

Low Carbon Product Manufacturing Project Development Stream Funding Deed

Department Department of Climate Change, Energy, the Environment and Water (DCCEEW)

Recipient [Click here to enter name of recipient](#)

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Recitals

- A. The Net Zero Manufacturing Initiative will build local manufacturing capacity and capability to deliver critical components for NSW's emerging renewable energy sector and new low carbon products.
- B. Low carbon product manufacturing is a key focus area of the Net Zero Manufacturing Initiative. The Low Carbon Product Manufacturing - Project Development stream will support industries with grants for project development activities. These activities will help reach a financial investment decision to build new or expand existing manufacturing facilities for low carbon products.
- C. The Recipient has expressed an interest in undertaking the Project.
- D. The Department has agreed to provide the Funding to the Recipient to be disbursed by the Recipient in accordance with this Deed.
- E. The Recipient agrees to both accept and apply the Funding in accordance with the terms of this Deed.
- F. The 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 Authorised Officer <i>(refer to clause 11.2- Notices)</i>	Name	[name of contract manager]
	Position	[tbd]
	Address	12 Darcy Street Parramatta NSW 2150
	Telephone	Click here to enter text.
	E-mail	[tbd]
Recipient ('You')	Name	Click here to enter name of recipient
	Address	Click here to enter text.
	ABN	Click here to enter text.
Your Authorised Officer <i>(refer to clause 11.2- Notices)</i>	Name	Click here to enter text.
	Position	Click here to enter text.
	Address	Click here to enter text.
	Telephone	Click here to enter text.
	E-mail	Click here to enter text.
Project	Click here to enter title of Project as more fully described in Schedule A.	
Funding	A maximum total amount of Click here to enter total amount of Grant (GST exclusive) payable in accordance with Schedule A and clause 6.	
Commencement Date <i>(refer to clause 2 - Term)</i>	Click here to enter text.	

Additional Insurance Policies

Table 2: Additional Insurance Policies

Types of Insurances	Minimum Sum Insured	Tick if Required
		<input type="checkbox"/>

Terms

1 Definitions and Interpretation

1.1 Interpretation

Unless the context requires otherwise, in this Deed:

- (a) the terms set out in the left-hand column of the Details have the meaning ascribed to them in the right-hand column of the Details;
- (b) where any time limit pursuant to this Deed falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;
- (c) a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;
- (d) the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
- (e) references to persons include bodies corporate, government agencies and vice versa;
- (f) references to the parties include references to respective directors, officers, employees and agents of the parties;
- (g) nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or any part of it; and
- (h) where an expression is defined, any other grammatical form of that expression has a corresponding meaning.

1.2 Definitions

Activity means the activity (or activities) described in **Schedule A – Project Plan**, which aims to fulfil one or more of the Project Objectives.

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

Business Plan means a document which details how funding is to be apportioned to deliver the Project. The business plan needs to include project risk planning and costing. For the purposes of this Deed, Schedule A – Project Plan is taken to be the Business Plan.

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

Conditions Precedent means the conditions detailed in clause 3.1.

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

- (a) is by its nature confidential (or which a party knows or ought to know (acting reasonably) is confidential);
- (b) has been designated as confidential by a party;

- (c) is capable of protection at common law or equity as confidential information; or
- (d) is derived or produced partly from the information in paragraphs (a), (b) or (c) above,

but does not include information that:

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

Contribution means the contribution from the Recipient and Partner Organisations (as applicable), upon which the Funding is contingent, to be contributed to the costs of delivering the Project, as stated in Schedule A – Project Plan.

Contribution Requirements means the requirements specified in Schedule A – Contribution Requirements.

Control means control of an entity has the same meaning as "control" in section 50AA of the *Corporations Act* provided that:

- (a) in the case of a corporation, it includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors of that corporation, the voting rights of any of the voting shares of the corporation or the management of the affairs of the corporation;
- (b) in the case of a trust, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the appointment or removal of the trustee of that trust, the composition of the board of directors of the trustee, the voting rights of any of the voting units of the trust or the management of the affairs of the trust or the business operated by that trust; and
- (c) in the case of a partnership, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the management of the affairs of the partnership.

Correctly Rendered Invoice means an invoice rendered in accordance with the Department's Fact Sheet and which satisfies the requirements for tax invoices under GST Law.

Delivery Date means the date by which Activities must be completed for each Milestone as specified in Schedule A.

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

Grant Guidelines means the guidelines set out in Annexure A – Grant Guidelines

Final Completion Statement means a report completed in the form required by the Department on the commencement of this Deed.

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

Intellectual Property or IP includes:

- (a) all rights in relation to copyright, inventions, plant varieties, trademarks, designs, patents; and

- (b) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including trade secrets and know-how,

but does not include Moral Rights.

Letter of Support means a letter from a Partner Organisation providing its endorsement to collaborate with the Recipient to deliver the Project. The letter must include the following information:

- (a) the Partner Organisation's relevant experience, expertise and Contributions;
- (b) an overview of how the Partner Organisation will collaborate with the 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 Contributions.

Modern Slavery has the meaning given in section 4 of the *Modern Slavery Act 2018* (NSW) and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons.

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

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

Partner Organisation means the individual or organisation specified in Schedule A – Project Plan, who has agreed to collaborate with the Recipient as to the Project, including organisations who have agreed to provide funding contribution for the Project.

Payment means that part of the Funding which the Department pays to you in the amounts and in relation to the Milestones set out in Schedule A.

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

Project Acquittal Certificate means a statement completed in the form required by the Department on the commencement of this Deed. The Department Business Advisory Services will provide this certificate.

Project Budget means the budget for the delivery of the Activities as described in Schedule A – Project Plan.

Project Costs means costs directly related to undertaking the Project, that are incurred within the term of this Deed, excluding:

- (a) audit costs;
- (b) usual administration costs of the Recipient; and
- (c) costs for the benefit or profit of Related Parties.

Project Governance Plan means the plan specified in the Recipient Application set out in Annexure B specifying:

- (a) the organisational structure for delivery of the Project; and

- (b) the personnel having a substantial role in undertaking the Project, including:
 - i. details of their roles and responsibilities including but not limited to manager, consultant, technical specialist, and area managers; and
 - ii. relationship to the Recipient and any Partner Organisation, such as but not limited to employee, contractor, and consultant.

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

Project Objectives means the objectives specified in Schedule A – Project Plan.

Recipient Application means the Recipient’s application set out in Annexure B and includes any documents provided by the Recipient to the Department relating to the proposed Funding prior to execution of this Deed.

Related Party has the meaning given to that term in section 228 of the *Corporations Act*, provided that for purposes of this definition:

- (a) ‘public company’ refers to any body corporate, trust or partnership;
- (b) ‘director’ includes a shareholder (in the case of a company), unitholder or beneficiary (in the case of a trust) and partner (in the case of a partnership); and
- (c) ‘control’ has the meaning given to that term in this Deed.

Risk Management Plan means the plan specified in the Recipient Application set out in Annexure B.

Start Date means the date by which Activities are to begin for each Milestone as specified in Schedule A.

2 Term

- (a) This Deed will commence on the Commencement Date.
- (b) Unless terminated earlier, this Deed will end once you have completed the Project to the Department’s satisfaction and the Department has paid all Payments due.

3 Conditions

3.1 Conditions Precedent

This Deed is subject to and conditional upon the following conditions precedent:

- (a) at the Commencement Date:
 - i. you meeting the eligibility criteria outlined in the Grant Guidelines and any additional criteria as reasonably required by the Department. You must provide the Department with evidence that you have complied with this clause 1.1(a)(i);
 - ii. where necessary, you have obtained all necessary licences and approvals to carry out the Project and must provide the Department with evidence you have complied with this clause 1.1(a)(i)ii;
 - iii. if you have agreed to collaborate with a Partner Organisation to deliver the Project, you have:

- A. obtained a Letter of Support and executed an agreement with that Partner Organisation in respect of such collaboration;
 - B. provided the Department with a copy of such Letter of Support and executed agreement between you and the Partner Organisation; and
- (b) you commencing the Project prior to the first Start Date or such later date as requested by you and agreed in the Department's absolute discretion prior to the first Start Date and you notifying the Department of such commencement. For the avoidance of doubt, the parties agree that the Department may request that you provide evidence to confirm that work has commenced on the Project.

3.2 **Satisfactions or waiver of Conditions Precedent**

- (a) You must use your reasonable endeavours to satisfy the Conditions Precedent, including procuring the performance by any third parties to ensure that this occurs.
- (b) You must keep the Department informed of any circumstances which may result in any Conditions Precedent not being satisfied or incapable of being satisfied.
- (c) Only the Department can determine if the Conditions Precedent has been satisfied or waive a Condition Precedent.

3.3 **Termination**

If the Conditions Precedent are not waived or satisfied in accordance with this clause 3, the Department may, by giving written notice to you after the respective dates described in clause 3.1, terminate this Deed.

3.4 **Effect of termination**

Notwithstanding any other provision under this Deed, if the Department terminates this Deed under clause 3.3, then, in addition to any other rights, powers or remedies provided by law:

- (a) each party is released from the performance of its obligations under this Deed, other than clauses 7.3 and 7.4;
- (b) you will have no Claims against the Department in connection with the termination of this Deed under clause 3.3; and
- (c) you will repay any funding received under clause 6.1.

4 What you must do

4.1 **Your obligations**

You must:

- (a) ensure the Funding and any Payment is used only for the Project Costs of the Project;
- (b) ensure each Activity is completed by the Delivery Date in accordance with this Deed;
- (c) comply with the reporting requirements set out in **Schedule B**;
- (d) comply with all Commonwealth, State and Local government laws that are relevant to the Project, this Deed, or your registration as an entity;

- (e) comply with all policies, guidelines and reasonable directions the Department provides to you; and
- (f) deliver the Project in a proper, timely and efficient manner and to a high ethical and professional standard.

4.2 Project Governance Plan

- (a) While carrying out your obligations under this Deed, you must comply with the Project Governance Plan.
- (b) You must review and update the Project Governance Plan with your Partner Organisations as needed. If you make any material changes to the Project Governance Plan, you must provide the latest version of the Project Governance Plan to the Department's Authorised Officer within 5 Business Days from the date that the Project Governance Plan was last updated.

4.3 Risk Management Plan

- (a) While carrying out your obligations under this Deed, you must comply with the Risk Management Plan.
- (b) You must review and update the Risk Management Plan as needed. If you make any material changes to the Risk Management Plan, you must provide the latest version of the Risk Management Plan to the Department's Authorised Officer within 5 Business Days from the date that the Risk Management Plan was last updated.

5 Partner Organisations

5.1 General

If you are delivering the Project with a Partner Organisation, you:

- (a) must lead the Project and co-ordinate the delivery of the Project with each Partner Organisation;
- (b) are not relieved of any of your obligations under this Deed and remain liable to the Department for the acts, defaults and neglect of each Partner Organisation as if they were acts, defaults or neglect of you; and
- (c) must enter into a written agreement with each Partner Organisation in accordance with clause 5.3.

5.2 Quality of Partner Organisation

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

5.3 Arrangements to be consistent with this Deed

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

- (a) 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;
- (b) prohibits the Partner Organisation from subcontracting its services without the Department's prior written consent; and

- (c) includes a right for you to terminate your agreement with the Partner Organisation on the expiry or termination of this Deed.

5.4 Responsibility for Partner Organisation

You remain fully responsible for, and will be liable for the services delivered by, the Partner Organisation, and indemnify the Department in respect of the acts and omissions of all Partner Organisations as if they were acts or omissions of you.

6 About the Funding

6.1 Paying the Funding

The Department will make a Payment in accordance with Schedule A within 30 days of the following conditions being satisfied:

- (a) you have completed the relevant Milestones and provided documentation as to completion of the relevant Milestones to the satisfaction of the Department as specified in Schedule A and clause 7;
- (b) the Department receives a Correctly Rendered Invoice from you that clearly identifies the Payment you are claiming; and
- (c) you are not in breach of the Grant Guidelines.

6.2 Notification of Project Impacts and Mitigation

- (a) You must promptly notify the Department of anything likely to substantially impact the Project.
- (b) You must notify the Department of any potential or foreseeable delay in delivering a Milestone or completing an Activity as set out in Schedule A – Project Plan, at least 14 days in advance and provide an explanation for the potential delay.
- (c) You must advise the Department in a timely manner of mitigation steps you intend to take in response to any adverse impacts and delays.
- (d) You may propose a variation under this clause 6.2 and provide justification on why such variation is necessary to address the adverse impact or delay.
- (e) The Department, notwithstanding other rights it may have under this Deed and in its absolute discretion, may:
 - i. agree to the variation proposed by the Recipient further to clause 6.2(c);
 - ii. propose changes to the variation proposed by the Recipient further to clause 6.2(c); or
 - iii. extend the timeframes as set out in Schedule A – Project Plan
- (f) No variation under this clause is binding unless signed by both of the parties as a Deed;
- (g) 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.

6.3 Withholding, Suspension, Changes to Payment and Repayment

- (a) The Department may change the amount of the Payment by issuing you with a Notice setting out the details of the changes.
- (b) If you are not complying with this Deed, the Department may withhold or suspend payment of an Payment until you comply with your obligations to the Department's satisfaction.
- (c) If the Department withholds or suspends a Payment, you must continue to perform your obligations under this Deed.
- (d) You must repay within 28 days of a demand being sent:
 - i. any Payments or part thereof spent in breach of this Deed;
 - ii. any money that is unspent from the Payments;
 - iii. any overpayment; and
 - iv. any interest earned on any Payments required to be repaid.
- (e) The Department may set off the amount of any overpayment or claim for repayment against any future Payments due.
- (f) Any repayment the Department claims from you under this **clause 6.3** will be a debt due and owing by you to the Department.

6.4 Holding of Funding

If a Payment is paid prior to the conditions in clause 6.1 as to Payment being fulfilled that Payment must be held by you from the date it is received until the Department confirms that the conditions in clause 6.1 have been fulfilled, either:

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

6.5 Contributions

- (a) You must provide or procure the Contributions in accordance with the Contribution Requirements.
- (b) You must provide written confirmation to the Department that you have the Contributions available, or if receiving monies from third parties as part of the Contribution that you have received these monies from the third parties for the Project as reasonably required by the Department from time to time.
- (c) Where you have failed to, or believe you cannot, comply with clause 6.5(a), you must:
 - i. immediately notify the Department and provide an explanation as to why you cannot comply with clause 6.5(a); and
 - ii. within 30 Business Days, secure alternative funding of the same amount and on the same conditions in place of the Contributions.
- (d) Upon receiving a Notice under clause 6.5(c), the Department may, at its absolute discretion:

- i. request changes to the Project, including reducing the scope of the Project and amending the Funding payable; or
- ii. if you do 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 Contributions, terminate the Deed upon Notice to you.

6.6 Additional Contributions

- (a) Unless stated in Schedule A – Project Plan or the Department notifies you otherwise, you 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 Contribution in Schedule A without the prior written consent of the Department, which cannot be unreasonably withheld.

6.7 GST

- (a) Unless otherwise indicated, all consideration for any supply under this Deed is exclusive of any GST imposed in relation to the supply.
- (b) If:
 - i. despite any other provision of this Deed, GST is imposed on a supply you make to the Department under this Deed; and
 - ii. the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply,the Department will pay you an additional amount equal to the GST imposed on that supply, at the time and in the manner payment is otherwise payable under this Deed in relation to that supply.
- (c) If you are not registered under the GST Law you will not be entitled to receive any additional amount as provided under this **clause 6.5**.
- (d) If for any reason the Department pays you an amount under this **clause 6.5** which is more than the GST imposed on the supply, you must repay the excess to the Department on demand or the Department may set off the excess against any other amounts due to you.

7 Material and Information

7.1 Reporting Requirements

- (a) You agree to provide the Department with written Reports at the times and containing the information specified in **Schedule B – Reporting Requirements** (“Reports”).
- (b) You must also
 - i. provide any other information the Department reasonably requires from time to time concerning the Project; and
 - ii. participate in such knowledge sharing 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.

- (c) If any Report contains information confidential to you, you should mark the relevant parts of the Report accordingly.
- (d) You must provide financial statements of income and expenditure in respect of the Funding ('the Statements') to the Department within 60 Business Days after:
 - i. completion of the Project or any termination of this Deed, whichever is the earliest; and
 - ii. the completion of each Financial Year in which Funding is provided.
- (e) The Statements must include a certification provided by an officer with proper authority to make representations on your behalf that:
 - i. the financial information contained in the Statements is accurate and represents the complete account of financial transactions for the Project;
 - ii. the Statements have been prepared fairly, and are based on proper accounts and records which comply with Australian accounting standards; and
 - iii. the Funding was expended only for the Project and otherwise in accordance with this Deed.
- (f) You acknowledge and agree that certain information provided under this clause 7.1 may be published or shared with third parties to:
 - i. monitor and evaluate the effectiveness of the Project;
 - ii. publish results from the Project, including on the Department's website; and
 - iii. inform the development of future government policies and programs.

7.2 Intellectual Property

- (a) Intellectual Property in all Project Material vests in you.
- (b) You grant the Department a perpetual, irrevocable, transferable, sub-licensable and royalty free licence to use the IP in the Project Material and Reports.

7.3 Confidential Information

Each party must maintain the confidentiality of all commercially sensitive information (Confidential Information) it receives from the other party, including the amount of the Funding, except in accordance with **clause 7.5** (Public Announcements), as required by law or as otherwise agreed in writing.

7.4 Privacy

You will:

- (a) ensure that Personal Information that is provided by the Department or collected by you under or in connection with this Deed is used only for the purposes of this Deed and is protected against loss, unauthorised access, use, modification and disclosure, or against other misuse;
- (b) not disclose any Personal Information without the written consent of:
 - i. the individual to whom the Personal Information relates; or
 - ii. the Department,

unless otherwise required or authorised by law;

- (c) comply with the Information Protection Principles applying to NSW public sector agencies under the Privacy and Personal Information Protection Act 1998 (NSW) when doing any act or engaging in any practice in relation to Personal Information as if you were an agency directly subject to that Act; and
- (d) include equivalent requirements regarding Personal Information (including this clause 7.4) in any subcontract entered into for the provision of any of the Activities under this Deed.

7.5 Public Announcements and Acknowledgement

You must:

- (a) acknowledge the support of the Department, as directed by the Department from time to time:
 - i. in any public statements about the Project;
 - ii. on the home page of any website established in connection with the Project;
 - iii. on any equipment or other facility funded wholly or in part by the Department.
- (b) You must acknowledge the Department's support of the Project and comply with the applicable NSW Government Guidelines.
- (c) The Department may, without notice:
 - i. publicly disclose your name as the Recipient, amount of the funding awarded under this Deed and general details of the Project, including details of the Partner Organisations, Project Objectives and outcomes of the Project; and
 - ii. publish the decision to provide the Funding for the Project on the NSW government Grant and Funding Finder or an equivalent NSW government website and such other information related to the Funding as is necessary to meet its obligations under the *Government Sector Finance Act 2018 (NSW)* and the NSW Grants Administration Guide.

7.6 Disclosure of Information

- (a) You acknowledge that, under the *Government Information (Public Access) Act 2009*, the Department may be required to publicly disclose information about this Deed at <https://tenders.nsw.gov.au>. None of the disclosure obligations require the disclosure of:
 - i. the commercial-in-confidence provisions of a contract;
 - ii. any matter that could reasonably be expected to affect public safety or security; or
 - iii. information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009*.
- (b) You may nominate any items you consider are confidential and why, to assist the Department in determining what items to disclose.

8 Dealing with Risk

8.1 Insurance

- (a) You must maintain, at your own cost:
 - i. a broadform public liability policy of insurance to the value of at least \$10 million in respect of each claim and in the aggregate as to the number of occurrences in the policy period;
 - ii. workers' compensation insurance as required by all relevant laws of Australia relating to workers compensation;
 - iii. the Additional Insurance Policies listed in the Details for the minimum sum provided.
- (b) You must not do, permit or suffer any act, matter or thing or omission whereby any of the policies referred to in this clause lapse or may be vitiated, rendered void or voidable.
- (c) On request by the Department, you must provide a copy of valid and current certificates of currency for each or any of the policies described above.
- (d) Without limitation to **clause 8.1(a)** each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.

8.2 Indemnities

- (a) You must indemnify and keep indemnified the Department, the Crown in right of the State of New South Wales and their officers, employees and agents from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:
 - i. the Funding or the use of any outcomes from the Project;
 - ii. your breach of this Deed;
 - iii. any unlawful or negligent act or omission by you, your employees or your subcontractors in connection with this Deed;
 - iv. any illness, injury or death of any person you, your employees or your subcontractors cause or contribute to, in connection with this Deed;
 - v. any loss or damage to real or personal property that you, your employees or your subcontractors cause or contribute to, in connection with this Deed; or
 - vi. any act or omission by you, your employees or your subcontractors in connection with this Deed that is in infringement of any Intellectual Property or privacy rights of the Department or any third party.
- (b) Your liability to indemnify the Department under this clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Department, its officers, employees or agents contributed to the relevant loss or liability.

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

9 Terminating the Deed

9.1 Termination

- (a) Where a party has breached this Deed:
 - i. the other party may give a Notice to that party requiring it to rectify that breach within 10 days of receiving that Notice; and
 - ii. if the party which received the Notice fails to rectify that breach in time, the other party may terminate this Deed immediately by giving a further Notice.
- (b) The Department may terminate this Deed by Notice, with effect on the date stated in the Notice, if:
 - i. you breach any of the following provisions: **clause 4.1** (Your Obligations), **clause 6.4** (Holding of Funding), **clause 7.1** (Reporting Requirements), or **clause 12.9** (Assignment);
 - ii. the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity; or
 - iii. you become insolvent, are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966*, resolve to go into administration or liquidation, or if a summons for your winding up is presented to a Court or you enter into any scheme of arrangement with your creditors.
- (c) **Clause 9.1** and **clause 100** do not exclude or reduce the rights of a party to terminate the Agreement arising by operation of the common law or statute or the other terms of this Agreement.
- (d) On termination or expiry of this Deed:
 - i. you must deliver to the Department:
 - A. all Reports due under this Deed at the date of termination or expiration;
 - B. any unspent or legally committed Funding, or Funding not spent in accordance with this Deed, which will be a debt due to and recoverable by the Department;
 - ii. accrued rights and obligations are not affected; and
 - iii. the Department will pay any Payments due and payable (after taking into account any Payments already made prior to that date).

10 Cancellation or reduction for convenience

10.1 Cancellation or reduction

- (a) The Department may cancel or reduce the scope of the Project at any time by providing 20 Business Days' Notice to you.
- (b) On receipt of a Notice to cancel or reduce the scope of the Project under clause 10.1(a), you agree to:

- i. stop the performance of the obligations specified in the Notice;
- ii. take all available steps to minimise any Loss resulting from such cancellation or reduction; and
- iii. 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.

10.2 Consequences of cancellation or reduction

- (a) In the event of a cancellation or reduction under clause 10.1(a), the Department will be liable only to:
 - i. pay any part of the Funding due and owing for activities satisfactorily performed as at the date of the Notice; and
 - ii. reimburse any reasonable expenses you unavoidably incur that relate directly to such cancellation or reduction that are not covered by clause 1.1(a)(i).
- (b) The Department's liability to pay any amount under this clause 100:
 - i. is subject to your compliance with this Deed; and
 - ii. will not exceed the total amount of the Funding payable pursuant to this Deed.

11 Other Legal Matters

11.1 Dispute Resolution

- (a) If a dispute arises in relation to this Deed ("a Dispute"), a party must comply with this **clause 11.1** before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.
- (b) A party claiming that a dispute has arisen must notify the other party in writing giving details of the dispute (Dispute Notice) in accordance with the requirements of **clause 11.2** (Notices).
- (c) Following receipt of a Dispute Notice, each party must refer the Dispute to a senior representative, who:
 - i. does not have prior direct involvement in the Dispute; and
 - ii. has authority to negotiate and settle the Dispute.
- (d) If the Dispute is not resolved within 10 Business Days from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice under **clause 11.1(b)** must refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.
- (e) If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
- (f) Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.

11.2 Notices

- (a) Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered, posted or emailed to the Authorised Officer specified in the Details or as otherwise notified in writing.
- (b) The receiving party will be deemed to have received the Notice as follows:
 - i. if hand delivered, on the day on which it is delivered or left at the relevant address;
 - ii. if sent by post:
 - A. if posted within Australia using Express Post, the priority letter service option of regular post, or the priority service option for Registered Mail, on the fourth Business Day after the day on which it is posted;
 - B. if posted within Australia using the regular post option, on the fifth Business Day after the day on which it is posted;
 - C. if posted to or from outside Australia, on the tenth Business Day after the day on which it is posted;
 - iii. if sent by email before 5.00pm on a Business Day, the first of the following occurring:
 - A. when the sender receives an automated message confirming delivery; or
 - B. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not be delivered;
 - iv. if sent by email after 5.00pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
- (c) Any such mode of service will be in all respects valid notwithstanding that the party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.

11.3 Subcontracting

- (a) You agree not to subcontract any of your obligations under this Deed without the prior written approval of the Department.
- (b) Where the engagement of a subcontractor is approved by the Department, you agree to ensure:
 - i. the suitability of the subcontractor and any part of the Project performed by the subcontractor meet the requirements of this Deed;
 - ii. any subcontract entered into between you and the subcontractor in relation to the Project is at arm's length, contains usual commercial terms and is consistent with the terms and conditions in this Deed; and
 - iii. all subcontractors comply with the subcontract and the terms of this Deed as if they were a party to it.
- (c) You agree that:

- i. the subcontracting of any part of the Project, or the Department's approval of a subcontractor, does not relieve you from your responsibility for the delivery of the Project; and
 - ii. you are liable for the acts and omissions of each subcontractor as if they were the acts and omissions of you.
- (d) 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.
- (e) The Department may at any time require you to cease using any subcontractor on reasonable grounds by Notice to you.
- (f) For the purposes of this clause 11.3, "subcontract" includes entering into any subcontract, joint venture, partnership or agency relationship.

11.4 Modern Slavery

- (a) You represent and warrant that you are not aware of any Modern Slavery risks or practices in your supply chain or operations.
- (b) Should you become aware of any Modern Slavery;
 - i. risks in your supply chain or operations, you must notify the Department of those risks and advise the Department of the steps you are taking to eliminate or minimise those risks; or
 - ii. practices being carried out within your operations or supply chain, you must:
 - A. in writing, immediately notify the Department of those practices and of the remediation action it proposes to take; and
 - B. at its cost, take any such additional remediation action as may be required by the Department (acting reasonably and after consultation with you).
- (c) If you are a 'reporting entity' for the purposes of any State or Commonwealth Modern Slavery legislation, including the *Modern Slavery Act 2018* (Cth), you must comply with such legislation and provide the Department upon request with a copy of any report you are required to prepare or submit under that legislation.

11.5 Funding Recipient as trustee

If you are expressed to have entered this Deed as trustee of a trust, you warrant and represent to the Department that, as at the date of this Deed:

- (a) you have been validly appointed as trustee of the trust, you are the sole trustee of that trust and no action has been taken to remove you as trustee;
- (b) the trust has been validly created and not terminated, nor has any event for the vesting of the assets of the trust occurred;
- (c) you have complied with the constitution and any relevant constituent documents of the trust and the general law obligations of trustees, and have the power to enter into and perform this Deed;
- (d) you enter into this Deed as part of the proper administration of the trust for the benefit of the beneficiaries of the trust;

- (e) you have 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;
- (f) there has not been any act or omission as a result of which your right to be indemnified out of the assets of the trust have been lost, alienated or reduced; and
- (g) no steps have been taken or are proposed to be taken to wind up the trust.

12 General

12.1 Electronic Execution

- (a) 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.
- (b) This clause applies regardless of the type of legal entity of the parties. If this Deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) 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:
 - 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;
 - iv. provided that in each of the above cases, words to the effect of 'Electronic signature of me, [NAME], affixed by me on [DATE]' are also included on the Deed;
 - v. use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the Deed; or
 - vi. as otherwise agreed in writing (including via email) between the parties.
- (d) 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.
- (e) 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.

12.2 Survival

The following clauses survive termination or expiry of this Deed: clause 7.1 (Reporting Requirements); clause 7.2 (Intellectual Property); clause 7.3 (Confidential Information); clause 7.4 (Privacy); clause 8.1 (Insurance); clause 8.2 (Indemnities); clause 9.1 (Termination); clause 12.3 (Keeping of records); this clause 12.12, and any other clause which by its nature is intended to survive this Deed.

12.3 Keeping of records, audit and rights of access to such records:

You:

- (a) must keep complete and accurate records and books of account with respect to your performance of the Project (the “Records”), and must retain such Records for a minimum of seven (7) years after expiry or termination of this Deed;
- (b) authorise the Department and any State or Commonwealth Government department or agency (the “Auditors”) that has provided moneys to the Department for the purposes of the Project, to undertake audits, to examine and inspect, at reasonable times and on reasonable Notice, any records held by you and Records, and allow any such Records to be copied; and
- (c) provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.

12.4 Conflict of Interest

You must not carry on or be involved in any capacity in an activity or business which may conflict with, or adversely affect, your ability to carry out your obligations under this Deed, and you will immediately notify the Department in writing if such a conflict or risk of such a conflict arises.

12.5 Entire Deed

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

12.6 Inconsistency

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

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

12.7 Negation of employment, partnership or agency

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

12.8 Waiver

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

12.9 Assignment

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

12.10 Counterparts

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

12.11 Further Assurances

- (a) Each party must, at their own expense, do all things and execute all further documents reasonably necessary to give full effect to this Deed.
- (b) 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.

12.12 Relationship

You and the Department 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 you authority to bind the Department in any way.

12.13 Governing Law

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

Executed as a deed

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

Electronic signature of me
[name] affixed by me on
00/00/00 [time pm/am]

Electronic signature of me
[name] affixed by me on
00/00/00 [time pm/am]

Signature of Authorised Signatory

Signature of Witness

Name of Authorised Signatory

Name of Witness

Position of Authorised Signatory

Address of Witness

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

Date

[Use this if signing on behalf of a company with more than one director or a director and secretary]

Signed, Sealed and delivered for on and on behalf of [Click here to enter Company/Organisation name](#) Ltd in accordance with section 127 of the *Corporations Act 2001* by:

Electronic signature of me
[name] affixed by me on
00/00/00 [time pm/am]

Electronic signature of me
[name] affixed by me on
00/00/00 [time pm/am]

Signature of Director(1)

Signature of Director(2)/Company Secretary

Name of Director (1)

Name of Director(2)/Company Secretary

Date

Date

[Use this if signing on behalf of a company with a sole director]

Signed, Sealed and delivered for on and on behalf of [Click here to enter Company/Organisation name](#) Ltd in accordance with section 127 of the *Corporations Act 2001* by:

Electronic signature of me
[name] affixed by me on
00/00/00 [time pm/am]

.....
Signature of Sole Director

.....
Name of Sole Director

.....
Date

[Use this if signing as an authorised representative]

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

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

Electronic signature of me
[name] affixed by me on
00/00/00 [time pm/am]

.....
Signature of authorised signatory

.....
Name of authorised signatory

.....
Position of authorised signatory

Electronic signature of me
[name] affixed by me on
00/00/00 [time pm/am]

.....
Signature of Witness

.....
Name of Witness

.....
Address of Witness

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

.....
Date

Schedule A – Project Plan

Table 3: Schedule A – Project Plan

Project Name	<i>[Insert the name of the Project]</i>				
Project Objective	<i>[Insert project objective; e.g. to undertake front end engineering design (FEED) for the establishment of a new manufacturing facility or expansion of existing manufacturing facility for [LOW CARBON PRODUCT]]</i>				
Project Scope	<i>[Insert the project description from Application Form]</i>				
Project Schedule	<i>(Fill in the table below)</i>				
Milestone number	Activities/Scope of Work	Start Date	Deliverables and Documentation	Delivery Date	Payment
1.	<i>[List activities]</i>	<i>[Start date]</i>	<i>[What will be done and what documentation will be delivered]</i>	<i>[End date]</i>	<i>[Amount to be paid by department]</i>
2.					
3.					
4.					
5.					
Project Budget	<i>[Provide the “total project cost” estimated for this project from application]</i>				
Contribution Requirements:	Must equal or exceed the value of the Funding paid to the Recipient, at all times, during the term of the Project;				

Must be financial contributions (in-kind contributions are not included);
 Must not be from a NSW Government Source; and
 Must be used to pay for Project Costs.
(Fill in the table below)

	Source <i>(Entity or organisation name)</i>	Amount(s)	Contribution due date(s)
	[Your organisation]		
	[Partner Organisations]		

Schedule B – Reporting Requirements (refer to clause 10)

Type of report	Report description/purpose	Due
Presentations	As per Department requirements	As requested by the Department in its reasonable discretion
Quarterly project reporting	As per Department provided template <ul style="list-style-type: none"> - Milestone and status report - Budget report - Variations requested 	[Insert Dates]
Statement of Expenditure	As per Department provided template when project is completed <ul style="list-style-type: none"> - Activities undertaken and relevant costs - Contributions provided - Invoices for items of expenditure 	[Insert Dates]
Final report	As per Department provided template when project is completed <ul style="list-style-type: none"> - Project outputs and outcomes - Confirmation that the project activities as listed in schedule A have been completed 	

Annexure A – Grant Guidelines and Supplementary Guidance

[insert Grant Guidelines and Guidance here]

Annexure B – Recipient Application

[insert Recipient's Application here]