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## Funding Deed Stronger Country Communities Fund

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Department

Department of Planning, Industry and Environment

Council

[Click here to enter name of Council](#)

Projects

[Click here to enter name of each Project for which  
SCCF funding has been approved](#)

# Table of Contents

<b>Details</b>	<b>1</b>
<b>Terms</b>	<b>2</b>
<b>Definitions and Commencement</b>	<b>2</b>
<b>What you must do</b>	<b>4</b>
<b>About the Grant</b>	<b>5</b>
<b>Payments</b>	<b>6</b>
<b>Material and Information</b>	<b>7</b>
<b>Dealing with Risk</b>	<b>9</b>
<b>Terminating the Deed</b>	<b>12</b>
<b>Other Legal Matters</b>	<b>13</b>
<b>Executed as a deed</b>	<b>18</b>
<b>Schedule A – Project Plan</b>	<b>19</b>

SAMPLE

## Details

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<b>Department</b>	Name	The Crown in right of the State of New South Wales acting through the Department of Planning, Industry and Environment (ABN 20 770 707 468)
	Agency/ Division	<a href="#">Click here to enter text.</a>
	Address	<a href="#">Click here to enter text.</a>

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<b>Department Authorised Officer</b> <i>(refer to clause 24 - Notices)</i>	Name	<a href="#">Click here to enter text.</a>
	Position	<a href="#">Click here to enter text.</a>
	Address	<a href="#">Click here to enter text.</a>
	Telephone	<a href="#">Click here to enter text.</a>
	E-mail	<a href="#">Click here to enter text.</a>

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<b>Council ('You')</b>	Name	<a href="#">Click here to enter name of Council</a>
	Address	<a href="#">Click here to enter text.</a>
	ABN	<a href="#">Click here to enter text.</a>

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<b>Your Authorised Officer</b> <i>(refer to clause 24 - Notices)</i>	Name	<a href="#">Click here to enter text.</a>
	Position	<a href="#">Click here to enter text.</a>
	Address	<a href="#">Click here to enter text.</a>
	Telephone	<a href="#">Click here to enter text.</a>
	E-mail	<a href="#">Click here to enter text.</a>

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<b>Grant</b>	Name of Project	Amount of Grant
	1	\$
	2	\$
	3	\$
	4	\$

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# Terms

## Definitions and Commencement

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### 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) the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
- (e) references to persons include bodies corporate, government agencies and vice versa;
- (f) references to the parties include references to respective directors, officers, employees and agents of the parties;
- (g) nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or any part of it; and
- (h) where an expression is defined, any other grammatical form of that expression has a corresponding meaning.

#### 1.2 Definitions

For the purposes of this Deed:

**Approved Community Organisation** means a community organisation listed in the Schedule as engaged in the delivery of a Project.

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

**Capital Expenditure Guidelines** means the *Division of Local Government, Department of Premier and Cabinet Capital Expenditure Guidelines* dated December 2010 issued pursuant to s. 23A of the *Local Government Act 1993*.

**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.

**Combined Administrative Costs** means the combined administrative costs incurred by you and an Approved Community Organisation in respect of a Project (such costs include internal and external costs from administering, designing, planning and managing a Project).

**Commencement Date** means the date on which the last party signed this Deed.

**Conflict of Interest** means a situation where the exercise of a person's duty or decision-making is influenced, potentially influenced, or may appear to be influenced, by a secondary interest, including (but not limited to) a private or business interest.

**CPWC Act** means the *Child Protection (Working with Children) Act 2012* (NSW).

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

**Grant** means the grant of funding for a Project from the SCCF and as further detailed in the Details.

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

**Instalment** means a payment of the Grant for a Project shown in the Schedule on the terms required by this Deed.

**Location** means the location of a Project shown in the Schedule.

**Milestone** means the stage for a Project shown in the relevant section of the Schedule.

**Milestone Date** means the date by which a Milestone must be completed as specified in the Schedule.

**Notice** means a notice given under this Deed and in accordance with clause 24.

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

**Personnel** means officers, employees, agents, sub-contractors or volunteers.

**Program Guidelines** means the *Stronger Country Communities Fund Program Guidelines* for Round 3 published by the NSW Government and as updated from time to time (available at [nsw.gov.au/strongercountrycommunities](http://nsw.gov.au/strongercountrycommunities)).

**Progress Report** means a written report that identifies for each Project:

- progress against Milestones and any current or anticipated delays (with information regarding the cause of the delay and measures to respond to the delay);
- any actual costs at the date of the report and any actual or anticipated cost overruns;
- any variations requested since the previous Progress Report;
- the amount of Instalments received from the Department since the previous Progress Report; and
- the cumulative amount of Instalments made since the Commencement Date.

**Project** means a Project (and each separate Project where there is more than one Project) outlined in the Schedule for which a Grant has been approved for the purposes of this Deed.

**Project Term** means (for each Project) the period starting on the Commencement Date and ending on the date by which the final Instalment for the Project must be claimed as set out in the Schedule.

**SCCF** means the Stronger Country Communities Fund, as further described in the Program Guidelines.

**State** means the Crown in right of the State of New South Wales and all officers, employees and agents of the Crown.

**Summary Completion Report** means a report confirming that each Project has been completed, the actual cost of the Project and the date the works comprised in the Project were made available for use by the local community.

## 2. Term

- 2.1 This Deed will commence on the Commencement Date.
- 2.2 Unless otherwise agreed, a Project must be completed and all claims for Instalments made within its Project Term.
- 2.3 Unless terminated earlier, this Deed will end at the later of:
  - (a) the latest end date for a Project Term, as identified in the Schedule; or
  - (b) once you (or an Approved Community Organisation) have completed each Project to the Department's satisfaction and the Department has paid all Instalments due.

## What you must do

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### 3. Your obligations

- 3.1 You must:
  - (a) ensure the Grant or any Instalment is used only for the approved Project if applicable, at the relevant Location;
  - (b) ensure that each Milestone is completed by the relevant deadline specified in the Schedule;
  - (c) be accountable for all the Grant funding you receive under this Deed;
  - (d) ensure you obtain all necessary local council and other legal and statutory approvals for a Project;
  - (e) manage a Project with all due skill and care including in relation to financial management, project planning and risk management;
  - (f) comply with all SCCF policies and guidelines (available at [nsw.gov.au/strongercountrycommunities](http://nsw.gov.au/strongercountrycommunities))
  - (g) if applicable to any Project, comply with the local government Capital Expenditure Guidelines;

- (h) provide assistance to the Department (and people invited by the Department) to visit a Location from time to time, including to verify that the Milestones have been completed;
  - (i) comply with all applicable Commonwealth, State and local government laws;
  - (j) if applicable to any Project, ensure that all mandatory employment screening (referred to in the CPWC Act as the "working with children check clearance") has been undertaken on all Personnel engaged to work in "child-related work" (as defined in the CPWC Act) in association with a Project, prior to such Personnel performing any such work; and
  - (k) comply with the requirements of the *Local Government Act 1993*.
- 3.2 If a Project is being delivered by an Approved Community Organisation, you are responsible for ensuring the Approved Community Organisation complies with the requirements set out in clause 3.1.

## About the Grant

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### 4. Paying the Grant

- 4.1 Provided you carry out your obligations under this Deed, the Department will pay you the Grant in the Instalments shown in the Schedule. Other than the first Instalment, the remaining Instalments will not be paid unless you provide invoices and related receipts as required by the Department.
- 4.2 All claims for Instalments, including invoices and related receipts as the Department requires, must be submitted to the Department within 20 business days of the Milestone Date, unless otherwise agreed by the Department in writing.
- 4.3 Unless otherwise approved under clause 6.1, if you do not make a claim for an Instalment by the date in the Schedule, you may no longer have a right to claim that Instalment and the Department will not be required to pay that Instalment.
- 4.4 If the Department makes any Instalment to you, you acknowledge this does not mean that the Department accepts that any part of a Project complies with the requirements of this Deed.

### 5. Project costs

- 5.1 You agree that the Grant for a Project is the maximum amount to be paid under the SCCF towards the carrying out of a Project and you agree that:
- (a) you have prepared or reviewed the scope of works and costs estimate for a Project before you signed this Deed;
  - (b) you are responsible for any costs that exceed the Grant for a 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 a Project;
  - (c) you are responsible for all maintenance costs arising from a Project or, where a Project will be delivered by an Approved Community Organisation, you are responsible for ensuring that a maintenance plan (showing how the maintenance will be funded for at

least 5 years after a Project has been completed) has been prepared by the Approved Community Organisation.

- 5.2 You must ensure no more than 20% of a Grant is applied or used to recover the Combined Administrative Costs.
- 5.3 You acknowledge and agree that where the actual cost of a Project is less than the Grant funding:
- (a) you will notify the Department of any unspent Grant before the end of a Project;
  - (b) the Department may reduce the final Instalment to reflect the actual cost incurred to deliver a Project;
  - (c) you must return to the Department all Grant money paid to you that exceeds the actual cost of carrying out a Project (including any interest earned on such funds) within 28 days after completion of a Project (or termination of the Deed).

## **6. Variation**

- 6.1 If you wish to vary a Project, including any Milestone or other matter set out in the Schedule, including:
- (a) changes to the nature of a Project or the scope of works, Location or revised priorities for a Project; and
  - (b) changes to the timeframe for delivery of a Project, including extensions to completion of Milestones,
- you must first make a written request to the Department and provide such information as is reasonably required by the Department.
- 6.2 Following your request for a variation under clause 6.1, the Department will consider whether to approve your request and you agree that no variation is approved unless it is approved by the Department in writing.
- 6.3 You agree you must advise the Department immediately:
- (a) if you are unable to proceed with a Project or you are notified or become aware that an Approved Community Organisation is unable to proceed with a Project;
  - (b) if a Project has been inactive for a period of 20 Business Days or more;
  - (c) (where you own or lease the Location) if you propose to sell or lease any part of the Location; and
  - (d) (where you do not own or lease the Location) if you are notified or become aware of a proposal to sell or lease any part of the Location.

## **Payments**

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### **7. Bank account for Instalments**

- 7.1 You agree you must maintain either:



- (a) a separate account at a financial institution, or
- (b) an existing general account at a financial institution where adequate internal financial controls are in place for the identification of the Grant,

which is an authorised deposit-taking institution, located in New South Wales, including a bank, credit union or building society (“bank account”).

- 7.2 Interest earned on the Grant held in a bank account must be used solely for the purpose of a Project.
- 7.3 If a Project is delayed, Instalments already paid to you must be held in the bank account until:
  - (a) they are applied solely for the purpose of that Project; or
  - (b) they are required to be returned or repaid to the Department in accordance with the terms of this Deed.

## **8. Withholding, Suspension, Changes to Instalments and Repayment**

- 8.1 The Department may change the amount of the Instalment by issuing you with a Notice setting out the details of the changes provided that such changes will not affect the amount of the overall Grant payable to you.
- 8.2 If you breach this Deed, the Department may provide you with a written Notice requiring you to repay any or all Instalments (determined by the Department in its absolute discretion) specified in the Notice within 28 days.
- 8.3 The Department may offset the amount of any overpayment or claim for repayment against any future Instalment to you.
- 8.4 You agree that any repayment or overpayment the Department claims from you under clauses 5 or 8 will be a debt due and owing by you to the Department.

## **9. GST**

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

## **Material and Information**

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### **10. Reporting Requirements**

- 10.1 You agree to provide (or obtain and provide where you have engaged an Approved Community Organisation to provide all or part of a Project) to the Department a Progress Report as requested from time to time (or such other information requested) within the timeframe the Department reasonably requires.
- 10.2 You agree to make relevant employees and contractors available to the Department as requested from time to time, to discuss the progress of a Project and any Progress Report.

- 10.3 The Department may provide you with a request for accounting, banking or other financial documents or other records relating to your use or expenditure of any Instalment (or use or expenditure of any Instalment by an Approved Community Organisation) and you agree to provide copies of any such records to Department within 10 Business Days of a request being made.
- 10.4 Despite clause 10.3, you acknowledge that the Department may, from time to time, require information urgently and you agree to use all reasonable endeavours to provide such information on an urgent basis.
- 10.5 Within 30 calendar days after completion of a Project, you agree to provide the Department with a Summary Completion Report.
- 10.6 You agree to participate in any survey or feedback at a time you and the Department agree to regarding matters including one or more of the following:
- (a) a questionnaire regarding the assistance received;
  - (b) a survey of the Department's service levels and the effectiveness of assistance provided; and
  - (c) a survey of Project outcomes.

## **11. Acknowledgement of support**

- 11.1 You agree to acknowledge in publications and signage (or arrange an acknowledgment where you engage an Approved Community Organisation to provide all or part of a Project) the NSW Government's support for a Project in accordance with the NSW Government's Funding Acknowledgement Guidelines for recipients of NSW Government grants, including appropriate use of the NSW Government logo in accordance with the NSW Government Brand Guidelines available at available at <https://communications.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/files/Communications-and-Engagement/0c7b202631/NSW-Government-Brand-Guidelines.pdf>

## **12. Publicity**

- 12.1 You agree to provide the Department with at least 15 Business Days' notice of any proposed announcements, launches or public events relating to a Project and provide an opportunity for a representative of the NSW Government to attend and speak at any launch or public event for a Project.
- 12.2 You agree that the Department may issue public communications on the provision of Grants and progress on completing a Project. Where practicable to do so, the Department will give you advance notice of such communications.

## **13. Intellectual Property**

- 13.1 You grant the State a permanent, non-exclusive, irrevocable, royalty-free licence to use, modify, communicate, publish, adapt and sub-licence any report you provide to the Department in connection with this Deed for the Department's purposes.

## 14. Confidential Information

- 14.1 Each party agrees it must maintain the confidentiality of all commercially sensitive or confidential information it receives from the other party, unless it obtains the consent of that other party to disclose the information. For the purposes of this section, the Department considers the amount of the Grant to be confidential information it holds.
- 14.2 Clause 14.1 does not apply if the information required to be disclosed:
- (a) is publicly available at the time of the disclosure;
  - (b) is required to be disclosed under the *Government Information (Public Access) Act 2009* (NSW) or process or requirement of Parliament or a court; or
  - (c) is required to be disclosed for the purpose of preparing a party's financial statements

## 15. Privacy

- 15.1 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 15) in any subcontract entered into to undertake a Project, including with an Approved Community Organisation.

## Dealing with Risk

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### 16. Disclosure of Information

- 16.1 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*.

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

## **17. Insurance**

17.1 You agree to maintain (or ensure that each Approved Community Organisation maintains in respect of each Project for which it is engaged) public liability insurance to a minimum of \$20,000,000.00 for any single occurrence and unlimited in the aggregate as to the number of occurrences for each Project.

17.2 You agree not to do, permit or allow any act, matter or thing or omission (and ensure that each Approved Community Organisation will not do, permit or allow any act, matter or thing or omission) whereby any insurance policy referred to in this clause 17 may be rendered void or voidable.

17.3 If the Department requests, you agree to provide (or obtain from each Approved Community Organisation) a copy of valid and current certificates of currency for each insurance policy described in this clause 17.

17.4 You agree you are responsible for maintaining (or procuring that each Approved Community Organisation maintains) the currency of any other relevant insurances including contract works insurance, professional indemnity insurance, directors and officers liability and worker's compensation insurances.

17.5 Without limitation to this clause 17, you agree that you have and will maintain (or you will ensure each Approved Community Organisation will have and will maintain) appropriate insurance to cover any liability you may incur in relation to this Deed and to ensure the delivery of each Project.

## **18. Indemnities**

18.1 You must indemnify and keep indemnified the State from and against any loss (including legal costs and expenses) 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) your breach of this Deed;
- (b) any unlawful or negligent act or omission by you, your employees, your agents or your subcontractors in connection with this Deed;
- (c) any illness, injury or death of any person caused or contributed to by you, your employees, invitees or your contractors or subcontractors in connection with this Deed or a Project;
- (d) any loss or damage to real or personal property caused or contributed to by you, your employees, invitees or your contractors or subcontractors in connection with this Deed or a Project; or
- (e) any act or omission by you or your employees, invitees or your contractors or subcontractors in connection with this Deed that is in infringement of any intellectual property, or privacy rights of the Department or any third party.

- 18.2 Your obligation to indemnify the State under this clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Department, its officers, employees or agents contributed to the relevant loss or liability.
- 18.3 Your obligation to indemnify the State 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.
- 18.4 If you engage an Approved Community Organisation and you obtain indemnities in your favour on the same terms as the indemnities in clause 18.1(b) to (e) from the Approved Community Organisation and you:
- (a) have obtained (where relevant) insurance from the Approved Community Organisation pursuant to clause 17, and
  - (b) use (and continue to use) all reasonable endeavours (including incurring costs) to obtain the benefit of the indemnity from the Approved Community Organisation and claim on all relevant insurances,

then, where the loss or liability arises from a matter indemnified by the Approved Community Organisation, you are released from your obligation to indemnify the State under clause 18.1(b) to (e) to the extent you receive payment from the Approved Community Organisation and all relevant insurers (and provided you then pay the amount received in full to the Department).

- 18.5 Your liability to indemnify the Department under this clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Department, its officers, employees or agents contributed to the relevant loss or liability.
- 18.6 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.

## **19. Conflict of Interest**

- 19.1 You agree that, as at the Commencement Date, you have no Conflict of Interest in relation to the carrying out of a Project under this Deed. You must notify the Department in writing as soon as you become aware of a Conflict of Interest that arises after the Commencement Date. On receiving notice of a Conflict of Interest, the Department may:
- (a) request such further information as it may require regarding the circumstances of the Conflict of Interest; or
  - (b) approve the continuation of the arrangements under this Deed, subject to reasonable conditions to ensure appropriate management of the Conflict of Interest.
- 19.2 The Department may immediately terminate this deed by giving a Notice to you if in the Department's view (acting reasonably) the Conflict of Interest cannot be appropriately managed.

- 19.3 You agree that you must have in place a written arrangement with any Approved Community Organisation that requires you be notified immediately upon the Approved Community Organisation becoming aware of the existence or possibility of a Conflict of Interest. You agree to report any such Conflict of Interest to the Department in accordance with clause 19.1.

## Terminating the Deed

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### 20. Termination

- 20.1 Where a party has breached this Deed:
- (a) the other party may give a Notice to that party requiring it to rectify that breach within 30 days of receiving that Notice; and
  - (b) 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.
- 20.2 The Department may terminate this Deed by Notice, with effect on the date stated in the Notice, if:
- (a) the Department is of the opinion that you have provided intentionally misleading or incorrect information as part of the application for funding or as part of this Deed;
  - (b) you use the Grant funding for purposes other than the relevant Project;
  - (c) you have failed to comply with the requirements under the *Local Government Act 1993*;
  - (d) the Department is of the opinion a material Conflict of Interest has arisen;
  - (e) the Department is of the opinion that it is necessary to terminate the Deed to protect the reputation of the Department or the NSW Government;
  - (f) you breach any of the following provisions: **clause 3**, **clause 10** (Reporting Requirements), **clause 17** (Insurance) or **clause 25.13** (Assignment);
  - (g) the Department considers the Project no longer viable;
  - (h) the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity; or
  - (i) you become insolvent, are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966*, resolve to go into administration or liquidation, or if a summons for your winding up is presented to a Court or you enter into any scheme of arrangement with your creditors.
- 20.3 This clause 20 does not exclude or reduce the rights of a party to terminate the Agreement arising by operation of the common law or statute or the other terms of this Agreement.
- 20.4 The Department is not liable to pay you any compensation or costs if this Deed is terminated in accordance with clause 20 and you irrevocably and unconditionally release the Department, the Crown in right of the State of New South Wales and its officers, employees and agents in respect of such termination.

## Other Legal Matters

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### 21. Consent of land owner

- 21.1 If you are not the owner of all or part of the land where a Project will be constructed, installed or otherwise delivered, you agree that you:
- (a) have obtained the written approval and agreement of the land owner to construct, install or otherwise deliver a Project on their land; and
  - (b) have obtained the written agreement of the land owner to notify you during the 5 year period referred to in clause 22.1 of any proposal to sell or lease the land on which a Project is or will be carried out.
- 21.2 You indemnify and agree to keep indemnified the State from and against any loss (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 the land owner as a result of or in connection with a Project.

### 22. Maintenance of Assets

- 22.1 You agree to maintain and not to demolish, eradicate, remove, dispose of or otherwise interfere with (and obtain agreement from each Approved Community Organisation to do the same) the infrastructure, facilities or improvements (“assets”) created by a Project for 5 years after the completion of a Project.
- 22.2 As the Grant funding is provided to benefit the local community and conversion or disposal through sale or otherwise of assets funded through the SCCF is not consistent with this purpose if you or an Approved Community Organisation intend to convert or dispose of assets funded by the SCCF program within five years from the Completion of a Project, you must notify the Department immediately with details of the intended conversion or disposal.
- 22.3 Where the Department so requests, you must repay the Department the Grant funding for the relevant project within 20 Business Days’ of the disposal or conversion of the asset that is in breach of clause 22.1.
- 22.4 If the Department notifies you that it requires repayment of any amount under clause 22.3 that amount will become a debt due and payable to the Department.

### 23. Dispute Resolution

- 23.1 If a dispute arises in relation to this Deed (“a Dispute”), a party must comply with this **clause 23** before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.
- 23.2 A party claiming that a dispute has arisen must notify the other party in writing giving details of the dispute (Dispute Notice) in accordance with the requirements of **clause 24** (Notices).

- 23.3 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.
- 23.4 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 under **clause 23.2** must refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.
- 23.5 If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
- 23.6 Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.

## **24. Notices**

- 24.1 Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered, posted or emailed to the Authorised Officer specified in the Details or as otherwise notified in writing. The Department accepts no responsibility for correspondence or other communications that are not received due to contact details not being updated.
- 24.2 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 an attended reception desk at the relevant address;
  - (b) if sent by post within Australia:
    - i. if posted using Express Post, the priority letter service option of regular post, or the priority service option for Registered Mail, on the fourth Business Day after the day on which it is posted;
    - ii. if posted using the regular post option, on the tenth Business Day after the day on which it is posted;
  - (c) 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 be delivered.
  - (d) if sent by email after 5.00pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.



24.3 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.

## 25. General

- 25.1 **Survival:** The following clauses survive termination or expiry of this Deed: clause 8 (Withholding, suspension, changes to instalments and repayments), clause 14 (Confidential information), clause 11 (Acknowledgement of support), clause 12 (Publicity), clause 15 (Privacy), clause 17 (Insurance), clause 18 (Indemnities), clause 20 (Termination), clause 25.5 (Keeping of records, audit and rights of access to such records), this clause 25.1 and any other clause which by its nature is intended to survive this Deed.
- 25.2 **Approved Community Organisations:** You remain responsible for implementing a Project in accordance with the terms of this Deed if you engage an Approved Community Organisation or contractors to deliver all or part of a Project. It is your responsibility to ensure that the Approved Community Organisation has appropriate skills, qualifications and experience for the Project and that all work meets the requirements of this Deed and complies with relevant legislation, standards and codes of practice. You are responsible for ensuring that the Approved Community Organisation holds all appropriate insurances.
- 25.3 **Subcontractors:** You remain responsible for implementing a Project in accordance with the terms of this Deed if you subcontract the performance of any part of a Project. It is your responsibility to ensure that only contractors, subcontractors or project partners (if any) that have appropriate skills, qualifications and experience are hired for the work proposed to be carried out, and that all work meets the requirements of this Deed and complies with relevant legislation, standards and codes of practice. You are responsible for ensuring that all contractors and subcontractors hold the appropriate insurances.
- 25.4 **Volunteers:** You may permit volunteers to assist in the delivery of a Project if such volunteers are volunteers of an Approved Community Organisation.
- 25.5 **Keeping of records, audit and rights of access to such records:** You:
- (a) must keep complete and accurate records and books of account with respect to your performance of the Project (the "Records"), and must retain such Records for a minimum of seven (7) years after expiry or termination of this Deed;
  - (b) authorise the Department and any State or Commonwealth Government department or agency (the "Auditors") that has provided moneys to the Department for the purposes of the Project, to undertake audits, to examine and inspect, at reasonable times and on reasonable Notice, any records held by you and Records, and allow any such Records to be copied; and
  - (c) provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.

## **25.6 Negation of employment, partnership or agency**

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

**25.7 Relationship:** All work performed by you and all contracts made by you in carrying out a Project shall be performed and made by you as principal and not as agent for the State or the Department. In all dealings in relation to a Project your organisation will act solely on its own account.

**25.8 Further assurance:** Each party must promptly execute all documents and do all things required by law, or that the other party from time to time reasonably requests, to effect, perfect or complete this Deed and all transactions incidental to it.

**25.9 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.

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

- (a) the Details; then
- (b) the terms of this Deed; then
- (c) any Schedules to this Deed.

## **25.11 Negation of employment, partnership or agency**

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

**25.12 Waiver:** You agree that:

- (a) The State does not accept any responsibility or liability for works carried out and bears no responsibility for a Project.
- (b) No failure or delay by the Department or its officers or the Department in exercising any right, power or remedy under this Deed, and no course of dealing with you, will operate as a waiver of a breach or a default by you. Any waiver by the Department or its officers of a breach or default 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.

## **25.13 Assignment or change of Crown agent:**

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

- (b) The Department may, by written Notice to you, advise that another NSW Government Department, statutory body or other agency is to exercise the rights of the Department under this Deed (being, at all times, rights which are exercisable for and on behalf of the Crown in right of the State of New South Wales).
- (c) On notification by the Department, you must execute all documents reasonably necessary to give effect to any Notice by the Department under this clause.

25.14 **Severability:** If any part of this Deed is or becomes illegal, invalid or unenforceable in any relevant jurisdiction, the legality, validity or enforceability of the remainder of this Deed will not be affected and this Deed will be read as if the part had been deleted in that jurisdiction only.

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

25.16 **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.

SAMPLE

## Executed as a deed

### Department

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

Signature of Authorised Signatory

Signature of Witness

Name of Authorised Signatory

Name of Witness

Position of Authorised Signatory

Address of Witness

Date

### You (Authorised Signatory of Council)

Signed, Sealed and delivered for on and on behalf of [Click here to enter council name](#) by its authorised representative acting lawfully under delegated authority:

Name of Authorised Representative

Signature of Authorised Representative

Position Held

Date

Date

Date

In the presence of:

Name of Witness

Signature

## Schedule A – Project Plan

You must ensure any Milestones for each Project are completed by the timeframe set out below.

- Project Number: SCCF **insert letters/numbers as assigned in SmartyGrants or by Department.**
- Project Name:
- Location:
- Approved Community Organisations [if applicable]:

Description of Milestone	Evidence of Completion	Payment by Department (excluding GST)	Milestone Date
Execution of Funding Deed	Signed Deed		
		Total	