



Funding Deed – [insert description of project] Project

Project Reference	[insert project reference number]
Department	Department of Planning, Industry and Environment
Agency/Division	Water
Grantee	[insert legal name]

Table of Contents

Details	1
Special Conditions	2
Terms	4
Definitions and Commencement	4
What you must do	6
About the Grant	6
Material and Information	9
Dealing with Risk	11
Terminating the Deed	13
Other Legal Matters	14
Executed as a deed	17
Schedule A – Project Milestones & Assurance	18
Schedule B – Reporting Requirements (refer to clause 9)	20
Schedule C – Signage Guidelines (refer to clause 13)	21

Details

Department	Name	The Crown in right of the State of New South Wales acting through the Department of Planning, Industry and Environment (ABN 20 770 707 468).
	Agency/ Division	Water
	Address	10 Valentine Street, Parramatta NSW 2150
Department Authorised Officer <i>(refer to clause 211 - Notices)</i>	Name	Nige Deacon
	Position	Manager, Safe and Secure Water Program
	Address	PO Box 717 Dubbo NSW 2830
	Telephone	02 6841 7416
	E-mail	nige.deacon@industry.nsw.gov.au
Grantee ('You')	Name	[insert legal name]
	Address	[insert address]
	ABN	[insert ABN]
Your Authorised Officer <i>(refer to clause 211 - Notices)</i>	Name	Click here to enter text.
	Position	Click here to enter text.
	Address	Click here to enter text.
	Telephone	Click here to enter text.
	E-mail	Click here to enter text.
Project	[insert description of project]	
Grant	A maximum total amount of \$xxx (GST exclusive) based on xx% of \$xxx of actual Project costs with actual DPIE payment based on whichever is the lesser. The Department will pay the Grant in arrears, upon successful completion of the project.	
Commencement Date <i>(refer to clause 2- Commencement)</i>	The Commencement Date is the date that this Deed is executed by the parties (or the last date that a party executes this Deed, if executed on different dates).	

Additional Insurance Policies required to be maintained by the Grantee

Types of Insurances	Minimum Sum Insured	Tick if Required
Professional Indemnity	\$1million in respect of any one claim	✓

Special Conditions

[Drafting Note: Two options are below: **Option 1** – Business Case is approved before signing the Deed and **Option 2** – Business Case to be approved after signing the Deed. Please select applicable option for each Deed]

[**Option 1** – Business Case is approved BEFORE signing the Deed]

You acknowledge and agree that:

- (a) the Project must be carried out in accordance with the approved Business Case;
- (b) You have consulted with the community and other stakeholders and confirmed their support for the Project;
- (c) You must use the Grant in accordance with the Business Case;
- (d) the Grant is the only amount to be paid by the Department in connection with the Project;
- (e) if the Project requires any additional funding, You are responsible for providing or obtaining such additional funding, without reference to the Department;
- (f) You are responsible (at Your own cost and expense) for the ongoing maintenance, support, running and other matters in connection with the works to be completed, including following completion of the works; and
- (g) the Department has a strategic commitment to bring “Every person home safe every day” and that You are responsible for ensuring that You deliver on this commitment throughout the delivery of the Project in relation to Your Personnel. You must provide the Department with sufficient detail relating to Your compliance with this Special Condition in the WHS report required to be provided under Schedule B.

[**Option 2** – Business Case to be approved AFTER signing the Deed.]

You acknowledge and agree that:

- (a) as at the date of this Deed, the Business Case has not been approved by the Department;
- (b) You must obtain the Department’s written approval of the Business Case and You acknowledge that prior to the Department providing such approval, You will be required to make any amendments to the Business Case that the Department determines are reasonably necessary;
- (c) until the Business Case is approved in writing by the Department, the Project must be carried out in accordance with any approvals in the document;
- (d) once the Business Case is approved, the parties agree to populate Schedule A - Project Milestones and Assurance reflect

- the approved Business Case, and vary the Deed in accordance with clause 21.6 to incorporate the populated Schedule A;
- (e) notwithstanding any other provision of this Deed, if for any reason:
- i. the Department has not provided its written approval of the Business Case and/or;
 - ii. the parties have not agreed to the terms of Schedule A in accordance with Special Condition (e), by [insert deadline date], the Department may immediately by notice in writing to You, terminate this Deed;
- (f) the Project must be carried out in accordance with the approved Business Case;
- (g) You have consulted with the community and other stakeholders and confirmed their support for the Project;
- (h) You must use the Grant in accordance with the Business Case;
- (i) the Grant is the only amount to be paid by the Department in connection with the Project;
- (j) if the Project requires any additional funding, You are responsible for providing or obtaining such additional funding, without reference to the Department;
- (k) You are responsible (at Your own cost and expense) for the ongoing maintenance, support, running and other matters in connection with the works to be completed, including following completion of the works; and
- (l) the Department has a strategic commitment to bring “Every person home safe every day” and that You are responsible for ensuring that You deliver on this commitment throughout the delivery of the Project in relation to Your Personnel. You must provide the Department with sufficient detail relating to Your compliance with this Special Condition in the WHS report required to be provided under Schedule B.

Terms

Definitions and Commencement

Definitions and Interpretation

1. Interpretation

1.1 Unless the context requires otherwise, in this Deed:

- (a) the terms set out in the left hand column of the Details have the meaning ascribed to them in the right hand column of the Details;
- (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) the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
- (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 ground 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

Activity means the activity(s) described in **Schedule A – Project Milestones and Assurance**, which aim to fulfil one or more of the Objectives of the Project.

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

Assurance requirements are reports, materials or other evidence as specified in Schedule A that are required to be provided to the Department by you before payment of the amount applicable to the corresponding Milestone.

Business Case means the document titled ‘[insert]’, dated [insert] and provided by You to the Department and includes any amendments to that document made under this Deed. Note for Projects under \$10 million the current SSWP Project Plan / Business Case template may be used.

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

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

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

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

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

but does not include information that:

- (d) is in the public domain; or
- (e) is independently known or developed by the party receiving the information other than as a result of a breach of this Deed or any other obligation of confidentiality owed by or to any other person.

Correctly Rendered Invoice means an invoice rendered in accordance with the Department's Fact Sheet.

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

Grant means funds released by the Department as specified in the Details section above.

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

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

Intellectual Property or IP includes:

- (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.

Milestone and **Funding Deed Milestone** is the **Activity(s)** described in **Schedule A – Project Milestones and Assurance**, which aim to fulfil one or more of the Objectives of the Project.

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

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

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

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

Personnel includes, in relation to a party, that party's: officers, employees and agents; affiliates, advisers, consultants and subcontractors; affiliates', advisers', consultants' and subcontractors' officers, employees and agents; and any other persons under that party's direction or control.

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

Special Conditions means the Special Conditions (if any) set out in that section of this Deed.

2. Commencement

2.1 This Deed will commence on the Commencement Date.

What you must do

3. Your obligations

3.1 You must:

- (a) ensure the Grant or any Instalment 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 set out in Schedule B;
- (d) comply with all Commonwealth, State and Local government laws that are relevant to the Project, this Deed, or your registration as an entity; and
- (e) comply with all policies, guidelines and reasonable directions the Department provides to you.

About the Grant

4. Paying the Grant

4.1 The Department will pay an Instalment for each Activity at the end of the Activity Period on condition that:

- (a) the Department receives a Correctly Rendered Invoice from you that clearly identifies the Instalment you are claiming;
- (b) you have provided the Department's authorised officer and in accordance with Clause 21 with the evidence of compliance required under **clause 9** and the Schedule(s) showing that you have performed the Activities at the times set out in the Schedules and this Deed; and
- (c) the Activities have been performed to the satisfaction of the Department.

4.2 Notwithstanding **clause 4.1**, if the Department pays you an Instalment, this does not constitute an admission that the performance of the Project is in conformity with this Deed and no payment will be deemed to release you from your obligations under this Deed.

4.3 Subject to the terms and conditions of this Deed, including this clause 4, the Department will endeavour to pay Correctly Rendered Invoices within 30 days of receipt by the Department.

5. Withholding, Suspension, Changes to Instalments and Repayment

5.1 The Department may change the amount of the Instalment by issuing you with a Notice setting out the details of the changes.

5.2 If you are not complying with this Deed the Department may withhold or suspend payment of an Instalment until you comply with your obligations to the Department's satisfaction.

5.3 If the Department withholds or suspends an Instalment you must continue to perform your obligations under this Deed.

5.4 You must repay within 28 days of a demand being sent:

- (a) any Instalment spent in breach of this Deed;
- (b) all unspent Instalments;
- (c) any overpayment
- (d) any interest earned on any Instalment required to be repaid.

5.5 Where you have failed to comply with this Deed, the Department will calculate the amount of repayment you must make with regard to the extent you have failed to complete the Activities of the Project.

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

5.7 Any repayment the Department claims from you under this **clause 5** will be a debt due and owing by you to the Department.

6. Holding of Grant

6.1 This **clause 6** applies to the extent that you receive any funds under this Deed prior to incurring costs associated with such funds or prior to completing your obligations which apply to the relevant Instalment.

6.2 Each Instalment must be held in trust for the benefit of the Department from the date it is received either:

- (a) in a separate bank account used solely in connection with the Grant; or
- (b) into a general bank account provided that sufficient accounting controls are in place to track the expenditure of the Grant.

6.3 You must not expend any part of the Grant until the Department has notified you that you may release the specified amount of the Grant for the Project.

7. Capital Equipment & Assets

7.1 Any Capital Equipment & Assets acquired with the Grant for the purposes of the Project will become your property.

7.2 You must not acquire any Capital Equipment & Assets with the Grant unless the Capital Equipment & Assets is specified in the Deed or the Department has provided you with prior written consent to acquiring that Capital Equipment & Assets.

7.3 You must for the term of this Deed:

- (a) use any Capital Equipment & Assets you acquire with the Grant for the Project and in accordance with this Deed;
- (b) not sell, encumber, cease to use or otherwise dispose of any Capital Equipment & Assets acquired with the Grant without first obtaining written consent from the Department;
- (c) at your own expense reinstate any Capital Equipment & Assets acquired with the Grant that is lost, damaged or destroyed;
- (d) hold any Capital Equipment & Assets securely and safeguard them against theft, loss, damage, or unauthorised use;
- (e) maintain all Capital Equipment & Assets in good working order;
- (f) maintain all appropriate insurances for all Capital Equipment & Assets to its full replacement value;
- (g) if required by law, maintain registration and licensing of all Capital Equipment & Assets;
- (h) be fully responsible for, and bear all risks relating to, the use or disposal of all Capital Equipment & Assets; and
- (i) ensure an asset register is maintained at all times and, when requested by the Department, provide copies of the asset register to the Department.

8. GST

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

8.2 If:

- (a) despite any other provision of this Deed, GST is imposed on a supply you make to the 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,
- (c) 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.

8.3 You must be registered under the GST Law at the time of making any supply under this Deed on which GST is imposed.

8.4 If you are not registered under the GST Law as required under **clause 8.3**, you will not be entitled to receive any additional amount as provided under this **clause 8**.

8.5 If for any reason the Department pays you an amount under this **clause 8** which is more than the GST imposed on the supply, you must repay the excess to the Department on demand or the Department may set off the excess against any other amounts due to you.

Material and Information

9. Reporting Requirements

- 9.1 You agree to provide the Department with written progress Reports at the times and containing the information specified in **Schedule B – Reporting Requirements** (“Progress Reports”).
- 9.2 You must also provide any other information the Department reasonably requires from time to time concerning the Project.
- 9.3 If any Progress Report contains information confidential to you, you should mark the relevant parts of the Report accordingly.
- 9.4 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 Activity or any termination of this Deed, whichever is the earliest; and
 - (b) the completion of each Financial Year in which a Grant is made.
- 9.5 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.
- 9.6 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 Capital Equipment & 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.

10. Intellectual Property

- 10.1 Intellectual Property in all Project Material vests in you, unless otherwise stated in the Special Conditions.

11. Confidential Information

11.1 Each party must maintain the confidentiality of all commercially sensitive information it receives from the other party, including the amount of the Grant, except in accordance with **clause 13** (Public Announcements) or as otherwise agreed in writing.

12. Privacy

12.1 You must:

- (a) ensure that Personal Information that is provided by the Department or collected by you under or in connection with this Deed is used only for the purposes of this Deed and is protected against loss, unauthorised access, use, modification and disclosure, or against other misuse;
- (b) not disclose any Personal Information without the written consent of:
 - i. the individual to whom the Personal Information relates; or
 - ii. the Department,unless otherwise required or authorised by law;
- (c) comply with the Information Protection Principles applying to NSW public sector agencies under the Privacy and Personal Information Protection Act 1998 (NSW) when doing any act or engaging in any practice in relation to Personal Information as if you were an agency directly subject to that Act; and
- (d) include equivalent requirements regarding Personal Information (including this clause 12) in any subcontract entered into for the provision of any of the Activities under this Deed.

13. Public Announcements and Acknowledgement

13.1 You must:

- (a) seek the consent of the Department prior to any public announcement about the Project;
- (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 content established in connection with the Project;
 - iii. on any equipment or other facility funded wholly or in part by the Department;
- (c) use the Department's logo when acknowledging the Department's support of the Project in compliance with the NSW Government Brand Guidelines; and
- (d) comply with the Funding Acknowledgement Guidelines for recipients of NSW Government infrastructure grants and **Schedule C - Signage Guidelines**. You must ensure that your subcontractors are aware of the requirements under these guidelines and any associated costs.

13.2 The Department may publish the title and brief description, including outcomes, of the Project and the amount of the Grant.

Dealing with Risk

14. Disclosure of Information

14.1 You acknowledge that, under the Government Information (Public Access) Act 2009, the Department may be required to publicly disclose information about this Deed at <https://tenders.nsw.gov.au>. None of the disclosure obligations require the disclosure of:

- (a) the commercial-in-confidence provisions of a contract;
- (b) any matter that could reasonably be expected to affect public safety or security; or
- (c) information which would be exempt from disclosure if it were the subject of an application under the Government Information (Public Access) Act 2009.

14.2 You may nominate any items you consider are confidential and why, to assist the Department in determining what items to disclose.

15. Insurance

15.1 You must maintain, during the term of this Deed:

- (a) a broadform public liability policy of insurance to the value of at least \$10 million in respect of each claim and 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;
- (c) the Additional Insurance Policies listed in the Details for the minimum sum provided.

15.2 If specified as being required in the Details, a professional indemnity insurance policy must be maintained for a period of 7 years from the end of the Deed.

15.3 You must not do, permit or suffer any act, matter or thing or omission whereby any of the policies referred to in this clause may be vitiated, rendered void or voidable.

15.4 On request by the Department, you must provide a copy of valid and current certificates of currency for each or any of the policies described above.

15.5 Without limitation to **clause 15.1**, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.

16. Indemnities

16.1 You must indemnify and keep indemnified the Department, the Crown in right of the State of New South Wales and their officers, employees and agents from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:

- (a) the Grant or the use of any outcomes or Capital Equipment & Assets arising 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.

16.2 Your liability to indemnify the Department under this clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Department, its officers, employees or agents contributed to the relevant loss or liability.

16.3 Your liability to indemnify the Department under this clause does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Deed.

17. Risk Management

17.1 Consistent with best practice Project Management, You must prepare and maintain a live risk register and develop appropriate mitigation plans for unacceptable risks which shall be used to manage and report against those risks throughout the project life cycle. You must provide the Department with access to such risk register, mitigation plans and reports.

18. Work Health and Safety

18.1 You must:

- (a) comply with, and must ensure that all of Your Personnel comply with all applicable laws and regulations, including the *Work Health and Safety Act 2011 (NSW)* and the *Work Health and Safety Regulations 2017 (NSW)* (**WHS Legislation**) when performing work under this Deed; and
- (b) so far as is reasonably practicable, consult, co-operate and co-ordinate activities with the Department and any other person who, concurrently with You, has a work health and safety duty under the WHS Legislation in relation to the same matter.

18.2 You must ensure, so far as is reasonably practicable, that any Activity or other work performed in connection with this Deed is without risk to the health and safety of persons who may in any way be affected by such Activity or work.

18.3 If a Notifiable Incident (as defined in the WHS Legislation) occurs in connection with an Activity or other work carried out under this Deed, You must report the incident to the Department within 1 business day and confirm in writing within 3 business days thereafter. Within 14 days of the incident provide the Department with copies of any notices or other documentation provided to or issued by the relevant government regulator in relation to the Notifiable Incident, and provide the Department with such other information as may be required by the Department to facilitate the notification to or investigation of the Notifiable Incident in accordance with WHS Legislation.

Terminating the Deed

19. Termination

- 19.1 Unless terminated earlier, this Deed will end once you have completed the Project to the Department's satisfaction and the Department has paid all Instalments due.
- 19.2 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.
- 19.3 The Department may terminate this Deed immediately by Notice if:
- (a) you breach a provision of this Deed in a manner that, in the Department's opinion, is not capable of remedy;
 - (b) you breach any of the following provisions: **clause 14** (Insurance) or **clause 22.10** (Assignment);
 - (c) you materially breach any of the following provisions: **clause 3** (Your Obligations), **clause 6** (Holding of Grant), or **clause 9** (Reporting Requirements); or
 - (d) 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.
- 19.4 The Department may immediately terminate this Deed by giving you Notice, if any one or more of the following occurs:
- (a) in the Department's opinion you are not carrying out the Project diligently and competently;
 - (b) you have not completed one or more of the Activities by the date they are due to be completed;
 - (c) the Department considers the Project no longer viable;
 - (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 have not made significant progress on the performance of your obligations under this Deed to the satisfaction of the Department by the date that is 6 months after the date of this Deed; or
 - (f) you have not completed a Milestone within 6 months of the due date for that Milestone,

and you have failed to satisfy the Department that such events or circumstances have been alleviated, within 30 days of receiving a Notice from the Department requiring you to do so.

Other Legal Matters

20. Dispute Resolution

- 20.1 If a dispute arises in relation to this Deed (“a **Dispute**”), a party must comply with this **clause 20** before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.
- 20.2 A party claiming that a dispute has arisen must notify the other party in writing giving details of the dispute (**Dispute Notice**) in accordance with the requirements of **clause 21** (Notices).
- 20.3 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.
- 20.4 If the Dispute is not resolved within 10 Business Days, from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice under **clause 20.2** must refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.
- 20.5 If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
- 20.6 Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.
- 20.7 Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.

21. Notices

- 21.1 Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered, posted or emailed to the Authorised Officer specified in the Details or as otherwise notified in writing.
- 21.2 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 post within Australia:
 - i. if posted using Express Post, the priority letter service option of regular post, or the priority service option for Registered Mail, on the fourth Business Day after the day on which it is posted;
 - ii. if posted using the regular post option, on the tenth Business Day after the day on which it is posted;
 - (c) 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 be delivered.
 - (d) 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.
- 21.3 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.

22. General

- 22.1 **Survival:** The following clauses survive termination or expiry of this Deed: **clause 9** (Reporting Requirements), **clause 11** (Confidential Information), **clause 12** (Privacy), **clause 15** (Insurance), **clause 16** (Indemnities), **clause 19** (Termination), **clause 22.3** (Keeping of records), this **clause 22.1** and any other clause which by its nature is intended to survive this Deed.
- 22.2 **Subcontractors:** You remain fully responsible for the performance of the Project if you subcontract the performance of any part of the Project.
- 22.3 **Keeping of records, audit and rights of access to such records and access to Capital Equipment & Assets:** You:
- (a) must keep complete and accurate records and books of account with respect to your performance of the Project (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 (and any of their appointed third party service providers authorised to perform audits on their behalf) (the "Auditors") that has provided moneys to the Department for the purposes of the Project, to undertake on-site audits, to examine and inspect, at reasonable times and on reasonable Notice, any facilities, any Capital Equipment & Assets and any records held by you and Records, and allow any such Records to be copied; and
 - (c) provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.
- 22.4 **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. You must take all reasonable efforts to ensure that your staff and contractors abide by this clause.
- 22.5 **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.
- 22.6 **Variation:** This Deed may only be varied by agreement in writing including by an exchange of emails confirming the agreed variation.

22.7 **Inconsistency:** If there is any inconsistency between provisions of this Deed then the order of precedence will be:

- (a) the **Details**; then
- (b) any **Special Conditions**; then
- (c) these **Funding Terms**; then
- (d) any **Schedules**.

22.8 Negation of employment, partnership or agency

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

22.9 Waiver

- (a) If a party fails to exercise any of its rights under this Deed, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect estop a party from relying on the terms of this Deed to their full force and effect.
- (b) Any waiver by a party of a breach of this Deed must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

22.10 **Assignment:** You must not assign or novate your obligations or interests under this Deed, without the prior written consent of the Department.

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

22.12 **Governing Law:** The laws of New South Wales govern this Deed and the parties submit to the non-exclusive jurisdiction of the courts in that State.

Executed as a deed

Department

Signed, sealed and delivered for and on behalf of the Crown in right of the State of New South Wales acting through the **Department** by its authorised signatory but not so as to incur personal liability:

Signature of Authorised Signatory	Signature of Witness
Name of Authorised Signatory	Name of Witness
Position of Authorised Signatory	Address of Witness
	Date

You (Authorised Signatory)

By entering into this Deed the signatory warrants that the signatory is duly authorised to execute this Deed on behalf of **[insert legal name] (ABN [insert ABN])**

Signed, sealed and delivered for and on behalf of **[insert legal name] (ABN [insert ABN])** 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

Schedule A – Project Milestones & Assurance

Objectives:

Project type: Development and delivery of XXX Drought & Emergency Works							
Item no.	Delivery Phase	Event	Assurance Requirements (see clause 1.2)	Funding Deed Milestone	Capped milestone percentage %	Capped milestone payment \$	Milestone Date
1	Development	Project Plan¹	Develop scope of works				
2			submit project plan to SSWP				
3		Hold point -SSWP concurrence¹	SSWP notification of concurrence item 2				
4			25% completion				
5			50% completion				
6			75% completion				
7			100% completion				
8		Contingency scope					
9	Project completion report ²	Gateway 3	Submit final report to SSWP				
Funding capped at			xxx		100%	\$ -	

Notes

- 1 Project Plan to be submitted for SSWP concurrence (may be submitted in stages for different elements)
- 2 Completion / benefits realisation report required for final grant release

Set out below is a preliminary project schedule, which must be updated by You and approved by the Department in writing upon the Commencement Date:

[insert project schedule]

SAMPLE

Schedule B – Reporting Requirements (refer to clause 9)

Reporting requirements (Progress Reports):

1. You must provide to the Department's authorised officer in accordance with clause 211, minimum quarterly (or monthly on request) Activity Progress Reports on the status of all on-going and completed activities for the period to which the report relates, consisting of:
 - a) project reference number (for all correspondence);
 - b) a brief description of the activities' objective/s;
 - c) all activities undertaken during the reporting period;
 - d) the status of results and milestones achieved to date from the project;
 - e) an update of the Gantt chart (at least as detailed as at Schedule B) with actual progress tracked;
 - f) financial report of actual expenditure and forecasts related to the Grant funding;
 - g) WHS report, including an update from the Principal Contractor in relation to WHS matters (which report must include, at a minimum, any matter in relation to your obligations under Special Condition (g) and clause 18 of the Deed);
 - h) a Risks and Issues report, with controls or treatments for all High and Medium risks ;
 - i) information about any notable engagement or communications with stakeholders, and / or media;
 - j) photographic evidence of construction progress;
 - k) photographic evidence of required signage, clearly depicting location (see **Schedule C – Signage Guidelines**) - required for first Activity Progress Report and Final Report. Photographic evidence must also be emailed to sswp@industry.nsw.gov.au;
 - l) details of any delay in the delivery of the project;
 - m) copies of published reports and materials in relation to the Project; and
 - n) such other information reasonably requested by the Department.
2. The Department may meet with you each quarter, at the Department's discretion, to discuss progress on the Project.
3. The Department may undertake site visits from time to time to ascertain progress of the activities after providing reasonable notice to you.
4. Upon completion of the Project, you must promptly provide to the Department a Final Report, outlining the delivery of the Project, including Project acquittal.

[Drafting Note: Please confirm whether any additional or alternate reporting requirements apply to the proposed funding arrangement.]

Schedule C – Signage Guidelines (refer to clause 13)

The NSW Government Brand Guidelines

<https://communications.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/files/Communications-and-Engagement/0c7b202631/NSW-Government-Brand-Guidelines.pdf>

and the Funding Acknowledgement Guidelines

<https://communications.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/files/Communications-and-Engagement/fa6fd6d77a/Funding-Acknowledgement-Guidelines-for-Recipients-of-NSW-Government-Grants.pdf>

for recipients of NSW Government infrastructure grants will apply to this Project.

The Funding Acknowledgement Guidelines include terms covering:

- Acknowledgement and approval
- Funding acknowledgement statement
- NSW Government logo
- Acknowledgement use and approval process
- Signage production and approval process
- Approvals process
- Cost responsibility
- Steps for production of signs
- Non-signage applications
- Signage requirements
- Signage templates
- Plaques

Notwithstanding the terms of the Funding Acknowledgement Guidelines, the following terms will apply:

- The Department will produce, print and supply one (1) sign as required under the Funding Acknowledgement Guidelines, at no cost to you.
- You must provide the relevant information to the Department within the requested timeframe, so the Department can deliver the sign before the sign is due to be installed at the Project site.
- You are responsible for the placement, display and ongoing maintenance of the sign, and for seeking approval of all construction and permanent signs.

- If you require more signs, for whatever reason, you will be responsible for the production, printing, placement and ongoing maintenance of the sign, and for seeking approval of all construction and permanent signs.

SAMPLE