

FUNDING DEED (LOW RISK)– [INSERT DESCRIPTION] PROJECT

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
Project Reference	[insert project reference number]	
Department Authorised Officer <i>(refer to clause 11.1 - Notices)</i>	Name	Nige Deacon
	Position	Manager, Safe and Secure Water Program
	Address	PO Box 717, Dubbo NSW 2830
	E-mail	nige.deacon@industry.nsw.gov.au
Grantee ('You')	Name	[insert legal name] ABN [insert]
	Address	[insert address]
Your Authorised Officer <i>(refer to clause 11.1 - Notices)</i>	Name	Click here to enter text.
	Position	Click here to enter text.
	Address	Click here to enter text.
	E-mail	Click here to enter text.
Project	[insert description of project] Further details at Annexure A and B	
Objectives	[insert the objectives which must be met by the Grantee in using the Grant in relation to the Project] Eg; Undertake options assessment and business case study to investigate XXX, including discussion on Section 60 approval in line with Annexure A and in accordance with the scope statement at Annexure B.	
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 accordance with Annexure A insert payment details (i.e. upfront / following your successful completion of the Project (as determined by the Department) / in the following instalments etc.]	

Terms

1. Definitions

1.1 Definitions

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, 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*.

Objectives has the meaning given in the Details.

Project has the meaning given in the Details.

2. Commencement and Term

2.1 This Deed will commence on the date that this Deed is executed by both parties (the **Commencement Date**) and, unless terminated earlier in accordance with its terms, will continue until you have completed the Project to the Department's satisfaction.

3. Your obligations

3.1 You must:

- (a) ensure the Grant is used only for the approved Project;
- (b) ensure that the Project is carried out in accordance with the approved scope to meet the Objectives; and
- (c) comply with all applicable laws and any policies, guidelines and reasonable directions of the Department.

4. Paying the Grant

4.1 The Department will pay the Grant once you have completed the Project to the Department's satisfaction, or at such other time(s) as are agreed by the Department from time to time (which may include payment of the Grant in instalments).

4.2 Subject to clause 4.1, the Department will endeavour to pay Correctly Rendered Invoices within 30 days of receipt by the Department.

5. GST

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

5.2 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.

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

5.4 If you are not registered under the GST Law as required under clause 5.3, you will not be entitled to receive any additional amount as provided under this clause 5.

5.5 If for any reason the Department pays you an amount under this clause 5 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.

6. Reporting Requirements

6.1 You must provide any reports and other information to the Department which the Department reasonably requires from time to time concerning the Project.

7. Confidential Information

7.1 Subject to clause 7.2, each party must maintain the confidentiality of all confidential information it receives from the other party, including the particulars of the Grant, except as otherwise agreed in writing.

7.2 The Department may publish the title and a description (including the purpose, outcomes and Objectives) of the Project and the amount of the Grant.

7.3 You acknowledge that, under the *Government Information (Public Access) Act 2009* (NSW), the Department may be required to publicly disclose information about this Deed at <https://tenders.nsw.gov.au>.

8. Indemnities

8.1 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 full indemnity basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly as a result of or in connection with: (a) the Grant or the 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 or the Project; (d) any illness, personal injury to, or death of any person caused or contributed to by you, your employees or subcontractors; (e) any loss or damage to real or personal property caused or contributed to by you, your employees or subcontractors; or (f) any infringement by you, your employees or your subcontractors of any intellectual property rights, or privacy rights of the Department or any third party.

9. Termination

9.1 The Department may terminate this Deed immediately on written notice to you if:

- (a) you breach a provision of this Deed and such breach is not remedied within 30 days' receipt of a notice from the Department requiring you to do so;
- (b) you breach a provision of this Deed and such breach is incapable of remedy; or
- (c) you become insolvent.

10. Dispute Resolution

10.1 If a dispute arises in relation to this Deed ("a **Dispute**"), each party must refer the Dispute to a senior representative for resolution before starting arbitration or court proceedings, except proceedings for urgent interlocutory relief.

11. General

11.1 **Notices:** 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.

11.2 **Survival:** The following clauses survive termination or expiry of this Deed: clause 6 (Reporting Requirements), clause 7 (Confidential Information), clause 8 (Indemnities), clause 9 (Termination), this clause 11.2 and any other clause which by its nature is intended to survive this Deed.

11.3 **Subcontractors:** You remain fully responsible for the performance of the Project if you subcontract the performance of any part of the Project.

11.4 **Entire Deed:** This Deed states all the express terms agreed by the parties as to the matters referred to in this Deed. It supersedes all prior contracts, obligations, representations, conduct and understandings between the parties relating to the subject matter of this Deed.

11.5 **Variation:** This Deed may only be varied by agreement in writing, including by an exchange of emails confirming the agreed variation.

11.6 **Inconsistency:** If there is any inconsistency between provisions of this Deed then the order of precedence will be as follows: (a) the Details; then (b) these

Terms; then (c) any schedules, annexures or other documents cross-referenced in this Deed.

11.7 **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.

11.8 **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.

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

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

11.11 **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.

11.12 **Interpretation:** 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) a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time; (c) the meaning of general words is not limited by specific examples introduced by "including" or "for example" or similar expressions; (d) references to persons include bodies corporate, government agencies and vice versa; (e) references to the parties include references to respective directors, officers, employees and agents of the parties; (f) 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 (g) where an expression is defined, any other grammatical form of that expression has a corresponding meaning.

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

Annexure A – Project Milestones

Item No.	Name of Activity	Description of Activities	Grant (excluding GST)	(If applicable) Your Contribution (excluding GST)	Activity Period	Payment Timing
1	Milestone 1	Execute funding deed			0 months	Xx/xx/xx
2	Milestone 2	Deliver Issues Report for concurrence				
4	Milestone 3	Deliver Final report for concurrence.				
			Total	Total		

Annexure B – Scope

[Annex a copy of the scope here including all attachments to the Application such as maps and photographs]

SAMPLE