

Funding Deed for the Clean Technology Innovation Fund - Clean Technology Innovation Grant Program

Between

The Crown in right of the State of New South Wales acting through
NSW Department of Climate Change, Energy, the Environment and Water
(ABN 27 578 976 844)

And

[#Insert details]

Table of Contents

1	Definitions and interpretation	5
2	Conditions	16
3	Term.....	18
4	Department's obligations	18
5	Project.....	19
6	Funding Recipient's obligations	21
7	Partner Organisations	27
8	Key Personnel.....	28
9	Audit.....	29
10	Conflict of Interest	30
11	Notifiable incidents.....	30
12	Work health and safety	31
13	Project Assets and Capital Works	31
14	Financial arrangements	33
15	Goods and Services Tax	38
16	Publicity.....	39
17	Intellectual Property Rights.....	39
18	Changes to corporate structure, service entities, and Change in Control	40
19	Privacy	41
20	Confidential Information	42
21	Remedies for default.....	43
22	Cancellation or reduction for convenience	45
23	Liability and indemnity.....	45
24	Disputes	46
25	Subcontracting	47
26	Force Majeure.....	48
27	Modern Slavery.....	50
28	Funding Recipient as trustee	51
29	General	52
	Schedule 1 – Project Plan	48
	Schedule 2 – Reports	59
	Schedule 3 – Project Assets and Capital Works	63
	Schedule 4 – Funds Request Form.....	48
	Schedule 5 - Deed of Variation.....	50
	Annexure A : Clean Technology Innovation Grant Program Guidelines	54
	Annexure B : Clean Technology Innovation Grant Program Supplementary Guidance	55
	Annexure C : Funding Recipient Submission.....	56

Funding Deed

Between	The Crown in right of the State of New South Wales acting through NSW Department of Climate Change, Energy, the Environment and Water ABN 27 578 976 844 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150 (Department)
And	Party identified as the 'Funding Recipient' in Table 1 – Details. (Funding Recipient)
Recitals	A. The Net Zero Manufacturing Initiative supports clean technology innovation across the entire product development lifecycle from research to overcoming obstacles in investment right through to being market ready. B. The Clean Technology Innovation Grants provided under the Clean Technology Innovation Grant Program are a key focus area of the Net Zero Manufacturing Initiative. It is a key Net Zero Industry and Innovation Investment Plan initiative which will unlock the next wave of low emission technologies needed for NSW to reach net zero emissions by 2050. C. The Funding Recipient has been approved to receive Funding to undertake the Project. D. The Funding has been approved by the Minister for Climate Change, Energy, Environment and Heritage from the Climate Change Fund to deliver the Project in accordance with section 34F and section 34H of the <i>Energy and Utilities Administration Act 1987 (Act)</i>, and this Deed. The Department is responsible for the governance and administration of the Climate Change Fund to provide funding to promote one or more purposes referred to in section 34F of the Act. E. The Department has agreed to provide the Funding to the Funding Recipient to be disbursed by the Funding Recipient in accordance with this Deed. F. The Funding Recipient agrees to both accept and apply the Funding in accordance with the terms of this Deed. G. The Funding Recipient will provide or procure the Contributions to deliver the Project in accordance with the terms of this Deed.

Details

Table 1: Details

Department	Name	The Crown in right of the State of New South Wales acting through the Department of Climate Change, Energy, the Environment and Water (ABN 27 578 976 844).
	Address	4 Parramatta Square 12 Darcy Street Parramatta NSW 2150
Department Representative (refer to clause 29.1 - Notices)	Name	[#Insert details]
	Position	[#Insert details]
	Address	[#Insert details]
	Telephone	[#Insert details]
	E-mail	[#Insert details]
Funding Recipient	Name	[#Insert details]
	Address	[#Insert details]
	ABN	[#Insert details]
Funding Recipient Representative (refer to clause 29.1 - Notices)	Name	[#Insert details]
	Position	[#Insert details]
	Address	[#Insert details]
	Telephone	[#Insert details]
	E-mail	[#Insert details]
Project	[#Insert details]	
Funding	[#Insert details]	

Commencement Date (refer to clause 3 - Term)	The date by which this Deed is signed by the last party to sign it.
--	---

Completion Date (refer to clause 3 - Term)	31/1/2027
--	-----------

Required Insurance Policies

Table 2: Required Insurance Policies

Types of Insurances	Minimum Sum Insured	Tick if Required
Public Liability	\$20 million	☒

Types of Insurances	Minimum Sum Insured	Tick if Required
Worker's Compensation	As required by applicable law	☒

The Parties agree as follows:

1 Definitions and interpretation

1.1 Definitions

In this Deed:

Additional Conditions	means additional terms and conditions stated in Schedule 1 – Project Plan and which form part of the Deed.
AI	refers to Artificial Intelligence and means any computer system with the ability to perform tasks that would normally require human intelligence. AI encompasses various specialised domains for different tasks and can include machine learning, generative AI and natural language processing as set out in the guidance published by Digital NSW and amended from time to time (https://www.digital.nsw.gov.au/policy/artificial-intelligence/a-common-understanding-simplified-ai-definitions-from-leading).
Alleged Misconduct	means an allegation which raises a reasonable suspicion of misconduct which may have a serious impediment to the delivery of the Project or the performance of activities under the Project, including serious or persistent harassment or bullying, or a criminal offence such as theft, fraud or assault.
Applicable Cure Period	has the meaning given in clause 21.2(1)(c).
Approved Subcontractors	means the individuals or entities listed in Schedule 1 – Project Plan and any further person approved in writing under clause 25.
Australian Accounting Standards	means the accounting standards made by the Australian Accounting Standards Board or other accounting standards which are generally accepted and consistently applied in Australia.
Audited Financial Report	means an “Audited Financial Report” specified in Schedule 2 – Reports.
Authorities	has the meaning given in clause 6.1(1)(h).
Budget	means the budget (if any) set out in the Funding Recipient Submission detailing the Funds to deliver the Project, including sources of income that constitute Co-contributions.
Business Day	means between 9.00 am and 5.00 pm on a day that is not a Saturday, Sunday or public holiday in New South Wales, Australia.
Capital Works	means that part of the Project which relates to the design, construction, fit-out (including, site preparation, modification, expansion, refurbishment, furnishing and equipping as applicable) and related activities described in Schedule 3 – Project Assets and Capital Works.
Change in Control	means, if the Funding Recipient is a corporation, there is any change in:

	(a) the direct or indirect beneficial ownership or control of the Funding Recipient; or (b) control (as defined in the <i>Corporations Act 2001</i> (Cth)) of the Funding Recipient.
Claim	includes any claim (whether ascertained or unascertained), action, proceeding, demand, application, enforcement hearing, enforcement order, judgment, or investigation of any kind, and includes the allegation of a claim.
Co-contribution	means the financial contribution provided or secured by the Funding Recipient from any sources outside of this Deed, upon which the Funds are contingent, to be contributed to the costs of delivering the Project as stated in Schedule 1 – Project Plan. Co-contributions can include contributions from Partner Organisations (if applicable).
Co-contribution Requirements	means the requirements specified in Schedule 1 – Project Plan.
Commencement Date	means the date specified in Table 1 – Details.
Committed	means contractually obliged to pay a third party in respect of any part of the Project and that can be identified in a written contractual arrangement with that third party.
Commonwealth	means the Commonwealth of Australia, including any government agency, department or authority of the Commonwealth.
Completion Date	means the date specified in Table 1 - Details or otherwise as agreed in writing by the Parties.
Conditions Precedent	means the requirements which must be satisfied by the Funding Recipient under clause 2.
Confidential Information	of a Disclosing Party means all information disclosed by or on behalf of the Disclosing Party to the Receiving Party, or acquired or created by or on behalf of the Receiving Party in connection with this Deed, that: (a) is by its nature confidential to the Disclosing Party; (b) the Disclosing Party designates as confidential; or (c) the Receiving Party knows or ought to know is confidential to the Disclosing Party, and includes: (d) information which relates to Intellectual Property Rights of the Disclosing Party; (e) in the case of the Department: (i) information concerning policies, commercial operations, financial arrangements, information technology systems and programs or other affairs of the Department; and

- (ii) information that is defined as 'confidential information' by the Department's portfolio legislation; and

- (f) the terms of this Deed,

whether existing or disclosed to the Receiving Party before or after execution of this Deed, and includes any information produced by the Receiving Party or any other person derived from or containing any of the Confidential Information, but does not include any information which:

- (g) is or becomes public other than through breach of a confidentiality obligation; or
- (h) was:
 - (i) already in the Receiving Party's possession before receipt from the Disclosing Party;
 - (ii) independently developed by the Receiving Party; or
 - (iii) received by the Receiving Party from a third party on a non-confidential basis.

Conflict of Interest means having an interest (whether personal, financial or otherwise) which conflicts or which may reasonably be perceived as conflicting with the Funding Recipient and its Personnel's ability to fairly and independently perform its obligations under the Deed.

Cure Plan means a detailed written plan to remedy a breach of this Deed and its underlying causes and to ensure that no similar breach occurs in the future.

Deed means this document, including any schedule or annexure to it.

Deed of Variation has the meaning given to that term in clause 5.2(2)(a).

Direct Project Expenses means any reasonable fees, expenses and disbursements used to deliver, administer and manage the Project, including:

- (a) salary and salary-on costs within the Funding Recipient's business, excluding labour costs for existing positions;
- (b) contractor costs;
- (c) capital expenditure costs;
- (d) Travel Expenses;
- (e) insurances; and
- (f) any other costs that the Department (in its sole opinion) considers to be direct costs to deliver the Project,

but excluding Ordinary Business Expenses, any costs relating to acts undertaken for the benefit or profit of any related bodies corporate of the Funding Recipient, or any costs, expenses, payments or fees set out in clause 14.2.

Disclosing Party	means the Party disclosing the Confidential Information.
Eligibility Criteria	means the eligibility criteria set out in paragraph 4 of the Grant Guidelines, including eligibility of applicants, projects and pathways.
Eligible Project Costs	means the costs incurred by the Funding Recipient during the Term which are directly related to undertaking the Project and which meet the conditions set out in the Grant Guidelines. Eligible Project Costs are: (a) resourcing (the cost of resources used for activities unrelated to the Project should be adjusted proportionally); (b) cost of Capital Works; (c) labour costs for employing staff who are critical to delivery of the Project. Labour costs cannot include expenditure to cover existing positions who are involved with other work undertaken by the Funding Recipient; (d) contractor and consultancy costs; (e) travel and overseas costs which are included in the Funding Recipient Submission or any subsequent Milestone, provided in each case that the Funding Recipient has notified the Department of such travel or overseas costs prior to expenditure and the Department has approved in writing such expenditure before the Funding Recipient is entitled to claim those costs; (f) intellectual property protection expenditure; and (g) administration expenditure. Eligible Project Costs exclude audit costs and any costs which are provided for the benefit or profit of a Related Entity of the Funding Recipient.
Engaged Entity	of an entity, means any first tier (direct) suppliers, subcontractors, consultants and contractors engaged by that entity (or that entity's Personnel) in connection with this Deed. For the avoidance of doubt, Engaged Entities includes independent contractors (whether an individual or body corporate), secondees, consultants and any other workers (however described) who may be engaged for the purposes of this Deed but are not employed by the relevant entity.
Existing Material	means any Material in existence before the Commencement Date or developed independently of this Deed.
Experienced Executive	means any Key Personnel engaged by the Funding Recipient to bring, amongst other things, complementary skills and experience to fill a key gap in the Funding Recipient's management team and help deliver the Project, as specified in Schedule 1 – Project Plan.
Experienced Executive Conditions	means the following terms and conditions that apply to the engagement of Experienced Executives: (a) the Experienced Executive must work at least 3 days per week (or equivalent) on the Project;

	(b) the Funding Recipient must not engage an individual as an Experienced Executive if that individual holds at least 20% of the shares in the Funding Recipient; and (c) the Funding Recipient must not engage an individual if they hold the position or title of chief executive officer or chief financial officer within the Funding Recipient's business.
Final Report	means the "Final Report" specified in Schedule 2 – Reports.
Financial Report	means a "Financial Report" specified in Schedule 2 – Reports.
Financial Year	means each 12 month period beginning on 1 July each calendar year during the Term.
Force Majeure Event	has the meaning given to it in clause 26.1.
Funds	means the amounts set out in Table 1 - Details as amended from time to time.
Funds Request Form	means the document in the form set out in Schedule 4 – Funds Request Form.
Funding Recipient	means the person or entity named in Table 1 - Details that enters into and is a party to this Deed.
Funding Recipient Submission	means the Funding Recipient's submission set out in Annexure C.
General Infrastructure	means the basic physical systems of the Funding Recipient, including communication, water and electrical systems.
GIPA Act	means the <i>Government Information (Public Access) Act 2009</i> (NSW).
Government Body	means the government of the State of New South Wales, including any governmental agency, department or authority of New South Wales.
Grant Guidelines	means the following guidelines: (a) Clean Technology Innovation Grant Guidelines, June 2026 set out in Annexure A; and (b) Clean Technology Innovation Grant Supplementary Guidance, June 2026 set out in Annexure B.
ICIP	means Indigenous Cultural and Intellectual Property and includes all objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to Aboriginal and Torres Strait Islander peoples or territory, including all aspects of country, traditional practices, tangible cultural property, intangible cultural property, literary, visual and performing arts, and documentation of Indigenous peoples' heritage, whether created in the past, now or in the future.
ICIP Rights	means rights in respect of ICIP and refers to the rights of Aboriginal and Torres Strait Islander peoples to maintain, control, protect and develop their cultural heritage, traditional knowledge, and traditional cultural expressions as stated in Article 31 of the United Nations Declaration of the Rights of Indigenous Peoples adopted on 13 September 2007.

In-kind Contribution	means non-cash financial contributions provided by the Funding Recipient or Partner Organisations to deliver the Project, including staff salaries.
Indigenous Data	means information or knowledge, in any format or medium, which is about and may affect Aboriginal and Torres Strait Islander peoples both collectively and individually.
Infrastructure	means new or improved assets, facilities or services which help accelerate research, development and commercialisation of innovative clean technologies and business models in New South Wales.
Insolvent	means that a person is subject to one or more of the following: (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the <i>Corporations Act 2001</i> (Cth)); (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property; (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other Party); (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of paragraphs (a), (b) or (c) above; (e) it is taken (under section 459F(1) of the <i>Corporations Act 2001</i> (Cth)) to have failed to comply with a statutory demand; (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the <i>Corporations Act 2001</i> (Cth) (or it makes a statement from which the other Party reasonably deduces it is so subject); (g) where the person is a natural person, the person becomes bankrupt, files or is served with a petition in bankruptcy or is served with a bankruptcy notice, the person is unable to pay his or her debts as and when they become due and payable or a creditor's meeting in relation to the person is called; (h) it is otherwise unable to pay its debts when they fall due; or (i) something having a substantially similar effect to paragraphs (a) to (h) happens in connection with that person under the laws of any jurisdiction.
Intellectual Property Rights	includes all copyright, trademark, design, patent, semiconductor or circuit layout rights, plant breeders' rights, know-how, trade secrets, and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of this Deed, but excludes Moral Rights.

Interest Rates	means the volume-weighted average interbank overnight interest rate published on the Reserve Bank of Australia website as its 'Cash Rate Target' (or any successor page) plus 2%.
Key Personnel	means the key Personnel of the Funding Recipient or Partner Organisations who are required to undertake the provision of the Funding Recipient's activities, as specified in Schedule 1 – Project Plan, and includes any Experienced Executives.
Letter of Endorsement	means a letter from the Project Sponsor providing its endorsement supporting the Project and outlining its interest in purchasing the clean technology developed by the Funding Recipient under or in connection with this Deed if it is successfully commercialised in NSW.
Letter of Support	means a letter from a Partner Organisation providing its endorsement to collaborate with the Funding Recipient to deliver the Project. The letter must include the following information: (a) the Partner Organisation's relevant experience, expertise and Co-contribution; (b) an overview of how the Partner Organisation will collaborate with the Funding Recipient and other Partner Organisations (if applicable) to deliver the Project; (c) the Partner Organisation's key contacts and their contribution to the Project; (d) the Partner Organisation's roles and responsibilities; and (e) the Partner Organisation's commitment to provide the Co-contributions.
Loss	includes any loss, damage, liability, tax, prohibition, penalty, fine or expense.
Material	means any document or other item in which Intellectual Property Rights subsist.
Milestone	means the milestones set out in Schedule 1 – Project Plan.
Milestone Deliverables	means the deliverables set out in Schedule 1 – Project Plan.
Milestone Deliverable Due Date	means the date specified in Schedule 1 – Project Plan for a Milestone Deliverable or as otherwise agreed by the Parties in writing.
Milestone Report	means a "Milestone Report" specified in Schedule 2 – Reports.
Modern Slavery	has the meaning given in section 4 of the <i>Modern Slavery Act 2018</i> (NSW) and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons.
Modern Slavery Information	means any of the information provided to the Department under, or arising out of any action taken in respect of, any matter referred to under clause 27.

Modern Slavery Laws	means: (a) the <i>Modern Slavery Act 2018</i> (Cth); (b) the <i>Modern Slavery Act 2018</i> (NSW); (c) Divisions 270 and 271 of the Commonwealth Criminal Code; (d) section 176(1A) of the <i>Public Works and Procurement Act 1912</i> (NSW); (e) section 438ZE of the <i>Local Government Act 1993</i> (NSW); and (f) any other laws, regulations, codes and international conventions aimed at combatting modern slavery, force labour or human trafficking, from time to time in force in or ratified by Australia and, where relevant, in or by other jurisdictions in which the parties operate, each as amended from time to time.
Modern Slavery Offence	means those offences set out in Schedule 2 of the <i>Modern Slavery Act 2018</i> (NSW).
Modern Slavery Statement	has the meaning given to it in clause 27(2)(g).
Moral Rights	means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the <i>Copyright Act 1968</i> (Cth), and rights of a similar nature anywhere in the world whether existing before, on or after the Commencement Date.
New Material	means Material which comes into existence through the performance by the Funding Recipient of its obligations under this Deed.
Nominated Account	has the meaning given in clause 14.7.
Notice	means a notice in writing provided in accordance with clause 29.1.
NSW Government	means the government of the State of New South Wales, including any government agency, department or authority of New South Wales.
Ordinary Business Expenses	means business expenses, including rent, maintenance and utility costs used to run and operate the Funding Recipient's business, including any business expenses that the Department (in its sole opinion) considers to be ordinary business expenses.
Party or Parties	means the Department or the Funding Recipient, as the case may be.
Partner Organisation	means the individual or organisation specified in Item 3 of Schedule 1 – Project Plan.
Personal Information	means information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.
Personnel	means officers, employees, agents and contractors of an entity and includes Key Personnel. The Personnel of the Department does not include the Funding Recipient or its subcontractors or Partner

Organisations. The Personnel of the Funding Recipient includes its subcontractors and their Personnel, and Partner Organisations and their Personnel.

Privacy Act	means the <i>Privacy and Personal Information Protection Act 1998</i> (NSW), the Department's privacy policies, and all other applicable privacy laws, codes and policies, including the <i>Privacy Act 1988</i> (Cth).
Project	means the project specified in Item 1 of Schedule 1 – Project Plan.
Project Assets	means any item of tangible and intangible property (including reports and advices obtained for the purposes of delivering the Project) which are purchased, leased, financed, created or otherwise brought into existence either wholly or in part with use of the Funds as set out in Schedule 3 – Project Assets and Capital Works.
Project Asset Register	means a written register kept in accordance with Australian Accounting Standards and audited annually which contains details of Project Assets purchased or leased, whether wholly or in part using the Funds, including: (a) the date each Project Asset was purchased, leased or otherwise acquired; (b) a description of each Project Asset, including (if applicable) any serial or reference number; (c) the address at which each Project Asset is located; (d) the purchase, lease or acquisition price of the Project Asset; (e) the amount of the Funds used, including a breakdown of the Parties' contribution, towards the purchase, lease or acquisition of the Project Asset; and (f) where relevant, the details of Project Asset disposals including sale price.
Project Governance Plan	means the plan as specified in Item 3 of Schedule 1 – Project Plan (as amended from time to time in accordance with this Deed).
Project Objectives	means the objectives specified in Item 1 of Schedule 1 – Project Plan.
Project Plan	means the plan specified in the Funding Recipient Submission.
Project Requirements	means the requirements specified in Item 1 of Schedule 1 – Project Plan.
Project Sponsor	means an individual or company that may be a potential customer from an emissions intensive business or industry in New South Wales.
Project Steering Committee	has the meaning given in clause 5.3(1).
Public Statement	means any statement or address in relation to the Project which is intended for the public or any industry or market domain, including: (a) media releases about the Project; (b) discussions about the Project with television or newspaper journalists;

- (c) presentations at conferences about the Project;
- (d) promotional and advertising material; and
- (e) any recording or publication resulting from the Project which is intended to be distributed into the public or any industry or market domain.

Receiving Party	means the Party receiving the Confidential Information.
Related Body Corporate	has the meaning given to that term in the <i>Corporations Act 2001</i> (Cth).
Related Entity	means, in respect of an entity, a Related Body Corporate of such entity.
Reportable Complaint	has the meaning given in clause 6.4(1).
Reports	means the reports specified in Schedule 2 – Reports and any other reports or similar documents that the Funding Recipient is required to provide the Department under this Deed.
Report Due Date	means the date specified in Schedule 2 – Reports or another date otherwise agreed by the Parties in writing.
Representative	means the relevant Party's representative stated in Table 1 - Details or as notified in writing from time to time.
Reputational Proceedings	means any inquiry, investigation, conciliation, mediation, arbitration or such similar proceedings against the Funding Recipient or any director, officer, employee, subcontractor or agent of the Funding Recipient that could, or has the potential to, in the reasonable opinion of the Department, have an adverse effect on the reputation of the Project, the Department or NSW Government.
Required Insurance	means all insurances in connection with a Project which are required by law or this Deed, including as specified in Table 1 - Details and this Deed.
Risk Management Plan	means the plan as specified in Item 3 of Schedule 1 – Project Plan (as amended from time to time in accordance with this Deed).
Schedule	means a Schedule to this Deed.
Secondary Purpose	has the meaning given in clause 13.3(2).

Serious Incident	means an incident that: (a) is likely to impact on the Funding Recipient's ability to deliver the Project or otherwise fulfil its obligations under the Deed; (b) arises in respect of work, health and safety in connection with the delivery of the Project; (c) requires an emergency response, or involves death or serious injury or any criminal activity; or (d) has or may attract significant public interest and attention.
Submitted Material	has the meaning given in clause 6.5(4)(a).
Supply Chain	means the goods and services (including labour) that contribute to the Funding Recipient's own goods and services, including: (a) goods and services sourced or used by the Funding Recipient from any jurisdiction; and (b) goods and services sourced or used by a Supply Chain Participant in any jurisdiction.
Supply Chain Participant	means, in relation to a business, any organisation or individual involved in the chain of production and provision of particular goods or services to that business.
Term	has the meaning given in clause 3.
Travel Expenses	means travel and accommodation expenses which are actually incurred by the Funding Recipient as a necessary part of delivering the Project, including: (a) domestic and international flight costs. For the avoidance of doubt, the Department will only provide Funds for economy class tickets; and (b) short term accommodation costs.
Unspent Funds	at a particular date means Funds that have not been spent or Committed by the Funding Recipient in accordance with this Deed.
Variation Report	means a "Variation Report" specified in Schedule 2 – Reports.

1.2 Interpretation

In this Deed unless a contrary intention is expressed:

- (1) headings do not affect interpretation;
- (2) all currency amounts refer to Australian currency;
- (3) words in the singular include the plural and vice versa;
- (4) other grammatical forms of a defined word or phrase have a corresponding meaning;
- (5) a reference to a 'person' includes any legal entity;

- (6) a reference to a clause, part, annexure, exhibit or Schedule is a reference to a clause, part, annexure, exhibit or Schedule of this Deed;
- (7) a reference to a document (including this Deed and any laws) includes all amendments or supplements to, or replacements or novations of, that document;
- (8) a reference to law includes common law and statutory laws, regulations, orders, subordinate legislation, ministerial directions, directions of relevant regulators and binding codes of conduct;
- (9) a reference to a Party includes that Party's executors, administrators, successors and permitted assignees;
- (10) an obligation or liability assumed by, or right conferred on, two or more persons binds or benefits them jointly and severally;
- (11) 'include', 'including' and similar words must be read as if followed by the words 'without limitation';
- (12) 'consent' and 'approval' mean prior written consent and prior written approval respectively; and
- (13) if anything under this Deed is required to be done by or on a day that is not a Business Day in the place where the thing is to be done, that thing must be done by or on the next Business Day.

1.3 Priority of documents

Any conflict or inconsistency between the provisions in documents forming part of this Deed will be resolved in the following order of priority:

- (1) the terms and conditions;
- (2) Annexure A;
- (3) the Schedules;
- (4) Annexure B (Funding Recipient Submission); and
- (5) any other document identified in any Annexure or Schedule as forming part of this Deed.

1.4 Representatives

- (1) The Parties agree to each appoint a Representative for the purposes of this Deed.
- (2) The Parties may each appoint administrative officers for the day-to-day administration of this Deed.

1.5 Additional Conditions

The Funding Recipient agrees, in undertaking the Project, to comply with any Additional Conditions.

2 Conditions

2.1 Conditions Precedent

This Deed is subject to and conditional upon:

- (1) at the Commencement Date:

- (a) the Funding Recipient Submission (including the Funding Recipient itself and the Project) meeting the Eligibility Criteria and any additional criteria as reasonably required by the Department. The Funding Recipient must provide the Department with evidence, to the Department's reasonable satisfaction, that such criteria have been met;
 - (b) the Funding Recipient having obtained all the necessary licences and approvals to carry out the Project. The Funding Recipient must provide the Department with evidence, to the Department's reasonable satisfaction, that it has obtained such licences and approvals;
 - (c) if the Funding Recipient has agreed to collaborate with a Partner Organisation to deliver the Project, the Funding Recipient having:
 - (i) obtained a Letter of Support and executed an agreement with that Partner Organisation in respect of such collaboration; and
 - (ii) provided the Department with a copy of such Letter of Support and executed agreement between the Funding Recipient and Partner Organisation; and
 - (d) if the Funding Recipient is an international non-government organisation seeking to establish an Australian-based entity to commercialise a clean technology not yet adopted in NSW, the Funding Recipient having:
 - (i) obtained a Letter of Endorsement from a Project Sponsor; and
 - (ii) provided the Department with a copy of such Letter of Endorsement; and
- (2) within 3 months after the Commencement Date:
- (a) the Funding Recipient commencing the Project, and notifying the Department in writing that it has commenced work on the Project. For the avoidance of doubt, the Parties agree that the Department may request the Funding Recipient provide evidence, to the Department's reasonable satisfaction, to confirm that work has commenced on the Project within such time period;
 - (b) if the Funding Recipient operates its business interstate or outside of Australia, the Funding Recipient establishing a presence in New South Wales, including:
 - (i) establishing an office in New South Wales; and
 - (ii) ensuring that Personnel that are integral to the delivery of the Project deliver the Project from New South Wales; and
 - (c) if:
 - (i) the Funding Recipient has indicated in its Funding Recipient Submission that it will engage Key Personnel to help deliver the Project; or
 - (ii) the Department reasonably determines that the Funding Recipient must engage any Key Personnel to help deliver the Project,

and such Key Personnel have not already been engaged prior to or during such 3 month period, the Funding Recipient entering into a formal agreement with such Key Personnel to help deliver the Project in accordance with any timetable for commencement of those Key Personnel set out in the Funding Recipient Submission or otherwise as reasonably notified by the Department, and providing evidence to the Department's reasonable satisfaction that it has done so,

(Conditions Precedent).

2.2 Satisfactions or waiver of Conditions Precedent

- (1) The Funding Recipient must use its reasonable endeavours to satisfy the Conditions Precedent, including using reasonable endeavours to procure the performance by any third parties to ensure that this occurs.
- (2) The Funding Recipient must keep the Department informed of any circumstances which may result in any Conditions Precedent not being satisfied or incapable of being satisfied.
- (3) The Funding Recipient must provide any evidence required by the Department to assure itself that such Conditions Precedent have been satisfied by the Funding Recipient. Only the Department can determine if the Conditions Precedent have been satisfied or waive a Condition Precedent.
- (4) This clause 2.2 does not impose any obligation on the Department to exercise a discretion or provide its approval in any way.

2.3 Termination

If the Conditions Precedent are not waived or satisfied in accordance with this clause 2, the Department may, by giving written notice to the Funding Recipient after the respective dates described in clause 2.1, terminate this Deed.

2.4 Effect of termination

Notwithstanding any other provision under this Deed, if the Department terminates this Deed under clause 2.3, then, in addition to any other rights, powers or remedies provided by law:

- (1) each Party is released from the performance of its obligations under this Deed, other than clauses 18 and 20;
- (2) the Funding Recipient will have no Claims against the Department in connection with the termination of this Deed under clause 2.3; and
- (3) the Funding Recipient will repay any Funds received under clause 14.3 in full.

3 Term

Subject to the Funding Recipient satisfying its obligations under clause 2, the Parties acknowledge and agree that:

- (1) clauses 2, 6.1, 6.4, 6.8, 6.9, 6.10, 6.14, 7, 8, 9, 10, 11, 12, 16, 17, 18, 20, 21, 22, 23, 24, 27, 28 and 29 commence on the Commencement Date; and
- (2) upon satisfaction of the Conditions Precedent, the remaining provisions that are not otherwise specified in clause 3(1) will commence,

and will continue until the Completion Date (**Term**), unless terminated earlier in accordance with this Deed.

4 Department's obligations

- (1) The Department agrees to:
 - (a) where practicable, provide the Funding Recipient with information, relevant Department standards, policies and procedures, applicable to the Project; and
 - (b) process the Funds in a timely, efficient and responsible manner.

- (2) Nothing in clause (1) limits or affects the Funding Recipient's obligations under the Deed or the Department's exercise of its statutory functions or powers.

5 Project

5.1 Delivering the Project

- (1) The Funding Recipient agrees to deliver the Project in accordance with the terms of this Deed:
- (a) in a manner that is consistent with, and in furtherance of, the Project Objectives;
 - (b) in accordance with the Project Requirements;
 - (c) subject to clause 5.2, to satisfy the Milestones and provide the Milestone Deliverables in accordance with the timeframes stated in Item 1 of Schedule 1 – Project Plan;
 - (d) in accordance with the Grant Guidelines, Project Plan, Risk Management Plan, Project Governance Plan and Budget; and
 - (e) in a proper, timely and efficient manner and to a high ethical and professional standard.

5.2 Variation to Milestones and Milestone Dates

- (1) Upon the Funding Recipient becoming aware, or forming a reasonable suspicion, that it will not be able to comply with clause 5.1(1)(c), the Funding Recipient must provide to the Department a Variation Report in accordance with Schedule 2 – Reports containing any proposed variations to a Milestone, Milestone Deliverable or Milestone Deliverable Due Date for the Department's prior written approval.
- (2) The Variation Report must be provided no less than 30 Business Days prior to the Milestone Deliverable Due Date to which the variation relates. Promptly following the receipt of a Variation Report requesting a variation to any Milestone, Milestone Deliverable or Milestone Deliverable Due Date, the Department may, in its absolute discretion:
- (a) agree to the requested variation, in which case the Department will prepare, and deliver to the Funding Recipient a deed in substantially the same form as the document set out in Schedule 5 which reflects the agreed variations (**Deed of Variation**);
 - (b) propose changes to the requested variation and require the Funding Recipient to submit an updated Variation Report; or
 - (c) reject the requested variation.
- (3) The Department is under no obligation to accept any variation requested by the Funding Recipient in accordance with clause 5.2, and may withhold or condition its entry into a Deed of Variation in its absolute discretion, including where:
- (a) it believes that the requested variation to a Milestone or Milestone Date is unreasonable; or
 - (b) it would result in the Completion Date occurring more than 3 years after the execution of this Deed by the Funding Recipient.
- (4) No Milestone, Milestone Deliverable or Milestone Deliverable Due Date will be varied other than as set out in a Deed of Variation which has been validly executed by both parties. The

Department will not be liable for any Claim arising out of or in connection with the exercise of any of its discretion under this clause 5.2.

5.3 **Project Steering Committee**

- (1) The Funding Recipient may establish a steering committee, group or body to oversee and/or coordinate the delivery of the Project by the Funding Recipient (**Project Steering Committee**).
- (2) If a Project Steering Committee is established, the Parties acknowledge and agree that:
 - (a) the Funding Recipient must invite the Department to participate in the Project Steering Committee and notify the Department at least 10 Business Days prior to a Project Steering Committee meeting; and
 - (b) the Department may, in its absolute discretion, send a representative or observer to participate in or observe at a Project Steering Committee meeting.
- (3) The Funding Recipient acknowledges and agrees that neither the Department nor any Department representative or observer will have any liability to the Funding Recipient in connection with their participation and attendance at a Project Steering Committee meeting. For the avoidance of doubt, the Department's participation or attendance at a Project Steering Committee meeting does not reduce or remove the Funding Recipient's liability under this Deed.

5.4 **Project Governance Plan**

- (1) While carrying out the Funding Recipient's obligations under this Deed, the Funding Recipient must comply with the Project Governance Plan.
- (2) The Funding Recipient must review and update the Project Governance Plan with its Partner Organisations and provide a report outlining the updates and changes (if applicable) in accordance with Schedule 1 – Project Plan or at such times as reasonably required by the Department.
- (3) If the Funding Recipient wishes to make any material change to the Project Governance Plan during the Funding Period, it must provide an updated version of the Project Governance Plan containing such changes to the Department's Representative for the Department's prior written approval. No changes to the Project Governance Plan will be effective until such time as the Department has provided its written approval to such changes (which may be communicated by email from the Department's Representative). If the Funding Recipient wishes to make any other changes to the Project Governance Plan, it must ensure that the Department is notified in writing (which may be communicated by email to the Department's Representative) as soon as practicable and otherwise within 30 days after the change occurring, however such changes will not require the approval of the Department to be effective.

5.5 **Risk Management Plan**

- (1) While carrying out the Funding Recipient's obligations under this Deed, the Funding Recipient must comply with the Risk Management Plan.
- (2) The Funding Recipient must review and update the Risk Management Plan and provide a report outlining such changes to the Risk Management Plan in accordance with Schedule 1 – Project Plan or at such times as reasonably required by the Department to address any development or potential development of risks to the Project.
- (3) If the Funding Recipient makes any material changes to the Risk Management Plan, it must provide the latest version of the Risk Management Plan to the Department's Representative within 5 Business Days from the date that the Risk Management Plan was last updated.

6 Funding Recipient's obligations

6.1 General obligations

- (1) The Funding Recipient agrees to:
 - (a) comply with all applicable laws in connection with the performance of this Deed, including laws relating work health and safety, privacy, workplace relations and taxation;
 - (b) comply with all applicable standards and codes relevant to the Project;
 - (c) comply with the Grant Guidelines;
 - (d) deliver the Project on a non-discriminatory basis;
 - (e) use the Funds only for the Project and in accordance with the Budget;
 - (f) produce each Milestone Deliverable by its corresponding Milestone Deliverable Due Date except as otherwise notified under clause 5.2;
 - (g) exercise due care and skill in carrying out all activities for which it is responsible under this Deed and act in accordance with applicable professional ethics, principles and standards;
 - (h) while performing its obligations under this Deed, ensure that it and its Personnel have obtained and maintain all required qualifications, accreditations, licences, permits, registrations, consents or other approvals to carry out the Project **(Authorities)**;
 - (i) while performing its obligations under this Deed and carrying out the Project comply with:
 - (i) the conditions or requirements of any Authorities;
 - (ii) any policies, procedures and directions as required by the Department from time to time; and
 - (iii) the terms and conditions contained in this Deed;
 - (j) immediately notify the Department upon becoming aware of any fact, matter or circumstance that may:
 - (i) amount to a breach of a condition or requirement of this Deed or an Authority; or
 - (ii) cause the Funding Recipient to fail to maintain an Authority in accordance with clause 6.1(1)(h);
 - (k) notify the Department if it is listed on the Department of Foreign Affairs and Trade sanctions list;
 - (l) monitor, review and evaluate the Project as required by the Department; and
 - (m) at all times to act in good faith in its dealings with the Department in relation to this Deed.

- (2) If the Funds are used to build or improve the Funding Recipient's Infrastructure, the Funding Recipient must:
 - (a) make that Infrastructure available to the public, including research institutes, businesses and individuals, with a genuine need to access that Infrastructure; and
 - (b) use all reasonable endeavours to ensure that there are resources available to allow third parties access to the Infrastructure in accordance with 6.1(2)(a).

6.2 Accuracy of information provided to the Department

- (1) The Funding Recipient represents and warrants that:
 - (a) **(Funding Recipient Submission)**: all information in the Funding Recipient Submission provided to the Department:
 - (i) is true, correct and complete in all material respects; and
 - (ii) is not misleading,at the time of execution of this Deed; and
 - (b) **(no misleading information)**: all information provided to the Department under this Deed (except in the Funding Recipient Submission):
 - (i) is true, correct and complete in all material respects; and
 - (ii) is not misleading,at the time:
 - (iii) given to the Department; and
 - (iv) on the date each Funds Request Form is submitted (other than to the extent that the Funding Recipient has given the Department prior notice in writing otherwise),noting that, without limiting the foregoing, the Funding Recipient must within 5 Business Days provide written notice to the Department if it becomes aware that a representation given at an earlier point in term subsequently become false, incorrect, not complete in all material respects or misleading.

6.3 Access to premises

The Funding Recipient agrees to give the Department or any persons authorised in writing by the Department:

- (1) access to any premises where the Project is being performed and/or where Material relating to the Project is kept, provided that any persons who enter onto such premises comply with the reasonable directions of the Funding Recipient (or the owner of those premises) in relation to work health and safety; and
- (2) permission to inspect and take copies of any Material relevant to the Project (which, for the avoidance of doubt, shall be kept subject to any applicable confidentiality obligations in respect of Confidential Information),

within the time periods specified by the Department in its reasonable discretion.

6.4 Reportable Complaints

- (1) The Funding Recipient must immediately provide Notice to the Department if, during the Term, the Funding Recipient becomes aware of an allegation or complaint made by a person in relation to the Project that raises a reasonable suspicion of unsafe practices, inappropriate or unlawful or unethical behaviour, wage claims, potential breaches of professional standards, discrimination or negligence (**Reportable Complaint**).
- (2) The Funding Recipient must immediately provide Notice of a Reportable Complaint to the relevant regulatory body that monitors, enforces or regulates the act or omission being raised in the Reportable Complaint.
- (3) The Funding Recipient must immediately provide Notice to the Department if it is notified by any regulatory body that it has received a Reportable Complaint. Such Notice must describe in detail, to the extent reasonably satisfactory to the Department, the Reportable Complaint, the Funding Recipient's proposed actions to address that Reportable Complaint and how it affects the Funding Recipient's ability to comply with this Deed.

6.5 Reports and information

- (1) The Funding Recipient must:
 - (a) prepare and submit to the Department each Report by its corresponding Report Due Date as set out in Schedule 2 – Reports, with the Reports being in such format and including such information as may be reasonably required by the Department;
 - (b) prepare and submit to the Department an interim Report if the Project ends prematurely or if there are significant changes to the Project;
 - (c) if requested by the Department or set out in Schedule 2 – Reports, provide information to the Department regarding the outcomes of the Project up to 5 years after submitting the Final Report; and
 - (d) participate in meetings, conferences, seminars, workshops, surveys and/or interviews, including delivering briefings to the Department and other relevant industry forums required by the Department for the purpose of sharing knowledge about the Project and Project outcomes.
- (2) During the Term, the Department may ask the Funding Recipient for ad-hoc reports and any data or information relating to the Project. The Funding Recipient must provide such reports and information in accordance with the timeframes required by the Department.
- (3) If the Funding Recipient, acting reasonably, is not able to comply with a request under clause 6.5(2) for any reason, the Funding Recipient must notify the Department in writing stating why the required reports and data are unavailable. Such notification must be submitted within 10 Business Days of the Department's request. The Department may, in its absolute discretion, withdraw the request or require the Funding Recipient to take such reasonable additional steps as the Department directs to allow the Funding Recipient to comply with such request.
- (4) The Funding Recipient must ensure that:
 - (a) any Report or information required to be submitted under this clause 6.5 (**Submitted Material**) has been certified as accurate and complete by the Funding Recipient Representative prior to submission; and
 - (b) if the Submitted Material contains Personal Information, it has obtained the relevant consents to disclose such Personal Information to the Department.

- (5) The Funding Recipient must prepare any Submitted Material to the Department's satisfaction in accordance with the requirements of this Deed. If the Department is not satisfied with any Submitted Material, the:
 - (a) Department may return the Submitted Material to the Funding Recipient with instructions for amendment; and
 - (b) Funding Recipient must amend and re-submit to the Department the Submitted Material in the time specified by the Department, or if no time is specified, within a reasonable time.

6.6 Use of AI

- (1) The Funding Recipient acknowledges that the Department must comply with obligations on the use of AI by Government Bodies.
- (2) The Funding Recipient:
 - (a) agrees that the Funding Recipient is wholly responsible for ensuring the accuracy, truthfulness, and completeness of any information or data which it gives to the Department under this Deed regardless of whether any AI or third party tools were used in preparing the information or data;
 - (b) warrants and represents to the Department that any information or data given to the Department under this Deed which is prepared wholly or in part using AI has been, thoroughly reviewed and validated by a physical person at the Funding Recipient to ensure the accuracy, completeness and alignment of the information and data with the intent and activities of the Project; and
 - (c) acknowledges and agrees that a failure to comply with this clause 6.6 is a breach of this Deed and the Department may terminate this Deed under clause 21.3.
- (3) For the purposes of this clause 6.6, the information or data provided to the Department under this Deed includes (but is not limited to) the following:
 - (a) ad-hoc reports, information or data requested under clause 6.5(2);
 - (b) Reports; and
 - (c) Submitted Material.

6.7 Knowledge sharing

- (1) The Funding Recipient must provide, at its own cost and not from the Funds, the Department with a Report within no later than 30 Business Days after the expiry or termination of this Deed explaining in general terms the information, knowledge and lessons learnt (both positive and negative) by the Funding Recipient, its Personnel, and Approved Subcontractors and their Personnel, from the Project.
- (2) The Funding Recipient agrees to provide, at its own cost and not from the Funds, the Department with any Reports on topics or activities related to the Project that:
 - (a) the Department reasonably requires from time to time during the Term; or
 - (b) are included as Milestone Deliverables for a Project Objective (where applicable).
- (3) The Funding Recipient acknowledges and agrees that:

- (a) it is the Funding Recipient's responsibility to ensure that any Reports provided to the Department under this clause 6.6 do not contain the Funding Recipient's Confidential Information;
- (b) any Reports provided under this clause 6.6 may be publicly released by the Department; and
- (c) all information contained in such Reports is true, accurate and correct.

6.8 Sharing Submitted Materials with third parties

Notwithstanding clause 20, the Funding Recipient acknowledges and agrees that certain information contained in the Submitted Material may be published or shared with third parties to:

- (1) monitor and evaluate the effectiveness of the Project;
- (2) publish results from the Project, including on the Department's website; and
- (3) inform the development of future government policies and programs.

6.9 Publication and sharing of Project information

- (1) Notwithstanding clause 20, the Funding Recipient acknowledges and agrees that the Department may publicly announce and/or publish the following information associated with successful Projects:
 - (a) name of Project, description of the Project and its aims;
 - (b) name of Funding Recipient;
 - (c) location or contact address of Funding Recipient;
 - (d) location of the Project;
 - (e) amount of Funds awarded; and
 - (f) the term of the funding deed in relation to the Project.
- (2) The Department may also share or publish information about any Project as required by applicable law, regulations or policies (as amended from time to time).

6.10 Funding Recipient's responsibility

The Funding Recipient remains fully responsible for delivering any activities under the Project and for otherwise complying with its obligations under the Deed and will not be relieved of that responsibility because of:

- (1) the Department's involvement in the Project;
- (2) any payment (or non-payment) of the Funds to the Funding Recipient;
- (3) the Department's approval of an event specified in clause 18; or
- (4) any permitted subcontracting arrangements to deliver the Project.

6.11 Insurance

The Funding Recipient must:

- (1) take out and maintain the Required Insurances;
- (2) provide evidence of the Required Insurances, if requested by the Department; and
- (3) ensure that any third party subcontracted to deliver the Project also takes out and maintains the Required Insurances.

6.12 Records

- (1) The Funding Recipient must keep and maintain proper and adequate books of account and records of the performance of the Project and the Funding Recipient's receipt and expenditure of Funds which are accurate, complete and subject to any law, are kept for a minimum of 7 years from the Completion Date. Without limiting this clause 6.12(1), all financial transactions incurred by the Funding Recipient in the conduct of the Project must be identifiable in the Funding Recipient's books of account.
- (2) The Funding Recipient must within 15 Business Days of a request being made by the Department or the NSW Auditor General, provide:
 - (a) a financial statement itemising the receipt and use of the Funds for the Project that is signed by the Funding Recipient verifying that the Funds have been spent in accordance with the Deed; and
 - (b) such other certification as may be required by the Department or the NSW Auditor General in connection with this Deed.

6.13 Evaluation of the Project

- (1) The Funding Recipient acknowledges that it will be required to participate in an evaluation after the Project has commenced. The Funding Recipient must provide evidence, as requested by the Department, which shows how the Project has resulted in measurable benefits consistent with the objectives of the Clean Technology Innovation Grant Program.
- (2) In addition, the Funding Recipient acknowledges that the Department may use:
 - (a) any Submitted Material;
 - (b) information obtained from the Funding Recipient and its Personnel and Partner Organisations;
 - (c) information from the Funding Recipient Submission; and
 - (d) such other information as determined by the Department,
 to evaluate the outcomes of the Project against the Project Objectives.
- (3) The Funding Recipient must, in good faith, cooperate with the Department's request for information or access to the Funding Recipient's premises (provided that persons who enter onto such premises must comply with the reasonable directions of the Funding Recipient (or the owner of those premises) in relation to work health and safety) or Personnel so that the Department can evaluate the outcomes of the Project against the Project Objectives.
- (4) The Funding Recipient acknowledges and agrees that if the Department identifies any deficiencies in the Funding Recipient's performance during the Term, the Department may (at its absolute discretion) issue the Funding Recipient with a corrective action plan. The Funding Recipient must follow any corrective action plan as required by the Department to ensure the Project is delivered in accordance with the Project Objectives.

6.14 Project Sponsor

- (1) This clause 6.14 only applies to the Funding Recipient if it is an international organisation.
- (2) If the Funding Recipient is an international organisation, it must ensure that the Project Sponsor continues to sponsor the Project for the Term.
- (3) If the Project Sponsor terminates its sponsorship at any time during the Term, the Funding Recipient must immediately notify the Department.
- (4) The Funding Recipient must, within 30 Business Days of being notified by a Project Sponsor of the termination of its sponsorship, find a replacement Project Sponsor and provide the Department with:
 - (a) such details as may be required by the Department in respect of the replacement Project Sponsor; and
 - (b) a Letter of Endorsement from the replacement Project Sponsor.
- (5) The Department may terminate this Deed immediately if the Funding Recipient does not comply with this clause 6.14.

6.15 Project Completion

The Project must be completed within no more than 3 years after the execution of this Deed by the Funding Recipient.

7 Partner Organisations

7.1 General

If the Funding Recipient is delivering the Project with a Partner Organisation, the Funding Recipient:

- (1) must lead the Project and co-ordinate the delivery of the Project with each Partner Organisation;
- (2) is not relieved of any of its obligations under this Deed and remains liable to the Department for the acts, defaults and neglect of each Partner Organisation as if they were the acts, defaults or neglect of the Funding Recipient; and
- (3) must enter into a written agreement with each Partner Organisation in accordance with clause 2.1(1)(c).

7.2 Quality of Partner Organisation

The Funding Recipient must ensure that a Partner Organisation is suitably qualified, skilled, knowledgeable, experienced and competent to deliver the Project.

7.3 Arrangements to be consistent with this Deed

Prior to any Partner Organisation providing any of its services to deliver the Project, the Funding Recipient must ensure that its agreement with the Partner Organisation:

- (1) is consistent with the terms and conditions of this Deed as they relate to the Partner Organisation and the role the Partner Organisation will play to deliver the Project;
- (2) prohibits the Partner Organisation from subcontracting its services without the Department's prior written consent; and

- (3) includes a right for the Funding Recipient to terminate its agreement with the Partner Organisation on the expiry or termination of this Deed.

7.4 Responsibility for Partner Organisation

The Funding Recipient remains fully responsible for, and will be liable for the services delivered by, the Partner Organisation in connection with the Project, and indemnifies the Department in respect of the acts and omissions of all Partner Organisations in connection with the Project as if they were acts or omissions of the Funding Recipient.

8 Key Personnel

8.1 Appointment of Key Personnel

- (1) The Funding Recipient acknowledges that each of its Key Personnel is critical to the delivery of the Project. As such, the Funding Recipient must:
 - (a) ensure that each of its Key Personnel is located in New South Wales, except as otherwise agreed in writing by the Department in its absolute discretion;
 - (b) provide the Department with information regarding each of its Key Personnel's experience, credentials, employment history and any information as reasonably required by the Department; and
 - (c) ensure that each of its Key Personnel is made available to perform their respective roles and responsibilities, including as set out in Item 3 of Schedule 1 – Project Plan.
- (2) The Funding Recipient must ensure that its engagement of any of its Key Personnel who is an Experience Executive complies with the Experienced Executive Conditions.

8.2 Removal of Key Personnel

The Funding Recipient will not remove any of its Key Personnel unless:

- (1) the Key Personnel is no longer available to carry out the Funding Recipient's activities under the Deed due to personal circumstances (including compassionate leave, carers' leave, or other extended leave, termination of employment by the Funding Recipient or resignation); or
- (2) the Funding Recipient has obtained the Department's prior written approval to such removal (to be provided in the Department's absolute discretion); or
- (3) the Department, acting reasonably and in its discretion, gives written notice to the Funding Recipient to remove and replace such Key Personnel.

8.3 Replacement of Key Personnel

- (1) If the Funding Recipient is required to replace any of its Key Personnel in accordance with clause 8.2, the Funding Recipient must find a replacement personnel within 30 Business Days from the date that Key Personnel ceases work on the Project and must ensure that the replacement personnel is:
 - (a) approved in writing by the Department prior to such replacement occurring; and
 - (b) of equal or superior ability to, and have the required experience of, the outgoing Key Personnel.

- (2) The Funding Recipient must ensure that it (and where appropriate, its outgoing Key Personnel) effects a process that minimises any adverse impact on, or delay in, the delivery of the Project where there is a change in Key Personnel.
- (3) The process for replacing and transitioning the replacement of Key Personnel by the Funding Recipient must be performed as expeditiously as possible with regard to the Funding Recipient's Milestone Deliverables, the Milestone Deliverable Due Dates and other timeframes under this Deed, and to the reasonable satisfaction of the Department.
- (4) The Funding Recipient will be solely responsible for complying with this clause 8, including finding and replacing any Key Personnel.

8.4 Responsibility for Key Personnel

The Funding Recipient remains fully responsible for, and will be liable for the services delivered by, any of its Key Personnel in connection with the Project, and indemnifies the Department in respect of the acts and omissions of all of its Key Personnel in connection with the Project as if they were acts or omissions of the Funding Recipient.

9 Audit

- (1) Notwithstanding the rights of any other Government Bodies (including the NSW Auditor General), the Department or its nominee may, on giving 5 Business Days written Notice to the Funding Recipient:
 - (a) access the premises of the Funding Recipient;
 - (b) inspect and take copies of records and documentation (however stored) in the custody or control of the Funding Recipient related to this Deed;
 - (c) require the Funding Recipient or its Personnel to provide full and accurate answers to any questions concerning any records or information related to this Deed;
 - (d) require the Funding Recipient to have its books of account in relation to its receipt and expenditure of the Funds audited, and provide a copy of the audited accounts to the Department within 60 days of receipt of the Notice under this clause; and
 - (e) undertake its own audit to ensure the Funding Recipient has sound planning, governance and management practices to satisfy its obligations under this Deed.
- (2) The Funding Recipient must grant reasonable access and assistance to:
 - (a) the Department;
 - (b) an independent auditor, appointed by the Department; or
 - (c) the NSW Auditor General,

as the case may be, to undertake any audit referred to in clause 9(1), provided that any persons accessing the Funding Recipient's premises under this clause 9 must comply with any reasonable directions from the Funding Recipient in relation to work healthy and safety.
- (3) Without limiting any other provision of this Deed, if an audit undertaken pursuant to this clause 9 reveals that the Funding Recipient has not (in the Department's reasonable opinion) complied with the requirements of this Deed:
 - (a) the Department may exercise any rights available under clause 21;

- (b) the Funding Recipient must reimburse the Department for the costs of carrying out such an audit and any subsequent audit to confirm rectification of the non-compliance; and
 - (c) if the Department carries out a subsequent audit to confirm rectification of the non-compliance and such subsequent audit reveals that the Funding Recipient has not (in the Department's reasonable opinion) rectified the non-compliance, the Department may immediately terminate this Deed by providing Notice to the Funding Recipient.
- (4) For the purposes of this clause 9, an audit may include verification by a third party auditor or expert consultant of any of the Funding Recipient's technical, financial and other work contained in a Report or Submitted Material given to the Department under this Deed.
 - (5) The Funding recipient agrees that it is responsible for ensuring any information provided to the Department or its nominee for the purposes of this clause 9 is appropriately designated to indicate the level of confidentiality of the information, including where the information is:
 - (a) commercially sensitive or contains proprietary Intellectual Property Rights; and
 - (b) Confidential information which is subject to clause 20.

10 Conflict of Interest

- (1) The Funding Recipient warrants that to the best of its knowledge, information and belief, no Conflict of Interest exists or is likely to arise in the performance of the Deed.
- (2) The Funding Recipient must notify the Department promptly of any actual, perceived or potential Conflicts of Interest which could affect the performance of this Deed and agrees to comply with any reasonable written instructions of the Department to resolve or otherwise manage any Conflict of Interest.
- (3) The Department may immediately terminate this Deed if the Funding Recipient fails to notify it of a Conflict of Interest or does not resolve the Conflict of Interest to the reasonable satisfaction of the Department.

11 Notifiable incidents

The Funding Recipient must notify the Department immediately of any of the following:

- (1) any matter which would cause any information, statement, forecast or representation in the Funding Recipient Submission to become untrue, or inaccurate;
- (2) when it becomes aware of Alleged Misconduct or a Serious Incident in relation to the delivery of the Project;
- (3) any serious complaints received in relation to the delivery of the Project;
- (4) the occurrence of any event which may cause adverse publicity in relation to the Project or the NSW Government;
- (5) another NSW Government body or agency terminates an arrangement with the Funding Recipient under which it receives funding;
- (6) any current, pending or threatened Reputational Proceedings;
- (7) any Claim involving the Funding Recipient which may adversely affect:

- (a) the operation or financial position of the Funding Recipient; or
- (b) the Funding Recipient's ability to perform its obligations under this Deed;
- (8) any dispute between the Funding Recipient and any of its Key Personnel or Partner Organisation (as the case may be) that may detrimentally affect the Funding Recipient's delivery of the Project; or
- (9) any material changes to the Risk Management Plan or Project Governance Plan that is likely to negatively impact the Funding Recipient's ability to deliver the Project or comply with its obligations under this Deed.

12 Work health and safety

- (1) The Funding Recipient must comply at all times with all applicable work health and safety legislative and regulatory requirements.
- (2) If requested by the Department, the Funding Recipient agrees to provide copies of its work health and safety management plans and processes and such other details of the arrangements it has in place to meet the requirements referred to in clause 12(1).

13 Project Assets and Capital Works

13.1 Acquiring of Project Assets

The Funding Recipient agrees not to use the Funds to purchase, lease or otherwise acquire any Project Assets for the Project unless:

- (1) it is an Asset stated in Schedule 3 – Project Assets and Capital Works and it is in accordance with any allocation of the Funds set out in the Budget for that purpose; or
- (2) the Department has given its prior written approval and the Funding Recipient complies with any conditions placed on that approval.

13.2 Ownership of Project Assets

The Funding Recipient agrees that it must be the legal and beneficial owner of the Project Assets purchased with the Funds unless it has obtained the prior written approval of the Department which will not be unreasonably withheld.

13.3 Use of Project Assets

- (1) The Funding Recipient must use the Project Assets for the primary purpose of delivering the Project and any other purposes that are consistent with the Milestone Deliverables and Project Objectives.
- (2) If the Funding Recipient wishes to use the Project Assets for a purpose that is not consistent with clause 13.3(1) (**Secondary Purpose**) then it must notify the Department and obtain the Department's prior written approval.
- (3) The Funding Recipient acknowledges and agrees that the Department is entitled to adjust the amount of the Funding by such amount as reasonably determined by the Department if the Project Assets are used for a Secondary Purpose.

13.4 Obligations in relation to Project Assets

- (1) The Funding Recipient agrees to:

- (a) Comply with all obligations relating to the Project Assets stated in Schedule 3 – Project Assets and Capital Works, including any Additional Conditions;
 - (b) ensure that it obtains value for money in the procurement of Project Assets and related activities;
 - (c) maintain the Project Assets in good working order;
 - (d) be fully responsible for, and bear all risk in relation to, the use and disposal of the Project Assets;
 - (e) maintain all appropriate insurances in respect of the Project Assets:
 - (i) including to ensure that Project Assets required for any Milestones (where applicable) are delivered in a manner which allows the Funding Recipient to meet Milestone Deliverable Due Dates; and
 - (ii) if requested by the Department, provide certificates or other sufficient evidence to satisfy the Department that such insurances have been procured and maintained, and diligently pursue any claim under those insurances;
 - (f) maintain and keep up-to-date a Project Asset Register in respect of the Project Assets and provide a current Project Asset Register to the Department as reasonably required from time to time;
 - (g) maintain all necessary registrations, approvals and licences in respect of the Project Assets;
 - (h) maintain accurate and complete records, materials, information and documentation in relation to the procurement of any Project Assets;
 - (i) if a Project Asset is used for a Secondary Purpose, keep a record of such use of that Project Asset; and
 - (j) not dispose of, deal with or encumber the Project Assets other than in accordance with this clause 13.4, without the prior written approval of the Department.
- (2) If the Funding Recipient has received written approval from the Department to dispose of a Project Asset during the Term, the proceeds must be treated as part of the Funds and used for the purposes of the Project.

13.5 Depreciation of Project Assets

The Funding Recipient must depreciate the Project Assets in accordance with applicable Australian Accounting Standards.

13.6 Capital Works

- (1) The Funding Recipient must not use the Funds for Capital Works or General Infrastructure, without the prior written approval of the Department.
- (2) Any approval under clause 13.6(1) may be subject to Additional Conditions or requirements under this Deed or as otherwise determined by the Department.
- (3) The Funding Recipient accepts all risk in respect of the design, construction and commissioning of any Capital Works, including any risk of:
 - (a) the cost of the design, construction and commissioning of the Capital Works being greater than expected;

- (b) the design, construction and commissioning of the Capital Works not being completed in accordance with the requirements of any contract between the Funding Recipient and a contractor;
- (c) any liabilities arising in connection with:
 - (i) workplace health and safety;
 - (ii) environmental issues;
 - (iii) payments to contractors and subcontractors; and
 - (iv) Claims by any third parties; and
- (d) compliance with all laws relating to the Capital Works.

13.7 Audit of Project Assets and Capital Works

Notwithstanding any other provision under this Deed, the Department (or its nominee) may carry out, upon providing reasonable notice to the Funding Recipient, an audit of the Funding Recipient's compliance with clause 13.

13.8 Adjustment of Funds

Notwithstanding any other provision under this Deed, if an audit undertaken pursuant to clause 13.7 reveals that the Funding Recipient has not (in the Department's reasonable opinion) materially complied with the requirements under clause 13, the Department may adjust any payments to the Funding Recipient in the future (**Fund Adjustment**). If the Funding Recipient does not accept the Fund Adjustment, the adjustment will be resolved in accordance with clause 24.

14 Financial arrangements

14.1 Use of Funds by the Funding Recipient

- (1) The Funding Recipient agrees to use the Funds:
 - (a) only for the purpose of delivering the Project and in accordance with the Deed;
 - (b) at all times in accordance with the Grant Guidelines; and
 - (c) prior to the Completion Date, and otherwise in accordance with any time periods stated in Item 1 of Schedule 1 – Project Plan for expenditure of the Funds, as varied from time to time in accordance with clause 5.2.
- (2) The Funding Recipient may:
 - (a) use the Funds to pay for Direct Project Expenses;
 - (b) pay for reasonable Travel Expenses provided that those expenses are set out in the Budget or if they are not set out in the Budget, with the prior written approval of the Department; and
 - (c) pay an amount of the Funds to a third party after the Completion Date provided that the amount was Committed before the Completion Date in accordance with the Budget (if any) and this Deed.

14.2 What the Funds must not be used for

- (1) The Funding Recipient must not use the Funds:

- (a) to make a loan, advance, donation, commission, gift or similar benefit for any purpose;
- (b) to make repayments of existing loans, investments or debts;
- (c) to acquire land and/or property;
- (d) to provide security for any purpose;
- (e) to pay fees or expenses, including sitting fees, to any board member, non-executive director or non-executive committee members of the Funding Recipient;
- (f) to pay legal fees or settle any Claim, order or judgment against the Funding Recipient, staff or board members. For the avoidance of doubt, this includes the costs to defend any Intellectual Property Rights;
- (g) to pay legal fees associated with setting up any entity or consortium;
- (h) to make any termination of employment or redundancy payments;
- (i) to pay the labour costs of existing positions within the Funding Recipient's business;
- (j) to pay for activities carried out or Committed before the Commencement Date;
- (k) to pay for expenditure that does not directly support the successful completion of the Project;
- (l) for Ordinary Business Expenses;
- (m) for projects aimed at developing new technology for the Funding Recipient's internal use;
- (n) to pay for infrastructure and equipment that can reasonably be assumed to be integral to the Funding Recipient's core business as determined by the Department, excluding the Project Assets; and
- (o) to pay for audit costs.

14.3 **Payment of Funds**

- (1) The Department will:
 - (a) withhold 5% of the Funds and will only release those withheld Funds at the conclusion of the Project upon the Funding Recipient delivering the Final Report to the Department's satisfaction; and
 - (b) subject to the satisfactory progress of the Project as determined by the Department in its absolute discretion, pay the Funds at the times, and in the amounts, stated in Item 1 of Schedule 1 – Project Plan in accordance with clause 14.4.
- (2) The Funding Recipient acknowledges that the Department may by Notice setting out details of the changes, vary the timing or amount of Funds payable in respect of any Milestone where, in the Department's absolute discretion, the Funding Recipient has met only part of that Milestone. In such cases, the Department may in its absolute discretion:
 - (a) choose to pay the Funding Recipient only the Funds which it determines, in its absolute discretion, are attributable to the completed portion of the Milestone; and

- (b) defer the payment of any remaining amount of the Funds until the remaining portion of the Milestone has been completed, provided that if such completion does not occur within what the Department considers, in its absolute discretion, to be a reasonable time following the original due date for the Milestone (or such varied date as has been agreed under clause 5.2), the Department is not required to make any further payment under this clause 14.3(2).
- (3) The Department will not be liable for any Claim arising out of or in connection with the exercise of its discretion under this clause 14.3
- (4) The Funding Recipient agrees that payment of all or part of the Funds is not an admission by the Department that the Funding Recipient has met its obligations under the Deed to the reasonable satisfaction of the Department.

14.4 Funds Request Form

- (1) Upon completion of a Milestone by its corresponding Milestone Deliverable Due Date, the Funding Recipient must submit a Financial Report and Funds Request Form for the payment of Funds within a reasonable time after the completion of the relevant Milestone.
- (2) The Department must, within 30 Business Days of its receipt of a Funds Request Form and all other information as reasonably required to determine whether or not the Funding Recipient is entitled to the next payment of Funds, provide the Funding Recipient with a notice:
 - (a) confirming whether or not the Funding Recipient is entitled to the next payment of Funds, including whether there will be an adjustment of Funds; or
 - (b) if the Department has determined that the Funding Recipient is not entitled to the next payment of Funds, the reasons for that determination.
- (3) If the Department determines that the Funding Recipient is:
 - (a) not entitled to the next payment of Funds, then either Party must follow the dispute resolution process in clause 24; or
 - (b) entitled to the next payment of Funds, the Department will, within 30 Business Days, deposit the Funds payable into the Nominated Account.
- (4) The Department is not required to pay any Funds in connection with a Funds Request Form which:
 - (a) is not in compliance with this Deed;
 - (b) is not supported by evidence of expenditure to the satisfaction of the Department (in its absolute discretion);
 - (c) is presented in respect of any delayed Milestone which was not approved by the Department in accordance with clause 5.2;
 - (d) is presented, in the Department's sole discretion, an unreasonable period of time after the corresponding Milestone Deliverable Due Date; or
 - (e) which would result in the Funds paid to the Funding Recipient at any time exceeding 50% of Direct Project Expenses actually paid by the Funding Recipient.

14.5 Additional Funds

The Department will not provide the Funding Recipient with Funds or other financial assistance in excess of the total amount stated in Table 1 - Details or provide funding beyond the expiration or termination of the Deed.

14.6 Additional Co-contributions

- (1) Unless stated in Item 1 of Schedule 1 – Project Plan or the Department notifies the Funding Recipient otherwise, the Funding Recipient must not receive any financial assistance from a Commonwealth, State, Territory, local government body or third party for any activities in connection with the Project that are not specified as a Co-contribution in Item 1 of Schedule 1 – Project Plan without the prior written consent of the Department, which cannot be unreasonably withheld.
- (2) If the Department consents to the Funding Recipient receiving additional Co-contributions during the Term, the Funding Recipient must provide the Department with an amended Project Plan and Budget which takes into consideration such additional Co-contributions.

14.7 Nominated Account

The Funding Recipient must:

- (1) provide such details, as reasonably required by the Department, to confirm that the account to which Funds are to be paid is an account controlled by the Funding Recipient and held with an institution authorised under the *Banking Act 1959* (Cth) (the **Nominated Account**);
- (2) ensure the Funds in the Nominated Account are separately identified from Co-contributions; and
- (3) immediately notify the Department if the Nominated Account details change.

14.8 Interest

The Funding Recipient must:

- (1) ensure that all interest earned on the Funds will be used as if that interest is part of the Funds;
- (2) use the interest earned for the purposes of delivering the Project and in accordance with the Deed; and
- (3) provide the Department with a summary of the interest (if any) earned on the Funds.

14.9 Co-contributions

- (1) The Funding Recipient must provide or procure the Co-contributions in accordance with the Co-contribution Requirements.
- (2) The Funding Recipient must provide written confirmation to the Department that the Co-contributions are available, or have been received, from any third party for the Project as reasonably required by the Department from time to time.
- (3) Where the Funding Recipient has failed to, or believes it cannot, comply with clause 14.9(1), the Funding Recipient must:
 - (a) immediately notify the Department and provide an explanation as to why it cannot comply with clause 14.9(1); and

- (b) within 30 Business Days, secure alternative funding of the same amount and on the same conditions in place of the Co-contributions.
- (4) Upon receiving a Notice under clause 14.9(3), the Department may, at its absolute discretion:
 - (a) request changes to the Project, including reducing the scope of the Project and amending the Project Plan, Budget and Funds payable; or
 - (b) if the Funding Recipient does not, to the satisfaction of the Department, within 30 Business Days, secure alternative funding of the same amount and on the same conditions in place of the Co-contributions, terminate the Deed upon Notice to the Funding Recipient.

14.10 Unspent Funds at the Completion Date

The Funding Recipient agrees to repay to the Department any Unspent Funds (including any interest earned on such unspent Funds) remaining at the Completion Date within 20 Business Days following the Completion Date, unless the Department has given prior written approval (in its absolute discretion) for the Funding Recipient to retain the Unspent Funds.

14.11 Deferring or reducing payments

- (1) The Department may by Notice defer or withhold payment of any amount of the Funds where it reasonably believes that the Funding Recipient has not complied with this Deed or is unable to undertake or complete the Project.
- (2) The Department may, in its absolute discretion, pay the deferred or withheld Funds once the Funding Recipient has addressed, to the Department's satisfaction, the reasons contained in the Notice from the Department under clause 14.11(1).
- (3) Notwithstanding any other provision of this Deed, if the Department considers that any part of a previous payment has not been fully expended in accordance with this Deed, the Department may, at its absolute discretion, reduce the amount of any one or more future payments by a corresponding amount.
- (4) The Funding Recipient must continue to perform its obligation under this Deed notwithstanding any suspension or deferral of Funds in accordance with this clause 14.11.
- (5) The Department will not be liable for any Claim arising out of or in connection with the exercise of any of its rights under this clause 14.11.

14.12 Repayments of Funds

(1) Notice concerning Funds

If at any time the Department forms the reasonable opinion (regardless of whether it was discovered before or after the Completion Date) that:

- (a) any Funds remain unspent and have not been repaid in accordance with clause 14.10;
- (b) it has made an overpayment or incorrect payment of the Funds;
- (c) a claim for payment or a tax invoice has been incorrectly rendered by the Funding Recipient; or
- (d) the Funds have been spent other than in accordance with this Deed,

the Department may by giving Notice to the Funding Recipient:

- (e) require the Funding Recipient to repay that part of the Funds (including any interest earned on such part of the Funds) (**Refundable Amount**) within 20 Business Days of a request by the Department; or
- (f) recover that part of the Refundable Amount through set-off of that amount against any other Funds payable to the Funding Recipient under this Deed, or otherwise as a debt due and owing by the Funding Recipient to the Department.

(2) **Department's rights**

If the Funding Recipient fails to make payment required by a Notice under clause 14.12(1), the Funding Recipient will pay the Department interest on any unpaid amount calculated in accordance with the Interest Rates and the unpaid amount and the interest may be recovered by the Department as a debt payable on demand.

14.13 Future funding

The Funding Recipient acknowledges that the Department makes no representations about future funding and there is no obligation on the Department to provide future funding to the Funding Recipient in respect of any matter.

15 Goods and Services Tax

- (1) Words or expressions used in this clause that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act) have the same meaning as given to them in that Act. Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause. A reference to something done (including a supply made) by a Party includes a reference to something done by any entity through which that Party acts.
- (2) Unless otherwise stated, any amount specified in another provision of this Deed as the consideration payable for any supply does not include an amount on account of any GST payable in respect of that supply.
- (3) If a Party makes a taxable supply under this Deed (Supplier), then unless the consideration for that supply is expressly stated to be inclusive of GST, the Party providing consideration for the taxable supply (Recipient) must also pay, in addition to the consideration for that supply, an amount equal to the GST payable in respect of the taxable supply at the time the other consideration for the taxable supply is payable.
- (4) Notwithstanding clause 15(3) the Recipient is not obliged to pay any amount on account of GST to the Supplier under this Deed until the Supplier provides it with a valid tax invoice for the taxable supply.
- (5) If an adjustment event arises in relation to a supply made by a Supplier under this Deed, the amount paid or payable by the Recipient pursuant to clause 15(3) will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be. The Supplier must issue an adjustment note to the Recipient as soon as practicable after the occurrence of any adjustment event.
- (6) If a third party makes a taxable supply and this Deed requires a Party (Payer) to pay for, reimburse or contribute to (Pay) any expense or liability incurred by the other Party to that third party for that taxable supply, the amount the payer must Pay will be the total amount of the expense or liability less the amount of any input tax credit to which the other Party (or the representative member of any GST group of which that Party is a member) is entitled in respect of the expense or liability.

16 Publicity

- (1) The Funding Recipient agrees that any Public Statement must include an acknowledgment of the funding contribution and support provided by the Department as set out at <https://www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines/funding-acknowledgement-guidelines/funding-acknowledgement-statement>, as amended or replaced from time to time.
- (2) The Funding Recipient must not, and must ensure its Personnel and Approved Subcontractors do not, make any Public Statement in relation to this Deed or the Project without the prior written consent of the Department.
- (3) Despite any other provision of this Deed (and without limiting any other right the Department has under this Deed), the Funding Recipient consents to the Department publishing, or otherwise publicly disclosing:
 - (a) such information on the *NSW Government Grants and Funding Finder* portal as may be permitted via that portal to be completed;
 - (b) such information as may be permitted, required or specified under the *NSW Government Grants Administration Guide* (as amended from time to time) for publication in connection with this Deed;
 - (c) such information as may be required by law to be published in connection with this Deed, including in accordance with sections 27-35 of the GIPA Act; and
 - (d) in any case, and without limiting any rights of the Department, the name of the Project, the name of the Funding Recipient, contact number and address of Funding Recipient, location of the Project, amount of the Funds awarded under this Deed and general details of the Project, including details of the Partner Organisations, Key Personnel, Project Sponsor, Project Objectives, Project Requirements and outcomes of the Project.

17 Intellectual Property Rights

17.1 Ownership of Intellectual Property Rights

- (1) This Deed does not affect the ownership of Intellectual Property Rights in any Existing Material.
- (2) Intellectual Property Rights in any New Material and Submitted Material will be owned by the Funding Recipient.

17.2 Licence of Materials

- (1) The Funding Recipient grants to the Department a perpetual, irrevocable, worldwide, non-exclusive, royalty-free licence (including the right to sublicense) to use, reproduce, communicate, publish, modify and adapt:
 - (a) New Material and Submitted Material; and
 - (b) the Funding Recipient's Existing Material, but only in conjunction with the New Material and Submitted Material,for the purposes of this Deed and for any non-commercial use required by the Department, including external promotions and communications.
- (2) The Department grants the Funding Recipient a non-exclusive, royalty-free licence (including the right to sublicense) to use the Department's Existing Material provided by the

Department to the Funding Recipient under this Deed to the extent needed to allow the Funding Recipient to deliver the Project and comply with this Deed.

- (3) Each Party warrants to the other Party that it has the rights and authority to grant the licences in this clause 17.2 and the use of such Materials by the other Party will not infringe any third party's Intellectual Property Rights.
- (4) The Funding Recipient must obtain written Moral Rights consents (other than in relation to acts of false attribution) from all authors of New Material and Submitted Material to the use of such material by the Department in accordance with this Deed, prior to that Material being provided to the Department.
- (5) At the request of the Department, the Funding Recipient will provide the Department with copies of all Materials in a manner that allows the Department to enjoy the full benefit of this clause 17.2.
- (6) The Funding Recipient agrees to do all such things as may be required in connection with the New Material to allow the Department to enjoy the full benefit of the Project and the Deed.
- (7) The Funding Recipient will not accept any funding from a third party that would jeopardise or limit any right in this clause 17.2 without the prior written approval of the Department.

17.3 Indigenous Cultural and Intellectual Property

- (1) This clause 17.3 applies to the extent that any ICIP is created in connection with a Project.
- (2) The parties agree that the ownership of ICIP remains with the Aboriginal and Torres Strait Islander peoples, communities, custodians or traditional owners of the ICIP.
- (3) The Funding Recipient is required to ensure that it has the authority or the permission from the relevant Aboriginal and Torres Strait Islander peoples, communities, custodians or traditional owners to use the ICIP and will ensure that the Department has the right to use such ICIP to the extent that it is incorporated into any Materials created in connection with the Project which the Department is entitled to use or publish as permitted under this Deed.
- (4) The Department agrees to only use the ICIP for the purposes of this Deed and internal purposes and that any other use will require the prior written consent of the Funding Recipient ('additional consent'). At the request of the Department, the Funding Recipient will where reasonably practicable and necessary consult with the Aboriginal and Torres Strait Islander peoples, communities, custodians or traditional owners of any ICIP used under this Deed or for any Project Objectives to grant any additional consents.

18 Changes to corporate structure, service entities, and Change in Control

- (1) The Funding Recipient acknowledges that the Department assessed the Funding Recipient on the basis of the information set out in the Funding Recipient Submission, including that the Funding Recipient is the lead applicant in the Funding Recipient Submission. The Department's expectation in respect of any changes to information contained in the Funding Recipient Submission during the Term is that:
 - (a) the Funding Recipient will provide justification, to the reasonable satisfaction of the Department, as to why the changes are required and the impact on the Funding Recipient if such changes are not permitted; and
 - (b) changes will only be requested of the Department where there has been a material change to the Funding Recipient's circumstances.

- (2) The Funding Recipient warrants, at the time of entry into this Deed, that the Funding Recipient does not reasonably anticipate any change to its corporate structure, Related Entities, or utilisation of any service entity, which would amount to a change set out in clauses 18(3)(a)(i) to 18(3)(a)(iii) below which occurs on or after the date of the Funding Recipient's execution of this Deed.
- (3) The Funding Recipient must:
 - (a) notify the Department as soon as practicable after becoming aware that any of the following are reasonably likely to occur:
 - (i) a Change in Control of the Funding Recipient;
 - (ii) transfer of the Funding Recipient's obligations under this Deed to any service entity or any other entity established by the Funding Recipient wholly or in part for the purpose of performing the Funding Recipient's obligations under this Deed; or
 - (iii) change of the Funding Recipient's name (regardless of whether the change of name results in the Funding Recipient becoming a new legal entity); and
 - (b) obtain the prior written approval of the Department in respect of any changes set out in clauses 18(3)(a)(i) to 18(3)(a)(iii) which occur on or after the date of the Funding Recipient's execution of this Deed,
- (4) The Funding Recipient must provide the Department with any information reasonably requested by the Department to allow the Department to assess whether to provide its approval under this clause 18, including:
 - (a) providing updated information as to the Funding Recipient and Project governance structure following the proposed change; and
 - (b) for the purposes of due diligence being carried out by an approved third-party organisation on any incoming entity.

Such approval is in the Department's sole discretion and may be subject to conditions, including:

 - (c) requiring that any person acquiring control of the Project or the Funding Recipient enters into a parent company guarantee or other deed, with the form and substance acceptable to the Department, in respect of the Funding Recipient's obligation under this Deed; and
 - (d) requiring the execution of a new funding deed, or a variation to complement the existing Funding Deed, as required by the Department.
- (5) In the event of any investor activity in the Funding Recipient which does not amount to a Change in Control, the Funding Recipient warrants that such investor activity will not adversely affect any commitments made by the Funding Recipient to the Department in connection with the Project (including under the Funding Recipient Submission).

19 Privacy

- (1) If the Funding Recipient collects or has access to any Personal Information in connection with the performance of this Deed, the Funding Recipient must:
 - (a) comply with the Privacy Act in relation to the performance of those obligations as if the Funding Recipient was the Department; and

- (b) fully cooperate with the Department to enable the Department to respond to applications for access to, or amendment of, a document containing any Personal Information and any privacy complaints.
- (2) The Funding Recipient must procure that the Funding Recipient's Personnel and Approved Subcontractors comply with clause 19(1) to the extent that they collect or have access to any Personal Information in connection with the performance of this Deed.

20 Confidential Information

- (1) Each Party must:
 - (a) keep the Confidential Information of the other Party confidential and secure;
 - (b) not use or copy the Confidential Information of the other Party for any purpose other than to perform that Party's obligations or exercise that Party's rights under this Deed;
 - (c) only allow access to the Confidential Information of the other Party to the officers, employees, agents and professional advisers of that Party who have a need to know the Confidential Information and who are bound by obligations of confidence to that Party to at least the standard contemplated by this clause (1);
 - (d) not disclose the Confidential Information of the other Party to any third party; and
 - (e) not use the Confidential Information of the other Party to the disadvantage of that other Party.
- (2) The obligations of confidence contemplated by clause 20(1) do not apply to the extent that the Confidential Information is required to be disclosed under applicable law.
- (3) Each Party acknowledges and agrees that:
 - (a) if a Receiving Party breaches clause 20(1) in relation to the Disclosing Party's Confidential Information, then the Disclosing Party may suffer loss or damage as a result of that breach for which monetary remedies would not be adequate; and
 - (b) if a Receiving Party attempts to breach or threatens to breach clause 20(1) in relation to the Disclosing Party's Confidential Information, then the Disclosing Party may seek injunctive relief including an injunction restraining the Receiving Party from committing any breach of this Deed without the necessity of proving that any actual loss or damage has been sustained or is likely to be sustained by the Disclosing Party.
- (4) Despite anything else in this Deed, the Department may disclose any Confidential Information to:
 - (a) Ministers and their advisors;
 - (b) the NSW Ombudsman and NSW Auditor General;
 - (c) the Department's Personnel including consultants and advisers;
 - (d) any NSW Government body or agency, or any other organisation or individual that the Department considers has a need or an entitlement to know that information (including any Commonwealth, State or Territory body or agency), where that need or entitlement to know that information arises out of or in connection with the Department's assessment, verification or due diligence of information provided by the Funding Recipient under or in connection with this Deed;

- (e) other parties where authorised or required by law to be disclosed to those parties; or
- (f) in response to a request by a House or a Committee of the Parliament of the State of New South Wales.

21 Remedies for default

21.1 Provision of Cure Plan

- (1) Without limiting any other rights of the Department, if the Funding Recipient has breached any term of this Deed, the Funding Recipient must within 10 Business Days of being notified to do so by the Department (or such longer time as the Notice specifies) provide the Department with a draft Cure Plan.
- (2) Within 5 Business Days following receipt by the Department of a draft Cure Plan, the Funding Recipient must meet with the Department to discuss the draft Cure Plan and agree to any reasonably requested amendments to the draft Cure Plan.
- (3) The Funding Recipient must, within 10 Business Days following the meeting referred to in clause 21.1(2), provide the Department with an amended Cure Plan which incorporates any amendments reasonably requested by the Department.
- (4) This clause 21.1 does not limit or exclude the rights of the Department at law under or in connection with this Deed.

21.2 Cure Plan requirements

- (1) A Cure Plan must include:
 - (a) full details of the nature of the cause of a breach, where known, or if not known the full details of what the Funding Recipient considers to be the cause of the breach;
 - (b) the proposed method by which the breach will be cured, including alternative or contingent action that can be taken if necessary; and
 - (c) the time that will be required to fully complete all aspects of the Cure Plan, with such period not to exceed 20 Business Days, unless a longer period is agreed between the Parties (**Applicable Cure Period**).
- (2) Following receipt of the Cure Plan pursuant to clause 21.1(3), the Department may notify the Funding Recipient to:
 - (a) implement the Cure Plan submitted by the Funding Recipient; or
 - (b) promptly revise and resubmit such Cure Plan within 10 Business Days (or such longer time as the Notice specifies) to meet the reasonable requirements of the Department as set out in the Notice. If the Funding Recipient fails to comply with the requirements of this clause 21.2(2)(b), the Cure Plan will be deemed to be varied in accordance with the reasonable requirements of the Department as set out in the Notice.
- (3) Upon receipt by the Funding Recipient of a Notice under clause 21.2(2)(a), or revision and resubmission (or deemed variation) of the Cure Plan under clause 21.2(2)(b), the Funding Recipient must promptly implement the Cure Plan and:
 - (a) perform all work in accordance with such Cure Plan; and
 - (b) notify the Department when the Funding Recipient believes the Cure Plan has been fully implemented.

21.3 Termination for breach

- (1) Without limiting clause 2.3 or any other rights of the Department under this Deed, the Department may terminate this Deed with immediate effect by giving Notice to the Funding Recipient, if:
 - (a) the Funding Recipient fails to comply with a Cure Plan;
 - (b) the Funding Recipient fails to remedy a breach within the Applicable Cure Period;
 - (c) the Funding Recipient ceases business or becomes Insolvent;
 - (d) the Funding Recipient indicates that it is unable or unwilling to comply with this Deed, including in respect of non-compliance with its obligations as required under clause 6.10;
 - (e) the Department is reasonably satisfied that any statement provided by the Funding Recipient and relied on by the Department to approve the Funds is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funds;
 - (f) the Funding Recipient fails to maintain progress towards completion of the Project to the reasonable satisfaction of the Department;
 - (g) the Department has a right to terminate this Deed under clauses 6.6(2)(c) or 27(4);
 - (h) the Department does not give its approval in respect of any event specified in clause 18;
 - (i) there has been or there is any current, pending or threatened Reputational Proceedings;
 - (j) the Funding Recipient fails to maintain the requisite authorisations, licences, accreditations, registrations or consents to perform its obligations under this Deed;
 - (k) the Funding Recipient does not comply with the Grant Guidelines; or
 - (l) the Funding Recipient commits any act, or becomes involved in any situation or occurrence, that is considered corruption, misconduct or maladministration as determined by the Department.

21.4 Consequences of termination

- (1) Upon the termination or expiry of this Deed:
 - (a) all payments due under this Deed will immediately cease; and
 - (b) the Funding Recipient must immediately suspend dealing with any or all of the Funds in its possession or control.
- (2) Upon termination or expiration of this Deed, the Funding Recipient must deliver to the Department (within 20 Business Days):
 - (a) all Reports due under this Deed at the date of termination or expiration; and
 - (b) any unspent or legally uncommitted Funds, or Funds not spent in accordance with the Deed, which will be a debt due to and recoverable by the Department, unless the Department has explicitly directed the Funding Recipient to retain the Unspent Funds and such direction is evidenced in writing.

- (3) Termination of this Deed will not affect the accrued rights and remedies of the Parties prior to termination.

22 Cancellation or reduction for convenience

22.1 Cancellation or reduction

- (1) The Department may cancel or reduce the scope of the Project at any time by providing 20 Business Days' Notice to the Funding Recipient.
- (2) On receipt of a Notice to cancel or reduce the scope of the Project under clause 22.1(1), the Funding Recipient agrees to:
 - (a) stop the performance of the obligations specified in the Notice;
 - (b) take all available steps to minimise any Loss resulting from such cancellation or reduction; and
 - (c) continue performing any part of the Project or this Deed that is not affected by the Notice if requested to do so by the Department.

22.2 Consequences of cancellation or reduction

- (1) In the event of a cancellation or reduction under clause 22.1(1), the Department will be liable only to:
 - (a) pay any part of the Funds due and owing for activities satisfactorily performed as at the date of the Notice; and
 - (b) reimburse any reasonable expenses the Funding Recipient unavoidably incurs that relate directly to such cancellation or reduction that are not covered by clause 22.2(1)(a).
- (2) The Department's liability to pay any amount under this clause 22:
 - (a) is subject to the Funding Recipient's compliance with this Deed; and
 - (b) will not exceed the total amount of the Funds payable pursuant to this Deed.

23 Liability and indemnity

- (1) The Department is not responsible and accepts no liability for:
 - (a) any aspect of the operation of the Funding Recipient's business;
 - (b) the Project;
 - (c) the payment of any amount over and above the Funds that may be needed or requested by the Funding Recipient in connection with the Project;
 - (d) any cost overruns or overspends in connection with the Project; or
 - (e) any circumstances where the Funding Recipient has insufficient funds to carry out the Project.

- (2) To the fullest extent permitted by law:
 - (a) the Department's liability in connection with this Deed is limited in the aggregate to the amount of the Funds; and
 - (b) the Funding Recipient releases and discharges, and must procure that its Personnel releases and discharges, the Department from all Claims for any Loss which, but for the provisions of this clause, might be brought or made by the Funding Recipient and its Personnel against the Department in connection with this Deed or the Project.
- (3) Neither Party will be liable to the other whether in contract, tort (including negligence) or otherwise in connection with this Deed, for any Loss to the extent that the other Party (or the other Party's Personnel) caused or contributed to the Loss.
- (4) A Party which suffers any Loss in connection with this Deed must take reasonable steps to mitigate its Loss. The other Party will not be responsible for any Loss to the extent that the injured Party could have avoided or reduced the amount of the Loss by taking reasonable steps to mitigate its Loss.
- (5) To the fullest extent permitted by law, but subject to clauses 23(3) to 23(4), the Funding Recipient indemnifies the Department and its Personnel (those indemnified) for all Loss suffered or incurred by those indemnified resulting from any Claim that may be brought against or made upon or incurred by any of them (whether in contract, tort including negligence or otherwise) in connection with:
 - (a) the Project;
 - (b) any act or omission which amounts to a breach of the Funding Recipient's obligations or warranties under this Deed;
 - (c) any unlawful act or omission connected with the Funding Recipient and its Personnel's actual or attempted performance of its obligations under this Deed;
 - (d) any neglect or default connected with the Funding Recipient and its Personnel's actual or attempted performance of its obligations under this Deed; or
 - (e) any infringement or alleged infringement of any third party's Intellectual Property Rights, ICIP Rights, rights in Indigenous Data or Moral Rights arising out of any use of any New Material, Submitted Material or Existing Material in accordance with this Deed,and all costs (including legal costs on an indemnity basis) that are reasonably and properly incurred by those indemnified in connection with any such Claim.
- (6) The Department will not in any circumstances be liable to the Funding Recipient for any loss of revenue, profit, opportunity, goodwill, reputation or any indirect or consequential Loss in connection with the Deed.
- (7) The Department holds on trust for the benefit of its Personnel the indemnity in clause 23(5) and may enforce such indemnity for itself and for and on behalf of its Personnel.

24 Disputes

- (1) If any dispute arises in connection with this Deed, it must be resolved according to this clause 24.
- (2) Either Party may give the other a notice in writing (Dispute Notice) setting out the details of a dispute. Within 5 Business Days after the date on which a Party gives the other Party a

Dispute Notice, the Representatives of the Parties must meet and use reasonable endeavours to resolve the dispute.

- (3) If the dispute is not resolved under clause 24(2), senior management representatives of the Parties must, within 10 Business Days after the receipt of the Dispute Notice under clause 24(2), meet and use reasonable endeavours to resolve the dispute.
- (4) If a dispute is not resolved in accordance with clause 24(3), the dispute must be referred to mediation according to clause 24(5).
- (5) Where a dispute is referred to mediation, the Parties:
 - (a) will conduct the mediation in New South Wales in accordance with the Mediation Rules of the Resolution Institute;
 - (b) will jointly appoint the mediator, or if the Parties cannot agree on the mediator within 5 Business Days of referral to mediation, the Chairperson of the New South Wales Chapter of the Resolution Institute will determine the mediator;
 - (c) may be legally represented at the mediation;
 - (d) will each bear their own costs in connection with the mediation, the mediation venue and the mediator; and
 - (e) will continue to perform their obligations under this Deed notwithstanding the existence of the dispute.
- (6) It is a condition precedent to the right of either Party to commence litigation other than for interlocutory relief that it has complied clauses 24(2) to 24(5).
- (7) Each Party must:
 - (a) pay its own costs of complying with this clause 24; and
 - (b) continue to perform its obligations under this Deed notwithstanding the existence of a dispute.

25 Subcontracting

- (1) The Funding Recipient agrees not to subcontract any of its obligations under this Deed without the prior written approval of the Department (with the subcontractor then becoming an Approved Subcontractor on such approval), except those persons set out in, and to the extent stated in, Item 3 of Schedule 1 – Project Plan.
- (2) Where the engagement of a subcontractor is approved by the Department, the Funding Recipient agrees to ensure:
 - (a) the suitability of the subcontractor and any part of the Project performed by the subcontractor meet the requirements of the Deed;
 - (b) any subcontract entered into between the Funding Recipient and the subcontractor in relation to the Project is consistent with the terms and conditions in the Deed; and
 - (c) all subcontractors comply with the subcontract and the terms of this Deed as if they were a party to it.

- (3) The Funding Recipient agrees that:
 - (a) the subcontracting of any part of the Project, or the Department's approval of a subcontractor, does not relieve the Funding Recipient from its responsibility for the delivery of the Project; and
 - (b) it is liable for the acts and omissions of each subcontractor as if they were the acts and omissions of the Funding Recipient.
- (4) The Department may approve or not approve the engagement of any subcontractor in its absolute discretion and may impose any terms and conditions on its approval as it considers appropriate.
- (5) The Department may at any time require the Funding Recipient to cease using any subcontractor on reasonable grounds by Notice to the Funding Recipient.
- (6) For the purposes of this clause 25, "subcontract" includes entering into any subcontract, joint venture, partnership or agency relationship.

26 Force Majeure

26.1 Force Majeure Event

In this Deed, a **Force Majeure Event** means any event or circumstance or combination of events or circumstances occurring after the Commencement Date:

- (1) that is not within the reasonable control or foresight of a party;
- (2) the occurrence or effect of which the party could not have avoided through compliance with its obligations under this Deed and the exercise of reasonable care in conducting its activities; and
- (3) that causes or results in the prevention or delay of the party performing its obligations under this Deed,

including events or circumstances arising out of, to the extent they satisfy clauses 26.1(1) to 26.1(3):

- (4) an act of God including floods and fire but excluding inclement weather such as prolonged periods of precipitation;
- (5) a pandemic or epidemic;
- (6) war, hostilities, invasion, kidnapping, act of foreign enemies, military mobilisation or embargo;
- (7) acts or threats of terrorism;
- (8) rebellion, revolution or insurrection; or
- (9) riot, vandalism or sabotage; or embargoes.

26.2 Exceptions

Notwithstanding clause 26.1, the following will not constitute a Force Majeure Event:

- (1) lack of funds, financial hardship or the ability of a party or any of its Related Entities to make a profit or achieve a satisfactory rate of return;

- (2) the inability of a party or any of its Related Entities to obtain financing or insurance, either completely or on commercially acceptable terms;
- (3) a shortage of materials, consumables, equipment or utilities required by a party, except to the extent the shortage is itself caused by a Force Majeure Event;
- (4) a breakdown or failure of a party's equipment, property or an asset (including any Project Assets) caused by normal wear and tear;
- (5) any event or circumstance arising due to a failure by a party, its Personnel or Related Entities to properly maintain any equipment, property or an asset or to hold sufficient stock of spares, except to the extent it is itself caused by a Force Majeure Event;
- (6) strikes, industrial disturbances or other industrial action other than on a national or state-wide basis;
- (7) the failure of any person (other than the Department) to perform an obligation it owes to a party, except to the extent such failure is caused by any event or circumstance that, had it happened to the party, would have been a Force Majeure Event under this Deed; or
- (8) failure or inability of any person to pay any sum due and payable.

26.3 Non-performance excused

- (1) Subject to clause 26.4, a party's non-performance of any of its obligations under this Deed as a result of a Force Majeure Event will:
 - (a) be excused during the time and to the extent that the Force Majeure Event prevents such performance, wholly or in part; and
 - (b) not give rise to any liability to the Department or any liability of any kind arising out of, or in connection with, that non-performance.
- (2) If a delay or failure due to a Force Majeure Event exceeds 60 days, the party not claiming a Force Majeure Event may terminate this Deed immediately on providing Notice to the affected Party.

26.4 Notification and Mitigation

Each party must comply with all of the following at all applicable times:

- (1) notify the other party as soon as reasonably possible:
 - (a) of the full particulars of the Force Majeure Event, as they become known to the Funding Recipient;
 - (b) the date of commencement and expected duration of the Force Majeure Event; and
 - (c) providing an estimate of the period of time required to enable the party to resume full performance of its obligations under this Deed;
- (2) keep the other party informed of any material changes or developments to any of the matters set out in clause 26.4(1);
- (3) use all reasonable diligence and means to remedy or abate the Force Majeure Event as expeditiously as possible;
- (4) use reasonable endeavours to mitigate the impact of any Force Majeure Event at the earliest possible time;

- (5) resume performance as expeditiously as possible after termination of the Force Majeure Event or after the Force Majeure Event has abated to an extent that permits resumption of performance (in whole or in part); and
- (6) notify the other party promptly when the Force Majeure Event has terminated or abated to an extent that permits resumption of performance (in whole or in part) to occur.

27 Modern Slavery

- (1) The Funding Recipient warrants that:
 - (a) any Modern Slavery Information it provides to the Department is, to the best of its knowledge, complete and accurate;
 - (b) neither the Funding Recipient, its Personnel, Related Entities and Engaged Entities, or, to the best of its knowledge, any Approved Subcontractors and their Personnel, have been convicted of a Modern Slavery Offence; and
 - (c) the Funding Recipient is not aware of any circumstances within its operations or Supply Chain that could give rise to an official investigation or prosecution of the Funding Recipient or Engaged Entity of a Modern Slavery Offence.
- (2) In addition to any other obligation of the Funding Recipient under this Deed, in performance of its obligations under and in connection with this Deed, the Funding Recipient must:
 - (a) comply with Modern Slavery Laws;
 - (b) procure that the Funding Recipient's Personnel and Engaged Entities comply with Modern Slavery Laws;
 - (c) include in its contracts with Engaged Entities provisions that are consistent with those set out in this clause 27;
 - (d) have in place, and maintain in place at all times adequate and reasonable policies, controls, procedures and training at its own cost, which:
 - (i) prevent, detect, assess, and mitigate the risk; and
 - (ii) remediate any instances,
 of Modern Slavery in its operations and Supply Chain;
 - (e) notify the Department promptly upon becoming aware, of any actual, alleged or reasonably suspected Modern Slavery in its operations or Supply Chain;
 - (f) take reasonable steps to respond to and address the occurrence of any Modern Slavery in its operations or Supply Chain in accordance with Modern Slavery Laws, its procedures and policies; and
 - (g) regardless of any requirement in the Modern Slavery Laws, provide a modern slavery statement which meets the requirements of Modern Slavery Laws (**Modern Slavery Statement**) to the Department by 30 June of each year.
- (3) From time to time, the Department may in writing request to view:
 - (a) the Funding Recipient's policies, controls, procedures and training programs to ensure compliance with the Funding Recipient's obligations under this clause 27; or

- (b) information reasonably requested by the Department in relation to the Funding Recipient, its Supply Chain, or any Engaged Entity or Approved Subcontractor in connection with any actual or suspected Modern Slavery Offence.

The Funding Recipient must provide the information identified in such request within the timeframe reasonably requested by the Department.

- (4) Notwithstanding any provision of this Deed, and without prejudice to any of the Department's rights or remedies, the Department may terminate this Deed in whole or in part (as determined by the Department with immediate effect by giving written notice to the Funding Recipient if the Funding Recipient has breached, or the Department has reasonable cause to believe that the Funding Recipient has breached:
 - (a) this clause 27 and such breach is incapable of being remedied to the satisfaction of the Department; or
 - (b) any Modern Slavery Law and such breach is incapable of being remedied to the satisfaction of the Department.

Notwithstanding any provision of this Deed, if the Department terminates this Deed pursuant to this clause 27(4), the Funding Recipient will have no Claim against the Department.

- (5) Without limiting any other provision of this clause 27, the Funding Recipient:
 - (a) agrees that the communication of such information to any Government Body is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
 - (b) releases and indemnifies the Department and the NSW Government from and against any Claim in respect of any matter arising out of such communications, including the use of such information by the recipient.
- (6) The Funding Recipient consents to the Department sharing Modern Slavery Information obtained from the Funding Recipient in respect of Modern Slavery, including records referred to in this clause 27 with any other NSW Government agency or entity:
 - (a) for the purpose of identifying or addressing that actual or potential Modern Slavery; or
 - (b) to the extent the Department has a reasonable belief of Modern Slavery actually or potentially occurring in the operations or Supply Chains of the Funding Recipient or any Engaged Entity or Approved Subcontractor.

28 Funding Recipient as trustee

- (1) If the Funding Recipient is expressed to have entered this Deed as trustee of a trust, the Funding Recipient warrants and represents to the Department that, as at the date of this Deed and at all times during the Term that:
 - (a) the Funding Recipient has been validly appointed as trustee of the trust, is the sole trustee of that trust and no action has been taken to remove it as trustee;
 - (b) the Funding Recipient will comply fully with its obligations as trustee under the trust deed applicable to the trust, and with all applicable Laws;
 - (c) the Funding Recipient enters into this Deed not only as trustee of the trust, but also so as to bind itself personally for obligations owed under this Deed;
 - (d) the trust has been validly created and not terminated, nor has any event for the vesting of the assets of the trust occurred;

- (e) the Funding Recipient has complied with the constitution and any relevant constituent documents of the trust and the general law obligations of trustees, and has the power to enter into and perform this Deed;
 - (f) the Funding Recipient enters into this Deed as part of the proper administration of the trust for the benefit of the beneficiaries of the trust;
 - (g) the Funding Recipient has a right to be fully indemnified out of the assets of the trust in respect of all of its obligations and liabilities under this Deed, subject to the terms of the trust, and the assets of the trust are sufficient to satisfy that indemnity;
 - (h) there has not been any act or omission as a result of which the Funding Recipient's right to be indemnified out of the assets of the trust has been lost, alienated or reduced;
 - (i) the Funding Recipient will not do anything which effects or facilitates the termination or winding up of the trust, or which would restrict or impair the ability of the Funding Recipient to comply with its obligations under this Deed; and
 - (j) no steps have been taken or are proposed to be taken to wind up the trust.
- (2) The Funding Recipient must, upon request by the Department, provide any additional information reasonably requested in relation to the trust, the Funding Recipient's position as trustee, or any other matters contemplated under clause 28(1).

29 General

29.1 Notices

- (1) Any Notice which may be given to or served on a Party under this Deed must be sent or delivered to the address specified for that Party in Table 1 - Details (as varied from time to time by Notice to the other Party).
- (2) Notwithstanding clause 29.1(1), if the Funding Recipient is a company then the Department may serve a Notice at any time on the Funding Recipient's registered office.
- (3) A Notice sent to a Party will be deemed to be given:
 - (a) within Australia by express post, 1 Business Day after the date of posting;
 - (b) within Australia by any other post, 6 Business Days after the date of posting;
 - (c) to or outside of Australia, 12 Business Days after the date of posting;
 - (d) if delivered by hand during a Business Day, on the date of delivery; and
 - (e) if emailed, on the date recorded on the device from which the Party sent the email, unless the sending Party receives an automated message that the email has not been delivered,

except that a delivery by hand or email received after 5.00 pm (local time) on a Business Day at the address of the receiving Party as specified in Table 1 - Details will be deemed to be given on the next Business Day.
- (4) For the purposes of the *Electronic Transactions Act 2000* (NSW), each Party consents to the giving of Notices by email.

29.2 **Electronic execution**

- (1) Each party consents to this Deed and any variations of this Deed being signed by electronic signature by the methods set out in this clause.
- (2) This clause applies regardless of the type of legal entity of the party. If this Deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrants that they have the authority to sign on behalf of that entity.
- (3) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this Deed and any variation of it:
 - (a) provided that in each of the below cases, words to the effect of 'Electronic signature of me, [NAME], affixed by me on [DATE]' are also included on the Deed at the relevant place;
 - (i) insertion of an image (including a scanned image) of the person's own unique signature onto the Deed;
 - (ii) insertion of the person's name onto the Deed; or
 - (iii) use of a stylus or touch finger on a touch screen to sign the Deed;
 - (b) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the Deed; or
 - (c) as otherwise agreed in writing (including via email) between the parties.
- (4) The parties agree that the above methods are reliable as appropriate for the purpose of signing this Deed and that electronic signing of this Deed by or on behalf of a party indicates that party's intention to be bound.
- (5) A signed copy of this Deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Deed for all purposes.

29.3 **Waiver**

Rights, remedies or powers under this Deed can only be waived in writing signed by an authorised delegate of a Party. Neither Party waives any right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power, or has on a previous occasion waived that right, remedy or power in relation to a particular obligation or breach.

29.4 **Severance**

If a provision or part of this Deed is wholly or partly void, illegal or unenforceable in any relevant jurisdiction, that provision or part must, to that extent, be treated as deleted from this Deed for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or part or any other provision or part of this Deed.

29.5 **Further assurances**

- (1) Each Party must, at their own expense, do all things and execute all further documents reasonably necessary to give full effect to this Deed.
- (2) Nothing in this Deed requires the Department to exercise any statutory power, amend or introduce any statute or implement any policy, procedure, guideline, standard or similar,

enter into any agreement other than as specified in this Deed, conduct any procurement, or purchase any goods or services, in connection with the Project.

29.6 Relationship

The Department and the Funding Recipient are not and are not to be taken to be in a partnership, joint venture, employment, agency or fiduciary relationship. Nothing in this Deed gives the Funding Recipient authority to bind the Department in any way.

29.7 Remedies cumulative

Except as expressly provided in this Deed and permitted by law, the rights, powers and remedies of a Party provided in this Deed are cumulative with and not exclusive of the rights, powers or remedies provided by law or equity independently of this Deed.

29.8 Entire agreement

This Deed constitutes the entire agreement between the Parties in respect of its subject matter. Any prior arrangements, agreements, warranties, representations or undertakings in respect of such subject matter are superseded.

29.9 Costs and expenses

Each Party must pay its own costs (including legal costs) and expenses in connection with the negotiation, preparation, execution and delivery of this Deed.

29.10 Variation

This Deed may only be varied by agreement between the Parties signed by their authorised delegates.

29.11 Assignment or novation by the Funding Recipient

The Funding Recipient must not assign, transfer or novate this Deed or any of its rights or obligations under or in connection with this Deed without the prior written consent of the Department.

29.12 Assignment or novation by the Department

(1) The Department may assign, transfer or novate this Deed or any of its rights or obligations under or in connection with this Deed (in whole or in part):

- (a) to another Government Body; or
- (b) as a result of any machinery of government changes, including if, by operation of law, the Department is reconstituted into a new body or legal entity or the functions of the Department, relevant to this Deed, are transferred to a different body or legal entity,

by providing Notice to the Funding Recipient.

(2) If the Department gives Notice to the Funding Recipient under clause 29.12(1):

- (a) from the date of that Notice that other Government Body, body or legal entity will assume the responsibilities and rights of the Department as if it were a Party; and
- (b) if required by the Department, all Parties will execute a deed of novation or any other document reasonably required by the Department to effect the assignment, transfer or novation.

29.13 Survival of clauses

- (1) Clauses 1, 6.1(1)(j), 6.5, 6.6, 6.12, 7, 14.10, 17, 18, 20, 21.4, 23, 24, 27, 29.1, 29.2, 29.4, 29.5, 29.6, 29.7, 29.8, 29.9, 29.10, 29.13 and 29.15 survive the termination or expiration of this Deed for any reason.
- (2) The list of clauses expressed to survive termination or expiration in this clause 29.13:
 - (a) is not an exhaustive list of the rights and obligations that are intended to survive termination or expiration; and
 - (b) does not exclude any rights, remedies and obligations arising by operation of law.

29.14 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together constitute one document. A Party may execute this Deed by signing any counterpart and the Deed will only become binding on a Party when both Parties have signed and delivered a counterpart to the other Party.

29.15 Governing law and jurisdiction

This Deed is governed by the laws in force in New South Wales, and the Parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Deed.

Schedule 1 – Project Plan

Item 1: Project Plan

Project Name	[#Insert details]
Project Details	[#Insert details]
Project Objectives	[#Insert details]
Project Location	[#Insert details]

Project Requirements

Project Schedule - Milestone Table

Milestone number	Milestone Activities	Start Date	Milestone Deliverable	Milestone Deliverable Due Date	Total Milestone Cost (anticipated Total Co-contribution + Funding payment for Milestone)	Funding Payment for Milestone (50% of Direct Project Expenses actually paid by the Funding Recipient for Milestone up to the amount specified below)

0	The Funding Recipient must do the following: • By the Milestone Start Date, provide the Department with the fully executed Funding Deed; and • By the Milestone Deliverable Due Date: ○ Complete the Funding Deed acceptance form provided by the Department via 'Smarty Grants'; ○ Comply with any 'Additional Conditions' which the Department determines apply to this 'Milestone 0'; and ○ Satisfy any Conditions Precedent which the Department determines apply to this 'Milestone	[#Insert date]	The Funding Recipient must submit the following evidence to the Department: • By the Milestone Deliverable Start Date: ○ The Milestone 0 report, outlining works that will be completed (to the reasonable satisfaction of the Department) during Milestone 0; ○ Tax Invoice; and ○ Funds Request Form (Schedule 4) for Milestone 0 Payment; and • By the Milestone Deliverable Due Date: ○ A milestone report covering the Milestone 0	[#Insert date]	-	Upfront payment – [x]% of grant requested [#Insert amount]
---	---	----------------	---	----------------	---	--

	0', noting that the payment of any 'Milestone 0' Funding Amount does not amount to a waiver or satisfaction of any Conditions Precedent for the purposes of clause 2 of the Funding Deed.		period, outlining all activities completed, achievements, and expenditure; ○ A detailed breakdown of all activities and spend, including an itemised list of invoices and expenditure (e.g., purchase orders, remittances, supplier invoices, contributions from partner organisations or customers, if applicable); and ○ Supporting evidence for the activities undertaken during the			
--	--	--	---	--	--	--

			Milestone 0 period, including engineering drawings, test data, or any other relevant documentation.			
1	The Funding Recipient must do the following by the Milestone Deliverable Due Date: Scoping and project foundations • [#Insert details]	[#Insert date]	The Funding Recipient must submit the following evidence to the Department by the Milestone Deliverable Due Date: • Evidence for Milestone Activities, including: ○ A milestone report covering the Milestone 1 period, outlining all activities completed, achievements, and expenditure;	[#Insert date]	[#Insert amount]	[#Insert amount]

			○ A detailed breakdown of all activities and spend, including an itemised list of invoices and expenditure (e.g., purchase orders, remittances, supplier invoices, contributions from partner organisations or customers, if applicable); and ○ Supporting evidence for the activities undertaken during the Milestone 0 period, including engineering drawings, test data, or any			
--	--	--	---	--	--	--

			other relevant documentation; • Tax Invoice; and • Funds Request Form (Schedule 4).			
2	The Funding Recipient must do the following by the Milestone Deliverable Due Date: • [#Insert details]	[#Insert date]	The Funding Recipient must submit the following evidence to the Department by the Milestone Deliverable Due Date: • Evidence for Milestone Activities, including: ○ [#Insert details]; • Financial evidence; • Milestone Report; • Tax Invoice; and • Funds Request Form (Schedule 4).	[#Insert date]	[#Insert amount]	[#Insert amount]
3	The Funding Recipient must do the following by the Milestone Deliverable Due Date: • [#Insert details]	[#Insert date]	The Funding Recipient must submit the following evidence to the Department by the	[#Insert date]	[#Insert amount]	[#Insert amount]

			Milestone Deliverable Due Date: • Evidence for Milestone Activities, including: ○ [#Insert details]; and • Financial evidence; • Milestone Report; • Tax Invoice; and • Funds Request Form (Schedule 4).			
4 (Final Milestone)	The Funding Recipient must do the following by the Milestone Deliverable Due Date: Commercial prototype testing and validation • [#Insert details]	[#Insert date]	The Funding Recipient must submit the following evidence to the Department by the Milestone Deliverable Due Date: • Evidence for Milestone Activities, such as: ○ [#Insert details]; and • Financial evidence; • Final Milestone Report;	[#Insert date]	[#Insert amount]	[#Insert amount]

			• Tax Invoice; and • Funds Request Form (Schedule 4).			
Totals					[#Insert amount]	[#Insert amount]
Additional Conditions	Financial Undertaking: Provide evidence that the capital raising was successful as outlined in the application					

Item 2: Project Budget

Co-contribution Requirements:	Must, at all times, equal or exceed the value of the Funding paid to the Funding Recipient during the Term of the Project; Must be financial contributions (in-kind non-financial contributions are not eligible); Must not be from a NSW Government Source; and Must be used to pay for Eligible Project Costs.						
Milestone	Funding Recipient		Partner Organisation(s)		Totals		
	Cash Contribution (excluding GST)	In-kind Contribution (in-kind financial only) (excluding GST)	Cash Contribution (excluding GST)	In-kind Contribution (in-kind financial only) (excluding GST)	Total Co-contribution (excluding GST)	Total Funding Payment (must equal or be lower than Total Co-contribution) (excluding GST)	Total Project Cost (Total Co-contribution + total Funding payment) (excluding GST)

0	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]
1	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]
2	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]
3	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]
4	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]
Totals	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]	[#Insert amount]

Item 3: Other Key Information

Partner Organisations

Name of Partner Organisation	Role in Project	Brief description of support provided
[#Insert details]	[#Insert details]	[#Insert details]

Key Personnel – Funding Recipient

Team Member	Title	Organisation	Role in the project	Number of FTE hours
[#Insert details]	[#Insert details]	[#Insert details]	[#Insert details]	[#Insert details]

Key Personnel – Partner Organisation

Team Member	Title	Organisation	Role in the project	Number of FTE hours
[#Insert details]	[#Insert details]	[#Insert details]	[#Insert details]	[#Insert details]

Approved Subcontractors

Name of Subcontractor	Role in Project	Details and Responsibilities
-----------------------	-----------------	------------------------------

[#Insert details]	[#Insert details]	[#Insert details]
-------------------	-------------------	-------------------

Item 4 - Plans and Attachments

Project Governance Plan

[#Insert details]

Risk Management Plan

[#Insert details]

Schedule 2 – Reports

Report	Description	Due Date
Milestone Report	Funding Recipient to provide a Report for each of the Milestones set out in Item 1 of Schedule 1 by the Milestone Deliverable Due Date. Each Milestone Report will provide an update on that Milestone and include: • the Milestone and period to which the Milestone Report relates; • details on any activities, achievements and expenditure; • itemised list of the applicable Project Assets (if any); • a Financial Report as set out below; and	Each Milestone Report (for Milestones 1 through 4) will be due on the corresponding Milestone Deliverable Due Date as set out below: • Milestone 0 = [#Insert date] • Milestone 1 = [#Insert date] • Milestone 2 = [#Insert date] • Milestone 3 = [#Insert date] • Milestone 4 = [#Insert date]

Report	Description	Due Date
	any other information as reasonably required by the Department and notified to the Funding Recipient prior to each Milestone Report due date.	
Variation Report	Funding Recipient to provide: - progress of the Project, including progress of Milestones; - any issues or delays that have arisen, or are reasonably expected to arise, in the delivery of the Project, their impact on the Project if any and any changes proposed to the Project; - details about any major development and/or change to the Project; - details of any issues or delays that have arisen, or are reasonably expected to arise, in relation to any upcoming Milestone (including a Milestone Deliverable Due Date); - details of any mitigation steps to be taken in response to any issue or delay set out above; - any requested change to any Milestone Deliverable Due Date as a result of a matter set out above and justification for such change; and - a Financial Report.	- Promptly upon becoming aware of any issue, delay, development or change in relation to the Project; - Within no less than 30 Business Days prior to the Milestone Deliverable Due Date which is likely to be affected; and - Otherwise, as reasonably requested by the Department (such as if there has been a major development, change and/or delay in the Project and it is in the period between the Milestone Report due dates set out above).
Financial Report	Funding Recipient to provide an update on the Budget, which may include (as requested by the Department in its absolute discretion) any one or more of the following: evidence of expenditure;	A Financial Report must be provided by the Funding Recipient: on request by the Department with each Milestone Report or Funding Request during the Project;

Report	Description	Due Date
	• evidence of receipt and/or availability of applicable Co-contributions (including Funding Recipient contributions); • whether the Project is in accordance with the Budget, and if it is not, reasons and actions being taken to address this; • financial statements certified by an appropriately qualified independent third party, or such other person agreed by the Department in writing from time to time; and • such other evidence as the Department reasonably requires in connection with the Project and the Funds.	• on request by the Department with the Final Report; and • otherwise as reasonably required by the Department.
Audited Financial Report	Funding Recipient to provide a report which may include (as requested by the Department in its absolute discretion) any one or more of the following: • the financial information recorded for the Project; • a statement as to whether the financial information recorded for the Project represents the financial transactions fairly and is based on proper accounts and records; and • a declaration from the Funding Recipient's CEO and/or company directors that the Funding Recipient is solvent, a going concern and able to pay its debts as and when they fall due. The Audited Financial Report is to be prepared by an auditor in accordance with Australian Accounting Standards.	If requested by the Department, an Audited Financial Report must be provided , in respect of any financial year during the Term to which the request relates. An Audited Financial Report must be provided covering the duration of the Funding Period, within 60 Business Days of any termination of the Project, whether such termination is due to completion of the Project or otherwise, unless this requirement has been waived by the Department.

Report	Description	Due Date
Final Report	Funding Recipient to provide: • evidence that the Project has been completed; • analysis of the Project outcomes and achievements for each Milestone; • an overview of any highlights, opportunities and barriers encountered; • description of knowledge sharing activities and assessment of their effectiveness; • recommendations arising from the Project; • a Financial Report and an Audited Financial Report as set out above; • an executive summary of the Final Report in a form to be published to the general public to share knowledge and lessons learnt; and • any other information as reasonably requested by the Department and notified to the Funding Recipient prior to the Final Report due date.	31/1/2027
Other	Any report as required under clause 6.5 of this Deed.	As Required

Schedule 3 – Project Assets and Capital Works

Project Assets

Name	Description	Project Asset Obligations/Conditions	Cost of Project Asset (excluding GST)
[#Insert details]	[#Insert details]	[#Insert details]	[#Insert amount]
[#Insert details]	[#Insert details]	[#Insert details]	[#Insert amount]

Capital Works

Name	Description	Cost of Capital Works (excluding GST)
[#Insert details]	[#Insert details]	[#Insert amount]

Schedule 4 – Funds Request Form

To: The Crown in right of the State of New South Wales acting through the
Department of Climate Change, Energy, the Environment and Water
(ABN 27 578 976 844) (**Department**)

Attention: [insert]

Date: [#insert]

Funds Request Form– Reference number [#insert] dated [#insert] pursuant to the Funding Deed for the Clean Technology Innovation Grant Program between [#insert name of Funding Recipient] (**Funding Recipient**) and the Department dated [#insert] (**Deed**).

This is a Funds Request Form for the purposes of the Deed.

Terms used but not defined in this Funds Request Form have the meaning given to them in the Deed

1 Submission of invoice

- (a) The Funding Recipient submits the **attached** invoice for payment in accordance with the Deed.
- (b) The invoice is for the amount of A\$[#insert] and is for [*#identify Milestone to which the invoice relates*].

2 Other matters

The Funding Recipient warrants to the Department as at the date of this Funds Request Form:

- (a) all Milestone Deliverables in respect of Milestone [#insert] have been met;
- (b) no breach of the Deed by the Funding Recipient is continuing; and
- (c) the Funding Recipient is able, and has sufficient funds, to complete the Project by the corresponding Milestone Deliverable Due Dates in accordance with the Deed.

Signed:

[#insert name of signatory], being an authorised officer of [#insert name of Funding Recipient] for the purposes of the Deed.

Signing Page

Executed as a Deed

SIGNED, SEALED AND DELIVERED for and on behalf of the Crown in right of the State of New South Wales acting through the NSW Department of Climate Change, Energy, the Environment and Water (ABN 27 578 976 844) by its authorised signatory but not so as to incur personal liability in the presence of:

Signature of witness

[#Drafting Note: If the Department's signature above is being witnessed remotely include the following sentence, otherwise delete.] This document was witnessed over audio-visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW)

Signature of authorised person

[#Drafting Note: If the Department is executing and witnessing this Deed electronically, include the following paragraph otherwise delete if signing will be in hard copy] Executed by the Crown in the right of New South Wales acting through the Department of Climate Change, Energy, the Environment and Water (ABN 27 578 976 844) electronically pursuant to the *Electronic Transactions Act 1999* (Cth) and *Electronic Transactions Act 2000* (NSW).

Full name of witness

Name of authorised person

Office held

Office held

Date

Date

SIGNED, SEALED AND DELIVERED for and on behalf of **[#insert Funding Recipient Name] [#insert Funding Recipient ABN]** in accordance with section 127 of the Corporations Act 2001 (Cth):

Secretary (or additional Director)

[#Drafting Note: If executing this Deed electronically, include the following paragraph, otherwise delete if signing will be in hard copy] Executed for and on behalf of **[#insert Funding Recipient Name] [#insert Funding Recipient ABN]** electronically pursuant to the *Electronic Transactions Act 1999* (Cth) and *Electronic Transactions Act 2000* (NSW).

Director

[Drafting Note: If executing this Deed electronically, include the following paragraph, otherwise delete if signing will be in hard copy] Executed for and on behalf of **[#insert Funding Recipient Name] [#insert Funding Recipient ABN]** electronically pursuant to the *Electronic Transactions Act 1999* (Cth) and *Electronic Transactions Act 2000* (NSW).

Name printed

Name printed

Schedule 5 - Deed of Variation

Date: [#insert]

Funding Deed for the Clean Technology Innovation Grant Program

VARIATION OF FUNDING DEED – NUMBER [#insert]

The parties refer to the funding deed entered into between [#insert Funding Recipient name] and The Crown in right of the State of New South Wales acting through the Department of Climate Change, Energy, the Environment and Water (ABN 27 578 976 844) (**Department**) on [#insert date] (**Funding Deed**), and the Variation Report submitted to the Department by the Funding Recipient on [#insert date].

Unless stated or the context requires otherwise, a capitalised term used in this document has the meaning given to it in the Funding Deed, and a reference to a provision in this document is a reference to a provision in the Funding Deed.

This is a Deed of Variation for the purpose of clause 5.2(2)(a) of the Funding Deed.

The column titled “Clause/Schedule as Amended” reflects the agreed variations to the relevant clause/Schedule of the Funding Deed.

Words which are struck through represent words to be deleted from the relevant clause/schedule of the Funding Deed. Words which are underlined represent those words which are added to the relevant clause/schedule of the Funding Deed.

Clause/Schedule of Funding Deed	Description of Amendment	Clause/Schedule as Amended
<i>[#Drafting Note State relevant clause/schedule here.]</i>	<i>[#Drafting Note: Insert description of amendment, e.g. this is a description to vary Milestone X as follows...]</i>	<i>[#Drafting Note: Insert actual amendment showing deletions and additions.]</i>

The parties agree that:

1. In accordance with clause 5.2(4) of the Funding Deed, the Funding Deed is varied in accordance with the table set out above, on and from the date that both parties have executed this document (unless agreed otherwise).
2. All other terms of the Funding Deed continue in full force and effect;
3. This variation does not constitute a waiver of any rights that the Department may have under the Funding Deed or at law;
4. This Deed of Variation may be signed electronically in accordance with the electronic signature requirements of the Funding Deed;

5. To the extent of any inconsistency between the terms of this Deed of Variation and the Funding Deed, the terms of this Deed of Variation prevail but only to the extent of the inconsistency; and
6. This Deed of Variation is governed by the law of New South Wales and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales.

The Department confirms that the Funding Deed will be varied in accordance with this Deed of Variation, which is to be executed as a deed.

DRAFT

[#Drafting Note: The signature blocks below are NOT for executing at the time that the parties execute the Funding Deed. The below execution blocks are to be used in the event that the parties execute a variation in accordance with this Attachment.]

Executed as a Deed

SIGNED, SEALED AND DELIVERED for and on behalf of the Crown in right of the State of New South Wales acting through the NSW Department of Climate Change, Energy, the Environment and Water (ABN 27 578 976 844) by its authorised signatory but not so as to incur personal liability in the presence of:

Signature of witness

[#Drafting Note: If the Department's signature above is being witnessed remotely include the following sentence, otherwise delete.] This document was witnessed over audio-visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW)

Signature of authorised person

[#Drafting Note: If the Department is executing and witnessing this Deed electronically, include the following paragraph otherwise delete if signing will be in hard copy] Executed by the Crown in the right of New South Wales acting through the Department of Climate Change, Energy, the Environment and Water (ABN 27 578 976 844) electronically pursuant to the *Electronic Transactions Act 1999* (Cth) and *Electronic Transactions Act 2000* (NSW).

Full name of witness

Name of authorised person

Office held

Office held

Date

Date

SIGNED, SEALED AND DELIVERED for and on behalf of
[#insert Funding Recipient Name] [#insert Funding Recipient
ABN] in accordance with section 127 of the Corporations Act
2001 (Cth):

Secretary (or additional Director)

[#Drafting Note: If executing this Deed electronically include the following paragraph, otherwise delete if signing will be in hard copy] Executed for and on behalf of
[#insert Funding Recipient Name] [#insert Funding Recipient
ABN] electronically pursuant to the Electronic Transactions
Act 1999 (Cth) and Electronic Transactions Act 2000 (NSW).

Name printed

Date

Director

[#Drafting Note: If executing this Deed electronically include the following paragraph, otherwise delete if signing will be in hard copy] Executed for and on behalf of [#insert Funding
Recipient Name] [#insert Funding Recipient ABN] electronically
pursuant to the *Electronic Transactions Act 1999* (Cth) and
Electronic Transactions Act 2000 (NSW).

Name printed

Date

Annexure A: Clean Technology Innovation Grant Program Guidelines

[#Insert document]

DRAFT

Annexure B: Clean Technology Innovation Grant Program Supplementary Guidance

[#Insert document]

DRAFT

Annexure C: Funding Recipient Submission

[#Insert details]

DRAFT