.4 You must provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.
- 27.5 If You do not comply with clauses 27.3 or 27.4, or if any audit finds that any part of the Grant has not been spent in accordance with this Deed or has been wrongly paid to You, the EPA or relevant funding agency will have the right to recover any overpayment.
- 28. Relevant Changes**
- 28.1 You must immediately Notify the EPA if any of the following occur (or are proposed to occur):
- (a) there is a change to Your structure, management or operations; or
  - (b) where applicable, a change to Your ownership or Constitution,
- which could reasonably be expected to:
- (c) affect Your eligibility for the Grant or have an adverse impact on Your ability to comply with Your obligations under this Deed; or
  - (d) adversely affect the reputation or good standing of the EPA or the State of New South Wales.
- 28.2 Without limiting the EPA's other rights at Law and under this Deed, the EPA may by Notice to You terminate this Deed or reduce its scope pursuant to clause 31.1(n) if You fail to comply with this clause or if any of the events referenced in clause 28.1 occur.

## Variation and Termination

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### 29. Variation

- 29.1 This Deed may only be varied by the agreement in writing of the Parties. Except for changes under clause 29.2 below, such agreement is to be by a deed of variation signed by the Parties confirming the agreed variation.
- 29.2 If You propose to change the nature or scope of the Activities, You must complete and submit to the EPA's Nominated Officer a Change Request Form that sets out details of:
- (a) the proposed change;
  - (b) the reasons for the proposed change; and
  - (c) how the proposed change will affect the Approved Project, including any the Activities and relevant Activity Completion Dates.
- 29.3 If the EPA approves the proposed change, the:
- (a) Parties must promptly execute the Change Request Form; and
  - (b) the change will come into effect from the date of execution of the Change Request Form (unless otherwise agreed between the Parties in the relevant Change Request Form).
- 29.4 No change is binding on either Party and You must not take any action to implement any change, until the relevant Change Request Form is properly executed by both parties in accordance with clause 29.3.

### 30. Termination or reduction without Cause

- 30.1 The EPA may, at its sole discretion, terminate this Deed or reduce its scope without cause upon the giving of 30 days' Notice to You.
- 30.2 If the EPA terminates or reduces the scope of this Deed under clause 30.1, the EPA will only be liable for:
- (a) the costs properly incurred in connection with this Deed before the effective date of termination or reduction in scope (as applicable); and
  - (b) the reasonable costs incurred by You and directly attributable to the termination or reduction in scope (as applicable).

### 31. Termination or reduction with Cause

- 31.1 The EPA may terminate this Deed or reduce its scope by Notice, with effect on the date stated in the Notice, if:
- (a) You breach a provision of this Deed that is capable of remedy, and do not remedy that breach within 30 days of receiving a Notice to do so;
  - (b) You breach a provision of this Deed that is incapable of remedy;
  - (c) You are no longer an Eligible Entity;
  - (d) You cease to carry out the Activities;
  - (e) the EPA considers the Activities or the Approved Project no longer viable;

- (f) You have provided misleading or incorrect information as part of the application for the Grant or as part of this Deed;
- (g) You use the Grant for purposes other than a Permitted Purpose or You misuse the Grant;
- (h) the EPA considers that there has been a material change in circumstances in Your financial position or Your identity;
- (i) You become, during the Term or within 12 months prior to its Commencement Date, subject to regulatory action in relation to compliance with any environmental laws;
- (j) the EPA forms the reasonable opinion that You (or Your directors or Personnel) have acted in a way that adversely affects the reputation or good standing of the EPA or the State of New South Wales;
- (k) You breach clause 25 or the EPA forms the reasonable opinion that there is a Conflict of Interest;
- (l) to the extent applicable, 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, to the extent there is no prohibition at Law in respect of such termination or reduction in scope;
- (m) You breach the Law or engage in any fraudulent activity in relation to this Deed; or
- (n) clause 28 or clause 33.4 applies.

31.2 This clause 31 does not exclude or reduce the rights of a Party to terminate the Deed arising by operation of the common law or statute or the other terms of this Deed.

## **32. Consequences of Termination**

32.1 On termination or expiry of this Deed:

- (a) accrued rights and obligations are not affected;
- (b) subject to clause 36.1, each Party is released from its obligations under this Deed other than as expressly provided for in this Deed;
- (c) each Party retains the rights it has against the other Party in connection with any breach or Claim that has arisen before termination; and
- (d) You must (unless otherwise directed by the EPA in writing):
  - (i) immediately cease use of the Grant; and
  - (ii) within 28 days repay to the EPA any overpayment.

32.2 An "overpayment" may include:

- (a) any amount You must repay to the extent the EPA considers You have failed to complete the Activities of the Approved Project as calculated under clause 6.1(b) and clause 32.3;

- (b) any Instalment spent in breach of this Deed;
- (c) all unspent Instalments as at the date of expiry or termination of this Deed;
- (d) any overpayment (including any repayment requested under clause 6.2); or
- (e) any interest earned on any Instalment required to be repaid.

32.3 The EPA will calculate the amount of any repayment You must make with regard to the extent the EPA considers You have failed to complete the Activities of the Approved Project.

### **33. Force Majeure Event**

33.1 Subject to clauses 33.2 and 33.3, non-performance as a result of a Force Majeure Event by a Party of any obligation required by this Deed to be performed by it will, during the time, and to the sole extent, that such performance is prevented, wholly or in part, by that Force Majeure Event

- (a) be excused; and
- (b) not give rise to any liability to the other Party for any Losses arising out of, or in any way connected with, that non-performance.

33.2 A Party which is, by reason of a Force Majeure Event, unable to perform any obligation required by this Deed to be performed will:

- (a) Notify the other Party as soon as possible giving:
  - (i) full particulars of the event or circumstance of the Force Majeure Event;
  - (ii) the date of commencement of the Force Majeure Event and an estimate of the period of time required to enable it to resume full performance of its obligations where these particulars are available at the time of the Force Majeure Event Notice; and
  - (iii) where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
- (b) use reasonable means to remedy or abate the Force Majeure Event as expeditiously as possible;
- (c) resume performance as expeditiously as possible after termination of the Force Majeure Event or after the Force Majeure Event has abated to an extent which permits resumption of performance;
- (d) Notify the other Party when the Force Majeure Event has terminated or abated to an extent which permits resumption of performance to occur; and
- (e) Notify the other Party when resumption of performance will occur.

33.3 A Force Majeure Event affecting a Party's performance under this Deed will not relieve that Party of liability in the event, and to the extent that:

- (a) its negligence or breach of this Deed (which was not caused by the Force Majeure Event) caused or contributed to its failure to perform under this Deed; or
- (b) it failed to use all reasonable endeavours to remedy the situation and to remove the event or circumstances giving rise to the Force Majeure Event.

33.4 If a Force Majeure Event prevents or inhibits Your performance of the Activities or other obligations under this Deed for 40 days or more, then the EPA may, at its sole discretion, elect to terminate this Deed by giving Notice pursuant to clause 31.1(n).

## Dispute Resolution

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### 34. Dispute Resolution

- 34.1 If a dispute arises in relation to this Deed (**Dispute**), the Parties must comply with the procedure in this clause 34 before starting legal proceedings in relation to the Dispute, except proceedings for urgent interlocutory relief.
- 34.2 A Party claiming that a Dispute has arisen must Notify the other Party in writing giving details of the Dispute (**Dispute Notice**).
- 34.3 Following receipt of a Dispute Notice, each Party must refer the Dispute to a senior representative, who:
- (a) does not have prior direct involvement in the Dispute; and
  - (b) has authority to negotiate and settle the Dispute.
- 34.4 If the Dispute is not resolved within 10 Business Days from the receipt of the Dispute Notice, or such extended period as the Parties may agree in writing before the expiration of the 10 Business Days, the Party which gave the Dispute Notice under clause 34.2 must refer the Dispute for mediation by the Australian Disputes Centre Limited (**ADC**) in accordance with the mediation rules of the ADC or such other forum or rules as agreed between the Parties in writing.
- 34.5 If the Dispute is not resolved within 40 Business Days after becoming entitled to refer the Dispute to mediation pursuant to clause 34.4 (or such extended period as the Parties may agree in writing) either Party may commence any other form of dispute resolution (including initiating proceedings in court).
- 34.6 Each Party must pay its own costs of complying with this clause 34 and split the costs of the mediator evenly.
- 34.7 Despite the existence of a Dispute, You must continue to comply with Your obligations under this Deed.

## Other Legal Matters and Administration

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### 35. Notices

- 35.1 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 relevant Party's Nominated Officer at the contact details specified in the Details or as otherwise notified by the Party in writing.

- 35.2 A Notice will be deemed to have been received as follows:
- (a) if hand delivered, on the day on which it is delivered or left at the relevant address;
  - (b) if sent by post within Australia, on the fifth Business Day after the day on which it is posted;
  - (c) if sent by post outside Australia, on the seventh Business Day after the day on which it is posted;
  - (d) if sent by email before 5:00pm on a Business Day, the first of the following occurring:
    - (i) when the sender receives a message (whether automated or otherwise) confirming or acknowledging delivery; or
    - (ii) 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; and
  - (e) 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, unless the sender receives an automated message that the email has not been delivered.

35.3 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.

## **36. General**

### **36.1 Survival**

The following clauses survive termination or expiry of this Deed: clause 10 (Use of the Grant); clause 12 (Reporting Obligations), clause 16 (Insurance) (to the extent it relates to insurance obligations that continue beyond the Term), clause 17 (Indemnities), clause 19 (Confidential Information), clause 20 (Privacy), clause 21 (Public Announcements and Acknowledgment); clause 22 (Disclosure of Information); clause 23 (Intellectual Property), clause 27 (Record Keeping and Audit), clause 32 (Consequences of Termination), clause 34 (Dispute Resolution), this clause 36 and any other clause which by its nature is intended to survive this Deed.

### **36.2 Remedies Cumulative**

The rights and remedies provided in this Deed are in addition to other rights and remedies given by Law independently of this Deed.

### **36.3 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.

### **36.4 Deed Documents and Inconsistency**

This Deed comprises the documents set out below:

- (a) the Details and Schedule A; then
- (b) the Special Conditions (if any); then
- (c) the Operative Terms; then
- (d) the other Schedules; then
- (e) any attachments; then
- (f) any other document expressly incorporated into this Deed.

If there is any inconsistency between any of the above Deed documents, then the document listed higher in the list will prevail over the document listed lower in the list to the extent of such inconsistency.

**36.5 Negation of employment, partnership or agency**

- (a) This Deed does not create a relationship of agency, partnership, and/or employment between the Parties.
- (b) You must not represent yourself as being an employee or agent of the EPA or as otherwise able to bind or represent the EPA.

**36.6 Waiver**

- (a) 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 stop a Party from relying on the terms of this Deed to their full force and effect.
- (b) 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.

**36.7 Assignment:** You must not assign or novate Your obligations or interests under this Deed, without the prior written consent of the EPA.

**36.8 Counterparts:** This Deed may be signed in any number of counterparts which taken together will constitute one instrument.

**36.9 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

## EPA

Signed, sealed and delivered for and on behalf of the Environment Protection Authority by its authorised signatory but not so as to incur personal liability:

Signature of authorised signatory

Signature of witness

Full name of authorised signatory

Full name of witness

Role of authorised signatory

Date

Date

## Grantee

Executed by **[Insert name of Grantee]** ABN **[Insert ABN]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of authorised delegate

Signature of witness

Full name of authorised delegate

Full name of witness

Date

Date

SAMPLE

# Schedule A – Approved Project Activities [For Individual Organisations]

## 1. Approved Project

- (a) The Approved Project is <INSERT NAME and DETAILS OF THE PROJECT in the applicant's application submitted to the EPA>.
- (b) The Approved Project is being carried out under the Food Rescue Grant Program.
- (c) The Approved Project will have the following key objectives:
  - (i) Increased diversion of <INSERT NUMBER> kilograms of food suitable for human consumption from landfill to the community;
  - (ii) Increased Capacity to accept at least < INSERT NUMBER > kilograms more Rescued Food a week in NSW; and
  - (iii) <(IF APPLICABLE) INSERT ADDITIONAL key objectives of applicant according to the output and proposed project>.

## 2. Activities

### 2.1 Activities

The Activities to be carried out by You as part of the Approved Project are set out in column 1 of Table A below.

### 2.2 Activity Completion Date

Each Activity must be completed by the relevant Activity Completion Date specified below or as otherwise approved by the EPA in writing.

**Table A**

Activity No.	Activity	Activity Completion Date
1. (not negotiable)	<p>Execution of the Funding Deed with the EPA if the offer of the Grant is accepted.</p> <p>a) receive notification via SmartyGrants of the outcome of the EPA's application assessment process, and</p>	<p>Within 30 days of notification of the outcome of the application and receipt of the unexecuted Funding Deed.</p>

	b) if You decide to accept the offer of Grant, execute the Funding Deed.	
2. (example only)	e.g. Purchase or lease of electric vehicle with refrigerated compartment for the purpose of transporting Rescued Food to warehouse for distribution to the community.	e.g. Within 6 months of the Commencement Date
3. (example only)	<p>e.g. Engage [insert organisation] to conduct feasibility study to assess opportunities provided by increased operational Capacity from infrastructure funded by the grant, to manage food rescue and/or relief activities. The study will:</p> <ul style="list-style-type: none"> <li>a) Identify operational efficiencies;</li> <li>b) Assess existing infrastructure and resources;</li> <li>c) Evaluate current processes and procedures.</li> </ul> <p>The feasibility study will culminate in a report which will include recommended action items for implementation.</p>	e.g. Within 6 months of the Commencement Date
4.	[INSERT Name and describe the Activity]	[insert]

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### **3. Reporting**

#### **3.1 General**

You must provide the Activity Report and Final Outcomes Report in accordance with the Operative Terms and this Schedule.

#### **3.2 Activity Report**

- (a) The Activity Report must include the following details:
  - (i) evidence of the Approved Project progress;
  - (ii) evidence of the Rescued Food (kg) diverted from landfill to the community;
  - (iii) evidence of expenditure;
  - (iv) project timeline review (if applicable);
  - (v) summary of the next stage of the project; and
  - (vi) **[INSERT PROJECT SPECIFIC DETAILED REQUIREMENTS]**
- (b) The Activity Report must be prepared and provided to the EPA to complete Milestone 2 or as otherwise agreed by the EPA in writing.

#### **3.3 Final Outcomes Report**

- (a) You must provide the other written reports specified below:
  - (i) summary of the project including, but not limited to, a review of the objectives and outcomes;
  - (ii) evidence of the Rescued Food (kg) diverted from landfill to the community as a result of the completed Approved Project;
  - (iii) evidence of increased Rescued Food Capacity (kg); and
  - (iv) evidence of expenditure, including co-contribution;
  - (v) **[INSERT PROJECT SPECIFIC DETAILED REQUIREMENTS]**
- (b) The above reports must be prepared and provided to the EPA to complete Milestone 3 or as otherwise agreed by the EPA in writing.

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### **4. Grant Instalments**

#### ***Option 1: Milestone payments***

The Grant will be paid to You by the EPA in Instalments within 40 days following receipt of a Correctly Rendered Invoice, subject to Your completion of each milestone specified in Table B below.

**Table B**

<b>Payment Milestone no.</b>	<b>Milestone Description</b>	<b>Instalment as a percentage of the total Grant</b>	<b>When a “Correctly Rendered Invoice” may be issued</b>
Payment Milestone 1	Execution of the Funding Deed of Agreement.	50%	When EPA agrees Milestone 1 is complete to the EPAs satisfaction
Payment Milestone 2	Approval of the Activity Report submitted by You to the EPA.	40%	When Milestone 2 is complete to the EPAs satisfaction
Payment Milestone 3	Approval of the Final Outcomes Report submitted by You to the EPA.	10%	When Milestone 3 is complete to the EPAs satisfaction

## **5. Co-contributions**

A project co-contribution of at least 10% towards Eligible Project Costs is required. This co-contribution can be a financial or in-kind contribution, or a combination. Co-contribution must be paid or demonstrated prior to the completion of Milestone 3.

# Schedule A – Approved Project Activities [For Coordinating Organisations]

## 1. Approved Project

- (a) The Approved Project is < INSERT NAME and DETAILS OF THE PROJECT in the applicant's application submitted to the EPA >.
- (b) The Approved Project is being carried out under the Food Rescue Grant Program.
- (c) The Approved Project will have the following key objectives:
  - (i) Increased diversion of <INSERT NUMBER> kilograms of food suitable for human consumption from landfill to the community;
  - (ii) Increased Capacity to accept at least < INSERT NUMBER > kilograms more Rescued Food a week in NSW;
  - (iii) Support at least < INSERT NUMBER > Food Rescue Organisations and/or Food Relief Organisations by project completion; and
  - (iv) <(IF APPLICABLE) INSERT ADDITIONAL key objectives of applicant according to the output and proposed project>.

## 2. Activities

### 2.1 Activities

The Activities to be carried out by You as part of the Approved Project are set out in column 1 of Table A below.

### 2.2 Activity Completion Date

Each Activity must be completed by the relevant Activity Completion Date specified below or as otherwise approved by the EPA in writing.

**Table A**

Activity No.	Activity	Activity Completion Date
1. (not negotiable)	<p>Execution of the Funding Deed with the EPA if the offer of the Grant is accepted.</p> <p>c) receive notification via SmartyGrants of the outcome of the</p>	<p>Within 30 days of notification of the outcome of the application and receipt of the unexecuted Funding Deed.</p>

	EPA's application assessment process, and  d) if You decide to accept the offer of Grant, execute the Funding Deed.	
5. (example only)	Support and coordinate at least three Food Rescue Organisations and/or Food Relief Organisations for improved collaboration to rescue increasing amounts (kgs) of Rescued Food	Within 12 months of the Commencement Date
6. (example only)	Support and coordinate at least five Food Rescue Organisations and/or Food Relief Organisations for improved collaboration to rescue increasing amounts (kgs) of Rescued Food	Within two years of the Commencement Date
7. (example only)	Support and coordinate at least 10 Food Rescue Organisations and/or Food Relief Organisations for improved collaboration to rescue increasing amounts (kgs) of Rescued Food	Within three years of the Commencement Date
8.	[Name and describe the Activity]	[insert]

### 3. Reporting

#### 3.1 General

You must provide the Activity Report and Final Outcomes Report in accordance with the Operative Terms and this Schedule.

#### 3.2 Activity Report

- (a) The Activity Report must include the following details:
- (i) evidence of the Approved Project progress;

- (ii) signed letters or MoU as evidence of the participating Food Rescue Organisations and/or Food Relief Organisations
  - (iii) evidence of the Rescued Food (kg) by each participating Food Rescue Organisations and/or Food Relief Organisations diverted from landfill to the community;
  - (iv) evidence of increased Capacity (kg) across the region to manage more Rescued Food;
  - (v) evidence of expenditure;
  - (vi) project timeline review (if applicable);
  - (vii) summary of the next stage of the project; and
  - (viii) **[INSERT PROJECT SPECIFIC DETAILED REQUIREMENTS]**.
- (b) The Activity Report must be prepared and provided to the EPA to complete Milestone 2 or as otherwise agreed by the EPA in writing.

### 3.3 Final Outcomes Report

- (a) You must provide the other written reports specified below:
- (i) summary of the project including, but not limited to, a review of the objectives and outcomes;
  - (ii) evidence of the Rescued Food (kg) by each participating Food Rescue Organisations and/or Food Relief Organisations diverted from landfill to the community;
  - (iii) evidence of increased Capacity (kg) across the coordinated region to manage more Rescued Food;
  - (iv) evidence of expenditure, including co-contribution; and
  - (v) **[INSERT PROJECT SPECIFIC DETAILED REQUIREMENTS]**.
- (b) The above reports must be prepared and provided to the EPA to complete Milestone 3 or as otherwise agreed by the EPA in writing.

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## 4. Grant Instalments

### *Option 1: Milestone payments*

The Grant will be paid to You by the EPA in Instalments within 40 days following receipt of a Correctly Rendered Invoice, subject to Your completion of each milestone specified in Table B below.

### **Table B**

<b>Payment Milestone no.</b>	<b>Milestone Description</b>	<b>Instalment as a percentage of the total Grant</b>	<b>When a “Correctly Rendered Invoice” may be issued</b>
Payment Milestone 1	Execution of the Funding Deed of Agreement.	50%	When EPA agrees Milestone 1 is complete to the EPAs satisfaction
Payment Milestone 2	Approval of the Activity Report submitted by You to the EPA.	40%	When Milestone 2 is complete to the EPAs satisfaction
Payment Milestone 3	Approval of the Final Outcomes Report submitted by You to the EPA.	10%	When Milestone 3 is complete to the EPAs satisfaction

## **5. Co-contributions**

A project co-contribution of at least 10% towards Eligible Project Costs is required. This co-contribution can be a financial or in-kind contribution, or a combination. Co-contribution must be paid or demonstrated prior to the completion of Milestone 3.

## Schedule B – Deed Change Request Form

<b>Change request number</b>	<i>[Number the change request form to assist with tracking changes and administrating the Deed.]</i>
<b>Deed name and reference</b>	<i>[Insert a reference to the applicable Deed name and, if applicable, any Deed reference number.]</i>
<b>Details of the change</b>	<i>[Insert a sufficiently detailed description of the proposed change.]</i>
<b>Reasons for the change</b>	<i>[Insert reasons for the proposed change.]</i>
<b>Impact of the change</b>	<i>[Describe how the proposed change will affect the Approved Project, including any Activities and relevant Activity Completion Dates.]</i>
<b>Activity Completion Dates and timeframes</b>	<i>[List any proposed new or amended Activity Completion Dates or other timeframes.]</i>
<b>Other matters</b>	<i>[List any other matters that are relevant to the proposed change.]</i>

<b>Grantee (You)</b>	<b>EPA</b>
Full name and position:	Full name and position:
Signature:	Signature:
Date:	Date: