

# Regional Investment Activation Fund

Stream 2: Funding Deed



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Title: Funding Deed

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## Stream 2 Funding Deed

Agency/Division: Regional Development and Programs

Grantee

### Details

Name	The Crown in right of the State of New South Wales acting through Regional NSW (ABN 19 948 325 463)
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Department

Agency/Division	Regional Development and Programs
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Address	Click here to enter text.
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Name	Click here to enter text.
------	---------------------------

Position	Director Grant Management and Finance
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Department Authorised Officer  
(refer to clause 29-Notices)

Address	Click here to enter text.
---------	---------------------------

Telephone	Click here to enter text.
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E-mail	Click here to enter text.
--------	---------------------------

Name	Click here to enter text.
------	---------------------------

Grantee ('You')

Address	Click here to enter text.
---------	---------------------------

ABN	Click here to enter text.
-----	---------------------------

Name	Click here to enter text.
------	---------------------------

Position	Click here to enter text.
----------	---------------------------

Your Authorised Officer  
(refer to clause 29-Notices)

Address	Click here to enter text.
---------	---------------------------

Telephone	Click here to enter text.
-----------	---------------------------

Mobile	Click here to enter text.
--------	---------------------------

E-mail	Click here to enter text.
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### Details

Please list the other joint applicants involved in this project.

Joint Applicants	Name	Click here to enter text.
	Address	Click here to enter text.
	ABN	Click here to enter text.

Please note SC2, the Grantee remains solely responsible for the performance of the Project and compliance with the terms and conditions of this Deed. The Joint Applicants are listed here for information only.

Project	Click here to enter title of Project
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Site/s (Where the Project is carried out)	Address	Click here to enter text.
	Local Government Area	Click here to enter text.

Grant	A maximum total amount of Click here to enter total amount of Grant (GST exclusive) payable in instalments.
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Your Contribution	A maximum total amount of \$[insert] (GST exclusive) payable as set out in Schedule A – Project Plan.
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Commencement Date (refer to clause 2 - Term)	The date on which the last party signs this Funding Deed
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Completion Date	No later than 30 May 2025
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Maintenance Period	Five years from the date of completion of the Project.
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Email address for invoices	Click here to enter text.
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## Details

### SC1. Warranties as to timing and competence

1. You warrant that, to the best of your knowledge, there are no serious planning, construction, zoning or other impediments that exist which may impede your delivery of the Project on time.
2. You warrant that you have the necessary expertise (or can subcontract experienced and qualified personnel) to deliver the Project on time.
3. You warrant that all capital works will be completed by no later than 30 May 2025.

### SC2. Joint Applicants

If you are the lead applicant applying for the Grant on behalf of joint applicants, you warrant that you have an agreement in place with the other joint applicants setting out joint applicants roles and responsibilities in relation to the Project. You remain solely responsible for the performance of the Project and compliance with the terms and conditions of this Deed.

### SC3. Building Work

1. If your Project involves building work (as defined in the *Building and Construction Industry (Improving Productivity) Act 2016 (Cth)*), you must engage accredited builders under the Work Health and Safety Accreditation Scheme.
2. You must make compliance with the most recent Building Code of Australia a condition of tender if you are engaging contractors and subcontractors on the Project.

### SC4. Your own advice

1. The Department strongly recommends that you obtain your own financial and legal advice before entering into this Deed. The Grant may be assessable under business income tax laws. There may be other tax or financial consequences for your business.

Special Conditions

### Background

- 1.1 The Regional Investment Activation Fund (RIAF) is a key component of the Regional Investment Activation Program (RIAP) that was announced in the 2022-23 NSW Budget.
- 1.2 RIAP is a \$145 million program that aims to make regional NSW a location of choice for investors and to activate the economic potential of priority precincts and key industries.
- 1.3 \$110 million is allocated to RIAF to unlock private sector investment through two targeted streams:
  - a. Stream 1: an open competitive grants program.
  - b. Stream 2: an open non-competitive grants program. Stream 2 aims to provide increased flexibility to secure investments that are time sensitive and strategically significant for a priority industry or location.
- 1.4 The Fund aims to help Grantees deliver Projects that would not occur in regional NSW or in the same timeframe without government investment support.
- 1.5 Projects must be completed by 30 May 2025 and be located within one of the 93 regional NSW local government areas, the Unincorporated Far West or Lord Howe Island.

SAMPLE

## Terms and Conditions

### Definitions and Term

#### 1. Interpretation and Definitions

##### 1.1 Interpretation

Unless the context requires otherwise, in this Deed:

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

SAMPLE



### 1.2. Definitions

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

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

**Assets** means any land, real property, infrastructure, facilities or improvements purchased, acquired or created by the Project.

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

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

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

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

- a. is by its nature confidential
- b. a party has designated as confidential;
- c. is capable of protection at common law or equity as confidential information; or
- d. is derived or produced partly from information described in paragraph (a), (b) or (c) above, but does not include information that:
  - a. is in the public domain; or
  - b. a party receiving the information independently knows or develops other than as a result of a breach of this Deed or any other obligation of confidentiality owed by or to any other person.

**Correctly Rendered Invoice** means an invoice that:

- a. sets out your contact details including ABN
- b. specifies the amount to be paid, and whether or not this includes GST;
- c. identifies this Deed and any Activities to which the payment applies; and
- d. is sent to the email address specified in the Details or otherwise notified by the Department.

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

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

**Guidelines** means the Regional Investment Activation Fund Stream 2 Guidelines available at <https://www.nsw.gov.au/sites/default/files/2022-10/RIAF%20guidelines%20stream2.pdf>.

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

**Intellectual Property or IP** includes:

- a. all rights in relation to copyright, inventions, plant varieties, trademarks, designs, patents; and
- b. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including trade secrets and know-how,

but does not include moral rights as defined in the *Copyright Act 1968 (Cth)*.

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## Stream 2 Funding Deed

**Modern Slavery** has the same meaning as it has in the *Modern Slavery Act 2018 (Cth)*.

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

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

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

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

**RIAF** means the Regional Investment Activation Fund established by the NSW Government.

### 2. Term

- 2.1 This Deed will commence on the Commencement Date.
- 2.2 Unless terminated earlier, this Deed will end once you have completed the Activities to the Department's satisfaction, the Department has paid all Instalments due and the Maintenance Period has ended.

SAMPLE

### What you must do

#### 3. Your general obligations

##### 3.1 You must:

- a. ensure the Grant or any Instalment is used only for the approved Project;
- b. make Your Contribution as specified in the Details in the amounts and within the timeframes set out in **Schedule A**;
- c. ensure each Activity is completed within the Activity Period in accordance with this Deed;
- d. comply with the reporting requirements set out in **Schedule B**;
- e. comply with all Commonwealth, State and Local government laws that are relevant to the Project, this Deed, or your registration as an entity;
- f. comply with the Guidelines and all other policies, guidelines and reasonable directions the Department provides to you;
- g. do all that is necessary to complete the Project to ensure the works are fit for the purposes required by the Deed and any purposes reasonably inferred;
- h. comply with any other standard or code specified in the Schedules; and
- i. prevent nuisance or inconvenience to anyone who may be affected when carrying out the Project.

#### 4. Permits and approvals

- 4.1 You must obtain all permits and approvals, and pay any fees and charges, which relevant Local, State or Commonwealth government or other authorities require in relation to the Project, prior to commencing the Project.

#### 5. Care of property

- 5.1 During the course of the Project, you are responsible for the care of, and must make good at your expense, any loss or damage which occurs to the Project or the Site.
- 5.2 You are liable for any loss or damage you cause whilst making good Defects.

#### 6. Maintenance of Assets

- 6.1 During the Maintenance Period you must maintain, and not demolish, eradicate, remove, dispose of or otherwise interfere with the Assets.
- 6.2 If you intend to convert or dispose of Assets during the Maintenance Period, through sale or otherwise, you must notify the Department immediately with details of the intended conversion or disposal.
- 6.3 Where the Department so requests, you must repay to the Department the Grant within 20 Business Days of the disposal or conversion of the Asset that is in breach of clause 6.2.
- 6.4 If the Department notifies you that it requires repayment of any amount under clause 6.3 that amount will become a debt due and payable to the Department.

#### 7. Consent of land owner

- 7.1 If you are not the owner of all or part of the Site, you agree and warrant that you:
  - a. have obtained the written approval and agreement of the land owner to construct, install or otherwise deliver the Project at the Site; and
  - b. have obtained the written agreement of the land owner to notify you during the Maintenance Period of any proposal to sell or lease the Site.

#### 8. Ownership of Site and access

- 8.1 Where you are the owner of the Site or become the owner of the Site, you agree and warrant that you have no immediate plans to sell, transfer, lease, licence or transfer the control of the Site prior to end of the Maintenance Period.

## Stream 2 Funding Deed

### 9. Work health and safety

#### 9.1 You must:

- a. ensure the health and safety of all people who your activities may affect under this Deed, including your employees and subcontractors and members of the public, in compliance with the WHS Law;
- b. undertake your own identification and detailed analysis of all work health and safety risks associated with the Activities;
- c. develop and implement a safe work method statement and a site-specific safety management plan; and
- d. immediately notify the Department of any work health and safety notifiable incident, and provide the Department with a written report within 24 hours of the incident.

#### 9.2 You warrant and represent that you have, and will ensure that your subcontractors have:

- a. the necessary resources in place to comply with the WHS Law; and
- b. taken all necessary measures to identify reasonably foreseeable hazards in relation to the Services which could potentially give rise to health and safety, and have taken all necessary measures to assess and eliminate or control the risks arising from those hazards.

### 10. Variation

#### 10.1 If you wish to vary the Project, including any Activity or other matter set out in Schedule A such as:

- a. changes to the nature of the Project or the scope of works, Site or revised priorities for the Project; or
- b. changes to the timeframe for delivery of the Project, including extensions to completion of Activities, you must first make a written request to the Department and provide such information as is reasonably required by the Department.

#### 10.2 Following your request for a variation under clause 10.1, the Department will consider whether to approve your request and make a decision in its sole discretion. No variation is approved unless and until the Department approves the variation in writing.

#### 10.3 You must advise the Department immediately:

- a. if you are unable to proceed with the Project;
- b. if the Project has been inactive for a period of 20 Business Days or more;
- c. (where you own or lease the Site) if you propose to sell or lease any part of the Site; and
- d. (where you do not own or lease the Site) if you are notified or become aware of a proposal to sell or lease any part of the Site.

### 11. No overlap with other funding

#### 11.1 You agree that there must be no overlap between the Activities funded under this Deed and activities covered by any other funding arrangements you have entered into, or that you may enter subsequently.

#### 11.2 You agree to:

- a. notify the Department immediately of any existing or proposed funding arrangement that concerns the Project, the Activities or any related matters (**Related Funding**); and
- b. cooperate with the Department and the provider of the Related Funding to ensure that there is a clear distinction between the Activities funded by this Deed and the activities you are required to carry out under the Related Funding deed.

### About the Grant

#### 12. Project costs

- 12.1 The Grant is the maximum amount to be paid under the Fund for the Project and you agree that:
- a. you have prepared or reviewed the scope of works and costs estimate for the Project before you signed this Deed;
  - b. all Instalments that you claim as part of the Grant must be Eligible Costs as set out in the Guidelines;
  - c. you are responsible for any costs that exceed the Grant for the Project (whether you expected to incur such costs or not at any time before or after you signed this Deed) and you must obtain any additional funding necessary to carry out the Project; and
  - d. you are responsible for all maintenance costs arising from the Project.
- 12.2 You must ensure no more than 10% of the Grant is applied or used to recover project management or administrative costs which you incur in respect of the Project (such costs may include accommodation, transport and on-costs for eligible wages).
- 12.3 You must ensure that no more than 25% of the Grant is applied towards contingency costs incurred in respect to the Project.
- 12.4 Where the actual cost of the Project is less than the Grant:
- a. you must notify the Department of any unspent Grant before the end of the Project;
  - b. the Department may reduce the final Instalment to reflect the actual cost incurred to deliver the Project; and
  - c. you must return to the Department all Grant money paid to you that exceeds the actual cost of carrying out the Project (including any interest earned on such funds) within 28 days after completion of the Project (or termination of the Deed).

#### 13. Paying the Grant

- 13.1 The Department will pay the Instalments as set out in Schedule A on condition that:
- a. the Department receives a Correctly Rendered Invoice from you that clearly identifies the Instalment you are claiming;
  - b. you have provided the Department with the evidence of compliance required under clause 16 and the Schedule(s) showing that you have performed the Activities at the times set out in the Schedules; and
  - c. the Activities have been performed to the satisfaction of the Department.
- 13.2 Notwithstanding clause 13.1, if the Department pays you an Instalment, this does not constitute an admission that the performance of the Project is in conformity with this Deed and no payment will be deemed to release you from your obligations under this Deed.

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## Stream 2 Funding Deed

### 14. Withholding, Suspension, Changes to Instalments and Repayment

- 14.1 The Department may change the amount of the Instalment by issuing you with a Notice setting out the details of the changes.
- 14.2 If you are not complying with this Deed the Department may withhold or suspend payment of an Instalment until you comply with your obligations to the Department's satisfaction.
- 14.3 If the Department withholds or suspends an Instalment you must continue to perform your obligations under this Deed.
- 14.4 You must repay within 28 days of a demand being sent:
  - a. any Instalment spent in breach of this Deed;
  - b. all unspent Instalments;
  - c. any overpayment
  - d. any interest earned on any Instalment required to be repaid.
- 14.5 Where you have failed to comply with this Deed, the Department will calculate the amount of repayment you must make in proportion with the extent to which you have failed to complete the Activities of the Project.
- 14.6 The Department may set off the amount of any overpayment or claim for repayment against any future Instalment due.
- 14.7 Any repayment the Department claims from you under this clause 14 will be a debt due and owing by you to the Department.

### 15. GST

- 15.1 Unless otherwise indicated, all consideration for any supply under this Deed is exclusive of any GST imposed in relation to the supply.
- 15.2 If:
  - a. despite any other provision of this Deed, GST is imposed on a supply you make to the Department under this Deed; and
  - b. the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply,
  - c. the Department will pay you an additional amount equal to the GST imposed on that supply, at the time and in the manner payment is otherwise payable under this Deed in relation to that supply.
- 15.3 If you are not registered under the GST Law you will not be entitled to receive any additional amount as provided under this clause 15.
- 15.4 If for any reason the Department pays you an amount under this clause 15 which is more than the GST imposed on the supply, you must repay the excess to the Department on demand or the Department may set off the excess against any other amounts due to you.

### Material and Information

#### 16. Reporting Requirements

- 16.1 You agree to provide the Department with written progress Reports at the times and containing the information specified in Schedule B – Reporting Requirements (“Progress Reports”).
- 16.2 You must also provide any other information the Department reasonably requires from time to time concerning the Project.
- 16.3 If any Progress Report contains information confidential to you, you should mark the relevant parts of the Report accordingly.
- 16.4 You must provide financial statements of income and expenditure in respect of the Grant (‘the Statements’) to the Department within 60 Business Days after:
  - a. completion of the Activity or any termination of this Deed, whichever is the earliest; and
  - b. the completion of each Financial Year in which a Grant is made.
- 16.5 The Statements must include a definitive statement as to whether:
  - a. the financial information for the Project represents the financial transactions fairly and is based on proper accounts and records; and
  - b. the Grant was expended for the Project and in accordance with this Deed.
- 16.6 You must keep financial accounts and records relating to the Project so as to enable:
  - a. all receipts and payments related to the Project to be identified in your accounts and reported in accordance with this Deed;
  - b. unless notified by the Department, the preparation of financial statements in accordance with Australian Accounting Standards; and
  - c. generation of an income and expenditure statement for each financial year of the Project with the Budget, including:
    - i. a schedule of the Capital Equipment acquired, sold, written-off or otherwise disposed of during each financial year; and
    - ii. a comparison of the income and expenditure in each financial year against the Budget; and
    - iii. the audit of those records in accordance with Australian Auditing Standards.

#### 17. Feedback

- 17.1 You must provide any other information the Department reasonably requires from time to time concerning the Project.
- 17.2 You must participate in Program evaluation after the Project has commenced to determine the extent to which the Project has contributed to the objectives of the Program. You must provide evidence of how the Project resulted in measurable benefits consistent with the objectives of the Program with a focus on employment, recovery and growth.
- 17.3 You must participate in any other survey or feedback regarding the Project which may include: a questionnaire regarding the assistance received; a survey of the Department’s service levels and the effectiveness of assistance provided; and a survey of Project outcomes.

#### 18. Intellectual Property

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

#### 19. Confidential Information

- 19.1 Each party must maintain the confidentiality of all Confidential Information it receives from the other party, including the amount of the Grant (subject to clause 21.2) unless otherwise agreed in writing.

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## Stream 2 Funding Deed

### 20. Privacy

#### 20.1 You will:

- a. ensure that Personal Information that is provided by the Department or collected by you under or in connection with this Deed is used only for the purposes of this Deed and is protected against loss, unauthorised access, use, modification and disclosure, or against other misuse;
- b. not disclose any Personal Information without the written consent of:
  - i. the individual to whom the Personal Information relates; or
  - ii. the Department,unless otherwise required or authorised by law;
- c. comply with the Information Protection Principles applying to NSW public sector agencies under the Privacy and Personal Information Protection Act 1998 (NSW) when doing any act or engaging in any practice in relation to Personal Information as if you were an agency directly subject to that Act; and
- d. include equivalent requirements regarding Personal Information (including this clause 20) in any subcontract entered into for the provision of any of the Activities under this Deed.

### 21. Public Announcements and Acknowledgement

#### 21.1 You must:

- a. seek the consent of the Department prior to any public announcement about the Project;
- b. acknowledge the support of the Department, as directed by the Department from time to time:
  - i. in any public statements about the Project;
  - ii. on the home page of any web site established in connection with the Project;
  - iii. on any equipment or other facility funded wholly or in part by the Department;
- c. You must acknowledge the Department's support of the Project and comply with the applicable NSW Government Guidelines.

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

### 22. Disclosure of Information

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

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

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



## Dealing with Risk

### 23. Insurance

- 23.1 You must maintain, during the term of this Deed:
- a. a broadform public liability policy of insurance to the value of at least \$20 million in respect of each claim and in the aggregate as to the number of occurrences in the policy period;
  - b. workers' compensation insurance as required by all relevant laws of Australia relating to workers compensation; and
  - c. the Additional Insurance Policies listed in the Details for the minimum sum provided.
- 23.2 If specified as being required, a professional indemnity insurance policy must be maintained for a period of 7 years from the end of the Deed.
- 23.3 You must not do, permit or suffer any act, matter or thing or omission whereby any of the policies referred to in this clause may be vitiated, rendered void or voidable.
- 23.4 On request by the Department, you must provide a copy of valid and current certificates of currency for each or any of the policies described above.
- 23.5 Without limitation to clause 23.1, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.

### 24. Indemnities

- 24.1 You must indemnify and keep indemnified the Department, the Crown in right of the State of New South Wales and their officers, employees and agents from and against any loss (paid or payable including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:
- a. the Grant or the use of any outcomes from the Project;
  - b. your breach of this Deed;
  - c. any unlawful or negligent act or omission by you, your employees or your subcontractors in connection with this Deed;
  - d. any illness, injury or death of any person you, your employees or your subcontractors cause or contribute to, in connection with this Deed;
  - e. any loss or damage to real or personal property you, your employees or your subcontractors cause or contribute to, in connection with this Deed; or
  - f. any act or omission by you, your employees or your subcontractors in connection with this Deed that is in infringement of any Intellectual Property, or privacy rights of the Department or any third party.
- 24.2 Your liability to indemnify the Department under this clause will be reduced proportionately to the extent that the Department's negligent or unlawful acts or omissions, or those of its officers, employees or agents contributed to the relevant loss or liability.
- 24.3 Your liability to indemnify the Department under this clause does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Deed.

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### 25. Covid-19

- 25.1 Both parties acknowledge the uncertainty arising from the COVID-19 pandemic, the measures taken by State and Commonwealth Governments in relation to the pandemic, and the consequential effects on daily activities ("Covid-19 Pandemic").
- 25.2 If either party becomes aware that its ability to comply with any of its obligations on time will be affected by the Covid-19 Pandemic, it must, as soon as possible, give the other party a written notice which sets out:
- the nature and extent of the obligations affected by the Covid-19 Pandemic;
  - the ways in which the Covid-19 Pandemic will affect its ability to perform those obligations; and
  - a proposal that the parties either vary the Deed to mitigate the effects of the Covid-19 Pandemic (for example, to change time frames and/or the scope of Services), or terminate by agreement.
- 25.3 When a party receives a notice under this clause, it must respond to the notice as soon as practicable, and the parties will attempt in good faith to reach agreement promptly to vary or terminate the Deed.
- 25.4 Despite any other provisions in this Deed, if the Department considers that, as a result of the Covid-19 Pandemic:
- there is likely to be significant delay before you will be able to complete your obligations; or
  - the Deed or the Project is no longer viable;
- the Department may terminate the Deed by notice, with effect on the date stated in the notice and the consequences will be as set out in **clause 27** (Consequences of termination).
- 25.5 You release the Department from any claims in respect of termination under this clause.

## Terminating the Deed

### 26. Termination

- 26.1 Where a party has breached this Deed:
- the other party may give a Notice to that party requiring it to rectify that breach within 30 days of receiving that Notice; and
  - if the party which received the Notice fails to rectify that breach in time, the other party may terminate this Deed immediately by giving a further Notice.
- 26.2 The Department may terminate this Deed by Notice, with effect on the date stated in the Notice, if:
- the Department considers that you have provided intentionally misleading or incorrect information as part of the application for funding or as part of this Deed;
  - you breach any of the following provisions: **clause 3.1** (Your General Obligations); **clause 23** (Insurance), **clause 19** (Confidential Information) and **clause 30.10** (Assignment);
  - the Department considers the Project no longer viable;
  - the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity; or
  - you become insolvent, if you are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966*, or if you resolve to go into administration or liquidation or have a summons for your winding up presented to a Court or enter into any scheme of arrangement with your creditors.
- 26.3 This clause 26 does not exclude or reduce the rights of a party to terminate the Deed arising by operation of the common law or statute or the other terms of this Deed.

### 27. Consequences of termination

- 27.1 On termination or expiry of this Deed:
- accrued rights and obligations are not affected; and
  - the Department will pay any Instalments due (after taking into account any Instalments already made prior to that date).

## Other Legal Matters

### 28. Dispute Resolution

- 28.1 If a dispute arises in relation to this Deed (“a Dispute”), a party must comply with this clause 28 before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.
- 28.2 A party claiming that a dispute has arisen must notify the other party giving details of the dispute (Dispute Notice) in accordance with the requirements of clause 29 (Notices).
- 28.3 Following receipt of a Dispute Notice, each party must refer the Dispute to a senior representative, who:
- a. does not have prior direct involvement in the Dispute; and
  - b. has authority to negotiate and settle the Dispute.
- 28.4 If the Dispute is not resolved within 10 Business Days, from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice must refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.
- 28.5 If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
- 28.6 Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.

### 29. Notices

- 29.1 Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered or emailed to the Authorised Officer specified in the Details.
- 29.2 The receiving party will be deemed to have received the Notice as follows:
- a. if hand delivered, on the day on which it is delivered or left at the relevant address;
  - b. if sent by email before 5.00pm on a Business Day, the first of the following occurring:
    - i. when the sender receives an automated message confirming delivery; or
    - ii. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
  - c. if sent by email after 5pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
- 29.3 Any such mode of service will be in all respects valid notwithstanding that the party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.

### 30. General

- 30.1 **Survival:** The following clauses survive termination or expiry of this Deed: clause 16 (reporting Requirements), clause 19 (Confidential Information), clause 20 (Privacy), clause 23 (Insurance), clause 24 (Indemnities), clause 26 (Termination), clause 30.3 (Keeping of records), this clause 30.1 and any other clause which by its nature is intended to survive this Deed.
- 30.2 **Subcontractors:** You remain fully responsible for the performance of the Project if you subcontract the performance of any part of the Project.

### 30.3 Keeping of records and rights of access to such records:

You:

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

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

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

### 30.6 Severability

If any clause (or part of any clause) in this Deed is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of other clauses of this deed.

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

- a. the Details; then
- b. the Special Conditions; then
- c. these Terms of Services; then
- d. any Schedules or attached Annexures.

### 30.8 Negation of employment, partnership or agency

This Deed does not create a relationship of agency, partnership, and/or employment between the parties.

You must not represent yourself as being an employee or agent of the Department or as otherwise able to bind or represent the Department.

### 30.9 Waiver

If a party fails to exercise any of its rights under this Deed, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect estop a party from relying on the terms of this Deed to their full force and effect.

Any waiver by a party of a breach of this Deed must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

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

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

30.12 **Electronic execution:** Each party agrees that the other may execute this Agreement electronically as provided for in the *Electronic Transactions Act 2000*.

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

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**Stream 2 Funding Deed**

**Executed as a deed**

**Department**

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

\_\_\_\_\_  
Signature of Authorised Signatory

Name of Authorised Signatory

Position of Authorised Signatory

\_\_\_\_\_  
Signature of Witness

Name of Witness

Address of Witness

Date

**You (Company/Organisation)**

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

\_\_\_\_\_  
Signature of Director (1)/Company Secretary

Name of Director (1)/Company Secretary

Date

\_\_\_\_\_  
Signature of Director (2)/Company Secretary

Name of Director (2)/Company Secretary

Date

SAMPLE

## Stream 2 Funding Deed

### Schedule A – Project Plan

[Guide note: Insert background information about the Project and cross-reference any relevant documents which describe the Project – this is critical – you must include details about what the grantee is required to do in return for the grant. The “entire agreement” clause means that, when you interpret the deed later, you can only rely on the information in this document or cross-referenced and attached.]

Description of Activities	Evidence of compliance	Instalment (excluding GST)	Your Contribution (excluding GST) (if applicable)	Activity Period	When to send invoice
[insert]					
[insert]					
[Create the required number of FTE jobs in connection with the Project.	A statutory declaration in the form of <b>Attachment 1 – Statutory Declaration</b> (or such other form as the Department may notify to you), nominating for all of the new FTE employees: employee identifier; start date; end date (if applicable); average hours worked per week for fulltime, part time and casual employees; and such other information as the Department may require.				
Six monthly report					
[insert]					
Six monthly report					
[insert]					
Six monthly report					

## Stream 2 Funding Deed

Description of Activities	Evidence of compliance	Instalment (excluding GST)	Your Contribution (excluding GST) (if applicable)	Activity Period	When to send invoice
[insert]					
Six monthly report					
[insert]					
Six monthly report					
Participate in a program evaluation to determine the extent to which the Project has contributed to the objectives of the [insert] Fund.					
Provide evidence of how the Project has resulted in a measurable benefit to the community that is consistent with the objectives of the [insert] Fund.					
<b>Project completed</b>					
<b>Grant paid</b>		-	-		
Final report on the Project		-	-		
Maintain assets for 5 years		-	-		
Final report on maintenance of assets		-	-		
		<b>Total</b>	<b>Total</b>		
Objectives of the Project	[insert]				
Assets	You must maintain the following assets: [insert]				
Invoicing Requirements (if required)	[insert]				

## Schedule B – Reporting Requirements

*(refer to clause 9)*

Example reporting requirements:

1. You must provide to the Department six monthly Activity Progress Reports on the status of all on-going and completed activities for the period to which the report relates, consisting of:
  - a. a brief description of the activities' objective/s;
  - b. all activities undertaken during the reporting period;
  - c. the status of results achieved to date from the project; and
  - d. the amount of the funding from the Grant and what has been expended on the activity so far.
2. The Department may meet with you each quarter, at the Department's discretion, to discuss progress on the Project.
3. The Department may undertake site visits from time to time to ascertain progress of the activities on providing reasonable notice to you.

SAMPLE

© State of New South Wales through Regional NSW 2022. The information contained in this publication is based on knowledge and understanding at the time of writing October 2022. However, because of advances in knowledge, users are reminded of the need to ensure that the information upon which they rely is up to date and to check the currency of the information with the appropriate officer of the Regional NSW or the user's independent adviser.



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For more information

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