

Net Zero Manufacturing Initiative – <Low Carbon Product Manufacturing Fund> or <Renewable Manufacturing Fund> - Grant Program Funding Deed

The Crown in right of the State of New South Wales acting
through the Department of Climate Change, Energy, the
Environment and Water

and

[Insert Recipient]

Funding Deed

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Details

Date	The date that the last party signs this Deed.
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Parties

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
Short form name	Department
Representative	[Insert]
Notice details	[Insert]

Name	[Insert] <i>[Drafting note: if the Recipient is a trustee of a trust, the Recipient must confirm the details of the Trust and provide the Trust instrument. Further clauses will be required and included in this Deed prior to execution.]</i>
ABN	[Insert]
Short form name	Recipient
Representative	[Insert]
Notice details	[Insert]

Project Details

Item #	Item	Details
Item 1	Program	Net Zero Manufacturing Initiative – <Low Carbon Product Manufacturing Fund> or <Renewable Manufacturing Fund> - Grant Program
Item 2	Project title	[Insert]
Item 3	Commencement Date	[means the date on which the last party signs this Deed.]
Item 4	Completion	Target Completion Date: [Insert] <i>[Drafting note: this date must be before the Final Completion Date.]</i>
		Final Completion Date: [Insert] <i>[Drafting note: this date must be on or before 30 June 2032.]</i>
Item 5	Expiry Date	the date that is seven years after the Completion Date.

Item 6	Site	[Insert]	
Item 7	Grant	[\$[Insert] (excluding GST)	
Item 8	Recipient Funding	[\$[Insert] (excluding GST)	
Item 9	Co-funding	Name and contact details of Funding Provider	Total amount contributed (excluding GST)
		[Insert]	[Insert]
Item 10	Grant Funding Percentage (Overall)	[Insert]	
Item 11	Guarantee	A guarantee [is] [is not] required to be provided under clause 2.3.	

Recitals

- A The Net Zero Manufacturing Initiative program aims to build local manufacturing capacity and capability to deliver critical components for New South Wales' emerging renewable energy sector and new low carbon products.
- B The [Low Carbon Product Manufacturing Grant Program] or [Renewable Manufacturing Grant Program], part of the Net Zero Manufacturing Initiative, [offers grants to support the construction of manufacturing facilities to produce low carbon products at commercial scale] or [offers grants to support the construction of manufacturing facilities to produce components for renewable energy generation, storage, and transmission infrastructure at commercial scale].
- C The Recipient has submitted an Application under the Net Zero Manufacturing Initiative to undertake the Project.
- D The Department has assessed the Recipient's Application and agrees to provide the Grant to the Recipient to complete the Project in accordance with the terms of this Deed.
- E The Recipient agrees to both accept and apply the Grant Instalments and deliver the Project in accordance with the terms of this Deed.
- F The Recipient will provide or procure the Recipient Funding and Co-funding to deliver the Project in accordance with the terms of this Deed.

Agreed Terms

1. Defined terms & interpretation

1.1 Defined terms

In this Deed capitalised terms have the meaning given in the table below, unless the context requires otherwise:

Term	Definition
Abandon	means circumstances in which no delivery or activities have been carried out in respect of the Project for 60 consecutive days, other than in the case of a Permanent Cessation of Operations.
ACCC	means the Australian Competition and Consumer Commission.
ACCC Approval	means approval provided by the ACCC in respect of any matter requiring ACCC approval under the <i>Competition and Consumer Act 2010</i> (Cth) and associated regulations, including with respect to notification of acquisitions (in accordance with the <i>Competition and Consumer Act 2010</i> (Cth)).
Access Zones	means any and all of the following: (a) the Site; (b) any other premises where the Project is being performed; (c) any premises where Records are held or stored; and (d) any premises where plant and equipment which will be incorporated into the Project Assets or where Material relating to the Project is kept .
Additional Conditions	means additional terms and conditions stated in Item 13 of Schedule 1 and which form part of the Deed.
Advance Milestone	means each Milestone Event listed in Item 2 of Schedule 2, for which payment of the Grant Instalment is payable ahead of completion of the Milestone Event. Advanced Milestones means multiple or all of the Milestone Events, as the context requires.
Adverse Event	has the meaning given in clause 7.1.
AI System	means a model, or a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments and includes Machine Learning Tools.
Alleged Misconduct	means an allegation which raises a reasonable suspicion of misconduct and 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.

Amended Cure Plan	means a further Cure Plan following rejection of a proposed Cure Plan.
Annexure	means an Annexure to this Deed.
Application	means all documents submitted for assessment under the Net Zero Manufacturing Initiative program by or on behalf of the Recipient for the delivery of the Project, and includes all related supporting documentation provided in connection with the application.
Application Date	means the date on which the Recipient submitted its Application.
Approved Auditor	means a person who is: (a) registered as a company auditor under the Corporations Act or an appropriately qualified member of Chartered Accounts Australia and New Zealand, CPA Australia or the Institute of Public Accountants; (b) not a principal, member, shareholder or Associate of the Recipient, a Partner Organisation or a Related Entity of the Recipient or a Partner Organisation; (c) not the Recipient's accountant; and (d) independent of the Recipient and the Recipient's Related Entities.
Asset Register	means a written register kept in accordance with Australian Accounting Standards that is audited annually which contains details of the Project Assets purchased, constructed, manufactured, leased, created or otherwise brought into existence for the purposes of the Project whether wholly or in part using the Grant, the Co-funding or the Recipient Funding, 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 Grant 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 the Project Assets disposal, including sale price, sale date, independent valuation and purchaser details.
Associate	means, in respect of a person, any officer, employee, agent, contractor (and in the case of the Recipient, its Contractors) of that person, and for the purposes of this Deed: (a) in the case of the Recipient, does not include the Department or any of its Associates; and (b) in the case of the Department, does not include the Recipient or any of its Associates but does include the State of New South Wales and the Department's responsible Minister.

Attachment	means an attachment to this Deed.
Audit Opinion	means an audit opinion: (a) provided by an Approved Auditor compliant with Australian Accounting Standards; and (b) includes all information required by the Department.
Australian Accounting Standards	means the accounting standards made by the Australian Accounting Standards Board or, where no standards have been made by the Australian Accounting Standards Board, the other accounting standards which are generally accepted and consistently applied in Australia.
Authorisation	means any applicable consent, licence, approval, permit, registration, accreditation, determination, certificate, registration, permission, filing or other authorisation that is required to be issued by or obtained from any Government Agency or in accordance with any Law for the implementation of this Deed and Project, including without limitation, FIRB Approval and ACCC Approval.
Bank Account	means an account: (a) in the Recipient's name; (b) which is not controlled by any person other than the account bank and the Recipient; and (c) with a deposit-taking institution in Australia authorised under the <i>Banking Act 1959</i> (Cth) to carry on banking business in Australia. If a Segregated Bank Account is required under this Deed, then references to Bank Account also mean the Segregated Bank Account.
Budget	means the current budget for the Project, being the Initial Budget as amended from time to time in accordance with clause 3.
Business Day	means a day in Sydney that is not a Saturday, Sunday or public holiday pursuant to the <i>Public Holidays Act 2010</i> (NSW).
Calculations	has the meaning given in clause 9.8(d).
Change in Control	occurs in relation to the Recipient (whether alone or together with any Associate or Associates) or its permitted successors, where: (a) a person who does not Control the Recipient acquires such Control; (b) a person who does not have Operational Control over the Recipient acquires such Operational Control; (c) a person that Controls the Recipient ceases to have such Control; (d) a person who has Operational Control over the Recipient ceases to have such Operational Control; or (e) a change in the manager, trustee or Responsible Entity of any Entity that is a trust. A 'Change in Control' of the Recipient will not occur as a result of:

	(f) the Recipient or any of its Related Bodies Corporate becoming listed on the Australian Stock Exchange or other recognised securities exchange; or (g) a transfer of or other dealing in shares in the Recipient or any of its Related Bodies Corporate that are listed on the Australian Stock Exchange or other recognised securities exchange. For the purposes of this definition of Change in Control: (h) "Associate" or "Associates" has the meaning given in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of the Corporations Act); and (i) to the extent it applies to a Partner Organisation, reference to the 'Recipient' will be read as references to the 'Partner Organisation'.
Change in Policy	means a change in the Department's policies or the Commonwealth Government policies (if the Commonwealth Government is contributing to the Project) with respect to or in connection with the: (a) Project; (b) funding provided under this Deed; or (c) implementation of this Deed.
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-funding	means the cash contributions from the Funding Providers to the costs of delivering the Project, identified in Item 9 of the Project Details.
Commencement Date	has the meaning given in Item 3 of the Project Details.
Commissioned	means the point at which each of the following have achieved: (a) the design, construction, commissioning and testing (as applicable) of the Project Assets has been completed in accordance with this Deed; (b) the Recipient has obtained Authorisations necessary for the operation and maintenance of the Project; (c) the Project Assets are capable of manufacturing the Products at the required Production Capacity; and (d) the Knowledge Sharing Deliverables have been provided to the Department to the extent they relate to the Construction Period.
Commissioning	means the achievement of Project being Commissioned.
Committed	means at any time, a present or accrued obligation on the Recipient under a written contractual arrangement to pay money to a third party. It does not include any future obligation to make payment to a third party:

	(a) which is subject to any outstanding condition to payment (other than the expiration of time) or other contingency that has not been satisfied at that time; or (b) which the Recipient has a right to cancel or terminate under the contractual arrangement or under Law.
Completion Date	means the date on which the Project is Commissioned.
Confidential Information	of a Disclosing Party, means all information disclosed by or on behalf of the Disclosing Party to the Receiving Party 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; and (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 portfolio legislation, 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, is likely to conflict, or which may reasonably be perceived as conflicting with or restricting the Recipient and its Associate's ability to fairly and independently perform the Recipient's obligations under the Deed. For the avoidance of doubt, a Conflict of Interest includes Alleged Misconduct.
Construction Period	means the period commencing on the day after the Commencement Date and ending on the Completion Date.
Contractor	means a contractor of the Recipient (other than the Department) and includes any contractor of such a contractor, whether hired directly by the Recipient or by a person hired by the Recipient and including

	each tier of contract, subcontract and so forth and any replacement of that contractor in accordance with this Deed. For the avoidance of doubt, 'Contractor' 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 party.
Control	has the meaning given in section 50AA of the Corporations Act, except that: (a) the application of section 50AA(4) will be disregarded; (b) in the case of a body corporate, it includes the direct or indirect right to exercise more than 25% of the votes exercisable at a general meeting of that body corporate and the direct or indirect right to appoint more than 25% of its directors; (c) in the case of a trust, it includes the direct or indirect right to exercise more than 25% of the votes exercisable by the beneficiaries of that trust in their capacity as beneficiaries and the ability to appoint or remove the trustee of the trust; (d) in the case of any other person, it includes the direct or indirect right to exercise more than 25% of the voting rights in the person; and (e) in the case of any person (including those listed in paragraphs (b) to (d) above), it includes the direct or indirect capacity to determine the outcome of decisions about the person's financial and operating policies, and Controlled has a corresponding meaning.
Core Modern Slavery Obligations	means the following obligations for the Recipient to: (a) not engage in Modern Slavery; (b) use best endeavours to ensure compliance with Modern Slavery Laws (as applicable), including by its Associates, Related Entities and Partner Organisations; (c) ensure in its arrangements with its Partner Organisations, Related Entities and Associates that those arrangements include provisions equivalent to the obligations in (a), (b) and (d) of this definition; and (d) use best endeavours to ensure that its Associates, Related Entities and Partner Organisations provide their respective directors, officers, employees and suppliers with at least the minimum level of wages and other entitlements required by law.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Correctly Rendered Invoice	means an invoice which: (a) meets the requirements of a tax invoice as set out in the GST Act; (b) is in a form approved by the Department;

	(c) sets out any Project number provided by the Department and Project title; (d) sets out the amount of the Grant to be paid by the Department for that Milestone Event together with the supporting documentation and any other evidence required by the Department; and (e) includes any other details reasonably requested by the Department from time to time.
Cost Savings	has the meaning given in clause 9.8(b)(iv)(A).
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.
Data Location Conditions	means, with respect to the Project: (a) ensuring that information provided by the Department (including Personal Information provided by the Department) are at all times handled and processed in accordance with all applicable Laws, including the Privacy Laws and the <i>State Records Act 1998</i> (NSW) (to the extent applicable); (b) not transferring or allowing access to any Personal Information provided by the Department to a jurisdiction outside New South Wales without the prior written consent of the Department; (c) ensuring that the information provided by the Department (including Personal Information provided by the Department) is at all times kept secure and protected in accordance with Good Industry Operating Practice and the requirements of this Deed; and (d) compliance with any other reasonable requirements or conditions with respect to the location, access and use of information provided by the Department (including Personal Information provided by the Department) provided by the Department as notified to the Recipient from time to time.
Deed	means this document comprised of the Details, the Recitals, the Agreed Terms, the Schedules, Annexures and attachments to this Deed.
Disclosing Party	means the party disclosing the Confidential Information.
Dispute	means a dispute, controversy or Claim arising out of, relating to, or in connection with this Deed, including (without limitation) any question regarding its existence, validity or termination.
Dissemination Activities	means activities undertaken at the Department's request to provide and disseminate information about the Project, including any or all of the following: (a) participating in or facilitating relevant meetings, conferences, seminars, workshops, surveys and interviews; (b) delivering presentations, assisting the Department with media announcements and/or publishing reports (or facilitating the Department to deliver presentations, media announcements or to publish reports);

	(c) providing briefings to the Department (including its staff) and other relevant industry forums, on the Project and its progress and achievement of the Project Objectives; and (d) either through lessons learnt Reports (where applicable) or ad hoc Reports, to cover particular topics related to the Project (or a portfolio of activities related to the Project).
Eligible Expenditure	means any reasonable capital expenses and other costs (such as fees, expenses and disbursements) directly incurred or Committed during the Term to deliver the Project, including: (a) to purchase land for the Site (and associated acquisition costs) but only where approved prior in writing by the Department and then only up to the amount included in the approved Budget; (b) to purchase, construct, install and/or commission new plant, equipment and/or machinery; (c) to purchase, construct, establish and/or fit out new facilities, buildings or hubs; (d) to purchase technology and/or Intellectual Property Rights required to undertake the Project; (e) to upgrade existing facilities, buildings, plant, equipment, machinery and/or technology where necessary to deliver the Project and achieve the Project Objectives; (f) to pay for labour costs up to 10% of the Grant (in the aggregate) as approved in the Budget, which may include one or more of: (i) external project management and administration; (ii) specialists, such as technicians and subject matter experts; (iii) machine operators; (iv) consultants; (v) tradespeople; (vi) apprentices; (vii) to pay salary and salary on-costs of employees and amounts payable to other workers in each case within the Recipient's business, limited to amounts included in the Budget and excluding salary, salary on-costs and such other amounts for existing positions, employees and workers; (viii) related to contractor costs; (g) that are related to capital expenditure costs; and (h) any other costs that the Department (in its sole opinion) considers to be direct costs to deliver the Project, without double counting but in each case excluding: (i) Ordinary Business Expenses during the Term; (j) costs to purchase land for the Site (and associated acquisition costs) where the Department has not approved the purchase of that land for the Site;

	(k) costs funded by, or forecasted (in the Budget or otherwise) to be funded by, the Recipient Funding or Co-funding; (l) costs incurred prior to execution of this Deed; (m) costs funded by other sources; (n) expenditure on cost or time overruns; (o) any escalation of costs; (p) any expenditure which may be an operational subsidy; (q) penalties, breaches or fines howsoever incurred by the Recipient or its Associates; and (r) expenditure on those matters identified in clause 9.2.
Entity	has the meaning given in section 64A of the Corporations Act and is also deemed to include a joint venture within the meaning of Australian Accounting Standard 131 (AASB 131).
Estimated Costs	means the Estimated Cost for the Milestone Event specified in Item 1 of Schedule 2.
Existing Material	means any Material in existence before the Commencement Date or developed independently of this Deed.
Expiry Date	means the date specified as such in Item 5 of the Project Details, unless this Deed is terminated or ends prior to that date in which case the Expiry Date will be the date of that termination or end.
Final Completion Date	means the 'Final Completion Date' specified in Item 4 of the Project Details.
Final Costs	has the meaning given in clause 9.8(b)(i).
Final Milestone Date	means the 'Final Milestone Date' for the relevant Milestone Event specified in Item 1 of Schedule 2.
Final Report	means the "Final Report" specified in Item 7 of Schedule 1.
FIRB	means the Foreign Investment Review Board and any of its successor authorities.
FIRB Approval	in respect of an action means: (a) the relevant person has received written notice under the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth), by or on behalf of the Treasurer of the Commonwealth stating that the Commonwealth Government does not object to the action taking place; (b) the Treasurer of the Commonwealth becomes precluded from making an order in relation to such action; or (c) if an interim order is made under the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) in respect of the relevant period, the subsequent period from making a final order prohibiting such action elapses without a final order being made.
Force Majeure Event	has the meaning given in clause 18.1.
Funding Acknowledgment Guidelines	means guidelines published from time to time which apply to recipients of grant funding from any NSW Government entity regarding acknowledgment of funding, including those available at

	https://www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines/funding-acknowledgement-guidelines .
Funding Provider	means any person or organisation which provides funding to the Recipient or a Related Body Corporate of the Recipient for the Project under a Funding Provider Agreement, including a Partner Organisation.
Funding Provider Agreement	means any agreement between a Funding Provider and the Recipient or a Related Body Corporate of the Recipient under which funding is provided for the Project and includes any agreement between the Recipient and the Partner Organisations pursuant to which the Partner Organisation provides funding to the Project.
Good Construction Industry Practice	means the exercise of that degree of skill, care, diligence, efficiency, prudence and foresight that would be expected from skilled and experienced and internationally recognised designers, engineers and constructors of facilities of a similar type, size and value to the Project under conditions comparable to the Project, consistent with applicable Laws, Authorisations, industry codes and standards.
Good Operating Industry Practice	means the exercise of that degree of skill, care, diligence, efficiency, prudence and foresight that would be expected from skilled and experienced and internationally recognised operators and maintainers of facilities of a similar type, size and value to the Project under conditions comparable to the Project, consistent with applicable Laws, Authorisations, industry codes and standards.
Government Agency	means a government, government department or other body, or a governmental, semi-governmental, judicial, municipal, statutory or public entity or authority (including a statutory authority, a State owned enterprise or a corporate Commonwealth entity), a self-regulatory authority established under statute, or a stock exchange (wherever created or located) or a person (whether or autonomous or not) who is charged with the administration of the Law.
Grant	means the grant amount identified in Item 7 of the Project Details (as may be amended from time to time in accordance with this Deed).
Grant Document	means: (a) this Deed; (b) each Funding Provider Agreement; (c) each Key Contract; (d) each Guarantee Agreement; (e) each lease or licence to the land on which Project Assets are constructed or located; and (f) any other document the parties agree is a Grant Document. Grant Documents means multiple or all of these, as the context requires.
Grant Funding Percentage (Milestone)	means the percentage of the Grant applied towards the Estimated Costs for a Milestone Event, as specified in Item 1 of Schedule 2.
Grant Funding Percentage (Overall)	has the meaning given in Item 10 of the Project Details.

Grant Guidelines	means the <i>[insert description and date]</i> .
Grant Instalments	means the amounts calculated in accordance with clause 9.3(a).
Grants Administration Guide	has the meaning given in the GSF Act.
GSF Act	means the <i>Government Sector Finance Act 2018</i> (NSW).
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
GST Recipient	means a party providing consideration for the taxable supply under this Deed.
GST Supplier	means a party that makes a taxable supply under this Deed.
Guarantee	means a guarantee given by a Guarantor in favour of the Department, guaranteeing, amongst other things, the Recipient's performance, payment, obligations and liabilities under this Deed, in a form satisfactory to the Department (in its absolute discretion).
Guarantor	means a person or Entity approved by the Department which is a guarantor pursuant to a Guarantee.
Harmful Code	means any computer program viruses or other code that is harmful, destructive, disabling or which assists in or enables theft, alteration, denial of service, unauthorised access to, or disclosure, or destruction or corruption of, Material or information technology systems.
Initial Budget	means the budget approved by the Department in accordance with clause 3.1(b).
Insolvency Event	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 Corporations Act); (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a "controller" (as defined under the Corporations Act) appointed to any of its property; (c) it is subject to any arrangement (including a deed of company arrangement or scheme of 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 which is disputed by the relevant person, 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 Corporations Act) 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 Corporations Act (or it makes a statement from which the other party reasonably deduces it is so subject); (g) it is otherwise unable to pay its debts when they fall due; or (h) something having a substantially similar effect to paragraphs (a) to (g) happens in connection with that person under the laws of any jurisdiction.
Integrity Agency	has the meaning given to that term in the <i>Government Sector Finance Act 2018</i> (NSW).
Intellectual Property Infringement	means an actual or alleged infringement of Intellectual Property Rights or Moral Rights, including unauthorised acts which would, but for the operation of section 163 of the <i>Patents Act 1990</i> , section 96(1) of the <i>Designs Act 2003</i> , section 183 of the <i>Copyright Act 1968</i> , and section 25 of the <i>Circuit Layouts Act 1989</i> , constitute an infringement.
Intellectual Property Rights	means all intellectual property rights including all copyright (including future copyright), trade and service marks (including goodwill in those marks), design, patent, know how, domain names and trade names, semiconductor or circuit layout rights, plant breeders' rights 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 Contract	means a contract: (a) specified as a 'Key Contract' in Schedule 4; and (b) a contract for the performance of any part of the Recipient's obligations under any Grant Document with a value either: (i) greater than 20% of the capital expenditure for the Project; or (ii) equal to or greater than \$500,000 (excl GST).
Key Contractor	means a Contractor engaged under a Key Contract.
Knowledge Sharing Deliverables	means the deliverables set out in the Knowledge Sharing Plan.
Knowledge Sharing Plan	means the knowledge sharing plan set out in Schedule 3.
Law	means: (a) those principles of common law and equity established by decisions of courts; (b) any legislation or regulation; (c) any statutory instrument or proclamation of any applicable jurisdiction in which any act or obligation in connection with this Deed is or is to be carried out or regulated, including the rules of any recognised stock exchange; or

	(d) any Authorisation (including any conditions or requirements under them) which is issued under an instrument referred to in paragraph (b) of this definition.
Liability	means any debt, obligation, Claim, action, cost (including legal costs, deductibles or increased premiums), expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is: (a) actual, prospective or contingent; or (b) currently ascertainable or not, and whether under or in any way in connection with any of the Grant Documents or arising at Law.
Licensed Materials	means the materials licensed to the Department pursuant to clauses 11.2 and 11.3.
Loss	means any loss, damage, Liability, cost, charge or expense (including legal expenses on a full indemnity basis), penalty, compensation fine or outgoing (including licence fees or royalties sustained or incurred), in each case of any kind suffered or incurred or agreed to be paid by way of settlement or compromise.
Machine Learning Tool	means a kind of AI System which builds systems that can learn from data and improve their performance over time without being explicitly programmed.
Material	means any reports, plans, documents, information, data or other item in which Intellectual Property Rights subsist.
Milestone Date	means in respect of a Milestone Event, the Target Milestone Date and the Final Milestone Date identified as such in Schedule 2 (as such date may be adjusted pursuant to this Deed).
Milestone Event	means each milestone event identified as such in Schedule 2.
Milestone Event Report	means the reports specified in Item 7 of Schedule 1.
Modern Slavery	means any conduct that constitutes or would constitute any offence listed in Schedule 2 of the <i>Modern Slavery Act 2018</i> (NSW), including: (a) an offence of attempting or incitement to commit such an offence; (b) any conduct that constitutes or would constitute an offence under any of the Modern Slavery Laws as amended from time to time, including an offence of attempting or incitement to commit such an offence; and (c) conduct engaged in elsewhere than in New South Wales that, if it occurred in New South Wales, would constitute a modern slavery offence under paragraphs (a) or (b).
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, forced 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.
Month	means a calendar month.
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 (whether written, created, developed or prepared by or on behalf of the Recipient or its Associates) which comes into existence through the performance by the Recipient of its obligations under this Deed or which is copied or derived at any time from the material referred to in this definition.
Notifiable Incident	has the meaning given to that term in the WHS Law.
NSW Government	means any New South Wales Government Agency including the government of the State of New South Wales and any governmental agency, department or authority of New South Wales.
Operational Control	means the authority to manage, direct and oversee the day to day activities of the Site, facility and Project, including enforcing health and safety and environmental policies.
Operations Period	means the period commencing on the Completion Date and ending on the Expiry Date.
Ordinary Business Expenses	means day to day business expenses, including: (a) labour costs, salary, salary on-costs and such other amounts for existing positions, employees and workers; (b) rent, maintenance and utility costs used to run and operate the Recipient's business; (c) marketing and promotion costs; (d) front-end engineering design (FEED) costs; (e) any expenses related to operation and maintenance; (f) any expenses related to stakeholder engagement; and (g) any other business expenses that the Department (in its sole opinion) considers to be ordinary business expenses.
Partner Organisation	means a person other than the Recipient's Associates, that is a party to a contract, arrangement, or understanding with the Recipient in connection with the delivery of the Project and includes the individual or organisation specified in Item 12 of Schedule 1.

Partner Organisation Agreement	means the agreement between the Recipient and the relevant Partner Organisation which documents the arrangements between those parties in relation to delivery of the Project including details of any Co-funding to be provided. For the avoidance of doubt, a Partner Organisation Agreement does not include a Guarantor.
Pay	has the meaning given in clause 9.12(e).
Payer	has the meaning given in clause 9.12(e).
Payment Condition	has the meaning given in clause 9.4.
Permanently Cease Operations	means the suspension or ceasing of operations at the facility on the Site at which the Project is performed for a continuous period of 6 Months without prior written approval from the Department. Permanent Cessation of Operations has a corresponding meaning.
Permitted Security Interest	means: (a) any Security Interest arising solely by operation of Law and in the ordinary course of the Recipient's ordinary business; or (b) a Security Interest that has the prior written consent of the Department (in its absolute discretion, with or without conditions).
Personal Information	means: (a) 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; or (b) information defined as such under applicable Privacy Laws or related legislation.
Plan	means the plans specified in Item 11 of Schedule 1 and as otherwise agreed as a 'Plan' by the parties.
Privacy Laws	means the <i>Privacy and Personal Information Protection Act 1998</i> (NSW), the <i>Health Records and Information Privacy Act 2002</i> (NSW) and the <i>Privacy Act 1988</i> (Cth) and includes any directions, regulations, codes of practice and principles made under these Acts.
Production Capacity	means the maximum production rate, specified in Item 10 of Schedule 1, for the Project per annum under normal operating conditions.
Products	has the meaning given in Item 9 of Schedule 1. Products has a corresponding meaning.
Program	means the [Low Carbon Product Manufacturing Grant Program] or [Renewable Manufacturing Grant Program] administered by the Department.
Prohibited AI System	means any AI System which has been prohibited by the Department or any other NSW or Commonwealth government body and includes any Protective Security Directions under the Protective Security Policy Framework, and the applications listed from time to time in the

	Restricted Applications List issued by the Department of Customer Services which is available at DCS-2025-01 Cyber Security NSW Directive - Restricted Applications List .
Project	means the project described in the Project Details and Schedule 1.
Project Asset	means any item of tangible or intangible property (including reports and advices obtained) which: (a) is purchased, constructed, manufactured, leased, created or otherwise brought into existence for the purposes of the Project either wholly or in part with use of the Grant, the Co-funding or the Recipient Funding as set out in Item 6 of Schedule 1; and (b) upgrades, updates or replaces an item referred to in paragraph (a) of this definition during the Term.
Project Details	means the section of the Details under the heading of that name.
Project Management Team	means a team established to oversee and/or coordinate the management, delivery and implementation of the Project.
Project Objectives	means the objectives specified in Item 1 of Schedule 1.
Project Particulars	means information provided by the Recipient to the Department relating to the Project including Knowledge Sharing Deliverables, information provided by the Recipient relating to Dissemination Activities, Reports, Plans and/or Data arising out of or in connection with this Project to the extent that such information, reports and/or Data which are not the subject of Intellectual Property Rights.
Project Requirements	means the requirements specified in Item 1 of Schedule 1.
Project Specification	means the project specification set out in Item 3 of Schedule 1 (as amended from time to time in accordance with this Deed).
Quarter	means each 3 Month period commencing on a Quarterly Date save that: (a) the first Quarter will be the period from the Commencement until the day before the first Quarterly Date after the Commencement Date; and (b) the last Quarter will be period from the last Quarterly Date during the Term to the Expiry Date, unless the Deed is terminated earlier, in which case the last Quarter will be the period from the later of the Commencement Date and last Quarterly Date immediately preceding the termination to the Expiry Date.
Quarterly Date	means every 1 January, 1 April, 1 July and 1 October.
RCTI	means a recipient-created tax invoice (meaning an invoice created by the Department as recipient in this definition has the meaning under GST Law).
Receiving Party	means the party receiving the Confidential Information.
Recipient Funding	means the cash contribution from the Recipient to the costs of delivering the Project, as stated in Item 8 of the Project Details.

Reconciliation Amount	has the meaning given in clause 9.8(b)(iv)(B).
Reconciliation Date	has the meaning given in clause 9.8(a).
Records	means documents, correspondence, information and data stored by any means with respect to the Project and all copies and extracts of the same.
Refundable Amount	has the meaning given in clause 21.1(a)(iv).
Related Body Corporate	in relation to a corporation means a body corporate that is related to the corporation within the meaning of the Corporations Act, but on the basis that 'subsidiary' has the meaning given to Subsidiary in this Deed and that 'body corporate' includes any entity or trust.
Related Entity	means: (a) a Related Body Corporate; (b) a party to which section 228 of the Corporations Act applies, provided that for purposes of this definition: (i) 'public company' refers to any body corporate, trust or partnership; (ii) '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 set out in this Deed.
Reportable Complaint	means 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, discrimination or negligence.
Report Due Date	means the date specified in Item 7 of Schedule 1 or such other date agreed by the Department in writing.
Reports	means the reports specified in Item 7 of Schedule 1 and any other reports or similar documents that the Recipient is required to provide the Department under this Deed.
Representative	means the person appointed by a party to be its representative for this Deed as specified in the Parties Details and includes any replacement of that natural person as notified to the other party from time to time.
Reputational Proceedings	means any legal proceedings or investigations (including any inquiry, investigation, litigation, arbitration, conciliation or mediation) against the Recipient or any of its Associates 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	has the meaning given in clause 17.2(a).
Required Rating	means, in respect of an entity, the rating assigned by a ratings agency to the unsecured, senior long term debt or deposit obligations of the entity (unsupported by third party credit enhancement) of at least:

	(a) A- by S&P Global; or (b) A3 by Moody's.
Responsible Entity	has the meaning given in the Corporations Act.
Schedule	means a Schedule to this Deed.
Secondary Purpose	means use of the Project Assets for a purpose that is not consistent with clause 6.2(a) during the Term.
Security Event	means an event which results in either or both of a: (a) Security Incident; and/or (b) breach of the security program requirements required under clause 12.6.
Security Incident	means: (a) any unauthorised or unlawful use of; loss of; access to; alteration of; or disclosure of, Personal Information, Department Confidential Information or Department data within the Recipient's possession or control; (b) any notifiable data breach under the Privacy Laws; (c) the introduction of Harmful Code; (d) any security breaches, cyber-security incidents or similar events relating to, or affecting, the Project which trigger, or are likely to trigger, contractual reporting obligations or legal reporting obligations to an Authority or which would require a response or action under this Deed, at Law or under any of the policy, code or standard; (e) the occurrence of circumstances indicating it is reasonably likely that any of the circumstances under paragraphs (a) to (d) have occurred; or (f) any alleged or suspected occurrence of any of the above events or circumstances.
Security Interest	means: (a) any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, encumbrance, trust arrangement, contractual right of set-off, preferential right, power or title retention or flawed deposit arrangement or any other security agreement or arrangement in favour of any person including any "security interest" as defined in sections 12(1) or (2) of the <i>Personal Property Securities Act 2009</i> (Cth); or (b) any agreement to create any of the above or allow them to exist.
Segregated Bank Account	means a newly established Bank Account in the Recipient's name: (a) which is not controlled by any person other than the Recipient; (b) established solely for the purposes of accounting for and administering the Grant paid to the Recipient by the Department;

	(c) which does not bear a rate of interest (unless otherwise approved by the Department, with or without conditions); (d) separate from the Recipient's or any other person's operational accounts; and (e) if requested by the Department, which is governed by an account control deed between the Department, the Recipient and the relevant bank which limits the Recipient's ability to withdraw funds without the Department's consent.
Serious Incident	means an incident that: (a) is likely to negatively impact on the 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, including a Notifiable Incident; (c) requires an emergency response, or involves death or serious injury or any criminal activity; or (d) has or is reasonably likely to attract significant public interest and attention.
Site	means the land identified in Item 6 of the Project Details.
Statement of Compliance	means a statement, certificate or letter that: (a) is issued by a suitably qualified independent firm approved by the Department (acting reasonably), with demonstrated relevant market experience, suitably qualified personnel and capability in preparing similar statements, certificates or letters; (b) is able to be relied upon by the Department with reliance language acceptable to it; and (c) certifies that the relevant Plan: (i) has been developed satisfactorily; (ii) complies with all applicable Laws; (iii) is prepared in accordance with Good Construction Industry Practice and/or Good Operating Industry Practice (as relevant); and (iv) is being appropriately implemented.
Statutory Declaration	means a statutory declaration in the form determined by the Department.
Submitted Material	means Reports, data or information required to be submitted under clause 12.2.
Subsidiary	has the meaning given to 'subsidiary' in the Corporations Act but so that: (a) a trust is a 'Subsidiary', for the purposes of which a unit or other beneficial interest will be regarded as a share; and (b) a corporation or trust is a 'Subsidiary' of a trust if it would have been a 'Subsidiary' if that trust were a corporation.

Target Completion Date	means the 'Target Completion Date' specified in Item 4 of the Project Details.
Target Milestone Date	means the 'Target Milestone Date' for the relevant Milestone Event specified in Item 1 of Schedule 2.
Term	means the term of this Deed in accordance with clause 2.1.
Third Party Materials	means material owned by another person that is: (a) included, embodied in or attached to New Materials, Submitted Materials and Existing Material (but only to the extent embodied in the New Materials or Submitted Materials); or (b) used in undertaking the Project including operation of any Assets (if applicable).
Those Indemnified	means: (a) the Department; (b) the Department's Associates; and (c) each of the Department and the Department's Associates licensees and sub-licensees of any Intellectual Property Rights.
Unspent Grant Amounts	at a particular date means those parts of the Grant which have been remitted to the Recipient but which have not been spent or Committed by the Recipient in accordance with this Deed.
WHS Law	means all applicable Law relating to work health and safety and electrical safety, dangerous goods and hazardous materials and includes (without limitation): (a) <i>Work Health and Safety Act 2011</i> (Cth); (b) <i>Work Health and Safety Regulations 2011</i> (Cth); (c) <i>Work Health and Safety Act 2011</i> (NSW); and (d) <i>Work Health and Safety Regulation 2017</i> (NSW); and any ancillary rules, guides, orders, directions, regulations, codes of practice and other instruments under it, as amended from time to time.

1.2 Interpretation

Headings and subheadings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this Deed:

- (a) the singular includes the plural and vice versa and a word indicating gender includes every other gender;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (d) a reference to entering into a "contract" includes entering into any contract, joint venture, partnership or agency relationship;

- (e) a reference to a document also includes any variation, replacement, novation or supplement of it;
- (f) a reference to a "person" includes an individual, a corporation, a body corporate, a partnership, a joint venture (whether incorporated or unincorporated), an unincorporated association, an Entity, a trust and any Government Agency or any other entity or organisation;
- (g) a reference to a particular person includes the person's executors, administrators, successors, permitted substitutes (including persons taking by novation) and assigns and in the case of a trustee, includes any substituted or additional trustee;
- (h) unless otherwise indicated:
 - (i) a reference to a party, clause, Schedule, Annexure or Attachment is a reference to a party, clause, Schedule, Annexure or Attachment of or to this Deed; and
 - (ii) a reference to a section, table, item or part is a reference to the relevant numbered section, table, item or part within the Schedule, Annexure or Attachment (as applicable) in which it is located;
- (i) a reference to a time of day is to the time in Sydney, Australia;
- (j) a reference to dollars, \$ or \$A is a reference to the currency of Australia;
- (k) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (l) a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, subordinate legislation, ordinances, statutory instruments (however described) and proclamations);
- (m) a reference to a group of persons is a reference to any two or more of them jointly and to each of them individually and a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (n) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (o) a period of time dating from a given day or the day of an act or an event is to be calculated exclusive of that day;
- (p) if the day on which a party must do something under this Deed is not a Business Day, the party must do it on the next Business Day;
- (q) a reference to a right includes any benefit, remedy, function, discretion, authority or power; and
- (r) where there is a reference to a Government Agency, institute, association or other body referred to in a Grant Document which:
 - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, that Grant Document is deemed to refer to that other entity; or
 - (ii) ceases to exist, that Grant Document is deemed to refer to the new entity (if any) which serves substantially the same purpose or object as the former entity.

1.3 Order of precedence

- (a) If there is an ambiguity, inconsistency or discrepancy between any of the documents forming part of this Deed, those documents will be interpreted in the following order of priority:
 - (i) the Agreed Terms;
 - (ii) the Project Details; and
 - (iii) Schedule 1 to Schedule 4,
 so that the terms of the higher ranked document prevail to the extent of the ambiguity, inconsistency or discrepancy.
- (b) If there is an ambiguity, inconsistency or discrepancy between this Deed and any other Grant Document, then the following order of precedence applies to the extent of any ambiguity, inconsistency or discrepancy:
 - (i) this Deed (and any variations to this Deed); and
 - (ii) the remaining Grant Documents (if any).
- (c) If the Recipient discovers any ambiguity, inconsistency or discrepancy within or between any one or more of the documents forming part of this Deed or between the Grant Documents, the Recipient must give the Department notice of such ambiguity, inconsistency or discrepancy within a reasonable time after discovering it.
- (d) The resolution of any ambiguity, inconsistency or discrepancy pursuant to this clause 1.3 does not entitle the Recipient to make any Claim against the Department, nor does it modify any of the Recipient's rights and obligations.

1.4 Department's rights, duties and functions

- (a) Unless otherwise expressly provided in a Grant Document, nothing in any Grant Document gives rise to any duty on the part of the Department to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations under any Grant Document.
- (b) Despite any term expressly provided or implied in any Grant Document to the contrary:
 - (i) the Department is not obliged to:
 - (A) exercise any executive or statutory right, duty or function, or to influence, override, interfere with or direct any part of the Department or any other Government Agency in the proper exercise and performance of any of its executive or statutory rights, duties or functions;
 - (B) develop or implement any new Department policy or change any Department policy;
 - (C) enact any new legislation or amend or repeal any Law or make or revoke any regulation including any statutory instrument or delegation; or
 - (D) provide an interpretation of any legislation, regulation or Department policy; and
 - (ii) nothing expressly provided or implied in any Grant Document has the effect of constraining the Department or placing any fetter on the Department's discretion to exercise or not to exercise any of its executive or statutory rights, duties or functions.

1.5 Reasonable endeavours of the Department

In any Grant Document a requirement for the Department to use 'best endeavours', 'reasonable endeavours', 'act reasonably', to not act unreasonably, to act in good faith or to take 'reasonable' or 'all reasonable' steps or actions, does not require:

- (a) the exercise or non-exercise of any executive or statutory discretion, right or power;
- (b) the development or implementation of any new Department policy or a change in Department policy;
- (c) the enactment of any new legislation or amending or repealing any Law or the making or revocation of any regulation including any statutory instrument or delegation; or
- (d) the Department to act in a way it regards as not in the public interest.

1.6 No Department Liability for Review and Approval

No:

- (a) review of, comment upon, acceptance, approval or certification of any document, or approval of or consent to a proposed Contractor, permission, comment or recommendation, in each case by the Department or its Associates (or a failure to do so); or
- (b) failure by (or on behalf of) the Department or Department's Associates, to detect any non-compliance by the Recipient with its obligations in accordance with the Grant Documents or any Laws;

will:

- (c) relieve the Recipient from, alter, affect or modify, its Liabilities, obligations or responsibilities whether in accordance with the Grant Documents or according to Law, or give rise to the right of the Recipient to make a Claim against the Department;
- (d) constitute a waiver or prejudice the Department's rights against the Recipient whether under the Grant Documents or otherwise according to Law;
- (e) constitute an approval or acceptance by the Department of the Recipient's performance of its obligations in accordance with the Grant Documents or acceptance of any item or Material delivered; or
- (f) entitle the Recipient to an adjustment of any Milestone Event, Milestone Date, payment or amount or any other obligation arising from or in connection with any Grant Document or to Claim from the Department any Liability incurred by the Recipient.

1.7 Prior approval or consent

If the Recipient is required by a Grant Document to obtain the Department's consent or approval to an action, document or thing, unless otherwise expressly provided in this Deed that that consent or approval:

- (a) must be obtained as a condition precedent to the action, document or thing occurring or coming into effect; and
- (b) may be provided subject to conditions.

1.8 Action without delay

Unless there is a provision in a Grant Document which specifies a period of time in which something must be done by the Recipient, all things must be done by the Recipient without undue delay.

1.9 Provisions limiting or excluding Liability, rights or obligations

- (a) A right or obligation of the Department or the Recipient under this Deed will not limit or exclude any other right or obligation of the Department or the Recipient under this Deed unless otherwise expressly provided.
- (b) Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

1.10 Relationship of the parties

- (a) Unless otherwise expressly provided, nothing in any Grant Document:
 - (i) creates a partnership, joint venture, fiduciary, employment or agency relationship with the Department; or
 - (ii) imposes any duty of good faith on the Department.
- (b) The Recipient acknowledges and agrees that the Department may enter into arrangements which are the same or similar to those set out in the Grant Documents with other persons.

1.11 Additional Conditions

The Recipient agrees to comply with the Additional Conditions.

2. Term and Grant Documents

2.1 Term

Subject to the clauses which survive expiry or termination of this Deed, this Deed commences on the Commencement Date and continues to and ends on and including the Expiry Date.

2.2 Timing acknowledgements

The Recipient acknowledges that the Project must:

- (a) be Commissioned on or before the Final Completion Date which must occur in all cases before 30 June 2032; and
- (b) from the date that the Project is Commissioned until the Expiry Date, operate and continue to operate in accordance with the terms of this Deed.

2.3 Guarantee

- (a) If a Guarantee is specified as required under Item 11 of the Project Details, then the Recipient must deliver to the Department the Guarantee within 20 Business Days after signing this Deed (unless extended by the Department in writing), duly executed by the Guarantor and in the form and substance satisfactory to the Department.

- (b) The Recipient acknowledges and agrees that, despite any other provision of this Deed, the Department will not pay (and will have no obligation to pay) any amount of the Grant until such time as the Guarantee is delivered to the Department in accordance with clause 2.3(a).

2.4 Execution of Grant Documents

Unless otherwise agreed by the Department in writing, within 10 Business Days of execution of each Grant Document, the Recipient must obtain from an external law firm appointed by the relevant counterparties to the Grant Documents (other than the Department), legal opinions given for the benefit of the Department in form and substance satisfactory to the Department confirming:

- (a) the legal capacity and corporate power of those relevant counterparties to enter into and perform their obligations under each of the Grant Documents to which they are a party;
- (b) due execution by the relevant counterparty of each of the Grant Documents to which it is a party; and
- (c) the enforceability against the relevant counterparty of each of the Grant Documents to which it is a party,

provided however, that the relevant counterparty is not required to provide such a legal opinion regarding a Grant Document where the relevant counterparty executes that Grant Document pursuant to section 127 of the Corporations Act and the governing law of the relevant Grant Document remains the law of the State of New South Wales.

3. Budget

3.1 Initial Budget

- (a) The Recipient must submit the proposed budget for the Project on or before the date specified in Item 5 of Schedule 1 for approval by the Department. The proposed budget must align with the Recipient's Application, and any differences from the budget proposed in the Application must be identified to the Department, with reasons provided for each deviation.
- (b) On the date that the Department confirms in writing that the proposed budget has been accepted, the accepted budget is deemed to be the Initial Budget for the Project.
- (c) The Recipient acknowledges and agrees that despite any other provision of this Deed, the Department will not pay, and will have no obligation to pay, any Grant under this Deed unless and until such time as the Initial Budget is accepted and approved in accordance with the requirements of this clause.
- (d) If the Department does not approve the proposed budget, has not waived the requirement for the Initial Budget or the proposed budget has not been provided by the date specified in clause 3.1(a), then the Recipient is in breach of this Deed and without limitation to any other rights, the Department may terminate this Deed in accordance with clause 20.1(a).

3.2 Variations to the Budget

- (a) The Recipient may, with prior written notice to the Department but without prior written consent of the Department, amend the Budget if the amendment is minor such that it will not:

- (i) materially affect the Project;
 - (ii) affect the delivery of the Project by either a Target Milestone Date or a Final Milestone Date; and
 - (iii) affect the accuracy of any of the Schedules to this Deed, for example, any Estimated Costs per Milestone.
- (b) In all circumstances other than that listed in clause 3.2(a), the Recipient must obtain the prior written consent of the Department to amend the Budget.
- (c) If the Budget is amended, the Recipient must provide an updated Budget to the Department:
- (i) if a minor amendment under clause 3.2(a), within 2 Business Days of making the amendment (or such other timing as approved by the Department in writing); or
 - (ii) for any other amendment, within 2 Business Days of the Department providing its consent under clause 3.2(b) (or such other timing as approved by the Department in writing).
- (d) Subject to the Department:
- (i) confirming the amendments are minor amendments; and
 - (ii) providing consent to the amendments if not minor,
- then, on and from the date the Budget is accepted by the Department in writing, the updated Budget will be deemed to be the Budget for the Project without the need for further documentation.

4. Project

4.1 Delivering the Project

- (a) The Recipient agrees to deliver the Project:
- (i) in a manner that is consistent with, and in furtherance of, the:
 - (A) Project Objectives;
 - (B) the Production Capacity; and
 - (C) achievement of the Products;
 - (ii) in accordance with the Project Requirements, the Grant Guidelines, each of the Plans, the Budget, and the terms of this Deed; and
 - (iii) in a proper, timely and efficient manner and to a high ethical and professional standard.
- (b) The Recipient assumes all responsibility (including financial responsibility) for performing and completing the Project. The Recipient accepts all risk arising out of or in connection with the Project including with respect to:
- (i) the cost of the Project;
 - (ii) the design, construction, Commissioning, delivery, testing and completion of the Project; and
 - (iii) any Liabilities arising out of or in connection with:
 - (A) workplace health and safety;

- (B) environmental issues;
- (C) payments to Associates;
- (D) Claims by any third parties;
- (E) contracts between the Recipient and an Associate or Partner Organisation;
- (F) compliance with all Laws and Authorisations relating to the Project; and
- (G) site preparation and conditions, modification, expansion, refurbishment, furnishing and equipping of the Project Assets and related activities.

4.2 Site and access

- (a) The Recipient must ensure that:
 - (i) the Site is owned, leased or licensed by the Recipient during the Term; and
 - (ii) subject to clause 18, throughout the Term it has, and will continue to have, uninterrupted access to the Site to deliver the Project as required by this Deed.
- (b) Throughout the Term the Recipient must allow, and must ensure that any third party with control over the Access Zones must allow, the Department and any persons nominated by the Department to access, visit and inspect the Access Zones.

4.3 General Recipient obligations

- (a) The Recipient must:
 - (i) achieve the Production Capacity requirements and Products requirements;
 - (ii) use best endeavours to complete each Milestone Event on or before the Target Milestone Date;
 - (iii) comply with the Core Modern Slavery Obligations;
 - (iv) complete each Milestone Event on or before the relevant Final Milestone Date;
 - (v) use best endeavours to achieve Commissioning on or before the Target Completion Date;
 - (vi) achieve Commissioning on or before the Final Completion Date;
 - (vii) not Abandon the Project or Permanently Cease Operations; and
 - (viii) at all times act in good faith in its dealings with the Department in relation to this Deed.
- (b) The Recipient must, and must ensure that all of its Associates:
 - (i) progress the Project in a timely and expeditious manner;
 - (ii) hold all licences, consents, and approvals required to implement, complete and operate the Project;
 - (iii) obtain, maintain and comply with all applicable Authorisations which are necessary for the performance of its obligations and/or exercise of any rights arising from or in connection with this Deed, including all conditions of such Authorisations;
 - (iv) comply with all applicable standards and codes relevant to the Project and undertake the Project in accordance with Good Construction Industry Practice and Good Operating Industry Practice;

- (v) comply with all applicable Laws in connection with the performance of this Deed including WHS Law; and
- (vi) while performing its obligations under this Deed and carrying out the Project, comply with any written policies, procedures and directions as required by the Department from time to time.

4.4 General operating obligations

Throughout the Operations Period, the Recipient must:

- (a) continuously operate, manage and maintain the Project Assets in accordance with:
 - (i) Good Operating Industry Practice;
 - (ii) due care and skill;
 - (iii) to the extent not inconsistent with the preceding clauses, the recommendations and guidelines specified by the suppliers of any plant, equipment and materials forming part of the Project or used in the operation and/or maintenance of the Project; and
 - (iv) the requirements in this Deed and the other Grant Documents;
- (b) ensure that the Project Assets remain fit for their intended purpose; and
- (c) ensure the Project meets the Production Capacity and Product requirements.

4.5 Partner Organisations

- (a) The Recipient:
 - (i) must lead the Project and co-ordinate the delivery of the Project;
 - (ii) is not relieved of any of its obligations under this Deed and remains liable to the Department for the acts, defaults and negligence of each Partner Organisation as if they were the acts, defaults or negligence of the Recipient;
 - (iii) must enter into a written agreement with each Partner Organisation that meets the minimum requirements specified in clause 4.5(b) and any relevant Additional Conditions; and
 - (iv) must ensure that each Partner Organisation is suitably qualified, skilled, knowledgeable, experienced and competent to deliver the Project.
- (b) Prior to each Partner Organisation performing any of its obligations to deliver the Project, the Recipient must ensure that its agreement with the Partner Organisation:
 - (i) 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, including with respect to Modern Slavery;
 - (ii) if requested by the Department, includes a deed poll in favour of the Department for performance of the Project, in a form and substance acceptable to the Department;
 - (iii) prohibits the Partner Organisation from subcontracting its obligations to deliver the Project without the Department's prior written consent; and
 - (iv) includes a right for the Recipient to terminate its agreement with the Partner Organisation without liability on the termination of this Deed.

- (c) If at any time throughout the Term, there is a proposed change to a Partner Organisation delivering the Project, the Recipient must provide the following to the Department, for the Department's consideration:
 - (i) notify and provide details of the proposed change to the Department prior to the change; and
 - (ii) provide all information requested by the Department with respect to the proposed change.
- (d) If the Department:
 - (i) approves the request for a change to a Partner Organisation:
 - (A) the Recipient must ensure that the new Partner Organisation meets the requirements of this Deed; and
 - (B) the parties must vary this Deed in accordance with the approval by the Department; or
 - (ii) does not approve the request for a change to a Partner Organisation, the proposed change to a Partner Organisation must not proceed.
- (e) If at any time throughout the Term, there is a proposed Change in Control of a Partner Organisation, the Recipient must seek the Department's prior written consent for a Change in Control of a Partner Organisation in accordance with clause 23.1 as if the Partner Organisation were the Recipient.
- (f) The Recipient:
 - (i) is and remains fully responsible and liable for the performance of each Partner Organisation; and
 - (ii) indemnifies and keeps indemnified the Department in respect of the acts and omissions of each Partner Organisation as if they were acts and omissions of the Recipient.
- (g) To the fullest extent permitted by Law, the Recipient agrees that the Department is released and continues to be released from any claim or liability with respect to:
 - (i) each Partner Organisation;
 - (ii) the performance of this Deed and delivery of the Project by each Partner Organisation; and
 - (iii) any act or omission of each Partner Organisation.

4.6 Associates

- (a) The Recipient must ensure that all of its Associates engaged on or in connection with the Project:
 - (i) are solvent, reputable and of good fame and character;
 - (ii) are appropriately qualified, licensed, trained and experienced;
 - (iii) hold and continue to hold any required clearances, licences, approvals and Authorisations; and
 - (iv) are insured and continue to be insured consistent with Good Construction Industry Practice, Good Operating Industry Practice and the requirements of this Deed.

- (b) The Recipient must engage any Associates under written agreement on terms consistent with this Deed, including with respect to Modern Slavery provisions, insurance requirements and termination rights contained in this Deed.
- (c) The Recipient:
 - (i) indemnifies and keeps indemnified the Department in respect of the acts and omissions of each of the Recipient's Associates (whether or not such Associates are employed or engaged directly or indirectly by the Recipient), as if they were the acts and omissions of the Recipient; and
 - (ii) is responsible for:
 - (A) the performance of the Project by the Recipient's Associates, including the management, coordination and supervision of all of the Recipient's Associates; and
 - (B) ensuring that its Associates comply with the Recipient's obligations under this Deed when carrying out any work or activities relating to the Project.
- (d) To the fullest extent permitted by Law, the Recipient agrees that the Department is released and continues to be released from any Claim or Liability with respect to:
 - (i) each of the Recipient's Associates;
 - (ii) the performance of this Deed and delivery of the Project by the Recipient's Associates; and
 - (iii) any act or omission of each of the Recipient's Associates.

4.7 Key Contracts

- (a) Subject to clause 4.7(c) and in addition to the requirements under clause 4.6, the Recipient must not (and must ensure that its Contractors do not) enter into a Key Contract without the prior written consent of the Department, which may be given with or without conditions.
- (b) When seeking consent from the Department, the Recipient must provide to the Department the proposed Key Contractor's business name, ABN and an up-to-date Australian Securities and Investment Commission (ASIC) company search.
- (c) The Recipient is not required to seek prior written consent from the Department for Key Contracts identified in paragraph (a) of the definition of Key Contract provided that the contract is for the scope of work specified in Schedule 4.
- (d) If at any time throughout the Term, there is a proposed change to a Key Contractor delivering the Project, the Recipient must provide the following to the Department, for the Department's consideration:
 - (i) notify and provide details of the proposed change to the Department prior to the change; and
 - (ii) provide all information requested by the Department with respect to the proposed change.
- (e) If the Department:
 - (i) approves the request for a change to a Key Contractor:
 - (A) the Recipient must ensure that the new Key Contractor meets the requirements of this Deed; and

- (B) the parties must vary this Deed reflecting the Department's approval; or
- (ii) does not approve the request for a change to a Key Contractor, the proposed change to the Key Contractor must not proceed.

4.8 Conflicts of Interest

- (a) The Recipient warrants that as at the Commencement Date, to the best of its knowledge, information, and belief, after making diligent enquiries, no Conflict of Interest exists or is likely to arise in the performance of the Recipient's obligations under this Deed.
- (b) Throughout the Term, the Recipient must continue to undertake diligent enquiries to confirm if any Conflict of Interest has occurred or is likely to arise in the performance of this Deed. If a Conflict of Interest arises, may arise, or may be perceived to arise then the Recipient notify the Department as an Adverse Event.

4.9 Bona fide and arms' length arrangement

- (a) The Recipient must not enter into, and must ensure that no Partner Organisations or Associates enter into, any contract or arrangement in connection with the Project (including a Key Contract) with:
 - (i) a Related Body Corporate of the Recipient or a Related Body Corporate of a Related Body Corporate of the Recipient;
 - (ii) a Related Body Corporate of the Partner Organisation or a Related Body Corporate of a Related Body Corporate of the Partner Organisation; or
 - (iii) to the extent not covered in clauses 4.9(a)(i) and 4.9(a)(ii) above, an Associate of the Recipient or Partner Organisation;
 unless:
 - (iv) the relevant contract or arrangement is entered into on an arms' length and bona fide basis under terms no less favourable to the Recipient than the terms of a comparable transaction negotiated at arms' length with an unrelated third party; or
 - (v) subject to clause 4.9(b), the Recipient or the Partner Organisation has the prior written consent of the Department (in its absolute discretion, with or without conditions).
- (b) If a contract or arrangement is entered into with the consent of the Department under clause 4.9(a)(v), then for the purposes of determining Eligible Expenditure relating to that contract or arrangement, the Eligible Expenditure will be treated on an 'at-cost' basis, without mark-up.
- (c) Within 10 Business Days following a request by the Department, the Recipient must provide such information as may be requested by the Department (acting reasonably) to demonstrate that the Recipient has complied with this clause 4.9.

4.10 Acknowledgement

The parties acknowledge and agree that the:

- (a) Department does not have any specialist expertise in coordinating, managing, or undertaking the Project;
- (b) Department assessed and determined the Grant provided under this Deed on the basis that the Recipient would be required to expend the total Estimated Costs as set out in the budget submitted in the Application to deliver the Project;

- (c) Recipient is fully responsible for and bears all risks arising out of or in connection with the Project, including the Project Assets; and
- (d) Recipient does not, and will not, rely on any representation made by the Department, either by act or omission, regarding the adequacy of the Recipient's compliance with any Laws, including but not limited to, WHS Law and the GST Act.

5. General construction obligations

5.1 General

Without limitation, the Recipient must, at its own risk, carry out the design, construction, delivery, commissioning, testing and completion of the Project:

- (a) with due care and skill;
- (b) in accordance with Good Construction Industry Practice and Good Operating Industry Practice;
- (c) so that the Project Assets, when designed, constructed, commissioned, delivered, tested and completed are:
 - (i) fit for their intended purpose and capable of meeting the Recipient's obligations under this Deed;
 - (ii) capable of meeting the required Production Capacity and Products;
 - (iii) compliant with, and capable of being operated and maintained in accordance with, all applicable Laws and Authorisations; and
 - (iv) in accordance with the recommendations and guidelines specified by the suppliers of any plant, equipment and materials forming part of the Project or to be used in the operation and maintenance of the Project.

5.2 Authorisations and construction requirements

- (a) The Recipient is responsible for obtaining all Authorisations to complete the Project. If an Authorisation is not obtained or is revoked at any time throughout the Term, the Recipient is in breach of this Deed and the Department may undertake any action available to it under this Deed and at Law.
- (b) Despite any planning, construction, zoning or other impediment, the Recipient remains responsible for delivery of the Project on time and in accordance with the Milestone Events and Final Milestone Dates in this Deed.

5.3 Work, health and safety

- (a) The Recipient must:
 - (i) prepare and maintain a risk register and mitigation plans for work, health, and safety (which can be updated to track against risks throughout the Project);
 - (ii) ensure that the Project, works, building, remediation, and construction are carried out in accordance with Good Construction Industry Practice and Good Operating Industry Practice;

- (iii) comply with, and must ensure that all its Associates, invitees and any volunteers comply with all applicable Laws and regulations, including the WHS Law, when performing work under this Deed;
 - (iv) to the extent reasonably practicable, consult, co-operate and co-ordinate activities with any other person who, concurrently with the Recipient, has or may have a work health and safety duty under WHS Law in relation to the same matter (including if applicable, the Department); and
 - (v) ensure that, in accordance with all Laws and Good Construction Industry Practice and Good Operating Industry Practice, any activity or other work performed in connection with this Deed is without risk to the health and safety of persons who may in any way be affected by such activity or work.
- (b) If a Notifiable Incident occurs in connection with an activity or other work carried out under this Deed, the Recipient must:
- (i) report the incident to the Department within 1 Business Day and confirm in writing within 3 Business Days thereafter;
 - (ii) within 14 days following the Notifiable Incident, provide the Department with copies of any notices or other documentation provided to or issued by the relevant government regulator in relation to the Notifiable Incident; and
 - (iii) provide the Department with such other information as may be required by the Department to facilitate the notification to or investigation of the Notifiable Incident in accordance with WHS Laws.
- (c) If requested by the Department, the 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 5.3(a).
- (d) The provision of any work health and safety documents associated with the Project to the Department is not to be construed as imposing an obligation on the Department to review, comment upon, consent to, accept or reject the work health and safety documents.
- (e) To the fullest extent permitted by Law, the Department's access to any work health and safety documents associated with the Project:
- (i) does not diminish or reduce the Recipient's work health and safety obligations under this Deed or at Law;
 - (ii) does not constitute constructive notice of any circumstances or breach relating to work health and safety;
 - (iii) does not impose any additional work health and safety obligations other than those obligations the Department has (if any) as the provider of the Grant; and
 - (iv) is without limitation to, and does not constitute a waiver of, any right the Department has under this Deed or at Law.

6. Project Assets

6.1 Ownership of the Project Assets

The Recipient acknowledges and agrees that it must be the sole legal and beneficial owner of all Project Assets unless it has obtained the prior written approval of the Department.

6.2 Use of the Project Assets

- (a) The Recipient must ensure that, throughout the Term, each Project Asset is used, made available and remains accessible for the primary purpose of delivering the Project and any other purposes that are consistent with the Milestone Events and Project Objectives.
- (b) If the Recipient wishes to use any Project Asset for a Secondary Purpose, then it must notify the Department and obtain the Department's prior written approval, which may be withheld or provided with or without conditions.
- (c) The Recipient acknowledges and agrees that the Department is entitled to adjust the amount of the Grant by such amount as reasonably determined by the Department if any Project Assets used for a Secondary Purpose.
- (d) Subject to clause 6.3(b), for the duration of the Term the Recipient must not (and must ensure that any relevant third party does not) sell, lease, dispose of, mortgage or otherwise encumber any of the Project Assets without the prior written approval of the Department. The Department may impose conditions on any such approval.

6.3 Obligations in relation to Project Assets

- (a) For the duration of the Term, unless otherwise expressly provided below, the Recipient agrees to:
 - (i) comply with all obligations relating to the listed Project Assets stated in Item 6 of Schedule 1;
 - (ii) ensure that it obtains value for money in the procurement of Project Assets and related activities;
 - (iii) maintain the Project Assets in good working order;
 - (iv) both during and after the Term, be fully responsible for, and bear all risk in relation to, the use, maintenance and disposal of the Project Assets;
 - (v) without limiting clause 17.2, maintain all appropriate Required Insurances in respect of the Project Assets;
 - (vi) maintain and keep up-to-date an Asset Register in respect of the Project Assets and provide a current Asset Register promptly following request from the Department;
 - (vii) obtain and maintain all necessary Authorisations in respect of the Project Assets;
 - (viii) maintain accurate and complete records, materials, information and documentation in relation to the procurement of any Project Assets;
 - (ix) if a Project Asset is used for a Secondary Purpose, keep a record of such Secondary Purpose use; and
 - (x) reinstate or replace (as applicable), or procure the same, Project Asset if a Project Asset is lost, damaged or destroyed during the Term or fails to meet the Production Capacity requirements.
- (b) The Recipient may at its cost without use of the Grant, during the Term, dispose of, reinstate, repair or replace any Project Asset without the Department's prior written approval but with prior written notice to the Department with supporting reasons provided, where it relates to:
 - (i) damage or destruction of the Project Asset;
 - (ii) the disposal of obsolete or redundant vehicles, plant and equipment;

- (iii) the disposal of a Project Asset for the purpose of replacing that Project Asset; or
- (iv) where that disposal is necessary for the maintenance of other Project Assets.
- (c) Without limitation to any other rights the Department may have, if the Recipient sells or otherwise disposes of a Project Asset during the Term (including if approved by the Department), the Department may:
 - (i) at its discretion, recover from the Recipient:
 - (A) the proportion of the value of the Project Asset following depreciation or appreciation (in accordance with applicable Australian Accounting Standards) calculated as at the date of sale or disposal which is equivalent to the proportion of the purchase price of the Project Asset that was funded from the Grant; or
 - (B) the proportion of the market value of the Project Asset which is equivalent to the proportion of the purchase price of the Project Asset that was funded from the Grant (with such value to be equivalent to an arms' length sale by a willing but not anxious buyer and seller); or
 - (ii) direct the Recipient to treat the proceeds as part of the Grant to be used for the purposes of the Project in accordance with the Department's approval for the use of those proceeds.
- (d) The Department is not responsible for maintenance (including ongoing maintenance) of the Project Assets. If any Project Asset is lost, damaged or destroyed, the Recipient must reinstate or replace (including by using the proceeds of insurance) without using any of the Grant and this clause 6 applies to any reinstated or replaced Project Asset.

7. Adverse Event

7.1 Adverse Event

- (a) The Recipient must notify the Department within 1 Business Day of when the Recipient becomes aware or should reasonably have become aware of the occurrence of any of the following arising out of or in connection with the Project or this Deed, each an "**Adverse Event**" for the purposes of this Deed:
 - (i) a Reportable Complaint or Serious Incident;
 - (ii) a Conflict of Interest has occurred, may arise, or may be perceived to arise or have occurred;
 - (iii) the occurrence of any event which may cause adverse publicity in relation to the Project or the NSW Government;
 - (iv) any serious complaints or significant concerns of local community groups of which the Recipient becomes aware relating to the delivery of the Project;
 - (v) an Insolvency Event has occurred or is likely to occur with respect to the Recipient, a Guarantor, a Partner Organisation or a Key Contractor;
 - (vi) a Change in Control of a Key Contractor has occurred, or is likely to occur, and such Change in Control may affect the Key Contractor's ability to deliver the Project as required by this Deed;

- (vii) there may be or is any current, pending or (to the best of the Recipient's knowledge after having made proper enquiry) threatened Reputational Proceedings;
- (viii) any Claim involving the Recipient which may adversely affect:
 - (A) the operation or financial position of the Recipient; or
 - (B) the Recipient's ability to perform its obligations under this Deed;
- (ix) any dispute that may detrimentally affect the delivery of the Project between the Recipient and any:
 - (A) Associate;
 - (B) Key Contractor; or
 - (C) Partner Organisation;
- (x) the Recipient has not complied with this Deed or is unable to undertake or complete the Project as required by this Deed;
- (xi) any material changes to any Plan that is likely to negatively impact the Recipient's ability to deliver the Project or comply with its obligations under this Deed;
- (xii) any matter which is likely to impact upon the accuracy of a warranty or representation given under this Deed, or the Recipient's ability to comply with such a warranty or representation; and
- (xiii) throughout the Operations Period the Project ceases to operate, or is projected to cease to operate, for more than:
 - (A) 5 consecutive days; or
 - (B) 10 days in aggregate in any 3 Month period.
- (b) The Recipient's notice in respect of an Adverse Event must include the reasons for the Adverse Event, anticipated impact on the Project and steps the Recipient is taking or will take to overcome the Adverse Event.
- (c) The notice provided under this clause does not diminish, reduce or alleviate the Recipient's obligations with respect to the Adverse Event, including reporting the relevant Adverse Event to a relevant Government Agency (such as SafeWork NSW) as required.

7.2 Additional requirements – Serious Incident and Reportable Complaint

In addition to the notice requirements under clause 7.1 and without limitation to clause 7.3, if a Reportable Complaint or Serious Incident occurs in connection with an activity or other work carried out under this Deed, the Recipient:

- (a) must, in compliance with the relevant legislation regulating the Reportable Complaint or Serious Incident (and in any case within 1 Business Day), provide notice of a Reportable Complaint or Serious Incident to the relevant Government Agency that monitors, enforces or regulates the matter the subject of the Reportable Complaint or Serious Incident;
- (b) within 10 Business Days following the Reportable Complaint or Serious Incident, must provide the Department with copies of any notices or other documentation provided to or issued by the relevant government regulator; and

- (c) must notify the Department within 1 Business Day after receiving notice from a Government Agency that the Government Agency has received a Reportable Complaint or notice of a Serious Incident. Such notice must describe in detail, to the extent reasonably satisfactory to the Department, the Reportable Complaint or Serious Incident, the Recipient's proposed actions to address that Reportable Complaint or Serious Incident and how it affects the Recipient's ability to comply with this Deed.

7.3 Adverse Event - Investigations

- (a) If an Adverse Event is notified to the Department or if the Department (acting reasonably) determines that an Adverse Event may have or is likely to occur, then without limiting any other rights of the Department, the Department may (at the Department's election and in its absolute discretion) by written notice and without liability immediately:
 - (i) undertake an investigation; and
 - (ii) suspend the performance of part or all of this Deed (including expenditure of the Grant and/or payment by the Department of the Grant) as notified to the Recipient.
- (b) If the Department provides notice of suspension under this clause, the Recipient must immediately cease performance in accordance with the requirements of the notice of suspension.
- (c) The Department will take all reasonable steps to promptly undertake its investigation. The Recipient must:
 - (i) promptly respond to any requests for information and provide any assistance required to allow the Department to complete its investigation; and
 - (ii) keep the Department updated with respect to the status and impact of the Adverse Event.
- (d) On completion of the Department's investigation and subject always to clause 7.3(e), if the Department concludes (acting reasonably) that:
 - (i) an Adverse Event is substantiated and that Adverse Event is a breach of this Deed, then the Department may undertake any actions available to it under this Deed or at Law, including termination under clause 20.1(a);
 - (ii) an Adverse Event is likely to occur and if that Adverse Event occurs would be a breach of this Deed, then the Department may require the Recipient to submit a Cure Plan outlining actions and timing to ensure the breach does not occur;
 - (iii) there is or likely to be an Adverse Event that is not a breach of this Deed but, if such Adverse Event occurs, would likely (in the Department's opinion):
 - (A) result in or lead to a breach of this Deed if continuing;
 - (B) materially reduce the likelihood of the Project being delivered on time or in accordance with this Deed;
 - (C) be inconsistent with the basis upon which the Department formed the view that the Recipient was eligible to receive the Grant or capable of undertaking the Project; or
 - (D) result in the Recipient or any Associate not having the financial, technical or commercial capability to develop, construct, implement or operate the Project or perform its obligations under this Deed,

then the Adverse Event is substantiated and the Department may:

- (E) require the Recipient submit to a Cure Plan under clause 19 outlining actions and timing to minimise the impact or ensure the Adverse Event does not occur (to the Department's satisfaction); or
- (F) issue directions to the Recipient and the Recipient must promptly follow the directions of the Department to lessen the impact of the circumstances of the respective Adverse Event; or
- (iv) an Adverse Event has not occurred and is unlikely to occur, the Recipient will be notified by the Department, and the Recipient must immediately resume performance of this Deed.
- (e) The rights and remedies available under this clause (including by reference), are without limitation to and do not prejudice any other rights or remedies of the Department. Notice of an Adverse Event to the Department, or action or inaction with respect to that Adverse Event by the Department, does not in any way constitute a waiver of rights with respect to that Adverse Event. In the case of a likely breach by the Recipient or likely Adverse Event occurring, any action or inaction under this clause does not limit the remedies available to the Department should the breach or Adverse Event materialise.

8. Project Management

8.1 Representative for each party

- (a) The Representative for each of the Department and the Recipient is the person to whom notices are to be sent as set out in the notice details at the start of this Deed.
- (b) Within 10 Business Days following any change to the identity, position and contact details of its Representative, a party must notify the other in writing and confirm the updated details of the Representative. The parties agree that a formal variation to this Deed is not required for an update to the Representative.

8.2 Project Management Team

- (a) The Recipient must establish a Project Management Team.
- (b) The Project Management Team must comprise the Representative, at least two other employees or officers of the Recipient and a person nominated by the Department to represent the Department as an observer.
- (c) The parties acknowledge and agree that:
 - (i) the Project Management Team must meet:
 - (A) at least once per Quarter; and
 - (B) as otherwise directed by the Department,

to discuss the status of the Project, activities to be undertaken in the next Quarter and any issues which have arisen on the Project which have or may impact the Recipient's ability to comply with its obligations under this Deed;
 - (ii) the Recipient must provide the Department with at least 10 Business Days prior notice regarding the date on which a Project Management Team meeting will occur;
 - (iii) the Department may, in its absolute discretion:

- (A) notify the Recipient of matters which must be considered or agreed upon at a Project Management Team meeting and such matters must be discussed or agreed upon at that Project Management Team meeting; and
- (B) send a representative to participate in or observe each Project Management Team meeting;
- (iv) any contribution made at the Project Management Team meetings by the Department will not bind the Project Management Team or Recipient; and
- (v) the Project Management Team's decisions, recommendations and actions will not bind the Department.
- (d) The Recipient acknowledges and agrees that neither the Department nor any Department representative, participant or observer will have any Liability to the Recipient in connection with their participation in, attendance or non-attendance at a Project Management Team meeting. For the avoidance of doubt, the Department's participation or attendance at a Project Management Team meeting does not reduce, modify or remove the Recipient's Liability under this Deed.

8.3 Notice of Milestone Event timing

- (a) If it is reasonably likely or probable that:
 - (b) a Milestone Event will not be completed on or before a Target Milestone Date; or
 - (c) the Project will not be Commissioned before the Target Completion Date,
- then the Recipient must, at least 5 Business Days before the Target Milestone Date or 10 Business Days before the Target Completion Date (or other such time as approved by the Department in writing) provide written notice to the Department with sufficient detail of:
- (d) the status and progress of the of the Milestone Event or the Project being Commissioned;
 - (e) the reason for the delay;
 - (f) the likely date of achievement of the Milestone Event or the Project being Commissioned; and
 - (g) in the case of a Milestone Event, the consequential impact of the delay on the achievement of other Milestone Events and Commissioning.

9. Financial arrangements

9.1 Use of the Grant by the Recipient

- (a) The Recipient must use the Grant only:
 - (i) for Eligible Expenditure for the Project;
 - (ii) in accordance with the then current Budget; and
 - (iii) in accordance with, and as permitted by, this Deed.
- (b) The Recipient must provide the Recipient Funding amount and ensure that the Recipient Funding and the Co-funding amounts are applied to the Project. The Department may direct that the Recipient Funding and/or Co-funding are expended by the Recipient prior to payment a Grant Instalment amount by the Department.

- (c) The Recipient acknowledges that:
 - (i) if any payment of the Grant is made by the Department ahead of completion of a Milestone Event, the payment is made by the Department in reliance on the Recipient completing the Milestone Event in accordance with the terms of this Deed;
 - (ii) the Recipient Funding amount and the Co-funding amounts are the minimum amounts applicable towards the Project;
 - (iii) any adverse currency fluctuations or adverse fluctuations in the exchange rate are at the Recipient's risk; and
 - (iv) the Grant will not be increased by the Department to account for adverse currency fluctuations or adverse fluctuations in the exchange rate.

9.2 Matters for which the Grant must not be used

The Recipient must not (without limitation) use the Grant at any time:

- (a) to reimburse itself or pay for any costs or expenses incurred before the execution of this Deed by both parties, including:
 - (i) for existing assets owned by the Recipient or its Associates or Related Entities;
 - (ii) any new entities established or proposed to be established for the Project;
 - (iii) assets, expenditure or liability procured or accruing prior to the execution of this Deed by both parties, including under a loan facility or other similar debt or capital raising exercise; and
 - (iv) legal obligations, liabilities or commitments or paying for goods, services or works;
- (b) to make a loan, advance, donation, commission, gift or similar benefit for any purpose;
- (c) to make repayments of existing loans, investments or debts;
- (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 Recipient;
- (f) to pay legal fees or settle any Claim, order or judgment against the Recipient, Partner Organisation or any of their Associates or board members;
- (g) to reimburse itself or pay for any costs or expenses (including legal fees) associated with setting up any new Entity or consortium for the Project;
- (h) to make any termination of employment or redundancy payments;
- (i) to pay for activities carried out or Committed before the Commencement Date;
- (j) to pay for expenditure that is not Eligible Expenditure;
- (k) for Ordinary Business Expenses;
- (l) to pay for senior executive positions; or
- (m) to cover costs to register Intellectual Property Rights.

9.3 Payment of the Grant

- (a) Subject to prior compliance with clause 9.4, for those Milestone Events that are:

- (i) not Advance Milestones, the Recipient must provide written confirmation to the Department within 5 Business Days (or such other time as agreed by the Department in writing) following completion of the Milestone Event by requesting payment of the Grant Instalment for that Milestone Event, in a form approved by the Department; and
 - (ii) Advance Milestones, on the 'Request for Grant Instalment date' submit a request for payment of that Advance Milestone, being the amount specified as the Grant Instalment for that Milestone Event specified in Item 1 of Schedule 2.
- (b) For a Milestone Event that is not an Advance Milestone, the Grant Instalment that may be requested under clause 9.3(a)(i) is a maximum of the Grant Funding Percentage (Milestone) of the actual Eligible Expenditure incurred for completion of that Milestone Event as at the date the Milestone is completed.
- (c) The Department must, within 20 Business Days after its receipt of the written request for payment, provide the Recipient with a notice confirming that the Recipient is either:
 - (i) entitled to the relevant Grant Instalment, the amount of the Grant Instalment to be paid and whether there will be an adjustment of the requested Grant Instalment; or
 - (ii) not entitled to the relevant Grant Instalment pursuant to this Deed, with reasons for that determination.
- (d) If the Department confirms that the Recipient is:
 - (i) entitled to the relevant Grant Instalment pursuant to this Deed and the Department confirms that it will:
 - (A) issue an RCTI and deposit the confirmed Grant Instalment amount within [28 days] thereafter into the Nominated Bank Account; or
 - (B) not issue an RCTI, then the Recipient must submit a Correctly Rendered Invoice to the Department and the Department will deposit the confirmed Grant Instalment amount within 28 days thereafter into the Nominated Bank Account;
 - (ii) not entitled to the relevant Grant Instalment pursuant to this Deed and the Recipient wishes to Dispute that determination, the Recipient must follow the dispute resolution process in clause 24.
- (e) The Recipient acknowledges and agrees that:
 - (i) each Grant Instalment represents the maximum amount which may become payable to it by the Department in respect of the relevant Milestone Event; and
 - (ii) its entitlement to payment in respect of each Milestone Event will be determined in accordance with clause 9.4 and may be subject to reconciliation under clause 9.8. The Recipient is not entitled to any additional payment if the determination and/or reconciliation results in the Recipient being paid less than either or both of the following:
 - (A) the Grant Instalment amount specified in Schedule 2 in respect of any Milestone Event; and/or
 - (B) the total amount of the Grant in total over the term of this Deed.
- (f) All payments of the Grant are made in full satisfaction of the Department's obligations under this Deed.

- (g) Payment of any amount of the Grant is not an admission by the Department that the Recipient has met its obligations under this Deed.

9.4 Payment Conditions

The payment of each Grant Instalment is conditional on the following, each a “**Payment Condition**”:

- (a) in respect of those Milestone Events that are not Advance Milestones, the Recipient must have:
 - (i) achieved the Milestone Event deliverables to the satisfaction of the Department (acting reasonably);
 - (ii) provided the relevant Reports, Plans and Knowledge Sharing deliverables due for delivery to the Department for that Milestone Event; and
 - (iii) provided evidence that it has expended the required Recipient Funding and Co-funding for the relevant Milestone Event specified in this Deed;
- (b) in respect of those Milestone Events that are Advance Milestones, the Recipient must:
 - (i) have achieved the ‘Milestone Event payment criteria’ for payment of the Grant Instalment before the ‘Request for Grant Instalment date’ as specified in Item 2 of Schedule 2; and
 - (ii) provide evidence at the same time as the written request for payment is submitted by the Recipient that it has available the Recipient Funding and Co-funding for the relevant Milestone Event as specified in this Deed;
- (c) the Recipient must have provided to the Department:
 - (i) if the Department has notified it requires a tax invoice from the Recipient, a Correctly Rendered Invoice for the relevant Grant Instalment request; and
 - (ii) the supporting documentation and any other evidence identified in Schedule 2 for that Grant Instalment payment.
- (d) the Department being satisfied that the:
 - (i) Grant Instalment amounts paid by the Department to date have been applied towards the Project and only used for the purposes permitted by this Deed;
 - (ii) Project has been conducted by the Recipient in compliance with the Plans; and
 - (iii) Recipient is not in breach of any Grant Document that has not been remedied to the satisfaction of the Department.

9.5 Interest on Grant amounts

The Recipient must ensure that any Grant Instalment paid in advance of completion of the Milestone Event (being an Advance Milestone) does not earn any interest unless otherwise approved by the Department in advance, with or without conditions.

9.6 RCTIs and tax invoices

[Drafting note: the Department is considering the use of RCTIs. This clause will be updated prior to execution to facilitate the Department’s processes and timing for issuing RCTIs]

- (a) The parties agree that the following will apply to any taxable supply made by a Recipient under this Deed, the consideration for which is the respective Grant Instalment payment for GST purposes:

- (i) if the Department has confirmed it will issue a RCTI, then:
 - (A) the Department will issue to the Recipient a RCTI for the applicable taxable supplies; and
 - (B) the Recipient must not issue a tax invoice to the Department in relation to those taxable supplies; and
- (ii) if the Department has confirmed that it will not issue RCTIs for this Project, then the Recipient must submit to the Department a Correctly Rendered Invoice in accordance with clause 9.3(d).
- (b) The Recipient:
 - (i) warrants and continues to warrant that it is registered for GST; and
 - (ii) indemnifies (and must keep indemnified) the Department against any Liability sustained or incurred by the Department arising out of or in connection with the Department issuing an RCTI to the Recipient at a time when the Recipient is not registered for GST.
- (c) Each party must promptly notify the other party if it ceases to be registered for GST or it ceases to comply with any of the requirements set out relating to the issue of RCTIs provided for in legislative determination *A New Tax System (Goods and Services Tax): Recipient Created Tax Invoice Determination 2023* (or its successors).

9.7 Bank Account requirements

- (a) Unless the Department otherwise agrees in writing, the Recipient must:
 - (i) ensure that the Grant is held in a Bank Account;
 - (ii) maintain a separate ledger in relation to the Bank Account for the sole purpose of accounting for, and administering, any Grant paid to the Recipient, including by ensuring that the Grant amounts remitted are separately identified from Recipient Funding and Co-funding;
 - (iii) notify the Department, prior to the receipt of any of the Grant, of details sufficient to identify the Bank Account; and
 - (iv) identify the receipt and expenditure of the Grant separately within the Recipient's accounting records so that at all times the Grant is identifiable and ascertainable and may be audited.
- (b) If Advance Milestones are applicable under this Deed, then prior to the first Milestone Event (whether or not that Milestone Event is an Advance Milestone), the Recipient must establish a Segregated Bank Account for the deposit of the Grant only. No other funds may be deposited in the Segregated Bank Account.
- (c) At any time if there are funds in the Segregated Bank Account, the Recipient must:
 - (i) provide the Department and the authorised deposit-taking institution with an authority enabling the Department to obtain any details relating to the use of the Segregated Bank Account;
 - (ii) provide the Department with a copy of any statement relating to the Segregated Bank Account, and any other reasonable details relating to the use of the Segregated Bank Account; and
 - (iii) not change the Segregated Bank Account without the Department's written consent.

- (d) The Recipient must not withdraw or transfer funds from a Bank Account or Segregated Bank Account other than in accordance with this Deed.

9.8 Reconciliation

- (a) The parties agree to undertake a reconciliation on completion of each Advance Milestone, calculated as at the date of completion of each Advance Milestone (as confirmed by the Department) (**Reconciliation Date**).
- (b) Within 10 Business Days of each Reconciliation Date (or such other time as agreed by the Department in writing), the Recipient must calculate in good faith and provide to the Department:
 - (i) the total amount of Eligible Expenditure incurred by the Recipient for the Advance Milestone as at the relevant Reconciliation Date (including specifically itemising the amount of the Grant, Co-funding and Recipient Funding expended) (**Final Costs**);
 - (ii) the Estimated Costs specified for that Advance Milestone in Schedule 2;
 - (iii) the Grant Instalment payment made by the Department for that Advance Milestone as specified in Schedule 2; and
 - (iv) if the Final Costs are less than the Estimated Costs for that Advance Milestone as at the Reconciliation Date, then:
 - (A) the difference between the Estimated Costs and the Final Costs for the Reconciliation Period (**Cost Savings**); and
 - (B) an amount equal to the Grant Funding Percentage (Milestone) of the Cost Savings for the Reconciliation Period (**Reconciliation Amount**).
- (c) If the Final Costs are equal or greater than the Estimated Costs for that Advance Milestone, then the Reconciliation Amount is zero.
- (d) The Recipient must notify the Department in writing of all amounts described in this clause 9.8 along with supporting documentation outlining the basis for those calculations (including an itemised breakdown of any variances between the Final Costs and the Estimated Costs) (**Calculations**). The Recipient must provide any other information the Department reasonably requests with respect to the reconciliation.
- (e) If requested by the Department, the Recipient must provide (at the Recipient's cost) an Audit Opinion certified by an Approved Auditor in accordance with Australian Accounting Standards certifying, in addition to the requirements of clause 9.9, that the:
 - (i) Calculations are correct;
 - (ii) Recipient Funding and Co-funding have been applied to the Milestone Event; and
 - (iii) Recipient has expended the Grant and any other Project costs in accordance with the terms of this Deed.
- (f) Following receipt of the Calculations and all other required information, the Department must provide notice to the Recipient confirming whether the Department accepts or rejects the Calculations.
- (g) If the Department accepts the Calculations, then the Recipient must repay to the Department the Reconciliation Amount within 30 days following the date that the Department provides written notice that the Calculations are accepted by the Department.

- (h) If the Department does not accept the Calculations, then the Recipient and the Department may refer the matter to Dispute under this Deed.
- (i) The Department may:
 - (i) recover the Reconciliation Amount as a debt due and owing by the Recipient to the Department; and
 - (ii) set off the Reconciliation Amount against any money payable to the Recipient by the Department under this Deed in accordance with clause 26.5.

9.9 Audit opinions

- (a) The Recipient must provide an Audit Opinion, at the Recipient's cost, in relation to the expenditure of the Grant Instalments to the Department:
 - (i) at the times specified in *[Item 7 of Schedule 1]*;
 - (ii) as part of a reconciliation (if requested); and
 - (iii) despite any other clause in this Deed, within 15 Business Days following a request made by the Department or NSW Auditor General.
- (b) The Audit Opinion must be prepared at the Recipient's cost by an Approved Auditor and must include, at a minimum:
 - (i) certification that the Grant has been spent on Eligible Expenditure solely in relation to the Project;
 - (ii) that all Recipient Funding and Co-funding amounts have actually been expended on the Project at the times specified in this Deed; and
 - (iii) any other information, certification or confirmation required by the Department or any auditor, including under Schedule 2.

9.10 Additional funds

Throughout the Term, the Recipient must not receive any financial assistance or funding from any Government Agency (including the Department) other than the Grant in connection with the Project that is not specified as Co-funding in Item 9 of the Project Details without the prior written consent of the Department in its absolute discretion.

9.11 Contributions

- (a) Nothing in this Deed implies that the Department will provide funding for the Project (including the Project Assets) or to the Recipient beyond the Grant expressly provided for under this Deed. The Recipient must either use its own funds or secure funding from other sources (subject to the requirements of this Deed) to fully fund the Project to the extent not funded by the Grant.
- (b) The Recipient is responsible for the Recipient Funding and must procure the Co-funding in accordance with this Deed. The Recipient must provide written confirmation to the Department that the relevant Recipient Funding and/or Co-funding is available, or has been received, as required by this Deed and otherwise as reasonably required by the Department from time to time.
- (c) Unless otherwise agreed by the Department in writing, the Recipient must ensure that:
 - (i) the Recipient Funding is provided and used only for the Project in accordance with this Deed; and

- (ii) any Co-funding is provided and used only for the Project in accordance this Deed.
- (d) Where the Recipient has failed to, or reasonably believes it is unable to comply with this clause, the Recipient must:
 - (i) immediately notify the Department and provide an explanation; and
 - (ii) within 30 Business Days, secure alternative funding of the same amounts and on the equivalent conditions.
- (e) Upon receiving a notice under clause 9.11(d), the Department may, at its absolute discretion:
 - (i) request changes to the Project, including reducing the scope of the Project and amending the Budget;
 - (ii) make changes to the Grant payable; and
 - (iii) if the Recipient does not, to the satisfaction of the Department, within 30 Business Days, secure alternative funding of the same amount and on equivalent conditions in place of the Co-funding, then the Recipient will have breached this Deed and the Department may undertake any actions available to it under this Deed and at Law.

9.12 Goods and Services Tax

[Drafting note: the Department is considering the use of RCTIs. This clause will be updated prior to execution to facilitate the Department's processes and timing for issuing RCTIs]

- (a) The parties agree:
 - (i) words or expressions used in this clause 9.12 that are defined in GST Act have the same meaning as given to them in the GST Act;
 - (ii) 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 9.12;
 - (iii) 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; and
 - (iv) 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.
- (b) If a GST Supplier makes a taxable supply under this Deed, then unless the consideration for that supply is expressly stated to be inclusive of GST, the GST 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.
- (c) Notwithstanding clause 9.12(b) the GST Recipient is not obliged to pay any amount on account of GST to the GST Supplier under this Deed until, as applicable:
 - (i) the GST Supplier provides it with a valid tax invoice; or
 - (ii) a RCTI is issued for the taxable supply.
- (d) If an adjustment event arises in relation to a supply made by a GST Supplier under this Deed, the amount paid or payable by the GST Recipient pursuant to clause 9.12(b) will be amended to reflect this and a payment will be made by the GST Recipient to the GST

Supplier or vice versa as the case may be. The GST Supplier must issue an adjustment note to the GST Recipient as soon as practicable after the occurrence of any adjustment event.

- (e) If a third party makes a taxable supply and this Deed requires a party (the **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.

10. Changes to the Project and variations

10.1 Changes to the Project – no variation to this Deed

At any time during the Term, if the Recipient wishes to undertake a change to the Project that does not require a variation to this Deed (being a change that does not amend any wording in the Deed, including Schedules, Annexures and attachments), the Recipient must, prior to the change:

- (a) obtain the Department's written approval to proceed with the change;
- (b) confirm that the Recipient and the Project continue, and will continue after the change, to meet the eligibility requirements in the Grant Guidelines;
- (c) unless otherwise agreed by the Department in writing, obtain formal approval of the change from the 'Managing Director' (or equivalent) of the Recipient; and
- (d) develop and revise the relevant Plan (if applicable) in consultation with the Department in accordance with clause 12.3.

10.2 Variations to this Deed

- (a) If the Recipient proposes a variation to this Deed, the Recipient must submit a variation proposal for the Department's consideration and approval that expressly specifies which aspects of the Deed are proposed to be varied. The Recipient must confirm as part of its request to vary this Deed, that following the proposed variation the Recipient and the Project will continue to meet the eligibility requirements in the Grant Guidelines.
- (b) All variations to this Deed (including to any Schedule or attachment) must be in writing and signed by both parties. The parties agree that the Guarantor is not required to sign any variation to this Deed for the deed of variation to be effective and binding on the parties.

11. Intellectual Property Rights

11.1 Ownership of Intellectual Property Rights

As between the Department and the Recipient:

- (a) this Deed does not affect the ownership of Intellectual Property Rights in any Existing Material; and

- (b) except for Existing Material, Intellectual Property Rights in any New Material and Submitted Material will be owned by the Recipient.

11.2 Licence of Materials

- (a) The 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:
 - (i) New Material and Submitted Material; and
 - (ii) the Recipient's Existing Material, but only to the extent it is incorporated in the New Material and Submitted Material,

for government purposes, including for the purposes of this Deed, evaluation of the Project, the Grant or the Program, for future Program design, other internal purposes of the Department and (subject to complying with clause 14) for any external promotions and communications.
- (b) The Recipient warrants to the Department that:
 - (i) it has the rights and authority to grant the licences in this clause 11.2; and
 - (ii) the use, reproduction, communication, publishing, modification and adaptation of such Materials by the Recipient and the Department will not infringe any third party's Intellectual Property Rights or Moral Rights.
- (c) Prior to that Material being provided to the Department, the Recipient must obtain written Moral Rights consents (other than in relation to acts of false attribution) from all authors of Existing Material, New Material and Submitted Material for the Department's use of such material in accordance with this Deed.
- (d) At the request of the Department, the 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 11.2.
- (e) The Recipient agrees to do all such things as may be required in connection with the Existing Material, New Material and Submitted Material to allow the Department to enjoy the full benefit of the rights under this clause.
- (f) The Recipient will not accept any funding from a third party that would jeopardise or limit any right in this clause 11.2 without the prior written approval of the Department.

11.3 Third Party Material

- (a) With respect to Third Party Material, if the Recipient does not own or hold the rights to provide the Department a licence to that Third Party Material on the same terms as clause 11.2, the Recipient will use best endeavours, at its cost without use of the Grant, to obtain for the Department a licence on the same terms and for the same purposes as clause 11.2.
- (b) If the Recipient is unable to procure a licence for the Department described in clause 11.3(a), the Recipient must notify the Department:
 - (i) clearly identifying the part of the Third Party Material that is not subject to the licence described in clause 11.3(a);
 - (ii) clearly identifying the owner of those Third Party Materials; and

- (iii) outlining and providing evidence of the attempts made by the Recipient to obtain the licence described in clause 11.3(a) and the reasons why the third party did not agree to the grant the licence.

The Recipient must follow the Department's directions with respect to the Third Party Material under this clause, including using best endeavours to seek a licence with a reduced scope for use by the Department on direction from the Department.

- (c) If despite complying with clause 11.3(a) and 11.3(b), the Recipient is unable to procure the required licence, then the licence granted under clause 11.2 will not apply to the Third Party Material notified under this clause and a reduced scope licence may be granted to the Department on terms acceptable to the Department (as agreed in writing). This clause does not prohibit the Department from seeking a licence directly from the owner of the Third Party Material.

11.4 Remedy for breach of warranty

If a third party claims the Department's use of all or part of the Existing Material, New Material and/or Submitted Material in accordance with its rights under this Deed infringes that third party's Intellectual Property Rights or Moral Rights, the Recipient must, in addition to any other rights that the Department may have against it, promptly, at the Recipient's expense:

- (a) use its best endeavours to secure the rights for the Department to continue to use the affected Existing Material, New Material or Submitted Material (as applicable) as permitted under this Deed free of any Claim or Liability for infringement; or
- (b) replace or modify the affected Existing Material, New Material or Submitted Material (as applicable) so that the Department's use as permitted under this Deed does not infringe the Intellectual Property Rights or Moral Rights of any other person without degrading the performance or quality of the affected Existing Material, New Material or Submitted Material (as applicable).

12. Project Information

12.1 Project Particulars and knowledge sharing

- (a) The Recipient must, without cost to the Department or use of the Grant:
 - (i) provide the Department with all Project Particulars as required by this Deed;
 - (ii) in consultation with the Department, implement and comply with the Knowledge Sharing Plan, including by providing the Knowledge Sharing Deliverables at the times specified in the Knowledge Sharing Plan or this Deed;
 - (iii) undertake, participate in and assist the Department with Dissemination Activities requested by the Department (acting reasonably); and
 - (iv) from time to time, at the time and in the manner reasonably required by the Department, provide the Department with any other Project Particulars requested by the Department (including in relation to any significant developments concerning the Project or any significant delays or difficulties encountered in undertaking the Project).
- (b) To the extent that Intellectual Property Rights do not subsist in the Project Particulars (and therefore clause 11 does not apply), the Recipient agrees to:

- (i) use its best endeavours to obtain the written consent of any third parties to whom the Project Particulars relate, so as to ensure the Department obtains the full benefit and use of those Project Particulars, including with respect to the disclosure of Personal Information; or
 - (ii) provide written confirmation to the Department of the Project Particulars that do not have the written consent of any third party to whom the Project Particulars relate, despite complying with clause 12.1(b)(i); and
 - (iii) provide to the Department evidence of compliance with either 12.1(b)(i) or 12.1(b)(ii) (as relevant).
- (c) The Recipient acknowledges that:
- (i) subject to clause 12.1(b) and clause 14, to the extent that Intellectual Property Rights do not subsist in the Project Particulars, the Department is permitted to:
 - (A) use, reproduce, communicate, publish, modify and adapt the Project Particulars; and
 - (B) share freely and publicly, including within the Department, with other NSW Government entities, with different government jurisdictions, industry participants and the public in general the Project Particulars;
 - (ii) the Department may require the consents of third parties given under this clause to be in a certain form or meet certain requirements, which will be notified to the Recipient from time to time; and
 - (iii) the consents provided under this clause 12.1 are given to satisfy, without limitation, any requirements under Law or this Deed.
- (d) To avoid doubt, it is the Recipient's responsibility to ensure that any Project documentation or information (including Project Particulars and any Reports) prepared for public release either by the Recipient or in consultation with the Recipient does not contain any Recipient Confidential Information and is appropriately licensed for the Department's public use and adaptation.

12.2 Reports

- (a) The Recipient must:
- (i) provide the Department with the Reports and Plans in accordance with the requirements and timing set out in Item 7 and Item 11 of Schedule 1, in the form and substance satisfactory to the Department;
 - (ii) from time to time, at the time and in the manner reasonably required by the Department, provide the Department with any other Reports;
 - (iii) prepare and submit to the Department an interim Report if the Project ends prior to the Expiry Date, or if there are significant changes to the Project, both of which must be to the satisfaction of the Department;
 - (iv) provide lessons learnt Reports or ad hoc Reports covering particular topics related to the Project; and
 - (v) if requested by the Department, provide information to the Department regarding the outcomes of the Project up to three years after submitting the Final Report for the Project.
- (b) The Recipient must report on and keep the Department regularly and fully informed regarding progress of the Project.

- (c) The Department will have 30 Business Days following receipt of a Report to assess that relevant Report. If the Department rejects any Report, it must provide the Recipient with written reasons for the rejection and a date (acting reasonably) for the Recipient to reissue that Report. The Recipient must reissue that Report by the notified date, in a form and substance that addresses the issues raised by the Department for the Department's review and approval.

12.3 Plans

- (a) While carrying out the Recipient's obligations under this Deed, the Recipient must comply with each of the Plans approved by the Department.
- (b) The Department may reasonably require the Recipient to provide a Statement of Compliance for any Plan on written notice to the Recipient, at the Recipient's cost.
- (c) The Recipient must:
 - (i) review and update each Plan and provide a Report outlining the updates and changes (if applicable) in each case in accordance with the relevant timeframes set out in Item 7 and Item 11 of Schedule 1 or at such times as reasonably required by the Department;
 - (ii) submit those updated Plans and Reports to the Department; and
 - (iii) if requested by the Department, provide a Statement of Compliance or an updated Statement of Compliance (as applicable).
- (d) If the Department is not satisfied (acting reasonably) with the updated Plan, then:
 - (i) the Department will notify the Recipient with reasons why the Department is not satisfied with the updated Plan;
 - (ii) within 10 Business Days following the notice provided under clause 12.3(d)(i) (or such other time as agreed by the Department), the Recipient must resubmit the updated Plan to the Department; and
 - (iii) the Department may withhold Grant Instalments from the date that the notice is provided under clause 12.3(d)(i) until the date that the updated Plan has been amended to the satisfaction of the Department (acting reasonably).

Clauses 12.3(d)(i) and 12.3(d)(ii) will continue to apply until the updated (or resubmitted) Plan is amended to the satisfaction of the Department (acting reasonably).
- (e) An updated Plan will replace the current Plan approved by the Department only on and from the date on which the Department notifies the Recipient that it is satisfied (acting reasonably) with the updated Plan.

12.4 Personal Information

- (a) To the extent that the Recipient deals with, accesses, controls or discloses Personal Information in conducting the Project, the Recipient must:
 - (i) comply, and ensure that its Associates comply, with applicable Privacy Laws;
 - (ii) not cause the Department to breach any obligations imposed on the Department by Privacy Laws; and
 - (iii) within 1 Business Day following becoming aware of an actual or potential breach of privacy, notify the Department and comply with this clause and clause 12.6.
- (b) The Recipient must obtain the prior, free and informed consent of any person for the sharing of their Personal Information for use by the Department for government

purposes, prior to sharing Personal Information with the Department under this Deed. The Department may require the consent be in a certain form as notified by the Department from time to time. If the Personal Information forms part of any Project Particulars or any other Material licensed to the Department under this Deed, the Recipient must provide evidence of the consent to the Department at the time the Department receives the Project Particulars or Licensed Material.

- (c) The Recipient must:
 - (i) comply with, and ensure that its Associates comply with, all directions by the Department relating to the Department's compliance with Privacy Law or resolution of any complaint alleging a breach of Privacy Law relating to the Project; and
 - (ii) promptly provide, or make available, the details of its security program to the Department on request.
- (d) The Recipient acknowledges that the Department is subject to the *Privacy and Personal Information Protection Act 1998* (NSW), which includes mandatory notification of Personal Information disclosure breaches in accordance with the requirements of that Act. The Recipient's compliance with this clause 12.4 and clause 12.6 is an essential term of this Deed and is required to assist the Department with complying with its obligations under the *Privacy and Personal Information Protection Act 1998* (NSW).

12.5 Data

- (a) Prior to the transfer of any Department data to the Recipient, the Recipient must enter into a separate agreement governing the transfer and use of that Department data.
- (b) In addition to the information required under the Knowledge Sharing Plan, the Department may at any time submit a request for Project data to the Recipient. The Recipient must use its reasonable endeavours at its own cost (without use of the Grant) to make available the required data under the data request.
- (c) Within 10 Business Days following the submission of the request for Project data (or such other time as agreed by the Department in writing), the Recipient must confirm whether the data is available and able to be extracted. If the Recipient confirms that the data:
 - (i) is available and able to be extracted, then the data must be provided to the Department in accordance with the terms of this Deed, including without limitation, the terms relating to Intellectual Property and Project Particulars; or
 - (ii) is not available and cannot be extracted, then the Recipient must promptly provide written reasons to substantiate its assessment. The Department may request further information or detail and may direct the Recipient, acting reasonably, to undertake further action to provide the information in the request for data.
- (d) If data is to be provided to the Department, the Recipient must:
 - (i) securely provide the data to the Department;
 - (ii) promptly notify the Department of any error in respect of the data shared, and comply with all reasonable directions of the Department to rectify such error and the mitigation and/or prevention of future errors in respect of that data;
 - (iii) provide the data:
 - (A) in the format requested by the Department; and

- (B) in accordance with any security requirements of the Department (which may be amended or different from time to time); and
- (iv) take reasonable steps to detect and prevent any Harmful Code from being introduced by the Recipient into any Department systems.
- (e) To the extent that any Harmful Code is introduced by the Recipient, the Recipient must pay the costs and expenses incurred by the Department in connection with any remedial action to eliminate and rectify the consequences of the introduction of the Harmful Code.
- (f) The Recipient acknowledges that the Department's use of the data from the Recipient is governed by clause 11 as Submitted Material, or to the extent no Intellectual Property Rights subsist in the data, clause 12.1 as Project Particulars.
- (g) A request for Project data made by the Department may, at any time, be withdrawn by the Department in its absolute discretion and without liability.

12.6 Project Security

- (a) The Recipient must have and maintain a formal security program in accordance with Good Operating Industry Practice for that enables the Recipient to meet its security and privacy obligations under this Deed. The security program must be designed to, without limitation:
 - (i) meet or exceed the Data Location Conditions;
 - (ii) ensure the security and integrity of, and protect against threats or hazards to the security of the Project, Material and Personal Information; and
 - (iii) prevent a Security Event.
- (b) The Recipient must notify the Department within 1 Business Day of it becoming aware of a Security Event and the Recipient must:
 - (i) contain and mitigate the Security Event;
 - (ii) investigate the Security Event (including by conducting a root cause analysis of the Security Event) and share the results of its analysis and its remediation plan with the Department on request;
 - (iii) take a snapshot of impacted systems (where available) for use in forensic activity as required by the Department; and
 - (iv) provide to the Department, to the extent known at the time:
 - (A) the date of the Security Event;
 - (B) a description of the Security Event;
 - (C) a list of corrective actions taken by the Recipient to contain and mitigate the impact of the Security Event; and
 - (D) a summary of any information lost, accessed or disclosed as a result of the Security Event.
- (c) Where the Recipient is required by Law to produce or disclose any information or to develop or provide any response or explanation to a Government authority in relation to any Security Event, the Recipient must (to the extent such action is permitted by Law), provide notice to the Department as soon as reasonably possible detailing the nature and content of the information to be produced or disclosed, prior to providing a response to the Government authority or disclosing any Personal Information.

- (d) In addition to the security obligations set out in this clause 12.6, the Recipient must comply with:
 - (i) any requests for information from the Department relating to the Security Event within the timeframes required by the Department;
 - (ii) any requests from the Department for assistance to ensure that the Department meets any disclosure requirements to the NSW Privacy Commissioner (or similar privacy body); and
 - (iii) additional security obligations or standards directed by the Department from time to time (acting reasonably).
- (e) In the event of any conflict or inconsistency between any of the security obligations specified in this Deed and a higher or more onerous standard, the higher or more onerous standard applies to the extent of the conflict or inconsistency.

12.7 Artificial Intelligence

- (a) The Recipient and its Associates must not, in connection with the performance of this Deed, input or upload Department data or any information provided by the Department (including any derivatives of any Department data or information) into any AI System.
- (b) The Recipient and its Associates must not, in connection with the provision of any information to the Department (including Reports and Plans), use any Prohibited AI System.
- (c) If an AI System (other than a Prohibited AI System) is used in the delivery of any information to the Department (including Reports and Plans), the Recipient must:
 - (i) identify and confirm the AI System used and which parts of the information provided to the Department were prepared using the AI System;
 - (ii) provide any further information requested by the Department with respect to the use of the AI System, such as prompts used and how the information was validated by the Recipient; and
 - (iii) thoroughly review, validate and provide written confirmation to the Department that the information is true, accurate, complete, contemporaneous and not misleading.
- (d) Without limitation, the Recipient is responsible for the information submitted to the Department, regardless of whether an AI System is used by the Recipient. The Recipient will be liable for any errors, omissions, inaccuracies or other shortcomings in any information provided to the Department, including if generated using an AI System.

13. Publicity and promotion

13.1 Publicity by the Recipient

- (a) Subject to clauses 13.1(b), 13.1(c) and 13.1(d), the Recipient will:
 - (i) acknowledge the support of the NSW Government, in the form and substance as directed by the Department from time to time:
 - (A) in any public statements about the Project;
 - (B) in all communications materials and other publications relating to the Project;

- (C) on the home page of any website established in connection with the Project; and
 - (D) on any equipment or other facility funded wholly or in part by the Department; and
- (ii) comply with any applicable Funding Acknowledgment Guidelines.
- (b) Other than disclosures that the Recipient is required to make under the rules of any applicable stock exchange, the Recipient must not in relation to the Project or this Deed make any public statements or communications, publish any media releases or publications, or undertake any of the activities under clause 13.1(a)(i) without first providing a copy of the statement, communication, publication or media release to the Department and obtaining the prior written approval of the Department.
- (c) Such approval by the Department under clause 13.1(b) is at the Department's discretion and may include conditions such as the inclusion of an acknowledgement or disclaimer, unless required by Law or a regulatory body (including a relevant stock exchange) in which case the Department must be notified prior.
- (d) The Recipient must not do or omit to do anything which may:
 - (i) damage, bring into disrepute or ridicule the NSW Government's or the Department's name, messages or reputation; or
 - (ii) attract public or media attention which may be prejudicial or otherwise detrimental to the NSW Government's or the Department's name, messages or reputation.
- (e) If requested by the Department at any time, the Recipient must promptly remove acknowledgement of the Grant and any Department or NSW Government trademark or logo from any material relating to the Project.

13.2 Use of Trademarks

Where the Recipient is permitted to use a trademark under clause 13.1, the Recipient must:

- (a) not use that trademark unless it has submitted to the Department all materials on which the trademark will appear and obtained the Department's approval to the use of the trademark;
- (b) comply with all reasonable directions notified by the Department in relation to use of that trademark; and
- (c) preserve the value and validity of that trademark.

13.3 Publicity by the Department

- (a) The Recipient agrees that it will cooperate with the Department in relation to all publicity associated with the Grant and the Project and will provide any assistance required by the Department in the preparation of materials used to promote the benefits of the Program to industry, such as a media release or case study on the Project.
- (b) Subject to clause 14, at any time the Department may publicise the benefits accruing to the Recipient and separately the Department as a result of the provision of the Grant.
- (c) Without limiting any rights of the Department and notwithstanding anything to the contrary in clause 14, the Department may publicly disclose:
 - (i) in any annual reporting which the Department undertakes, information including:
 - (A) the name of the Recipient;

- (B) the amount of the Grant;
 - (C) the title and brief description of the Project; and
 - (D) the Project outcomes;
- (ii) any information requested or required to be disclosed under or pursuant to any of the following:
 - (A) the GSF Act;
 - (B) the *Government Sector Audit Act 1983* (NSW);
 - (C) NSW government audit requirements;
 - (D) part 6A of the *Energy and Utilities Administration Act 1987* (NSW); or
 - (E) any other legislative requirements, including to the NSW Parliament under a Standing Order 52; and
- (iii) any information permitted or required to be disclosed under the Grants Administration Guide.

14. Confidential Information

14.1 General confidentiality

- (a) A Receiving Party must (and must ensure its Associates):
 - (i) keep the Confidential Information of the Disclosing Party confidential and secure; and
 - (ii) not without the prior written consent of the Disclosing Party, disclose any Confidential Information received from the Disclosing Party to another person or entity unless required by Law or permitted under this Deed.
- (b) Licensed Materials, Knowledge Sharing Deliverables, and Project Particulars must not contain Recipient Confidential Information unless clearly notified to and agreed by the Department at the time provided to the Department.
- (c) Nothing in this Deed prevents the Department from disclosing the identity of the Recipient, the nature of the Project or the amount of the Grant by way of a statement of a policy or governmental nature including any statement in Parliament.

14.2 Permitted disclosures

- (a) The Recipient consents to the Department disclosing Recipient Confidential Information:
 - (i) to the Department's Associates;
 - (ii) where applicable, to other state or federal government funders, potential funders, or lenders (including the Clean Energy Finance Corporation) or potential lenders in connection with the Project;
 - (iii) to any NSW Government or Commonwealth agency or Authority (including without limitation the Clean Energy Regulator) including for the purposes of understanding and discussing any government contributions;
 - (iv) to a house or a committee of the Parliament of New South Wales and/or the Parliament of Australia, or any of the Commonwealth or State or Territory Auditor-General or Ombudsmen;

- (v) to the Department's responsible Minister or the employees of that Minister;
 - (vi) to an Integrity Agency; and
 - (vii) in connection with any legal or recognised dispute resolution process to which the Department is a party.
- (b) The Recipient consents to and acknowledges that Recipient Confidential Information may be provided by the Department to a contractor for data handling and analysis services or incorporated into databases or other IT systems.
- (c) The Recipient may disclose the Department Confidential Information:
- (i) to the Recipient's Associates solely in order to comply with the obligations or to exercise rights in relation to the Grant Documents or to a Related Body Corporate for internal management purposes, in each case only:
 - (A) to the extent that such a person has a need to know on a 'need to know basis'; and
 - (B) provided the recipient of the Confidential Information is made aware that it is Confidential Information and agrees in writing to maintain the confidentiality of the Confidential Information on terms no less onerous than this Deed;
 - (ii) in connection with any legal or recognised dispute resolution process to which the Recipient is a party; and
 - (iii) to an Integrity Agency or where required by Law or a regulatory body (including a relevant stock exchange), in which case the:
 - (A) Department must be notified prior to any such announcement or disclosure; and
 - (B) Recipient acknowledges that the Department is entitled to make representation to the relevant court, tribunal or other body seeking or ordering disclosure, as to whether the Confidential Information should be disclosed.
- (d) Without limiting any other provision of this Deed, the Recipient:
- (i) agrees that the communication of Recipient Confidential Information or any other information relating to this Deed to any NSW Government agency, Minister, the NSW Parliament or NSW Authority (and each of their Associates) is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
 - (ii) releases the Department and Those Indemnified from and against any Claim in respect of any matter arising out of such communications, including the use of such information by the Department or Those Indemnified.
- (e) Nothing in this clause 14 derogates from the Department's obligations under any freedom of information or Privacy Laws.

14.3 Return of Department Confidential Information

- (a) Within 5 Business Days following request from the Department (or such other time as agreed by the Department in writing), the Recipient must at the Recipient's cost, return, permanently delete or deal with any or all the Department Confidential Information as directed by the Department. The Recipient may retain the Department's Confidential Information:
- (i) where needed for the purpose of complying with any continuing legal obligations;

- (ii) to fulfil legal, regulatory or reporting obligations;
- (iii) that is included in the directors' papers or board committee papers of the Recipient; or
- (iv) that is stored electronically pursuant to an existing routine data back-up.

For the avoidance of doubt, any Confidential Information retained by the Recipient under this clause 14.3(a) continues to be subject to the terms and conditions of this Deed.

- (b) The return, deletion, or destruction of the Department's Confidential Information does not release the Recipient from its confidentiality obligations under this Deed, including with respect to the returned or destroyed Confidential Information.
- (c) The terms of this Deed continue to apply to the Department's Confidential Information until the date that the Confidential Information comes into the public domain other than by the Recipient's breach of this Deed (but only to the extent that part or all of that Confidential Information is in the public domain).

15. Records, Evaluation and Audits

15.1 Evaluation

- (a) The Department or its nominee may undertake, at its own cost, an evaluation or review of the Project, the Program and the Recipient's performance under this Deed at any time throughout the Term and for a period of 24 Months after the end of the Term.
- (b) The Recipient must provide, at its own cost, prompt assistance throughout the review or evaluation to enable the Department to complete the review or evaluation in a timely manner.
- (c) For the purposes of this clause, an evaluation and/or review may, at the Department's discretion, require the Recipient to procure and provide information and data about the Project, which may be used to inform decision making and support the further evaluation of the Department's funding activities.
- (d) The Recipient must, in good faith, cooperate with the Department's reasonable requests for information, data or access to the Access Zones, the Recipient's premises and the Recipient's Associates' premises so that the Department can evaluate and/or review the outcomes of the Project (including against the Project Objectives), the Program and the Recipient's performance under this Deed.

15.2 Records

- (a) The Recipient must, at its cost, keep, manage and maintain proper and adequate books of account and records of the performance of the Project and the receipt and expenditure of the Grant which are:
 - (i) accurate and complete;
 - (ii) maintained so that:
 - (A) all financial transactions, including receipts and payments, arising out of or in connection with the Grant and Project are clearly and separately identifiable and able to be extracted;
 - (B) all revenue and expenditure relating to the Grant and the Project is accounted for separately from other funds managed by the Recipient and

- in accordance with Australian Accounting Standards so that at all times the Grant Instalments are identifiable and ascertainable;
 - (C) the accounts for the revenue and expenditure for the Grant and the Project disclose all cash and other contributions for all components of the Project in accordance with Australian Accounting Standards;
 - (D) the amounts paid by the Department under this Deed are able to easily be determined and verified;
 - (E) the Recipient is able to promptly prepare financial statements in compliance with Australian Accounting Standards, if required by Law or on request by the Department;
 - (F) if required by Law or on request by the Department, the Recipient's accounts and records are able to be audited in accordance with Australian Accounting Standards; and
 - (G) all of the Recipient's taxation liabilities and payments can be clearly identified.
- (b) Records must be kept for a minimum of 7 years from the date of expiry or termination of this Deed in such a manner that allows the records to:
- (i) maintain their accuracy and completeness in accordance with clause 15.2(a); and
 - (ii) be quickly and easily accessed, retrieved, reviewed and used by the Department, the NSW Government or an auditor/nominee engaged by, or on behalf of, the Department or the NSW Government.

15.3 Audit by the Department (or nominees)

- (a) Without limitation to the rights of any other Government Agency (including the NSW Auditor General), during the Term of this Deed and for 7 years after the termination or expiry of this Deed, the Recipient acknowledges and agrees that the Department and its nominees may conduct audits relevant to the performance of the Recipient's obligations under this Deed and in respect of the Project.
- (b) Without limitation, the Recipient must:
 - (i) subject to reasonable and appropriate work health and safety restrictions, permit or procure access for the Department, the NSW Auditor General and any of their nominees to the Access Zones;
 - (ii) permit access to, allow inspection of and permit the taking of copies of records and Materials (regardless of the manner in which they are stored) in the custody or control of the Recipient to the extent related to this Deed, the Grant or the Project by the Department and/or the NSW Auditor General (and/or any its or their nominees);
 - (iii) provide full and accurate answers (and/or procure its Associates to provide full and accurate answers) to any reasonable and relevant questions put to them by the Department and/or the NSW Auditor General (and/or any of its or their nominees) concerning any records or information related to this Deed or the Project activities;
 - (iv) provide certification as may be required by the Department or the NSW Auditor General (and/or any its or their nominees) in connection with this Deed; and

- (v) have its books of account in relation to its receipt and expenditure of the Grant and the Project audited by an Approved Auditor and provide a copy of the audited accounts to the Department and/or the NSW Auditor General (and/or any of its or their nominees) within 60 days after a request from the Department and/or the NSW Auditor General (and/or any of its or their nominees).
- (c) The Recipient must promptly provide assistance for such audit and/or access, including by procuring any required records from its Associates.
- (d) Without limiting any other provision of this Deed, if an audit undertaken pursuant to this clause 15.3 reveals that the Recipient has not complied with the requirements of this Deed:
 - (i) the Department may exercise any available rights, including under this Deed; and
 - (ii) the 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.

The Recipient acknowledges and accepts that it is not permitted to use the Grant to meet any such costs.

16. Representations and warranties

16.1 Recipient's representations and warranties

The Recipient represents and warrants for the benefit of the Department that:

- (a) **(professional capacity):** the Recipient and any person or entity which it engages in relation to the Project has the capacity to perform their respective tasks in the delivery of the Project to a professional standard in accordance with Good Construction Industry Practice and Good Operating Industry Practice;
- (b) **(corporate power and authority):** the Recipient is incorporated, properly constituted and remains in existence and has the corporate power to own its assets and to carry on its business as it is now being conducted and it has the capacity and power to execute, deliver and perform its obligations under the Grant Documents and all necessary action has been taken to authorise that execution, delivery and performance;
- (c) **(transaction permitted):** the execution, delivery and performance of its obligations under each Grant Document does not and will not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets, and does not constitute a breach of any other obligation of the Recipient;
- (d) **(binding obligations):** each Grant Document constitutes legal, valid and binding obligations on the Recipient in accordance with its terms;
- (e) **(GST):** the Recipient is registered for GST and holds an Australian Business Number;
- (f) **(no Insolvency Event):** the Recipient is not subject, and continues to not be subject to, an Insolvency Event;
- (g) **(authorisations):** it holds (or will hold) and will maintain all Authorisations, registrations, accreditations and certifications that it is required by Law to hold in order to lawfully execute, deliver and perform its obligations under the Grant Documents;

- (h) **(no misleading information):** all information that has been provided to the Department by or on behalf of the Recipient is true, correct and not misleading at the time it was provided to the Department;
- (i) **(Application):**
 - (i) all information provided to the Department as part of or in connection with the Application (other than forecasts or projections) remains true, correct and not misleading in any material respect (whether by omission or otherwise); and
 - (ii) all forecasts and projections which were provided by the Recipient to the Department as part of or in connection with the Application were prepared using due care and skill based on assumptions which the Recipient, Partner Organisation or its or their Related Bodies Corporate believed, in good faith, were fair and reasonable assumptions as at the Application Date;
- (j) **(no Security Interests):** none of the Project Assets are subject to a Security Interest other than a Permitted Security Interest;
- (k) **(own investigations):** in entering into each Grant Document it has relied upon its own investigations and has not relied upon any representation or warranty about its subject matter by the Department or any other person, other than as expressly provided in the relevant Grant Document;
- (l) **(sanctions):** the Recipient and its Associates are not:
 - (i) directly or indirectly engaged in preparing, planning, assisting or fostering a terrorist act;
 - (ii) listed terrorist organisations for the purposes of the *Criminal Code Act 1995* (Cth) (details of listed terrorist organisations as at the Commencement Date are available at <https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations>);
 - (iii) subject to sanctions or similar measures under the *Charter of the United Nations Act 1945* (Cth) or the *Autonomous Sanctions Act 2011* (Cth) (details of individuals and entities as at the Commencement Date are available at: <https://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx>);
 - (iv) listed on the 'World Bank's Listing of Ineligible Firms and Individuals' which as at the Commencement Date are posted at: <https://www.worldbank.org/en/projects-operations/procurement/debarred-firms>;
 - (v) owned, controlled by, acting on behalf of, or at the direction of individuals, persons, entities or organisations referred to in clauses 16.1(l)(i) to 16.1(l)(iv); or
 - (vi) providing direct or indirect support, resources or assets (including any grant monies) to individuals, persons, entities or organisations referred to in clauses 16.1(l)(i) to 16.1(l)(iv);
- (m) **(not a trustee):** it does not enter into this Deed as trustee of any trust;
- (n) **(Proceedings):** the Recipient and its Related Entities are not the subject of any actual, pending or (to the best of the Recipient's knowledge after having made proper enquiry) threatened legal proceedings, Reputational Proceedings or investigations (including any inquiry, investigation, litigation, arbitration, conciliation, mediation or similar proceedings) which may adversely impact the Recipient's ability:
 - (i) to fulfil its obligations under this Deed;

- (ii) to own, design, construct, commission, test, complete, operate, manage or maintain the Project Assets; or
 - (iii) to grant, renew, obtain, maintain or extend any Authorisation which the Recipient is required to obtain pursuant to this Deed or at Law; and
- (o) **(Modern Slavery):** it has disclosed in accordance with the terms of this Deed, any:
- (i) actual or reasonably suspected Modern Slavery;
 - (ii) notices, investigations, proceedings or claims arising in any jurisdiction in relation to any actual or reasonably suspected breach of Modern Slavery Laws; and
 - (iii) all actions taken to remedy the Modern Slavery or breach of Modern Slavery Laws,
- by the Recipient, the Recipient's Associates or Related Entities, or by any of the Recipient's Associates while performing any contract with the Recipient, whether or not the Modern Slavery arises in the performance of the Deed;
- (p) **(employment conditions):** the Recipient is compliant in all material respects with:
- (i) its obligations under employment contracts, industrial agreements and awards;
 - (ii) codes of conduct and practice relevant to conditions of service and to the relations between the Recipient and its employees; and
 - (iii) applicable workplace health and safety Laws; and
- (q) **(Grant eligibility):** the Recipient:
- (i) meets and continues to meet the eligibility criteria (and the Project meets the eligible project requirements) set out in the Grant Guidelines; and
 - (ii) it is not aware of any material facts or circumstances that, had they been disclosed to the Department, may have made a prudent person in the Department's position, determine not to enter into this Deed.

16.2 Grant Instalment warranties

The Recipient warrants to the Department on each date that it requests the payment of a Grant Instalment that:

- (a) all requirements under the Deed for payment of the Grant Instalment have been met;
- (b) no breach of the Deed by the Recipient is continuing; and
- (c) the Recipient is able, and has sufficient funds, to complete the Project by the corresponding Milestone Dates in accordance with the Deed.

16.3 Repetition of representation and warranties

- (a) Unless otherwise expressly stated in this Deed, each representation and warranty given by the Recipient under this Deed is made on the Commencement Date and is repeated each day during the period from the Commencement Date to the end of the Term.
- (b) Within 10 Business Days following a request from the Department (or such other time as agreed by the Department in writing), the Recipient must provide evidence which reasonably demonstrates that it continues to satisfy the warranties and representations given under this Deed.

- (c) The Recipient acknowledges and agrees that the Department has entered into and performs this Deed in reliance on the warranties and representations made by the Recipient.

17. Liability, indemnity and insurance

17.1 Liability and indemnity

- (a) The Project is at the Recipient's risk. The Department is not responsible and accepts no liability for:
 - (i) any aspect of the operation of the Recipient's business;
 - (ii) the performance of the Project;
 - (iii) any cost overruns or overspends in connection with the Project; or
 - (iv) any circumstances where the Recipient has insufficient funds to carry out the Project.
- (b) To the fullest extent permitted by Law and despite any other provision of this Deed:
 - (i) the Department's Liability arising from or in connection with this Deed is limited in the aggregate to the lesser of the:
 - (A) amount of the Grant; and
 - (B) amount that is equal to the Grant Funding Percentage (Overall) as a percentage of the Eligible Expenditure incurred by the Recipient toward the Project as at the date the Liability arises; and
 - (ii) the Recipient releases and discharges, and must procure that its Associates release and discharge, the Department from all Liability which, but for the provisions of this clause 17, might be brought or made by the Recipient and its Associates against the Department.
- (c) A party is not liable to the other party whether in contract, tort (including negligence), equity or otherwise in connection with this Deed, for any Loss to the extent that the other party (or the other party's Associates) caused or contributed to the Loss.
- (d) A party which suffers any Loss in connection with this Deed must take reasonable steps to mitigate its Loss.
- (e) To the fullest extent permitted by law, but subject to clauses 17.1(c) to 17.1(d), the Recipient indemnifies Those Indemnified from and against all Losses suffered or incurred by Those Indemnified resulting from any Claim or Liability by a third party that may be brought against, made upon or incurred by any of Those Indemnified (whether in contract, tort (including negligence), equity or otherwise) arising from or in connection with the Project or this Deed, including without limitation, any:
 - (i) Intellectual Property Infringement arising out of any activity permitted under any licence or sublicense granted under clause 11;
 - (ii) act or omission of the Recipient's Associates and the performance of the Project by the Recipient's Associates;
 - (iii) act or omission of the Partner Organisations and the performance of the Project by the Partner Organisations;

- (iv) act or omission which amounts to a breach of the Recipient's obligations or warranties under this Deed; or
- (v) neglect, default or any unlawful actions connected with the actual or attempted performance of the Recipient's obligations under this Deed by the Recipient, its Associates or Partner Organisations.
- (f) The Department will not in any circumstances be liable to the Recipient for any loss of revenue, profit, production, opportunity, goodwill, reputation, use or any indirect or consequential Loss arising from or in connection with the Deed.
- (g) The Recipient:
 - (i) agrees that the Department may hold on trust for each of Those Indemnified the benefit of each indemnity and release given by the Recipient under this Deed, in favour of each of Those Indemnified and may be fully and effectively enforced by the Department on behalf of Those Indemnified; and
 - (ii) acknowledges the existence of such trusts under clause 17.1(g)(i) and consents to:
 - (A) the Department and/or the NSW Government exercising such rights and powers in relation to, or otherwise enforcing such obligations, on behalf of Those Indemnified as the case may be; and
 - (B) Those Indemnified exercising rights or powers in relation to, or otherwise enforcing, the indemnities and releases as if a party to this Deed.
- (h) The parties agree that the consent of neither Those Indemnified nor any Guarantor will not be required for any amendment to, or waiver of, rights, powers or obligations under this Deed.
- (i) The Recipient is and remains liable for the performance of the Project and this Deed and, to the extent permitted by Law, the operation of any proportionate liability legislation in relation to any claim or liability arising out of or in connection with this Deed is excluded, including under Part 4 of the *Civil Liability Act 2002* (NSW).

17.2 Required Insurance

- (a) The Recipient must, at its cost, take out and maintain or procure the taking out and maintenance of those insurances with reputable insurers that have the Required Rating and which are otherwise to the reasonable satisfaction of the Department (**Required Insurances**) including insurances of a type and on no less favourable terms than the following insurances:
 - (i) contract works insurance for the full reinstatement or replacement value of the work undertaken by the Recipient in relation to the Project and the Project Assets;
 - (ii) broad form public liability insurance for the minimum amount of \$20 million in respect of each and every occurrence and unlimited in the number of such occurrences over any one period of cover;
 - (iii) workers' compensation as required by Law;
 - (iv) all risks property insurance to protect against loss or damage to the Project Assets for an amount of not less than the full reinstatement or replacement value of the Project Assets;
 - (v) a minimum amount of \$5 million per occurrence of professional indemnity insurance if the Recipient is performing any professional services and in the case

that the Recipient's Associates perform professional services, those Associates must have a minimum amount of \$5 million per occurrence of professional indemnity insurance; and

- (vi) all insurances that would be maintained by a prudent developer, owner and operator of assets substantially similar to the Project Assets operating in accordance with Good Construction Industry Practice and Good Operating Industry Practice to cover any liability incurred in relation to undertaking the Project, including the procurement, installation and operation and maintenance of any plant or equipment, any building, infrastructure or electrical upgrades, and the procurement, installation and use of any software.
- (b) The Recipient must maintain or, as applicable, procure the maintenance of the Required Insurances:
 - (i) in the case of a Required Insurance issued on a claims made basis, for 7 years after the end of the Term; or
 - (ii) otherwise, until the last date of the Term.
- (c) The Recipient must ensure that each of its Associates are either an insured under the Required Insurances or procure their own insurance on terms no less favourable than the Required Insurances.
- (d) The Recipient must provide the Department, within 10 Business Days after a request, a current certificate of currency and any other evidence the Department may reasonably require as evidence that the Recipient has complied with its obligations under this clause 17.2.

18. Force Majeure

18.1 Force majeure event

For the purposes of this Deed, a '**Force Majeure Event**' means any event or combination of events which:

- (a) is beyond the reasonable control of the Recipient;
- (b) causes a failure to perform or delay in performance by the Recipient of any of its obligations under this Deed;
- (c) could not have been prevented or overcome by the Recipient acting in accordance with Good Construction Industry Practice or Good Operating Industry Practice; and
- (d) subject to (e) to (n) below, is directly caused by one or more of the following:
 - (i) fire, lightning, explosion, flood, earthquake or extreme storm or force of nature;
 - (ii) any infectious disease that is declared as a pandemic by the World Health Organisation after the Commencement Date;
 - (iii) civil commotion, sabotage, war, revolution, radioactive contamination, toxic or dangerous chemical contamination;
 - (iv) strikes, lock-outs, industrial disputes, labour disputes, industrial difficulties, labour difficulties, work bans, blockades or picketing; and
 - (v) a delay in obtaining an Authorisation not caused by the act or omission of the Recipient,

but for the avoidance of doubt and without limitation, does not include any event or combination of events arising out of or in connection with:

- (e) COVID-19;
- (f) strikes, lock-outs, industrial disputes, labour disputes, industrial difficulties, labour difficulties, work bans, blockades or picketing between the Recipient and its Associates in relation to the Project except where any such dispute is part of a wider dispute involving employees of other employers (not being a Related Body Corporate of the Recipient);
- (g) mechanical or electrical breakdown or a failure of equipment in respect of the Project unless caused by a separate Force Majeure Event;
- (h) wet or inclement weather other than extreme storms, hurricanes, cyclones, tornados, tsunamis, ice and ice storms, hail, dust storms and typhoons;
- (i) shortages of materials or other supplies required for the Project where the Recipient, its Associates or Partner Organisations (or a party to a Key Contract) has failed to use its best endeavours to overcome such shortages;
- (j) an Associate or Partner Organisation's failure to perform does not constitute a Force Majeure Event, except to the extent that the failure to perform is caused or contributed to by a Force Majeure Event;
- (k) the inability of the Recipient (or any Associate, Partner Organisation, Related Entity or Funding Provider), for whatever reason, to pay any amount it is obliged to pay;
- (l) the Recipient's inability to access the Site unless caused by a Force Majeure Event;
- (m) a delay in obtaining an Authorisation caused by the act or omission of the Recipient; or
- (n) any change in Law.

18.2 Recipient must notify

If a Force Majeure Event occurs, the Recipient must promptly notify the Department of the event, providing details of the event, any obligations affected, the action being taken to mitigate the situation and the likely duration of the delay.

18.3 Suspension of obligations

- (a) Subject to clauses 18.3(b) and 18.4, the obligations of the:
 - (i) Recipient to the extent affected by the Force Majeure Event (affected obligations), are suspended while the Force Majeure Event notified to the Department under clause 18.2 persists and the Department will grant a reasonable extension of time to perform the relevant affected obligation; and
 - (ii) Department to pay the Grant will be suspended, unless otherwise agreed by the Department in writing, until such time the Force Majeure Event ends and deliverables are delivered as required under this Deed (except with respect to timing).
- (b) The Recipient must use its best endeavours to remedy the effects of the Force Majeure Event as soon as reasonably practicable.

18.4 Termination

If the effects of a Force Majeure Event continue for more than 30 Business Days in aggregate, the Department may immediately terminate this Deed by notice in writing to the Recipient.

Termination under this clause 18.4 will be without Liability to the Department, other than in respect of any Liability accrued as at the date of termination.

18.5 Cessation of Force Majeure Event

- (a) Subject to the Department exercising its rights under clause 18.4, the period of any Force Majeure Event will end on the date on which the Force Majeure Event has ceased.
- (b) The Recipient must within 2 Business Days, notify the Department in writing when a Force Majeure Event ceases.

19. Cure regime

19.1 Cure Plan request

Without limiting any rights of remedy under this Deed or at Law, the Department may request that the Recipient provide the Department with a Cure Plan for a breach committed by the Recipient or as a result of an Adverse Event. The Department is not required to request a Cure Plan in the case of a breach by the Recipient or an Adverse Event but may do so in its discretion.

19.2 Cure regime

If the Department provides notice to the Recipient to provide a Cure Plan:

- (a) the Recipient must submit the proposed Cure Plan within 10 Business Days after the date of receipt of the notice;
- (b) the Department will, by written notice, approve or reject the proposed Cure Plan within 20 Business Days of receiving the proposed Cure Plan from the Recipient;
- (c) if the Department rejects the proposed Cure Plan, the Recipient may within 10 Business Days following the date it receives the notice of rejection submit an Amended Cure Plan that addresses the Department's requirements;
- (d) if the Department rejects the Amended Cure Plan, then the Department may terminate this Deed for breach under clause 20.1(a); and
- (e) if the Department approves a proposed Cure Plan or proposed Amended Cure Plan, the Recipient must comply with, diligently pursue, and complete the actions set out in the approved Cure Plan or approved Amended Cure Plan within the timeframes specified in the Cure Plan or approved Amended Cure Plan.

19.3 Breach of cure regime

- (a) If the relevant breach or Adverse Event is remedied in accordance with the approved Cure Plan or approved Amended Cure Plan, then that breach or Adverse Event is no longer taken to be a breach of this Deed on and from the date the Department confirms (in the Department's absolute discretion) compliance with, and satisfactory completion of, the approved Cure Plan or approved Amended Cure Plan (as relevant).
- (b) If the Recipient does not submit a Cure Plan or Amended Cure Plan within the relevant timeframes specified in clause 19.2, including if it relates to an Adverse Event, the Department may terminate this Deed for breach under clause 20.1(a).
- (c) If the Recipient fails to comply with an approved Cure Plan or approved Amended Cure Plan, including if it relates to an Adverse Event, then the Recipient is in breach of this

Deed and the Department may provide written notice to the Recipient of the non-compliance and terminate this Deed under clause 20.1(a).

- (d) Remedy of a breach or Adverse Event pursuant to a Cure Plan or Amended Cure Plan does not prejudice or affect the rights of the Department with respect to any future breach or Adverse Event, including if that future breach or Adverse Event relates to, or is similar to, the original breach or Adverse Event.

20. Termination

20.1 Termination for breach

Without limiting any other provision of this Deed, the Department may terminate this Deed by written notice at any time on and from the date that any of the following events occur, with this Deed terminated on the date specified in the written notice:

- (a) a breach of a Grant Document;
- (b) the Recipient indicates in writing that it is unable or unwilling to comply with this Deed;
- (c) the Department is satisfied (acting reasonably) that any statement provided by or on behalf of the Recipient, its Related Entities or a Partner Organisations to the Department, relied on by the Department (including to approve the Grant) is incorrect, incomplete, false or misleading;
- (d) the Recipient commits by act or omission, or becomes involved in any situation or occurrence, that is considered corruption, misconduct or maladministration arising out of or in connection with the Project, this Deed or its interaction with the NSW Government, as determined by the Department;
- (e) the Department becomes entitled to terminate this Deed for a Force Majeure Event under clause 18; or
- (f) the Recipient, Partner Organisation, or a Guarantor becomes subject to an Insolvency Event.

20.2 Termination for Change in Government Policy

Without limiting any other rights or remedies the Department may have arising out of or in connection with this Deed but subject to clause 20.3(c), the Department may terminate this Deed upon written notice to the Recipient effective from the date specified in the notice, due to a Change in Policy.

20.3 Consequences of termination

- (a) On receipt of the notice of termination, the Recipient agrees to:
 - (i) stop the performance of the Recipient's obligations under this Deed;
 - (ii) immediately cease expenditure of the Grant; and
 - (iii) take all available steps to minimise loss resulting from the termination.
- (b) On and from the termination or expiry of this Deed:
 - (i) subject to clause 20.3(c), if this Deed is terminated the Department is not liable to pay to the Recipient any compensation or any Grant amount that is outstanding as at the date of termination under this Deed;

- (ii) with respect to Advance Milestones that have been paid by the Department and completed by the Recipient prior to the date of termination but have not been reconciled under clause 9.8 as at the date of termination, the parties must undertake a reconciliation in accordance with clause 9.8 within 10 Business Days of the date of termination;
- (iii) without limiting any other rights and remedies the Department may have, the Recipient must repay to the Department the amount notified by the Department under clause 21;
- (iv) the Recipient must immediately cease use of the Department's Confidential Information and deal with such Confidential Information as required by clause 14.3;
- (v) the Recipient must within 15 Business Days:
 - (A) promptly provide all required Reports, information pursuant to the Knowledge Sharing Plan and Licensed Materials to the Department; and
 - (B) unless otherwise agreed in writing by the Department, return (and permanently delete and destroy if required by the Department) to the Department all Personal Information and Existing Material provided to the Recipient by the Department; and
- (vi) all payments due under this Deed will immediately cease.
- (c) If this Deed is terminated under clause 20.2 the Department will:
 - (i) pay to the Recipient; or
 - (ii) in the case of Grant amounts paid by the Department for Advance Milestones, allow the Recipient to retain or offset against the reconciliation amount,

those payments accrued under clause 9 before the effective date of termination in accordance with this Deed, but only to the extent:

 - (iii) those payments have been spent by the Recipient or Committed by the Recipient on Eligible Expenditure in accordance with this Deed; and
 - (iv) evidence of such is provided to the Department (to the Department's satisfaction, acting reasonably).
- (d) Termination of this Deed does not affect any accrued rights, obligations or remedies of a party.

21. Repayment

21.1 General repayment

- (a) If at any time the Department, acting reasonably, forms the opinion (regardless of whether it was discovered before or after the Completion Date) that:
 - (i) it has made an overpayment or incorrect payment of any part or the whole of the Grant under this Deed;
 - (ii) a claim for payment or a tax invoice has been incorrectly rendered; or
 - (iii) the Grant has been spent other than in accordance with this Deed,

the Department may by giving notice to the Recipient:

- (iv) require the Recipient to repay that part of those amounts (**Refundable Amount**) within 20 Business Days after request from the Department as a debt due and owing to the Department; or
 - (v) set-off that part of the Refundable Amount against any other Grant Instalment or amount payable to the Recipient by the Department under this Deed in accordance with clause 26.5.
- (b) The Recipient agrees to repay to the Department any Unspent Grant Amounts within 20 Business Days following:
- (i) completion of the last Milestone Event that has a Grant Instalment payable (if no reconciliation is applicable for that Milestone Event) calculated as at the date of completion of that Milestone Event; and
 - (ii) the Expiry Date, calculated as at the Expiry Date.
- (c) The Department may:
- (i) recover any Unspent Grant Amounts as a debt due and owing by the Recipient to the Department; and
 - (ii) set off the Unspent Grant Amount against any money payable to the Recipient by the Department under this Deed in accordance with clause 26.5.

21.2 Repayment of the Grant

- (a) Despite any other term of this Deed and without limitation to the rights of the Department under this Deed and at Law, on and following termination or expiry of this Deed the Department may in its absolute discretion:
- (i) require the Recipient to repay to the Department some or all of:
 - (A) any Grant amount remaining in the Bank Account or Segregated Bank Account at the time of termination or expiry;
 - (B) if this Deed is terminated under clause 20.1, except 20.1(e), the Grant paid to the Recipient; and
 - (C) the Recipient Funding and Co-funding that have not been applied or expended for the Project but should have been applied at the time of termination or expiry; and
 - (ii) in the case of a termination, except for termination under clause 20.2, with respect to the Project Assets funded in part or in total from the Grant:
 - (A) recover from the Recipient the proportion of the value of each or any Project Asset following depreciation or appreciation (in accordance with applicable Australian Accounting Standards) calculated as at the date of termination which is equivalent to the proportion of the purchase price of the Project Asset that was funded from the Grant;
 - (B) recover from the Recipient the proportion of the market value of each or any Project Asset which is equivalent to the proportion of the purchase price of the Project Asset that was funded from the Grant (with such value to be equivalent to an arms' length sale by a willing but not anxious buyer and seller); or
 - (C) require the Recipient to use, deal with or transfer each or any Project Asset as the Department directs in writing.

- (b) The aggregate amount the Department may recover or be required to be repaid under clauses 21 and 22 must not exceed the amount of the Grant paid to the Recipient (whether on or after the expiry or termination date).

21.3 Repayment notice

- (a) The Department may give the Recipient a repayment notice requiring the Recipient to repay to the Department an amount which the Department is entitled to recover under this Deed. If the Department gives the Recipient such notice, the Recipient must, within 20 Business Days of the date of the repayment notice, repay the amount specified in the repayment notice in the manner directed by the Department.
- (b) Subject to any amounts that are the subject to bona fide dispute under clause 24, if the Recipient does not make any required repayment of the undisputed repayment amount by the due date for payment, the Department may:
 - (i) recover those amounts as a debt due and owing by the Recipient to the Department;
 - (ii) add interest to those amounts in accordance with clause 26.4; and
 - (iii) set off those amounts against any money payable to the Recipient by the Department under this Deed, in accordance with clause 26.5.
- (c) If there is a bona fide dispute in respect of a repayment claim under this clause 21, the Recipient must notify the Department of the Dispute. The parties will resolve the Dispute in accordance with clause 24. The Recipient must pay any undisputed amount in accordance with clause 21.3(a) but will be entitled to withhold the amount in dispute pending resolution of the Dispute.
- (d) The Recipient acknowledges that the amounts to be paid to the Department under this clause 21 are a genuine pre-estimate of the losses incurred or likely to be incurred by the Department in the circumstances in which clause 21 applies.
- (e) This clause 21 does not limit any other right or remedy of the Department, and the Department may pursue any claim or remedy available to it.

22. Reduction for Change in Policy or contributions

22.1 Reduction

Without limiting any other rights of the Department, at any time if there is a Change in Policy or a change in the Recipient Funding or Co-funding amounts, then the Department may, without further obligation or liability, effective from the date specified in the notice either:

- (a) **Change in Policy:** reduce the Grant amount not yet paid to the Recipient; or
- (b) **Change in contributions:** reduce the unpaid portion of the Grant in the Department's discretion (acting reasonably), but in all cases, by at least the minimum amount required to maintain the Grant Funding Percentage (Overall).

22.2 Effects of reduction

- (a) The Recipient must continue to undertake its obligations under this Deed that are not expressly affected by a reduction in scope under this clause.

- (b) If the Recipient Funding amounts or Co-funding amounts change on and from the date that the Department has discharged its Milestone Event payment obligations under this Deed such that the Grant cannot be reduced, then the Department may require repayment of the Grant under clause 21.1 as an overpayment of the Grant amount or under clause 21.2(a)(i)(C).

22.3 Committed expenses

- (a) If the Grant amount is reduced under clause 22.1(a):
 - (i) the parties will agree any necessary consequent variation to this Deed, for example, by way of reduction in scope; and
 - (ii) the Department will pay the Recipient's reasonable, substantiated costs (other than costs specified under clause 17.1(f) and any legal costs) necessarily and directly incurred as a result of the reduction in Funding and scope, provided that:
 - (A) the Recipient uses its best efforts to minimise its costs; and
 - (B) the total amount of the costs accrued will not exceed the total amount of the unpaid Grant forfeited through reduction under clause 22.1(a).
- (b) If the parties cannot agree a variation to effect the reduction in scope under clause 22.3(a)(i) within 1 Month following the notice from the Department, then the Department reserves its rights to terminate this Deed under clause 20.2.

23. Assignment, Novation and Change in Control

23.1 Change in Control of Recipient or Partner Organisation

- (a) During the Term of this Deed, the Recipient must obtain the prior written approval of the Department in respect of any Change in Control of the Recipient or a Partner Organisation.
- (b) The Recipient must:
 - (i) provide the Department with any information about the proposed Change in Control requested by the Department to allow the Department to assess whether to provide its consent, including:
 - (A) an overview of the proposed Change in Control, including diagrams clearly explaining the proposed Change in Control;
 - (B) if the proposed Change in Control involves a Partner Organisation, a copy of the written agreements with the Partner Organisation;
 - (C) such other information which identifies and evidences the commercial arrangements underpinning the Change in Control; and
 - (D) answers to any questions put to it by the Department in relation to a proposed Change in Control and any documents or information related to the proposed Change in Control; and
 - (ii) use reasonable endeavours to assist the Department to efficiently consider whether to approve any proposed Change in Control.
- (c) The Department must use reasonable endeavours to notify the Recipient of its approval or rejection of any proposed Change in Control within 30 Business Days after receipt of

the latest of the information and documents required to be provided under clause 23.1(b).

- (d) The Department may require as a condition of its approval under this clause 23.1 a deed is entered in a form and substance acceptable to the Department undertaking that the incoming party will ensure that the Recipient complies and will continue to comply with the terms of this Deed.

23.2 Assignment or novation

- (a) The Recipient must not assign, transfer or novate this Deed or deal with any of its rights or obligations under or in connection with this Deed without the prior written consent of the Department. The Department may withhold its consent in its absolute discretion, with or without conditions. The parties agree that clauses 23.1(b) to 23.1(d) (inclusive) apply in respect of an assignment, transfer or novation as if it were a Change in Control.
- (b) 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):
 - (i) to another NSW Government entity by providing notice to the Recipient; or
 - (ii) 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.
- (c) If the Department gives notice to the Recipient under clause 23.2(b)(i), all parties will execute a deed of novation or any other document reasonably required by the Department to effect the assignment, transfer or novation.

23.3 Costs

If required by the Department, the Recipient must pay to the Department the Department's reasonable costs (including legal, commercial, technical and financial adviser costs) incurred in relation to its consideration and approval (as the case may be) of a proposed Change in Control, assignment, novation or transfer by the Recipient, including the costs of preparing any documentation and any associated documentation.

24. Disputes

24.1 No court proceedings

If a Dispute arises, a party must not commence court proceedings relating to the Dispute without first complying with this clause 24, except proceedings for urgent interlocutory relief. After a party has sought or obtained any urgent interlocutory relief, that party must follow this clause 24.

24.2 Notice of dispute

A party claiming that a Dispute has arisen must give written notice of the Dispute to the other party.

24.3 Referral to representatives

During the period of 15 Business Days (or such other time as the parties may agree) after a notice is given in accordance with clause 24.2 (**Representatives Discussion Period**), each party must seek to settle the Dispute by referring the Dispute to a representative with authority to settle the Dispute.

24.4 Senior Representatives

- (a) If the parties' representatives are unable to settle a Dispute within 10 Business Days after the end of the Representatives Discussion Period and a party wishes to progress the Dispute, the Dispute must be referred by that party on or before the end of that seven day period to the following, each a '**Senior Representative**':
 - (i) in the case of the Recipient - to its Chief Executive Officer, Managing Director or equivalent; and
 - (ii) in the case of the Department - to the Deputy Secretary, Energy, Climate Change and Sustainability of the Department (or equivalent) or that person's nominee.
- (b) Both Senior Representatives must initially meet to seek to resolve the Dispute within 15 Business Days after that Dispute is referred to them under this clause 24.4 (**Senior Representative Discussion Period**).

24.5 Mediation

- (a) If the parties have not resolved the Dispute in writing under clause 24.4 by the end of the Senior Representative Discussion Period and a party wishes to progress that Dispute, that Dispute must be referred to mediation in accordance with this clause 24.5 (or as otherwise agreed between the parties) by written notice by that party to the other party.
- (b) The Dispute is to be referred to the Australian Commercial Dispute Centre (**ACDC**) for mediation. The mediation is to be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- (c) If the Dispute is not settled within 20 Business Days (or such other period as agreed in writing) after appointment of the mediator, or if no mediator is appointed within 20 Business Days of the referral of the Dispute to mediation, the parties may pursue any other procedure available at Law for the resolution of the Dispute.
- (d) If the Department requests it, the Recipient must continue performing this Deed while a Dispute is being dealt with in accordance with this clause, to the extent practicable to do so.
- (e) Each party retains the right to apply to any court of competent jurisdiction for provisional, interim and/or conservatory relief, including injunctions, and any such request is deemed not to be incompatible with the agreement to mediate or a waiver of the right to mediate.

25. Notices

25.1 Form

- (a) Unless this Deed expressly states otherwise, all notices, demands, certificates, consents, approvals and waivers in connection with this Deed must be in writing..

- (b) All notices, demands, certificates, consents, approvals, waivers and other communications in connection with this Deed (other than those sent by email) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).
- (c) Email notices, demands, consents, approvals and waivers must state the first and last name of the sender and are taken to be signed by the named sender unless otherwise specified in the email.

25.2 Delivery

- (a) All notices, demands, certificates, consents, approvals, waivers and other communications in connection with this Deed must be:
 - (i) left at the address referred to in the Details;
 - (ii) sent by post (airmail if appropriate) to the address referred to in the Details; or
 - (iii) sent by email to the email address referred to in the Details.
- (b) If the intended recipient has notified changed contact details, the notice, demand, certificate, consent, approval, waiver or other communication must be sent to the changed contact details.

25.3 When effective

All notices, demands, certificates, consents, approvals, waivers and other communications in connection with this Deed take effect from the time they are actually received or taken to be received under clause 25.4 (whichever happens first).

25.4 When taken to be received

Notices, demands, certificates, consents, approvals, waivers and other communications in connection with this Deed are taken to be received on the earlier of:

- (a) if sent by post, 5 Business Days after posting (or 8 Business Days after the date of posting by airmail to if sent from one country to another); and
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message within that 4 hour period that the delivery failed.

Despite anything else in this clause 25, if the notice, demand, certificate, consent, approval, waiver or other communication is received or taken to be received under clause 25.4 after 5.00pm on a Business Day or at any time on a non-Business Day, it is taken to be received at 9.00am on the next Business Day. For the purposes of this clause 25.4, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

26. General

26.1 Modern Slavery

- (a) The Recipient must establish, implement, and maintain for the term of this Deed, appropriate systems and policies as required to meet its Core Modern Slavery Obligations.
- (b) Should the Recipient become aware of any actual or reasonably suspected Modern Slavery risks, practices or a breach of the Core Modern Slavery Obligations, the Recipient must notify the Department under clause 7 as an Adverse Event and follow the requirements for an Adverse Event.
- (c) In addition to the requirements of clause 7 when notifying the Department of the Adverse Event the Recipient must:
 - (i) identify the entities affected by the Modern Slavery risks, practices or breach of the Core Modern Slavery Obligations;
 - (ii) provide details of any notices, investigations, proceedings or claims arising in any jurisdiction in relation to any actual or reasonably suspected breach of Modern Slavery Laws or Core Modern Slavery Obligations;
 - (iii) provide details of the Modern Slavery risks, practices or breach of the Core Modern Slavery Obligations;
 - (iv) provide details of the occurrences of Modern Slavery or breach of the Core Modern Slavery Obligations and their scale and severity; and
 - (v) advise the Department of the steps the Recipient is taking to remedy, eliminate, minimise and remediate those risks, practices or breach of the Core Modern Slavery Obligations.
- (d) Within 10 Business Days of a request by the Department, the Recipient agrees to provide the Department with any information and other assistance required by the Department to meet any of the Department's obligations with respect to any Modern Slavery Laws.
- (e) If the Recipient is a 'reporting entity' for the purposes of any Modern Slavery Laws, it must comply with such legislation and promptly provide the Department with a copy of any report it is required to prepare under that legislation at the Department's request.
- (f) The Recipient consents to the Department sharing information obtained from the Recipient with respect to Modern Slavery, including any records, with any other NSW Government agency or entity:
 - (i) for the purpose of identifying or addressing that actual or potential Modern Slavery; or
 - (ii) to the extent the Department has a reasonable belief of Modern Slavery actually or potentially occurring in the operations or supply chains of the Recipient, Partner Organisation, Associate or any Related Party.
- (g) Clause 14.2(d) applies to any disclosure by the Department under this clause 26.1.

26.2 Governing Law

- (a) This Deed is governed by the law in force in the State of New South Wales.
- (b) Each party:

- (i) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought arising from or in connection with this Deed;
- (ii) waives any right to object to any proceedings being brought in those courts including on the basis of an inconvenient forum or those courts not having jurisdiction.

26.3 Consents, approvals or waivers

- (a) A failure to exercise or enforce, a delay in the exercise or enforcement of, or the partial exercise or enforcement of, a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.
- (b) By giving any consent, approval or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.
- (c) No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.
- (d) A provision of this Deed, or right, power or remedy created under it, may not be waived except in writing signed by the party to be bound.

26.4 Interest

If the Recipient fails to pay any amount due and payable by the Recipient to the Department within the time required under this Deed, then it must pay interest on that amount:

- (a) from the date on which payment was due and payable until the date on which payment is made; and
- (b) calculated daily at the Interest Rate.

26.5 Set off

- (a) Subject to clause 26.5(c), the Department may deduct from any amounts due and payable by the Department to the Recipient under this Deed:
 - (i) any amount due and payable by the Recipient to the Department; and
 - (ii) the amount of any Claim that the Department may have against the Recipient.
- (b) The Recipient must make all payments to the Department free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future tax, unless the Recipient is compelled by Law to make such a deduction or withholding.
- (c) If a party is compelled by Law to make a deduction or withholding for the benefit of a Government Agency, it must:
 - (i) remit the deducted or withheld amount to the relevant Government Agency within the time required by Law; and
 - (ii) provide to the other party all information and documentation relating to that deduction or withholding, including any information or documentation required to obtain a credit for or repayment of the deducted or withheld amount from a Government Agency.

26.6 Discretion in exercising rights

Unless a Grant Document expressly provides otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this Deed in its absolute discretion (including by imposing conditions).

26.7 Partial exercising of rights

Unless this Deed expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this Deed fully or at a given time, it may still exercise it later.

26.8 Remedies cumulative

The rights, powers and remedies in connection with this Deed are in addition to other rights, powers and remedies given in any other agreement or by Law independently of any Grant Document.

26.9 Indemnities and reimbursement obligations

- (a) Any indemnity, reimbursement, payment or similar obligation in this Deed:
 - (i) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this Deed, any settlement or any other thing;
 - (ii) is independent of any other obligations under this Deed or any other agreement; and
 - (iii) continues after this Deed, or any obligation arising under it, ends.
- (b) It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this Deed.

26.10 Counterparts and electronic signature

- (a) This Deed may be executed in any number of counterparts or copies, each of which may be executed by physical signature in wet ink or electronically (whether in whole or part).
- (b) Each party consents to this Deed and any variations of this Deed being signed by electronic signature in accordance with any applicable Law. The parties agree that electronic signing of this Deed by or on behalf of a party indicates that party's intention to be bound.
- (c) 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.
- (d) A party who has executed a counterpart of this Deed may exchange it with the other party (the **Other Party**) by:
 - (i) emailing a copy of the executed counterpart to the Other Party; or
 - (ii) utilising an electronic platform (including DocuSign) to circulate the executed counterpart,

and will be taken to have adequately identified themselves by so emailing the copy to the Other Party or utilising the electronic platform.

- (e) A signed copy of this Deed transmitted by email or other means of electronic transmission is be deemed to have the same legal effect as delivery of an original executed copy of this Deed for all purposes.
- (f) Each counterpart constitutes an original (whether kept in electronic or paper form), all of which together constitute one instrument as if the signatures (or other execution markings) on the counterparts or copies were on a single physical copy of this Deed in paper form. Without limiting the foregoing, if any of the signatures or other markings on behalf of one party are on different counterparts or copies of this Deed, is taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this Deed.

26.11 Entire agreement

This Deed constitutes the entire agreement of the parties on the subject matter and supersedes all prior agreements, understandings and negotiations on that subject matter.

26.12 Expenses

Unless otherwise expressly provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing and executing this Deed.

26.13 Rules of construction

No rule of construction applies to the disadvantage of a party because that party (or its representative) was responsible for the preparation of, or seeks to rely on, this Deed or any part of it.

26.14 Severability

If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction, then it is severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause 26.14 has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.

26.15 Survival

Each of the following will survive the expiry or termination of this Deed:

- (a) clauses *[to be populated prior to execution by the Department]*
- (b) any provision that is required to enable a party to exercise rights accrued prior to the expiry, rescission or termination of this Deed; and
- (c) any provision which (expressly or by implication) by its nature is intended to survive the expiry, rescission or termination of this Deed.

26.16 Further steps

The Recipient and the Department agree to do anything the other reasonably requests (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) as may be necessary or desirable to give full effect to the provisions of this Deed and the transactions contemplated by it.

Schedule 1 – Reference Details

Item #	Item	Details			
Item 1	Project Objectives	The Project must deliver the following in accordance with the objectives of the [Low Carbon Product Manufacturing Grant Program][Renewable Manufacturing Grant Program]: <i>[Drafting note: to be populated prior to execution]</i>			
Item 2	Project Requirements	The Project must: a. be implemented and based in New South Wales; b. comply with the Project Specification; c. be fully delivered, competed and operational by the Final Completion Date; d. be sustainable without continued government investment; e. not have occurred in NSW at all or in the same timeframe without the Grant; and f. have, and continue to have, a viable commercial strategy.			
Item 3	Project Specification	The Project must meet the Project Specification in the documents listed below (which were provided by the Recipient as part of the Application and clarifications (if applicable)) attached to the Deed by incorporation: <i>[Drafting note: to be populated prior to execution]</i>			
Item 4	Authorisations	Without limitation, the following Authorisations in a form and substance satisfactory to the Department: a. any Authorisation related to planning and environment for the Project which are required to enable the Recipient to commence works; <i>[Drafting note: to be populated prior to execution]</i>			
Item 5	Initial Budget submission date	<i>[Drafting note: to be populated prior to execution]</i>			
Item 6	Project Assets	Asset Type	Description	Project Asset obligations/conditions	Cost of Project Asset (excluding GST)

Item #	Item	Details		
Item 7	Reports	Report	Requirements	Report Due Date
		<i>[Drafting note: additional reports may be required.]</i>		<i>[Drafting note: to be finalised before execution of Deed.]</i>
		Commencement Date Report (if applicable)		<i>[Drafting note: to be finalised before execution of Deed.]</i>
		Milestone Event Report	Each Milestone Event Report and Final Report required must include, unless otherwise agreed by the Department prior in writing: (a) a list of any public reports or knowledge sharing reports; (b) the Knowledge Sharing activities and Deliverables completed during the period to which the report relates, including a list of any public reports or knowledge sharing reports; (c) the outcomes of those Knowledge Sharing activities and Deliverables; (d) any data or documentation developed from the Project during the period to which the Report relates; and (e) any lessons learnt regarding the Project during the period to which the Report relates. (f) any data or documentation developed from the Project during the period to which the report relates; and (g) a 'lessons learnt' section (using the template provided by the Department), which may be made publicly available. <i>[Drafting note: to be finalised before execution of Deed. The above are examples of what may be required]</i>	<i>[Drafting note: to be finalised before execution of Deed.]</i>

Item #	Item	Details		
		Audit Opinion		
		Update Report	Refer to requirements for Milestone Event Report.	<i>[Drafting note: to be finalised before execution of Deed.]</i>
		Financial Report	Certified by the Recipient's Chief Financial Officer (or such other person approved by the Department) as complete, accurate and not misleading or deceptive.	<i>[Drafting note: to be finalised before execution of Deed.]</i>
		Final Report	Refer to requirements for Milestone Event Report. In addition, each Milestone Event Report and final Report required by this Item 7 must include, unless otherwise agreed by the Department prior in writing: (a) a list of any public reports or knowledge sharing reports; (b) any data or documentation developed from the Project during the period to which the report relates; and (c) a 'lessons learnt' section (using the template provided by the Department), which may be made publicly available.	<i>[Drafting note: to be finalised before execution of Deed.]</i>
		Post-Completion Report		<i>[Drafting note: to be finalised before execution of Deed.]</i>
Item 8	Guarantee	<i>[Drafting note: a form of performance and financial guarantee may be required by the Department. This will be confirmed by the Department on completion of financial due diligence and prior to execution.]</i>		
Item 9	Products	<i>[Drafting note: to be populated prior to execution]</i>		
Item 10	Production Capacity	<i>[Drafting note: to be populated prior to execution]</i>		
	Plans	Name of Plan	When updated	Minimum Plan requirements

Item #	Item	Details		
Item 11		<i>[Risk Management Plan]</i>		
		<i>[Licensing and Planning Approvals Plan]</i>		
		<i>[Emissions Monitoring Plan]</i>		
Item 12	Partner Organisations	Name of Partner Organisation	Contact details	Role/responsibility
		<i>[Drafting note: a Partner Organisation is an entity that is contributing to the Project but is not personnel (Associates). This could include a lessor of the project site, an offtaker or another entity that is delivering the project that is not a subcontractor (e.g. as part of a consortium)]</i>		
Item 13	Additional Conditions			

Schedule 2 – Milestone Events and Milestone Dates

Item 1: Milestone Events *[Drafting note: the below includes examples. This table must be populated and finalised before execution]*

Each Milestone Event and Milestone Date under this Deed is set out or identified in the following table:

	Milestone Event	Deliverables	Target Milestone Date	Final Milestone Date	Estimated Costs	Grant Instalment	Recipient Funding amount	Co-funding amount	Grant Funding Percentage (Milestone)
1		Milestone description: This Milestone Event relates to <i>[insert]</i>. Milestone Deliverables: The Recipient must: <i>[insert]</i> Additional Reporting Deliverables: The Recipient must submit the following documentation: 1. Milestone Event Report in accordance with item 7 of Schedule 1 which must also include the following: a. evidence of the procurement of subcontractor; b. evidence (including photographs) of installation at the facility; c. evidence of service connections to plant and machinery; d. evidence of calibration and testing; e. evidence of commissioning and certification; f. evidence of training.							

	Milestone Event	Deliverables	Target Milestone Date	Final Milestone Date	Estimated Costs	Grant Instalment	Recipient Funding amount	Co-funding amount	Grant Funding Percentage (Milestone)
		2. Financial Report as outlined in item 7 of Schedule 1, which must also include a detailed projection of remaining Eligible Expenditure and associated funding required to maintain sufficient working capital through to the Completion of the Project. 3. Statutory Declaration which must: a. list the amount of expenditure incurred on the Project and the amount of expenditure attributable to the Grant Instalment; b. verify the contents of the Financial Report as accurate and true, and c. confirm that the relevant Recipient Funding and Co-funding amount related to the relevant Milestone Event have been incurred by the Recipient in completing the relevant Milestone Events. 4. Audit Opinion that confirms that the Statutory Declaration is correct.							
2									
3									
4									
5									
6									
7									
8									

Notes to the table:

- (a) The 'Deliverables' identifies a set of conditions that must be met in order for the relevant Milestone Event to be achieved.
- (b) The letters N/A means "not applicable".
- (c) The Milestone Events must be achieved sequentially. It is a precondition to achieving a Milestone Event that all other Milestone Events which appear above it in the table above have also been achieved.

Item 2: Advance Milestones

	Milestone Event Number	Milestone Event payment criteria	Request for Grant Instalment date
1		<i>[Drafting note: insert requirements that are necessary prior to payment of the Grant Instalment – for example, executed Funding Deed or any other documents]</i>	
2			
3			
4			

Notes to the table:

- (a) The 'Milestone Event payment criteria' identifies a set of conditions that must be met in order for the Grant Instalment for that Advance Milestone to be paid. The payment is in reliance that the Deliverables associated with the relevant Milestone Event in Item 1 are completed.
- (b) The letters N/A means "not applicable".
- (c) The 'Request for Grant Instalment date' means the date on which the 'Milestone Event payment criteria' must be completed and provided to the Department.

Schedule 3- Knowledge Sharing Plan

[Drafting note: the below is an indicative example of what is expected under the Knowledge Sharing Plan. Knowledge Sharing is an essential requirement for the Program. The Knowledge Sharing Plan will be confirmed and updated prior to execution]

1. Knowledge sharing context

The Department may use the Knowledge Sharing Deliverables for the following purposes:

- (a) to perform the Department's obligations under this Deed;
- (b) to monitor and evaluate the performance of the Program;
- (c) to accurately inform and engage key stakeholders on the following aspects of Program in New South Wales:
 - (i) actual capital expenditure (CAPEX) and operating expenditure (OPEX) costs for such projects, including pathways for cost reductions particularly around risk premiums applied by suppliers as they build experience and confidence in these types of projects;
 - (ii) challenges and lessons learnt about the integration of the various systems and technologies at commercial scale;
 - (iii) what commercial, regulatory and social barriers the Project encounters, and how they are effectively addressed;
 - (iv) the capabilities, depth and maturity of the various supply chains required to deliver this Project;
 - (v) how social licence and genuine support for the Project is established and maintained with relevant communities; and
 - (vi) how the actual operation of the completed Project compares to the design forecasts, and how this could be optimised for future projects.

2. Knowledge Sharing Deliverables

All deliverables are to be prepared to a standard acceptable to the Department and, where relevant, reflect any guidelines provided by the Department relating to the preparation and delivery of Knowledge Sharing Deliverables.

No.	Knowledge Sharing Deliverable	Purpose	Frequency	When?	Public information or confidential information	Content	Delivery
1	Construction jobs created by the Project funded by the Grant ¹	As set out in section 1 of this Schedule 3	Per Milestone Event Reporting	Upon Milestone Event completion	Public information but only if published in de-identified	Count (#) Employment type ² (i.e, full-time, part-time, salaried, casual)	In writing.

¹ New employment positions created in NSW during the Construction Period as a direct result of the Project for which grant funding has been awarded.

² Positions should only be counted in so far as they would not exist without the Grant. For example:

- If an employee is hired to work 35 hours a week to fulfill the tasks that have been funded through Grant, then this is 1 FTE
- If an existing employee now spends one day a week doing Grant funded tasks, that is recorded as 0.2 FTE.
- If a role is expected to exist for the next X years as a result of changes in business operations funded by the Grant, then this should be included as 1 FTE for the next X years.

No.	Knowledge Sharing Deliverable	Purpose	Frequency	When?	Public information or confidential information	Content	Delivery
					aggregated form	Location (e.g., LGA/ Regional vs Metro) Average weekly earnings (\$, ex GST)	
2	Ongoing full-time equivalency (FTE) jobs supported by the Project funded by the Grant ³	As above	Annually	On the first three anniversaries of the Completion Date	As above	As above	As above
3	Volume of products made	As above	As above	As above	As above	Actual volume produced (in tonnes), target or estimate for production (in tonnes)	As above
4	Volume of products sold	As above	As above	As above	As above	Actual volume produced (in tonnes), target or estimate for production (in tonnes) Total value (\$) \$ per tonne	As above
5	Total market value of products sold	As above	As above	As above	As above	Total market value of manufactured products sold from funded projects (\$)	As above
6	Percentage of local content used in the Project funded by the Grant	As above	As above	As above	As above	The proportion of local content used compared to total materials for project operations (%)	As above
7	Total market value of local content used in the Project funded by the Grant	As above	As above	As above	As above	Total market value of local content used in projects operations (\$)	As above

³ The total number of ongoing job positions in NSW directly involved in the project funded by the Grant during the Operations Period. The total number of jobs will be the sum of: 1) the number of existing employment positions funded by the **Grant** for the Project (such as existing contractors, installers, consultants, trainers, etc.), and 2) the number of existing employment positions funded by the **grantee** to work directly in the Project funded by the Grant.

Schedule 4 - Key Contractors and Key Contracts

1 The following Contractors are Key Contractors for the purpose of this Deed:

	Key Contractor and Address	Key Contract	Relevant scope of work	Engaged By	Country of Headquarters and from which the relevant scope of work will be provided
1	[insert]	[insert]	[insert]	[insert]	[insert]
2	[insert]	[insert]	[insert]	[insert]	[insert]

Signing page

EXECUTED as a Deed

By the Department

Signed for **The Crown in right of the State of New South Wales acting through the Department of Climate Change, Energy, the Environment and Water** by its authorised representative but not so as to incur personal liability, in the presence of:

Signature of Representative

Strike through if not signed electronically** I acknowledge this Deed has been electronically signed by me, the authorised representative named below, affixed on the date specified below.

Name of Representative (print)

Position of authorised representative

Date

Signature of Witness

Strike through if not signed electronically** I acknowledge this Deed has been electronically signed by me, the witness named below, affixed on the date specified below.

Name of Witness (print)

Address of witness

Date

Strike through if not witnessing over audio visual link** 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).

By the Recipient

Executed by *[insert Recipient details]* in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Strike through if not signed electronically** I acknowledge this Deed has been electronically signed by me, the Director named below, affixed on the date specified below.

Date

Name of director/company secretary (print)

Strike through if not signed electronically** I acknowledge this Deed has been electronically signed by me, the Director or company secretary named above, affixed on the date specified below.

Date