

Sample Funding Deed



Western NSW Workforce Activation package

Agency Department of Primary Industries and Regional Development

Grantee Sample Grantee Name

Project Sample Project Name



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Background

- A. The Western NSW Workforce Activation Program (Program) aims to increase workforce participation in Western NSW by providing funding to eligible early childhood education and care providers to expand or upgrade their services and enable them to care for more local children in the Local Government Areas (LGAs) of Bourke Shire, Broken Hill and Cobar Shire.
- B. You have applied for the Grant under the Program for the Project.
- C. The Department will pay the Grant to you, and you agree to be responsible for delivering the Project, reporting and other obligations, as set out in this Deed.

SAMPLE

Details

Department	Name	The Crown in right of the State of New South Wales acting through the Department of Primary Industries and Regional Development
	ABN	19 948 325 463
	Division	
	Address	

Department Authorised Officer	Name	
	Position	
	Address	
	Telephone	
	Mobile	
	E-mail	

Grantee ('You')	Name	
	ABN	
	Legal entity	
	Business name	
	Address	

Your Authorised Officer	Name	
	Position	
	Address	
	Telephone	
	Mobile	
	E-mail	

Program	Western NSW Workforce Activation Package
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Program Guidelines	The published guidelines for the Program are available at this link, as updated from time to time: https://nsw.gov.au/workforceactivation
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Project	Sample Project Name
	The Project is funded under the Program. Details of the Project are set out in Schedule A and documents attached or cross-referenced in this Deed.

Site (where the Project will be carried out)

Grant	A maximum total amount of \$ Sample total amount of Grant (GST exclusive) payable in Instalments.
Commencement Date (of this Deed.)	The date on which this Deed is executed by the last party.

Special Conditions

SC1 Timing

SC1.1 You must commence the Project within 4 months of the Commencement Date.

SC1.2 You must complete the Project within 18 months of the Commencement Date.

SC2 Service Approval

SC2.1 During the term of the Funding Deed you must provide early childhood education and care services, in an eligible Local Government Area (Bourke Shire Council, Broken Hill City Council or Cobar Shire Council), including:

- a. long day care;
- b. community preschool;
- c. family day care;
- d. occasional care; or
- e. before and after school care.

SC2.2. If the Department requests, you must provide evidence of those services and of any necessary registration or qualifications to provide the services.

SC3 Project costs

SC3.1 You may use a maximum of 10% of the Grant for project management and administration costs in delivering the Project (not for your core business).

SC3.2 You may use a maximum of 15% of the Grant for contingencies and cost escalations.

Terms and Conditions

Definitions and Term

1. Interpretation and Definitions

1.1. Interpretation

Unless the context requires otherwise, in this Deed:

- (a) the terms defined in the Details have the meaning ascribed to them there;
- (b) 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;
- (c) 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;
- (d) specific examples do not limit the meaning of general words introduced by “including” or “for example” or similar expressions;
- (e) monetary amounts are expressed in Australian dollars;
- (f) references to persons include bodies corporate, government agencies and vice versa;
- (g) references to the parties include references to respective directors, officers, employees and agents of the parties;
- (h) nothing in this Deed is to be interpreted against a party solely on the grounds that the party put forward this Deed or any part of it; and
- (i) where an expression is defined, any other grammatical form of that expression has a corresponding meaning.

1.2. Definitions

Unless the context requires otherwise, in this Deed:

Activity means the activities and/or agreed results which you must achieve, as described in **Schedule A – Project Plan**, which are elements of the Project.

Activity Period means the period specified in **Schedule A – Project Plan** during which the Activity must be completed.

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

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 means any written or oral information of a party that:

- (a) is by its nature confidential;
- (b) is designated as confidential; or
- (c) the receiving party knows or ought to know is confidential,

but does not include information which is or becomes public knowledge other than by breach of this Deed.

Correctly Rendered Invoice means an invoice that:

- (a) sets out your contact details including ABN;
- (b) specifies the amount to be paid, and whether or not this includes GST;
- (c) identifies this Deed and any Activities to which the payment applies; and
- (d) is sent via the SmartyGrants platform or as otherwise notified by the Department.

Data Breach means any access to, or disclosure of, information in your possession or control which includes data (including Personal Information):

- (a) that the Department provided to you; or
- (b) that you have obtained in the course of carrying out the Activities;

unless such access or disclosure complies with this Deed.

Deed means this funding deed document and includes the Details, Special Conditions, Terms and Conditions, **Schedule A – Project Plan** and any other schedules, annexures or other documents cross-referenced in this deed.

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

Instalment means a payment of part of the Grant which the Department will pay to you as set out in **Schedule A**.

Intellectual Property or **IP** includes:

- (a) all rights in relation to copyright, inventions, plant varieties, trademarks, designs, patents; and
- (b) 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 as defined in the *Copyright Act 1968* (Cth).

Maintenance Period means a period of five years commencing on completion of the Project.

Notice means any approval, consent, instruction, order, direction, statement, request or certificate, or other communication one party gives to another party in writing under this Deed.

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

Privacy Legislation means the *Privacy and Personal Information Protection Act 1998* (NSW), *Health Records and Information Privacy Act 2002* (NSW) and the *Privacy Act 1988* (Cth) and includes any directions, regulations, codes of practice and principles made under those Acts.

Project Material means any data, reports, online content or other material created as part of or in performance of the Project, which you provide to the Department.

Significant Asset means an item of capital expenditure (such as equipment, infrastructure or facilities but excluding real property), the value of which exceeds \$5,000, which you acquire, create or upgrade wholly or partly with the Grant.

2. Term

- 2.1. This Deed will commence on the Commencement Date.
- 2.2. Unless terminated earlier, this Deed will end on expiry of the Maintenance Period.

What you must do

3. Your general obligations

- 3.1. You must:
 - (a) ensure the Grant is used only for the approved Project;
 - (b) ensure each Activity is completed within the Activity Period in accordance with this Deed;
 - (c) comply with the Reporting Requirements;

- (d) comply with all Commonwealth, State and local government laws that are relevant to the Project, this Deed, or your registration as an entity;
- (e) comply with all policies, guidelines and reasonable directions the Department provides to you;
- (f) comply with the Program Guidelines; and
- (g) not do anything that may cause damage to the reputation of the Department or the Program.

3.2. You represent and warrant that at the date you execute this Deed:

- (a) all information which you have provided to the Department is true and correct;
- (b) you have full power and authority to enter into this Deed and to perform your obligations;
- (c) you have the expertise, skills and resources to perform your obligations under this Deed; and
- (d) you are not aware of any circumstances, including any financial circumstances or litigation or other proceeding that are taking place, pending or threatened, which might affect your ability to perform the Deed or which may cause damage to the reputation of the Department or the Program.

3.3. You must promptly notify the Department as soon as you become aware of:

- (a) any material change to any representation and warranty given under this Deed, including if your financial circumstances or legal status changes or you become subject to legal proceedings;
- (b) any significant delay or suspension of the Project;
- (c) your inability to proceed with the Project;
- (d) any other matter that is reasonably likely to adversely affect your conduct of the Activities or your performance of this Deed;
- (e) (where you own or lease the Site) your intention to sell or lease any part of the Site; or
- (f) (where you do not own or lease the Site) a proposal to sell or lease any part of the Site,

and, in consultation with the Department, you must take available steps to lessen the impact of any such adverse event.

4. No overlap with other funding

4.1. You agree that there must be no overlap between the Activities funded under this Deed and activities covered by any other funding arrangements you have entered into, or that you may enter subsequently.

4.2. You agree to:

- (a) notify the Department immediately of any existing or proposed funding arrangement that concerns the Project, the Activities or any related matters (**Related Funding**); and
- (b) cooperate with the Department and the provider of the Related Funding to ensure that there is a clear distinction between the Activities funded by this Deed and the activities you are required to carry out under the Related Funding deed.

5. Significant Assets

- 5.1. During the term of this Deed (which, in accordance with **clause 2.2**, ends on expiry of the Maintenance Period), you must:
 - (a) record the Significant Assets in an asset register and keep that register current;
 - (b) be responsible for all maintenance costs relating to the Project including maintaining the Significant Assets;
 - (c) not demolish, eradicate, remove, dispose of nor otherwise interfere with the Significant Assets; and
 - (d) retain ownership of the Significant Assets.
- 5.2. You hold the Significant Assets on trust for the benefit of the Department. Where you have purchased a Significant Asset partly with the Grant, you hold it on trust for the Department as to a proportionate share of the value of the Significant Asset. You must do all things which the Department requests, including executing any necessary documents, to give full effect to, and protect, the trust created by this **clause 5**.
- 5.3. If you breach this **clause 5**, the Department may by Notice require you to repay the Grant or a portion of the Grant. You must repay that amount to the Department within 20 Business Days of the date of that Notice. The repayment amount will be a debt due and owing by you to the Department without the need for further proof.
- 5.4. If the Department terminates this Deed for your breach (**clause 23**) or for cause (**clause 24**) and requires delivery-up of Significant Assets, you must deliver-up to the Department any such required Significant Assets.
- 5.5. Subject to **clause 5.4** (Deliver-up Significant Assets), you cease to hold all Significant Assets on trust for the Department upon termination or expiry of this Deed.

6. Variations to the Project

- 6.1. If you wish to vary the Project, including any Activity or other matter set out in **Schedule A** such as:
 - (a) changes to the scope of the Project or the Site or revised priorities for the Project; or
 - (b) changes to the timeframe for delivery of the Project, including extensions to completion of Activities,you must first make a written request to the Department and provide such information as is reasonably required by the Department.
- 6.2. Following your request for a variation under **clause 6.1**, the Department will decide whether or not to approve your request in its sole discretion. No variation is approved until the Department notifies you in writing of its approval.

About the Grant

7. Project costs

- 7.1. The Grant is the maximum amount the Department will pay you in respect of the Project and you:
- (a) warrant that you have prepared or approved the scope of works and costs estimate for the Project before signing this Deed;
 - (b) agree that you are responsible for any costs for the Project that exceed the Grant, whether or not you expected to incur such costs before signing this Deed, and will obtain any additional funding necessary to carry out the Project; and
 - (c) agree that you are responsible for all maintenance costs relating to the Project.

8. Paying Instalments

- 8.1. The Department will pay the Instalments as set out in **Schedule A** on condition that you provide the Department with:
- (a) a Correctly Rendered Invoice that clearly identifies the Instalment you are claiming;
 - (b) evidence that you have performed the Activities within the applicable Activity Periods; and
 - (c) any additional information which the Department requires to satisfy itself that you are complying with all of your obligations under this Deed.
- 8.2. The Department will pay an Instalment within 30 days of receiving all documents required under **clause 8.1**.
- 8.3. Notwithstanding **clauses 8.1** and **8.2**, if the Department pays you an Instalment, it may require you to repay all or part of the amount under **clause 10** (Repaying).
- 8.4. On receiving an Instalment, you must immediately deposit it in your account with an Australian branch of an established bank, building society or credit union, which is solely controlled by you and allows for the Grant to be separately identified. You must keep the Instalment monies on trust for the Department in such account until you require it for an Activity, or repay it to the Department under **clause 10** (Repaying).

9. Changing and withholding Instalments

- 9.1. The Department may change the amount of the Instalment (but not the total Grant) by issuing you with a Notice setting out the details of the changes.
- 9.2. The Department may, on giving Notice, withhold payment of any Instalment if, and for so long as, the Department reasonably believes that:
- (a) you have not complied with this Deed; or
 - (b) circumstances exist which might affect your ability to perform the Deed or which may cause damage to the reputation of the Department or the Program.
- 9.3. If the Department withholds an Instalment under this clause, you must continue to perform your obligations under this Deed.

10. Repaying and deducting amounts

10.1. If the Department considers that any amount of the Grant:

- (a) has been incorrectly claimed or overpaid;
- (b) has not been spent in accordance with this Deed;
- (c) is surplus to the requirements of the Activity; or
- (d) is unspent upon termination or expiry of this Deed,

then the Department may, by Notice:

- (e) require you to repay that amount to the Department within 20 Business Days or to otherwise deal with that amount as directed by the Department;
- (f) deduct that amount from any future Instalments; or
- (g) set off that amount against any payment which the Department is due to pay to you on a different funding program.

10.2. Any repayment the Department claims from you under this **clause 10** will be a debt due and owing by you to the Department without the need for further proof.

11. Reducing the Grant

11.1. Without limiting other rights under this Deed, the Department may reduce the amount of the Grant by giving you at least 20 Business Days' notice if:

- (a) the Department does not receive sufficient funds from the Commonwealth Government, or other relevant source, to provide the Grant for the Project; or
- (b) there is a change in NSW Government policy which affects the Program, the Project or allocation of funds for the Grant.

11.2. If the Department reduces the Grant under this **clause 11**, the Department will:

- (a) agree with you any necessary consequent variation to this Deed, for example, by reducing the scope of the Activities; and
- (b) pay your reasonable, substantiated costs (other than loss of profit or income) which you necessarily and directly incur from the reduction in the Grant and any consequent variation to the Deed, provided that:
 - i. you use your best efforts to minimise those costs; and
 - ii. those costs do not exceed the amount by which the Grant has been reduced under this clause.

12. GST

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

12.2. If:

- (a) despite any other provision of this Deed, GST is imposed on a supply you make to the Department under this Deed; and
- (b) the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply;

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.

- 12.3. If you are not registered under the GST Law you will not be entitled to receive any additional amount as provided under this **clause 12**.
- 12.4. If for any reason the Department pays you an amount under this **clause 12** 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.

Reporting and monitoring

13. Progress Reports

- 13.1. You must provide the Department with written progress reports at the times and containing the information specified in **Schedule B – Reporting Requirements (“Progress Reports”)**.
- 13.2. If any Progress Report contains information confidential to you, you must mark the relevant parts of the Progress Report accordingly.
- 13.3. If the Department does not accept a Progress Report as satisfactory, you must submit a revised Progress Report within ten Business Days of your receipt of the Department’s request.

14. Financial information

- 14.1. You must provide financial statements of income and expenditure in respect of the Grant (“**the Statements**”) to the Department within 60 Business Days after:
 - (a) completion of the Project or any termination of this Deed, whichever is the earliest; and
 - (b) the completion of each Financial Year in which a Grant is made.
- 14.2. The Statements must include a definitive statement as to whether:
 - (a) the financial information for the Project represents the financial transactions fairly and is based on proper accounts and records; and
 - (b) the Grant was expended for the Project and in accordance with this Deed.
- 14.3. You must keep financial accounts and records relating to the Project so as to enable:
 - (a) all receipts and payments related to the Project to be identified in your accounts and reported in accordance with this Deed;
 - (b) unless notified by the Department, the preparation of financial statements in accordance with Australian Accounting Standards; and
 - (c) generation of an income and expenditure statement for each financial year of the Project with the budget, including:
 - i. a schedule of the Significant Assets acquired, sold, written-off or otherwise disposed of during each financial year; and
 - ii. a comparison of the income and expenditure in each financial year against the budget; and
 - iii. the audit of those records in accordance with Australian Auditing Standards.

15. Evaluation

- 15.1. To assist the Department to monitor and evaluate the Project, the Program and your performance, you must, on reasonable notice and in a timely manner:
- (a) provide the data and reports specified in **Schedule B**;
 - (b) make appropriate personnel available to meet with the Department;
 - (c) make reliable and adequate records available to the Department;
 - (d) allow the Department and its authorised representative reasonable access to the Site to inspect the conduct of Activities;
 - (e) provide other information which the Department requires concerning the Project, your structure, your finances or your financial viability; and
 - (f) participate in any survey or feedback regarding the Project or Program.

Material and Information

16. Intellectual Property

- 16.1. Intellectual Property in all Project Material vests in you.
- 16.2. You grant the Department a non-exclusive, irrevocable, royalty-free licence (including the right to sub-license) to use the Project Material for any purposes.
- 16.3. You warrant that the use of Project Material in accordance with this Deed will not infringe any third party's IP rights.

17. Confidential Information

- 17.1. Neither party may disclose the other's Confidential Information without its prior consent unless the disclosure:
- (a) is required or authorised by law or by this Deed;
 - (b) is reasonably required by a person, including a contracted auditor of the Department, for purposes of this Deed;
 - (c) is to that party's own professional advisers for the purpose of obtaining advice; or
 - (d) in the case of the Department, is required:
 - i. by Parliament or the Department's responsible Minister; or
 - ii. for the Department to perform a governmental function including research and analysis in respect of the Program, monitoring performance of this Deed, evaluating the outcomes of this Deed or the Program, and reporting on the Program.
- 17.2. Each party will ensure that any third party to which it discloses Confidential Information under a permitted disclosure is made aware of the confidential nature of the information.

18. Privacy and data

- 18.1. To the extent that you deal with Personal Information in conducting the Project, you must:
- (a) comply with applicable Privacy Legislation;

- (b) not cause the Department to breach any of its obligations under the *Privacy and Personal Information Protection Act 1998*;
- (c) immediately notify the Department if you become aware of a Data Breach or other actual or potential breach of privacy; and
- (d) include equivalent requirements regarding Personal Information (including this **clause 18**) in any subcontract you enter into for the provision of any of the Activities under this Deed.

19. Public Announcements and Acknowledgement

19.1. You must:

- (a) seek the consent of the Department prior to any public announcement about the Project and prior to you using any branding or logos of the Department or the NSW Government;
- (b) acknowledge the support of the Department, as directed by the Department from time to time:
 - i. in any public statements about the Project;
 - ii. on the home page of any web site established in connection with the Project; and
 - iii. on any equipment or other facility funded wholly or in part by the Department;
- (c) comply with the applicable NSW Government guidelines for acknowledging funding; and
- (d) use your best efforts to ensure that the Department and its Minister are given a reasonable opportunity to participate in media coverage or other promotion of the Project.

19.2. You agree that the Department may disclose information about the Project and the Grant in any media, such as media releases, social media, case studies, promotional material and in response to media enquiries.

20. Disclosure of Information

20.1. You acknowledge that the Department is required to publish detailed information about the Grant on the NSW Government Grants and Funding Finder at nsw.gov.au/grants-and-funding, except to the extent such information would identify individuals or otherwise conflict with the law. You must provide any information which the Department needs to meet those publication requirement including, where relevant, any funding amounts which you transfer to indirect grantees as downstream recipients.

Dealing with Risk

21. Insurance

21.1. You must maintain, during the term of this Deed:

- (a) a broadform public liability policy of insurance to the value of at least \$20 million in respect of each claim and unlimited in the aggregate as to the number of occurrences in the policy period;
- (b) workers' compensation insurance as required by all relevant laws of Australia relating to workers compensation; and
- (c) any additional insurance policies the Department requires in writing.

- 21.2. You must not do, permit or suffer any act or omission that could lead to any of the policies referred to in this clause being vitiated or rendered void or voidable.
- 21.3. If requested by the Department, you must provide a copy of valid and current certificates of currency for each or any of the policies described above.
- 21.4. Without limitation to **clause 21.1**, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.

22. Indemnities

- 22.1. 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 against any loss (paid or payable including legal costs and expenses on a solicitor/own client basis) or liability by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person in connection with:
- (a) the Grant or the use of any outcomes from the Project;
 - (b) your breach of this Deed;
 - (c) any unlawful or negligent act or omission by you, your employees or your subcontractors in connection with this Deed;
 - (d) any illness, injury or death of any person you, your employees or your subcontractors cause or contribute to, in connection with this Deed;
 - (e) 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
 - (f) 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.
- 22.2. Your liability to indemnify the Department under this clause:
- (a) will be reduced proportionately to the extent that the Department's negligent or unlawful acts or omissions, or those of its officers, employees or agents contributed to the relevant loss or liability; and
 - (b) 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.

Terminating the Deed

23. Termination by either party for breach

- 23.1. Where a party has breached this Deed:
- (a) the other party may give a Notice to that party requiring it to rectify that breach within 30 days of receiving that Notice; and
 - (b) 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.

24. Termination by Department for cause

- 24.1. The Department may terminate this Deed by Notice, with effect on the date stated in the Notice, if:
- (a) you have provided misleading or incorrect information in your application for funding or in reports, invoices or information you provide in connection with this Deed;
 - (b) the Department considers that termination is necessary to avoid damage to the reputation of the Department or the Program;
 - (c) you breach any of the following provisions: **clause 3.1** (Your General Obligations); **clause 3.2** (Warranties), **clause 5** (Significant Assets), **clause 21** (Insurance), **clause 17** (Confidential Information) and **clause 29.10** (Assignment);
 - (d) the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity; or
 - (e) you become insolvent, if you are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966*, or if you resolve to go into administration or liquidation or have a summons for your winding up presented to a Court or enter into any scheme of arrangement with your creditors.

25. Termination by Department – without cause

- 25.1. The Department may terminate this Deed without cause (and without the need to give reasons) by giving you at least 20 Business Days' notice.
- 25.2. The Department will pay your reasonable, substantiated costs (other than loss of profit or income) necessarily and directly incurred as a result of such termination provided that:
- (a) you use your best efforts to minimise those costs; and
 - (b) the total amount of those costs will not exceed the total amount of unpaid Grant forfeited through termination under this clause.

26. Consequences of termination

- 26.1. On termination or expiry of this Deed, accrued rights and obligations are not affected.
- 26.2. Unless otherwise agreed, you must, within 10 Business Days of termination:
- (a) repay to the Department any unspent portion of the Grant;
 - (b) provide to the Department:
 - (i) any reports due or that the Department otherwise reasonably requests; and
 - (ii) any Project Material which the Department owns, or which is licensed to the Department under this Deed, in a format which permits the Department to exercise its IP rights in respect of that Project Material; and
 - (c) destroy any Confidential Information the Department has provided to you.
- 26.3. **Clauses 23 to 26** (Termination) do not limit the rights of a party under this Deed or at law.

Other Legal Matters

27. Dispute Resolution

- 27.1. If a dispute arises in relation to this Deed (“a **Dispute**”), a party must comply with this **clause 27** before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.

- 27.2. A party claiming that a dispute has arisen must notify the other party giving details of the dispute (“**Dispute Notice**”) in accordance with the requirements of **clause 28** (Notices).
- 27.3. 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.
- 27.4. 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 must refer the Dispute for mediation by the [Australian Disputes Centre](#) (ADC) for resolution in accordance with the mediation rules of the ADC.
- 27.5. If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
- 27.6. Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.

28. Notices

- 28.1. Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered or emailed to the Authorised Officer specified in the Details.
- 28.2. The receiving party will be deemed to have received the Notice as follows:
- (a) if hand delivered, on the day on which it is delivered or left at the relevant address;
 - (b) if sent by email before 5.00pm on a Business Day, the first of the following occurring:
 - i. when the sender receives an automated message confirming 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 been delivered; or
 - (c) if sent by email after 5pm 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.
- 28.3. 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.

29. General

- 29.1. **Survival:** The following clauses survive termination or expiry of this Deed: **clause 9** (Withholding payment), **clause 10** (Repaying), **clause 14** (Financial information), **clause 15 (Evaluation)**, Error! Reference source not found. **clause 16** (Intellectual Property), **clause 17** (Confidential Information), **clause 18** (Privacy), **clause 21** (Insurance), **clause 22** (Indemnities), **clause 26** (Consequences of termination), **clause 27** (Disputes), **clause 29.3** (Keeping of records), **clause 29.13** (Governing law), this **clause 29.1** and any other clause which by its nature is intended to survive this Deed.

- 29.2. **Subcontractors:** You remain fully responsible for the performance of the Project if you subcontract the performance of any part of the Project.
- 29.3. **Keeping of records and rights of access to such records** You:
- (a) must keep complete and accurate records and books of account with respect to your performance of the Activities (the “**Records**”), and must retain such Records for a minimum of seven (7) years after expiry or termination of this Deed;
 - (b) 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 Project to which the Activities relate, to examine and inspect, at reasonable times and on reasonable Notice, any Project Material you hold, and allow any such Records to be copied; and
 - (c) must provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.
- 29.4. **Conflict of Interest:** 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.
- 29.5. **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.
- 29.6. **Inconsistency:** If there is any inconsistency between provisions in this Deed then the order of precedence will be:
- (a) the Details; then
 - (b) the Special Conditions; then
 - (c) these Terms and Conditions; then
 - (d) any Schedules or attached Annexures; then
 - (e) the Program Guidelines.
- 29.7. **Negation of employment, partnership or agency:** This Deed does not create a relationship of agency, partnership, and/or employment between the parties. You must not represent yourself as being an employee or agent of the Department or as otherwise able to bind or represent the Department.
- 29.8. **Severance:** If any part of this Deed is held to be invalid or ineffective, that part is removed from this Deed. If that happens, it does not affect the validity of what remains.
- 29.9. **Waiver:** 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. 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.
- 29.10. **Assignment:** You must not assign or novate your obligations or interests under this Deed, without the prior written consent of the Department.

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

29.12. **Electronic execution:** Each party agrees that the other may execute this Deed electronically as provided for in the *Electronic Transactions Act 2000*.

29.13. **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.

SAMPLE

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 of Primary Industries and Regional Development** 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

By signing this document, the witness states that they witnessed the signing of this document over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the *Electronic Transactions Act 2000 (NSW)*.

You (Company/Organisation)

Signed, Sealed and delivered for on and on behalf of (Sample name of Company/Organisation) in accordance with section 127 of the *Corporations Act 2001 (Cth)* 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

You (Authorised Signatory eg Council)

By entering into this Deed the signatory warrants that the signatory is duly authorised to execute this Deed on behalf of (Sample University/Council name)

Signed, sealed and delivered for and on behalf of (Sample University/Council name) 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	Date

By signing this document, the witness states that they witnessed the signing of this document over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the *Electronic Transactions Act 2000 (NSW)*.

Schedule A – Project Plan

Program:

Program evaluation criteria:

Project:

Example points:

- Description of Project
- Purpose of Project
- Summary of Activities and who is responsible: (eg. subcontractors, project management arrangements etc)
- Key performance indicators
- Performance standards
- Timing
- Budget
- Co-contributions

Acquittal requirements:

Activities - Summary Table:

Description of Activities	Evidence of completion/compliance	Instalment (excluding GST)	Your Contribution (excluding GST) (If applicable)	Activity Period
		Total	Total	

Schedule B – Reporting Requirements

1. You must provide to the Department a Progress Report at the completion of the Project and at any other time that the Department requests. The Progress Report must cover the status of all on-going and completed Activities for the period to which the report relates, consisting of:
 - (a) a brief description of the Activities' objective/s;
 - (b) all Activities undertaken during the reporting period;
 - (c) the status of results achieved to date from the Project; and
 - (d) the amount of the funding from the Grant and what has been spent on the Activities so far.

Meetings and site visits

2. The Department may meet with you from time to time, at the Department's discretion, to discuss progress on the Project.
3. The Department may make site visits from time to time to ascertain progress of the Activities on providing reasonable notice to you.

Evaluation

You must provide the following additional performance information and data for the purposes of clause 15 (Evaluation):