

## NSW Sustainable Communities Program – Business and Industry Round

**Department**                      **Department of Primary Industries and Regional  
Development**

**Division**                              **Regional Development and Delivery**

**Grantee**                                **[Click here to enter text.](#)**

**Project**                                **[Click here to enter text.](#)**



## Table of Contents

Background .....	3
Details .....	4
Special Conditions.....	5
Terms and Conditions .....	7
Definitions and Term .....	7
What you must do .....	9
The Grant and your Co-Contribution .....	11
Payment of the Grant .....	12
Reporting and monitoring.....	14
Material and Information .....	15
Dealing with Risk.....	17
Terminating the Deed .....	17
Other Legal Matters .....	19
Executed as a deed .....	22
<b>Alternative Signature Blocks</b> .....	23
Schedule A – Project Plan .....	24
Schedule B – Reporting Requirements .....	27
Attachments.....	28

## Background

- A. The \$50 million Business and Industry Round of the NSW Sustainable Communities Program will invest in projects that improve business and industry sustainability, retain and create local jobs and provide long-lasting benefits to the communities affected by water recovery under the NSW Murray-Darling Basin Plan.
- B. You have applied for the Grant under the Program for your Project.
- C. You will use the Grant to fund Activities of your Project.
- D. The Department will pay the Grant to you, and you agree to be responsible for completing the Activities, reporting and other obligations, as set out in this Deed.

## Details

---

<b>Department</b>	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
	Agency/Division	Regional Development and Delivery
	Address	105 Prince Street Orange, NSW 2800
<b>Department Authorised Officer</b>	Name	<a href="#">Click here to enter text.</a>
<i>(The Authorised Officer should be a Senior Executive leading the team managing the Project. The Authorised Officer will receive any formal notices under the Deed.)</i>	Position	<a href="#">Click here to enter text.</a>
	Address	<a href="#">Click here to enter text.</a>
	Mobile	<a href="#">Click here to enter text.</a>
	E-mail	<a href="#">Click here to enter text.</a>
	<b>Grantee ('You')</b>	Name
	ABN	<a href="#">Click here to enter text.</a>
	Legal entity	<a href="#">Click here to enter type of legal entity</a>
	Business name	<a href="#">Click here to enter text.</a>
	Address	<a href="#">Click here to enter text.</a>
<b>Your Authorised Officer</b>	Name	<a href="#">Click here to enter text.</a>
<i>(The Authorised Officer should be senior to the person managing the Project day to day. The Authorised Officer will receive any formal notices under the Deed.)</i>	Position	<a href="#">Click here to enter text.</a>
	Address	<a href="#">Click here to enter text.</a>
	Mobile	<a href="#">Click here to enter text.</a>
	E-mail	<a href="#">Click here to enter text.</a>
	<b>Program</b>	
<b>Program Guidelines</b>		The published guidelines for the Program.
<b>Project</b>		<a href="#">Click here to enter title of Project</a> The Project is funded under the Program. Details of the Project are set out in <b>Schedule A – Project Plan</b> and documents attached or cross-referenced in this Deed.
<b>Site</b> <i>(where the Project will be carried out)</i>		<a href="#">Click here to enter text.</a>
<b>Grant</b>		A maximum total amount of \$ <a href="#">Click here to enter total amount of Grant</a> (GST exclusive) payable in Instalments.

---

**Your Co-Contribution**  A minimum total amount of \$ [Click here to enter text.](#) (GST exclusive) provided in cash

A minimum total amount of \$ (GST exclusive) provided in-kind, consisting of [Click here to enter text.](#) as detailed in **Schedule A.**

OR

Not applicable.

---

**Commencement Date** *(of this Deed)* The date on which this Deed is executed by the last party.

---

**Maintenance Period**  A period of five years from the date the Department agrees in writing that you have completed the Project.

OR

Not applicable.

---

## Special Conditions

### SC1. Timing

SC1.1. You must commence the Project within 6 months of the Commencement Date.

SC1.2. You warrant that, to the best of your knowledge, there are no serious planning, construction, zoning or other impediments that exist which may impede delivery of the Project on time.

SC1.3 All development consents or approvals required for the Project must be in place within 6 months of the date of the letter of conditional offer from the Department.

SC1.4 You warrant that you have the necessary expertise (or can subcontract experienced and qualified personnel) to deliver the Project on time.

### SC2. Consortium

If you are the lead applicant for a consortium which applied for the Grant, you warrant that you have an agreement in place with the other consortium members setting out the members' roles and responsibilities in relation to the Project. You remain solely responsible for the performance of the Project and compliance with this Deed.

### SC3. Building work

You acknowledge that the Grant includes indirect funding from the Commonwealth. If the Project involves any building work (as defined in section 6 of the *Federal Safety Commissioner Act 2022 (FSC Act)*), you must ensure that your head contractor maintains accreditation under the *Australian Government WHS Accreditation Scheme (Scheme)* established under the FSC Act and specified in the *Federal Safety Commissioner (Accreditation Scheme) Amendment Rules 2023* while that building work is carried out. You must ensure that the contractor complies with all conditions of Scheme accreditation.

### SC4. Consent of land owner

SC4.1 If you are not the owner of all or part of the Site, you agree and warrant that you have:

- (a) obtained the written approval and agreement of the land owner to construct, install or otherwise deliver the Project at the Site;
-

- 
- (b) obtained the written agreement of the land owner that they have no immediate plans to sell or lease the Site during the term of this Deed; and
  - (c) obtained the written agreement of the land owner to notify you of any proposal to sell or lease the Site during the term of this Deed.

SC4.2 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 Claim they incur or that is made against them by the land owner, whether arising directly or indirectly, in connection with the Project or this Deed.

**SC5. Additional Project requirements**

SC5.1 The Project must not result in a substantive increase in irrigated water use over the life of the Project.

SC5.2 The Project must not benefit only private individuals or businesses without also generating broader economic benefits.

**SC6. Project costs**

SC6.1 In accordance with the Program Guidelines, you may apply up to:

- (a) 10% of the Grant on Eligible Costs covering project management and project assurance support, including employment of project managers either directly or through outsourcing to an external organisation; and
  - (b) 25% of the Grant on Eligible Costs covering project contingency to allow for any cost escalation.
-

# 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) specific examples do not limit the meaning of general words introduced by “including” or “for example” or similar expressions;
- (d) monetary amounts are expressed in Australian dollars;
- (e) references to persons include bodies corporate, government agencies and vice versa;
- (f) references to the parties include references to respective directors, officers, employees and agents of the parties;
- (g) 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
- (h) 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 and expenses 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.

**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**, **Schedule B - Reporting Requirements** and any other schedules, annexures or other documents cross-referenced in this deed.

**Eligible Cost** means a cost you incur in relation to the Project or Activities which is not an ineligible project cost as set out in the Program Guidelines.

**Financial Statement** means a financial statement of income and expenditure in respect of the Grant as referred to in **clause 16** (Financial information).

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

**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 present and future rights conferred by statute, common law or equity 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).

**Law** means any applicable:

- (a) statute, rule, regulation, by-law or statutory instrument of the Commonwealth, any State or Territory, or local government area;
- (b) order, request or direction issued by a regulator or other authority; or
- (c) other requirement having the force of law;

as amended, consolidated or replaced from time to time.

**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 Law** 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.

**Progress Report** means a written progress report referred to in **clause 15** (Progress Reports).

**Project Material** means any data, reports, images, online content or other material created as part of or in performance of the Project.

**Related Funding** means any existing or proposed funding arrangement that concerns the Project, the Activities or any related matters.

**Security Interest** has the meaning given in the *Personal Property Securities Act 2009* (Cth).

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

**SmartyGrants** means the online platform which the Department uses to administer this Deed.

## 2. Term

2.1. This Deed will commence on the Commencement Date.

2.2. This Deed will end:

- (a) if there is a Maintenance Period, on expiry of the Maintenance Period; or
- (b) otherwise, when you have completed the Project to the Department's satisfaction and the Department has paid all Instalments due.

## What you must do

---

### 3. The Project

3.1. You must:

- (a) ensure each Activity is completed within the Activity Period;
- (b) use the Grant only for the Activities;
- (c) deliver the Project in accordance with **Schedule A** and this Deed; and
- (d) if the Project involves acquiring or creating a Significant Asset, comply with **clause 5** (Significant Assets).

3.2. You may make a written request to the Department at any time to vary the Project, 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.

The Department will decide whether or not to approve your request in its sole discretion, in accordance with the NSW Government Grants Administration Guide. No variation is approved until the Department notifies you in writing of its approval.

### 4. Your general obligations and warranties

4.1. You must:

- (a) comply with all Laws that are relevant to the Project, this Deed, or your registration as an entity;
- (b) comply with all policies, guidelines and reasonable directions the Department provides to you;
- (c) comply with the Program Guidelines; and
- (d) not do anything that may cause damage to the reputation of the Department or the Program.

4.2. 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;
- (d) you have obtained all necessary project, activity and planning approvals necessary for your Project; and
- (e) 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 comply with the Deed or which may cause damage to the reputation of the Department or the Program.

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

- (a) any material change to your legal status or to any representation and warranty given under this Deed, including if your financial circumstances change 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.

## 5. Significant Assets

5.1. If you will acquire or create Significant Assets, you must, during the term of this Deed and until the end of the Maintenance Period (if applicable):

- (a) retain ownership of the Significant Assets;
- (b) maintain the Significant Assets in good order at your cost;
- (c) ensure the Significant Assets are used for the Project purposes identified in **Schedule A**;
- (d) immediately notify the Department if for any reason you will become unable to maintain the Significant Assets, including if the Site is to be sold or leased;
- (e) not demolish, remove, dispose of nor otherwise interfere with the Significant Assets;
- (f) record the Significant Assets in an asset register and keep that register current;
- (g) hold the Significant Assets on trust for the Department in proportion to the amount which the Grant contributes to the value of the Significant Asset; and
- (h) 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.

5.2. If this Deed and the transactions contemplated by it give rise to a Security Interest, you must do anything requested by the Department (at your cost) including executing further documents for the purposes of:

- (a) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible;
- (b) enabling the Department to apply for registration, or give any notification, in connection with the Security Interest; or

- (c) enabling the Department to exercise any right in connection with a Security Interest and this Deed.
- 5.3. To the extent permitted by law:
- (a) you waive any right which you may have under the *Personal Property Securities Act 2009* (Cth) to receive anything from the Department, including a notification that the Security Interest has been registered; and
  - (b) you will not do anything to prejudice any Security Interest in favour of the Department, including that you will not permit a third party to register any Security Interest, or obtain an interest, in the Significant Assets.

## The Grant and your Co-Contribution

---

### 6. The Grant

- 6.1. The Grant is the maximum amount which the Department will pay to you in respect of the Project. You warrant that you have prepared or approved a scope of works and costs estimate for the Project before signing this Deed.
- 6.2. You agree that:
- (a) 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;
  - (b) you will obtain any additional funding necessary to carry out the Project; and
  - (c) you are responsible for all maintenance costs relating to the Project.
- 6.3. You must immediately notify the Department if:
- (a) you incorrectly claim an amount of the Grant;
  - (b) you spend an amount not in accordance with this Deed; or
  - (c) an amount:
    - i. has been overpaid;
    - ii. is surplus to the requirements of an Activity; or
    - iii. is unspent upon termination or expiry of this Deed,and you must promptly repay any such amount.

### 7. No overlap with other funding

- 7.1. 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.
- 7.2. You must:
- (a) notify the Department immediately of any 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.

### 8. Your Co-Contribution

- 8.1. If the Details provide for you to make a Co-Contribution, you must:

- (a) provide your Co-Contribution in accordance with **Schedule A**;
- (b) spend your Co-Contribution on the Project, in compliance with the same requirements as apply to the Grant under this Deed; and
- (c) provide evidence of your expenditure of Your Co-Contribution on the Project as and when the Department requires, in compliance with the same requirements as apply to the Grant under this Deed.

## 9. Acquitting the Grant and Co-Contribution

- 9.1. You must spend the Grant and Co-contribution only on Eligible Costs.
- 9.2. You must provide the Department, as and when it requires, with evidence of:
  - (a) your expenditure of the Grant and your Co-Contribution, and of how the expenditure contributed to the Project;
  - (b) how your expenditure of the Grant and Co-Contribution achieves value for money for the Project.
- 9.3. In accounting for your in-kind Co-Contribution and for any payment of Grant or Co-Contribution monies to a related person or entity, you must provide evidence that the relevant goods or services were valued on an arms' length basis.

## Payment of the Grant

---

### 10. Paying Instalments

- 10.1. The Department will pay the Instalments as set out in **Schedule A** on condition that you have provided the Department with:
  - (a) a claim for the Instalment which you are claiming, submitted in SmartyGrants;
  - (b) evidence that you have completed the Activities within the applicable Activity Periods;
  - (c) evidence that you have acquitted any previous Instalments and Co-Contributions in accordance with **clause 9**; and
  - (d) any additional information which the Department requires to satisfy itself that you are complying with all of your obligations under this Deed.
- 10.2. The Department will pay an Instalment within 30 days of receiving all documents required under **clause 10.1**.
- 10.3. Once the Department has paid you an Instalment, it will:
  - (a) issue you with a remittance advice; and
  - (b) if you are registered for GST, issue you with a recipient-created tax invoice.
- 10.4. 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 you alone control 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 12** (Repaying and deducting amounts).

10.5. Notwithstanding **clauses 10.1** and **10.2**, if the Department pays you an Instalment, it may require you to repay all or part of the amount under **clause 12** (Repaying and deducting amounts).

## **11. Changing and withholding Instalments**

11.1. 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.

11.2. 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.

11.3. If the Department withholds an Instalment under this **clause 11**, you must continue to perform your obligations under this Deed.

## **12. Repaying and deducting amounts**

12.1. This **clause 12.1** applies if you:

- (a) fail to complete the Project on time;
- (b) fail to comply with the Special Conditions;
- (c) fail to comply with **clause 5** (Significant Assets);
- (d) fail to comply with **clause 6.3**; or
- (e) otherwise fail to comply with this Deed.

12.2. If **clause 12.1** applies, the Department may by Notice:

- (a) require you to repay all, or part of, the Grant to the Department within 20 Business Days or to otherwise deal with that amount as the Department directs;
- (b) deduct an amount from any future Instalments; or
- (c) set off an amount against any payment which the Department is due to pay to you on a different funding program.

12.3. An amount to which **clause 6.3** applies, or which the Department has required you to repay under **clause 12.2**, is a debt due and owing by you to the Department without the need for further proof.

12.4. This **clause 12** does not limit the Department's rights under this Deed or at law.

## **13. Reducing the Grant**

13.1. The Department may reduce the amount of the Grant not yet paid 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.

13.2. If the Department reduces the Grant under this **clause 13**, the Department will negotiate with you any necessary consequent variation to this Deed, for example, by reducing the scope of the Activities.

#### **14. GST**

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

14.2. 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.

14.3. If you are not registered under the GST Law you will not be entitled to receive any additional amount as provided under this **clause 14**.

14.4. If for any reason the Department pays you an amount under this **clause 14** 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**

---

#### **15. Progress Reports**

15.1. You must provide the Department with written Progress Reports at the times and containing the information specified in **Schedule B – Reporting Requirements**.

15.2. If any Progress Report contains information confidential to you, you must mark the relevant parts of the Progress Report accordingly.

15.3. 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.

#### **16. Financial information**

16.1. You must provide Financial Statements in respect of the Grant to the Department within 60 Business Days after:

- (a) completion of the Project or termination of this Deed; and
- (b) the completion of each Financial Year until the completion of all Activities.

16.2. The Financial 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.

- 16.3. 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.

## **17. Monitoring and evaluation**

- 17.1. 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 - Reporting Requirements**;
  - (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, interview or feedback regarding the Project or Program.

## **Material and Information**

---

### **18. Intellectual Property**

- 18.1. Intellectual Property in all Project Material vests in you.
- 18.2. If the Department requests copies of the Project Material you must provide them to the Department within ten Business Days.
- 18.3. 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.
- 18.4. You warrant that the use of Project Material in accordance with this Deed will not infringe any third party's IP rights.

### **19. Confidential Information**

- 19.1. Each party must keep the other party's Confidential Information confidential and not disclose it to any other person without the prior written consent of the disclosing party, subject to this clause.
- 19.2. Each party may disclose the other party's Confidential Information:

- (a) to its contractors as reasonably required for the purposes of this Deed;
- (b) to its legal and professional advisors for the purpose of obtaining professional advice; or
- (c) as required or authorised by Law or parliament;

provided the party ensures that the recipient keeps the Confidential Information confidential.

## **20. Public Announcements and Acknowledgement**

20.1. You must:

- (a) seek the consent of the Department before making any public announcement about the Project and before using any branding or logos of the Department, the NSW Government or Commonwealth Government;
- (b) acknowledge the support of the Department and the Commonwealth, as directed by the Department from time to time:
  - i. in any public statements or signage 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 any relevant Commonwealth Government guidelines for acknowledging funding; and
- (d) use your best efforts to ensure that the Department and its Minister, and if relevant, the Commonwealth Government and Minister, are given a reasonable opportunity to participate in media coverage or other promotion of the Project.

20.2. The Department and the Commonwealth 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.

## **21. Privacy and data**

21.1. To the extent that you deal with Personal Information in conducting the Project, you must:

- (a) comply with applicable Privacy Law;
- (b) not cause the Department to breach any of its obligations under Privacy Law;
- (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) in any subcontract you enter into for the provision of any of the Activities under this Deed.

## **22. Disclosure of Information**

22.1. 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](http://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 requirements including, where relevant, any funding amounts which you transfer to indirect grantees as downstream recipients.

## Dealing with Risk

---

### 23. Insurance

- 23.1. 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; and
  - (c) any additional insurance policies the Department requires in writing.
- 23.2. You must not do, permit or suffer any act or omission that could lead to any of the policies referred to in this **clause 23** being vitiated or rendered void or voidable.
- 23.3. 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.
- 23.4. Without limiting **clause 23.1**, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.

### 24. Indemnities

- 24.1. 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 Claim they incur or that is made against them by any person, whether arising directly or indirectly, 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.
- 24.2. Your liability to indemnify the Department under this **clause 24**:
- (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

---

### 25. Termination by either party for breach

25.1. 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.

## 26. Termination by Department for cause

26.1. The Department may terminate this Deed by Notice, with effect on the date stated in the Notice, if:

- (a) you breach this Deed and, in the Department's reasonable opinion, the breach is incapable of remedy;
- (b) 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;
- (c) the Department considers that termination is necessary to avoid damage to the reputation of the Department or the Program;
- (d) the Department considers that the Project is no longer viable;
- (e) you breach any of the following clauses: **Special Condition SC1.3**, **clause 3** (The Project); **clause 4** (Your general obligations and warranties); **clause 5** (Significant Assets), **clause 8** (Your Co-Contribution); **clause 9** (Acquitting the Grant and Co-Contribution); **clause 15** (Progress Reports), **clause 19** (Confidential Information), **clause 23** (Insurance) or **clause 31.10** (Assignment);
- (f) the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity; or
- (g) you become insolvent, if you are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966* (Cth), 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.

## 27. Termination by Department without cause

27.1. The Department may terminate this Deed without cause (and without the need to give reasons) by giving you at least 20 Business Days' notice.

27.2. 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 27**.

## 28. Consequences of termination

28.1. On termination or expiry of this Deed, accrued rights and obligations are not affected.

28.2. You must, within 10 Business Days of termination:

- (a) repay to the Department any unspent portion of the Grant and any amount the Department requires under **clause 12** (Repaying and deducting amounts);
- (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) deliver up to the Department any Significant Assets as the Department may require if the Department has terminated the Deed; and
- (d) destroy any Confidential Information the Department has provided to you other than: one copy to determine any continuing legal obligations; and copies created electronically by automated backup systems.

28.3. **Clauses 25 to 28** (Termination) do not limit the rights of a party under this Deed or at law.

## Other Legal Matters

---

### 29. Dispute Resolution

- 29.1. If a dispute arises in relation to this Deed (“a **Dispute**”), a party must comply with this clause 29 before starting court proceedings except proceedings for urgent interlocutory relief.
- 29.2. 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 30** (Notices).
- 29.3. 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.
- 29.4. 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.
- 29.5. If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
- 29.6. Each party must pay its own costs of complying with this **clause 29** and split the costs of the mediator evenly.

### 30. Notices

- 30.1. 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.
- 30.2. 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 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.
- 30.3. 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.

## 31. General

- 31.1. **Survival:** The following clauses survive termination or expiry of this Deed: **clause 3.1 (d)** (maintenance period), **clause 6.3** (the Grant), **clause 12** (repaying and deducting amounts), **clause 16** (financial information), **clause 17** (monitoring and evaluation), **clause 18** (Intellectual Property), **clause 19** (Confidential Information), **clause 21** (privacy and data), **clause 22** (disclosure of information), **clause 23** (insurance), **clause 24** (indemnities), **clause 28** (consequences of termination), **clause 29** (dispute resolution), this **clause 31.1** (survival), **clause 31.3** (keeping of records), **clause 31.13** (governing law) and any other clause which by its nature is intended to survive this Deed.
- 31.2. **Subcontractors:** You remain fully responsible for the performance of the Project if you subcontract the performance of any part of the Project.
- 31.3. **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 ("**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 ("**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.
- 31.4. **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.
- 31.5. **Entire agreement:** 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.
- 31.6. **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) the Schedules; then
- (e) the Program Guidelines; then
- (f) any annexures or attachments.

- 31.7. **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.
- 31.8. **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.
- 31.9. **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.
- 31.10. **Assignment:** You must not assign or novate your obligations or interests under this Deed, without the prior written consent of the Department.
- 31.11. **Counterparts:** This Deed may be signed in any number of counterparts which taken together will constitute one instrument.
- 31.12. **Electronic execution:** Each party agrees that the other may execute this Deed electronically as provided for in the *Electronic Transactions Act 2000*.
- 31.13. **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.

# 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

Include text if person is witnessing the signature remotely.  
Delete if witness is present in person (not remote.)

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)

Signed, sealed and delivered for on and on behalf of [Click here to enter Company/Organisation name](#) 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

**[Internal drafting note for Department's project manager. Please delete this heading and note before you release document externally: This is an alternative signature block. If the grantee is another type of legal entity (eg. partnership, trustee), please contact Legal to provide appropriate signature block.]**

### You (Authorised Signatory eg University, Council)

By entering into this Deed the signatory warrants that the signatory is duly authorised to execute this Deed on behalf of [Click here to enter University/Council name](#).

Signed, sealed and delivered for and on behalf of [Click here to enter 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

**Include text if person is witnessing the signature remotely.  
Delete if witness is present in person (not remote.)**  
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

**[Internal drafting note for Department’s project manager. Please delete this note before you release document externally: It is critical that you insert all relevant information or cross-reference attachments as the Deed is a standalone document.]**

<b>1. Program</b>	
Program overview	<i>Insert brief overview of Program</i>
Program evaluation criteria	<i>insert the criteria which the Department will use to evaluate how this Project has met the objectives of the Program</i>
<b>2. Project</b>	
Project description	<i>Insert description of Project, ie. this may be information from the Application, updated to reflect the Project as approved.</i>
Project purpose	<i>Insert purpose of Project</i>
Attachments evidencing Project	<p>The Project is more particularly described in these attachments to this Deed:</p> <p><i>Example attachments:</i></p> <ul style="list-style-type: none"> <li>• <i>Application</i></li> <li>• <i>Project Budget</i></li> <li>• <i>Project Management Plan</i></li> <li>• <i>Risk Management Plan</i></li> <li>• <i>NSW Treasury compliant Short-Form Assessment (total Project cost exceeds \$10 million)</i></li> <li>• <i>Business Case (total Project cost exceeds \$20 million)</i></li> </ul>
<b>3. Activities – also refer to Activities summary table below</b>	
Overview of funded Activities	<i>Insert</i>

<i>Key performance indicators</i>	<i>Insert if relevant</i>
<i>Performance standards</i>	<i>Insert if relevant</i>
<i>Other</i>	<i>Insert if relevant</i>
Acquittal requirements	<i>Insert any specific requirements</i>



## Schedule B – Reporting Requirements

**[Internal drafting note for Department’s project manager. Please delete this note before you release document externally. These are example reporting requirements. Please amend to suit your program.]**

### Progress Reports

1. You must provide Progress Reports to the Department on 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) details of how the funding from the Grant and Co-Contribution (if applicable) has been spent on the Activities so far.
2. You must provide the Progress Reports within the timeframes listed in **Schedule A**.

### Meetings and site visits

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

### Photographs

5. You must obtain permission and releases from individuals featured in any photographs which you provide to the Department to permit the Department to use and publish those photographs in connection with the Program.

### Evaluation

6. You must provide the additional performance information and data for the purposes of **clause 17** (Monitoring and evaluation) as set out in **Table 1**: **[insert Table]**

**[Internal drafting note for Department’s project manager. Please delete this note before you release document externally: Insert any additional information and data which the Grantee must provide for the Department to evaluate the Program, the Project and the Grantee’s compliance. Refer to Grants Administration Guide, section 6.4]**

7. The Department may contact you during the term of this Deed with details of data which the Department requires to evaluate the Project or Program. You must provide that data within the timeframes which the Department requires.

# Attachments

*Example attachments:*

- *Application*
- *Project Budget*
- *Project Management Plan*
- *Risk Management Plan*
- *NSW Treasury compliant Short-Form Assessment (total Project cost exceeds \$10 million)*
- *Business Case (total Project cost exceeds \$20 million)*