

# Resources for Regions 8 - Funding Deed

## Form Preview

### Resources for Regions (R4R) 8 - Funding Deed

\* indicates a required field

#### Information about your Funding Deed

You will be required to submit a signed Funding Deed, invoice & supporting documents in order to have your first instalment released. Funding will only be released once all supporting documentation is reviewed and approved.

Supporting documents you may be required to provide to execute your Funding Deed include but are not limited to public liability insurance, land owner's consent, Asset Management Unit approval (for projects on Department of Education land) or Development Approval and an invoice for your first instalment.

Funding Deeds must be signed by authorised office bearers within your organisation.

Funding Deeds are considered executed once both parties have signed and the organisation has received a copy of the Funding Deed for their records.

Records relating to your project must be kept by your organisation for a period of seven (7) years and provided upon request or in case of an audit.

#### Background

**A.** Resources for Regions (R4R) aims to support the ongoing prosperity of mining communities in regional NSW by providing economic opportunities, improved amenity and positive social outcomes.

**B.** You have applied successfully for funding.

**C.** The Department agrees to provide funding to you, and you agree to accept that funding, on the terms and conditions of this Deed.

#### Details

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

**Division** Public Works Advisory & Regional Development

**Address** Level 2, 66 Harrington St, The Rocks, NSW, 2000

#### Department Authorised Officer

**Name** Adam Young

**Position** Director, Grant Management, Evaluation & Reporting

**Address** Level 2, 66 Harrington St, The Rocks, NSW, 2000.

**Telephone** 1300 107 754

**Email** gmo@regional.nsw.gov.au

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Grantee ("You")

## Organisation Name

This question is read only.

## Organisation Address \*

Address

  

Address Line 1, Suburb/Town, State/Province, Postcode, and Country are required.

## Organisation ABN

The ABN provided will be used to look up the following information. Click Lookup above to check that you have entered the ABN correctly.

Information from the Australian Business Register	
ABN	
Entity name	
ABN status	
Entity type	
Goods & Services Tax (GST)	
DGR Endorsed	
ATO Charity Type	<a href="#">More information</a>
ACNC Registration	
Tax Concessions	
Main business location	

Must be an ABN.

## Your Authorised Officer \*

Title      First Name      Last Name

            

## Position of Authorised Officer \*

## Authorised Officer Phone Number \*

Must be an Australian phone number.

## Authorised Officer Email \*

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Must be an email address.

## Details

### Project Title

This question is read only.

### Short project description

This question is read only.

### Grant

This question is read only.

Total funding amount approved by R4R8

### Project Location \*

Address

  


Address Line 1, Suburb/Town, State/Province, Postcode, and Country are required.  
This is the location where your project is being delivered

## Project Contact

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Complete if different to above - this is the person who is the contact for delivery of the project.

### Project Contact Name

Title	First Name	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

### Position of Project Contact

### Project Contact Phone Number

Must be an Australian phone number.

### Project Contact Email

Must be an email address.

## Terms and Conditions of the Deed

### Special Condition - Project Management

#### SC1. Project Management

(a) The Department draws your attention to your obligation under **clause 3.1(f)** to ensure that each Activity is completed within the Activity Period.

(b) In addition to the Department's rights under this Deed and at law, the Department may, at any time, notify you that the Department is concerned about how you are managing a Project.

(c) The Department may recommend that you engage a subcontractor (such as Public Works Advisory) to carry out project management or other such services. That subcontract would be at your cost (with no additional funding from the Department). You would remain responsible for the subcontractor in accordance with **clause 22.2** (subcontractors).

#### SC2. Covid-19

1. Both parties acknowledge the uncertainty arising from the current pandemic COVID-19, the measures taken by State and Commonwealth Governments in relation to the emergency, and the consequential effects on daily activities ("C-19 Emergency").

2. If either party becomes aware that its ability to comply with any of its obligations on time will be affected by the C-19 Emergency, it must, as soon as possible, give the other party a written notice which sets out:

(a) the nature and extent of the obligations affected by the C-19 Emergency;

(b) the ways in which the C-19 Emergency will affect its ability to perform those obligations; and

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(c) a proposal that the parties either vary the Deed to mitigate the effects of the C-19 Emergency (for example, to change time frames and/or the scope of the Project), or terminate by agreement.

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.

4. Despite any other provisions in this Deed, if the Department considers that, as a result of the C-19 Emergency:

(a) there is likely to be significant delay before you will be able to complete your obligations;

(b) the Deed is no longer viable; or

(c) the Department may terminate the Deed by notice, with effect on the date stated in the notice.

5. You release the Department from any claims in respect of termination under this clause.

### SC3. Photographs

1. You must provide the Department with copies of any professional photographs which you take, or arrange, in relation to any official opening of the Project or of the delivered Project.

## Definitions and Commencement

### 1.1 Interpretation

Unless the context requires otherwise, in this Deed:

(a) the terms set out in the Details have the meaning ascribed to them in the Details;

(b) where any time limit pursuant to this Deed falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;

(c) a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;

(d) the meaning of general words is not limited by specific examples introduced by "including" or "for example" or similar expressions;

(e) references to persons include bodies corporate, government agencies and vice versa;

(f) references to the parties include references to respective directors, officers, employees and agents of the parties;

(g) nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or any part of it; and

(h) where an expression is defined, any other grammatical form of that expression has a corresponding meaning.

### 1.2 Definitions

**Activity** means the activity(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.

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**Approved Community Organisation** means a community organisation 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 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.

**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 on a full indemnity basis.

**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). Under the Program guidelines this can be up to 20 per cent of the total project cost for combined contingency, project management and administrative costs.

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

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

**Conflict of Interest** means a situation where the exercise of a persons 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.

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

**Correctly Rendered Invoice** means an invoice rendered in accordance with the [Department's Fact Sheet](#).

**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 R4R and as further detailed in the Details.

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

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

**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.

**Location** means the location of a project shown in the details.

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

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

**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)*.

**Program Guidelines** means the Resources for Regions program guidelines for round 8 published by the NSW Government and as updated from time to time (available at [R4R8 Guidelines](#))

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

- progress against activities 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 costs over runs;
- 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.

**R4R** means the Resources for Regions 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.

## 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 Project to the Department's satisfaction and the Department has paid all Instalments due.

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.

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### WHAT YOU MUST DO

#### 3. Your Obligations

3.1 In addition to other terms of this Deed, you must:

- (a) ensure the Grant or any Instalment is used only for the approved Project at the relevant Location;
- (b) ensure each Activity is completed within the Activity Period in accordance with this Deed;
- (c) comply with the reporting requirements set out in **Schedule B - reporting requirements**;
- (d) comply with all Commonwealth, State and Local government laws that are relevant to the Project, this Deed, or your registration as an entity;
- (e) comply with all policies, guidelines and reasonable directions the Department provides to you;
- (f) manage a Project with all due skill and care including in relation to financial management, project planning and risk management.
- (g) provide assistance to the Department (and people invited by the Department) to visit a Location from time to time, including to verify that the Activities have been completed;
- (h) 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
- (i) comply with the requirements of the Local Government Act 1993, if applicable 3.2 If a Project is being delivered by an Approved Community Organisation on behalf of a Council, Councils are responsible for ensuring the Approved Community Organisation complies with the requirements set out in clause 3.1.

### About the Grant

#### 4. Paying the Grant

4.1 Provided you carry out your obligations under this Deed, The Department will pay an Instalment for each Activity at the end of the Activity Period 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 8** 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.

4.2 Notwithstanding **clause 4.1**, 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.

#### 5. Bank account for Instalments

5.1 You agree you must maintain either:



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- (a) a separate account at a financial institution, or
  - (b) an existing general account at a financial institution where;
  - (i) 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").
- 5.2 Interest earned on the Grant held in a bank account must be used solely for the purpose of a Project.
- 5.3 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.

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

- 6.1 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.
- 6.2 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.
- 6.3 The Department may offset the amount of any overpayment or claim for repayment against any future Instalment to you.
- 6.4 You agree that any repayment or overpayment the Department claims from you under clauses 4 or 7 will be a debt due and owing by you to the Department.

### **7. GST**

- 7.1 Unless otherwise indicated, all consideration for any supply under this Deed is exclusive of any GST imposed in relation to the supply.
- 7.2 If you are not registered under the GST Law, you will not be entitled to receive such amount of any Payment that is equal to the amount of GST imposed on that supply.
- 7.3. If:
- (a) 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,
- 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.
- 7.4 If for any reason the Department pays you an amount under this **clause 7** 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

### **8. Reporting Requirements**

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8.1 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").

8.2 You must also provide any other information the Department reasonably requires from time to time concerning the Project.

8.3 If any Progress Report contains information confidential to you, you should mark the relevant parts of the Report accordingly.

8.4 You must provide financial statements of income and expenditure in respect of the Grant ('the Statements') to the Department within 30 calendar 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.

8.5 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.

8.6 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.

## 9. Public Announcement and Acknowledgement

9.1 You:

(a) must 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.

(b) 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

(c) 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;

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(d) You must acknowledge the Department's support of the Project and comply with the applicable [NSW Government Guidelines](#).

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

### 10. Intellectual Property

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

### 11. Confidential Information

Each party must maintain the confidentiality of all commercially sensitive or confidential information it receives from the other party, including the amount of the Grant, except in accordance with **clause 9** (Public Announcement and acknowledgment) or as otherwise agreed in writing.

### 12. Privacy

12.1 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 12) in any subcontract entered into for the provision of any of the Activities under this Deed.

## Dealing with Risk

### 13. Disclosure of Information

13.1 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*.

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

### 14. Insurance

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14.1 You must maintain, during the term of this Deed:

(a) a broad form 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;

(c) the Additional Insurance Policies listed in the Details for the minimum sum provided.

14.2 If specified as being required in the Details, a professional indemnity insurance policy must be maintained for a period of 7 years from the end of the Deed.

14.3 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.

14.4 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.

14.5 Without limitation to clause 14.1, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed and to ensure the delivery of each Project.

### **15. Indemnities**

15.1 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 (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.

15.2 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.

15.3 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.

### **16. Conflict of Interest**

16.1 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:

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(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.

16.2 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.

16.3 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 16.1.

## Terminating the Deed

### 17. Termination

17.1 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.

17.2 The Department may terminate this Deed by Notice, with effect on the date stated in the Notice, if:

(a) you breach any of the following provisions: clause 3 (Your Obligations), clause 5 (Bank Accounts for Instalments), clause 8 (Reporting Requirements), clause 14 (Insurance) or Clause 22.8 (Assignment) ;

(b) the Department considers the Project no longer viable;

(c) the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity; or

(b) 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.

17.3 This clause 17 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.

17.4 On termination or expiry of this Deed:

(a) accrued rights and obligations are not affected; and

(b) the Department will pay any Instalments due (after taking into account any Instalments already made prior to that date).

## Other Legal Matters

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### **18. Consent of land owner**

18.1 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 19.1 of any proposal to sell or lease the land on which a Project is or will be carried out.

18.2 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.

### **19. Maintenance of Assets**

19.1 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.

19.2 As the Grant funding is provided to benefit the local community and conversion or disposal through sale or otherwise of assets funded through the R4R is not consistent with this purpose if you or an Approved Community Organisation intend to convert or dispose of assets funded by the R4R program within five years from the Completion of a Project, you must notify the Department immediately with details of the intended conversion or disposal.

19.3 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 19.1.

19.4 If the Department notifies you that it requires repayment of any amount under clause 19.3 that amount will become a debt due and payable to the Department.

### **20. Dispute Resolution**

20.1 If a dispute arises in relation to this Deed ("a Dispute"), a party must comply with this clause 20 before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.

20.2 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 21 (Notices).

20.3 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.

20.4 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 20.2 must refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.

20.5 If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.

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20.6 Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.

### **21. Notices**

21.1 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 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..

21.2 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.

21.3 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.

### **22. General**

**22.1 Survival:** The following clauses survive termination or expiry of this Deed: clause 6 (withholding), clause 8 (Reporting Requirements), clause 11 (Confidential Information), clause 12 (Privacy), clause 14 (Insurance), clause 15 (Indemnities), clause 17 (Termination), clause 22.3 (Keeping of records), this clause 22.1 and any other clause which by its nature is intended to survive this Deed.

**22.2 Subcontractors:** You remain fully responsible for the performance of the Project if you subcontract the performance of any part of the Project. It is your responsibility to ensure that only contractors, subcontractors or project partners (if any) have the 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, subcontractors hold the appropriate licenses and insurances.

**22.3 Keeping of records, audit and rights of access to such records:** You:

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

**22.4 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,

# Resources for Regions 8 - Funding Deed

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representations, conduct and understandings between the parties relating to the subject matter of this Deed.

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

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

### **22.6 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.

**22.7 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.

### **22.8 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

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

**22.10 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.

## Schedule A - Project Plan

\* indicates a required field

### Project Activities & Instalments

**I/we confirm that project activities listed below provided in the EFT & Project Details form are true and correct reflection of the works being undertaken as part of this project \***



# Resources for Regions 8 - Funding Deed

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Yes

**Activity Period** - project works must commence within 6 months from the commencement date (see definitions) and the project must be completed within 2 years from the commencement date.

### **Instalment 1 amount released upon execution of your Funding Deed**

This question is read only.  
Funding Deed to be Signed by both parties before execution

### **Activity 1 - Brief description of what works from the itemised list you plan on completing with your 1st instalment**

This question is read only.

### **Date Activity 1 to be completed**

This question is read only.

### **Instalment 2 amount to be received**

This question is read only.  
This amount will be released in order for you to complete your next scope deliverables

### **Activity 2 - Brief description of what works from the itemised list you plan on completing with your 2nd instalment**

This question is read only.  
These are the works to be completed with the prior instalment funding

### **Date proposed works will be completed for Activity 2**

This question is read only.

### **Instalment 3 amount to be received**

This question is read only.  
This amount will be released in order for you to complete your next scope deliverables

### **Activity 3 - Brief description of what works from the itemised list you plan on completing with your 3rd instalment**

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This question is read only.

These are the works to be completed with the prior instalment funding

## **Date proposed works will be completed for Activity 3**

This question is read only.

## **Instalment 4 Amount to be received**

This question is read only.

This amount will be released in order for you to complete your next scope deliverables

## **Activity 4 - Brief description of what works from the itemised list you plan on completing with your 4th instalment**

This question is read only.

These are the works to be completed with the prior instalment funding

## **Date proposed works will be completed for Activity 4**

This question is read only.

## Schedule B - 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 brief description of the activities objective/s;
- all activities undertaken during the reporting period;
- the status of results achieved to date from the project; and
- 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.

4. You must participate in a program evaluation after the Project has commenced to determine the extent to which the Project has contributed to the objectives of the Resources for Regions Program fund.

### **Reporting on Outcomes:**

You will measure the intended outcomes of the Project and provide reports and information to the Department on the Outcomes as follows, in accordance with your application form under the heading "Outcomes and Benefits"

# Resources for Regions 8 - Funding Deed

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### Checklist & Invoice Information

\* indicates a required field

#### Supporting Documents & Funding Acknowledgment

Please ensure that all supporting documents (where applicable) have been provided so that review of your Funding Deed can occur.

#### Checklist - please select what documents that are being submitted with the Funding Deed

- Public Liability Insurance - \$20 million required for all projects
- Invoice for the agreed Instalment 1 amount listed in this Funding Deed
- Land owner's consent
- Development approval or proof of exemption
- Letters of support
- Asset Management Unit approval - for project located on Department of Education land ONLY
- EVENTS & PROGRAMS - List of what, where and when your projects are being delivered where required

#### Upload supporting documentation

Attach a file:

#### I/we confirm that by accepting this offer and signing the Deed, I/we: \*

- are aware that digital signatures are not allowed as part of this Deed
- agree to the Terms and Conditions within this Deed
- declare that all information provided as part of this Deed including attachments are true & correct
- agree to adhere to the Funding Acknowledgment guidelines as per clause 9. of the Terms and Conditions
- agree to provide the Department with a progress report when requested for this project
- agree to provide an evaluation report to the Department when requested after the project has been completed
- agree to the Activity period timeframes for project delivery

At least 7 choices must be selected.

#### Invoice information

Invoices to the Department for Instalment claims should be the amount being claimed plus GST if your organisation is registered for GST, except for local councils or other Government agencies who will need to submit invoices excluding GST regardless of their ABN GST status.

Invoice for Instalment 1 is to be uploaded into the Funding Deed - **DO NOT post. Invoices to be uploaded in section below.**

Invoices should be addressed to:

**Department of Regional NSW**

**ABN: 19 948 325 463**

# Resources for Regions 8 - Funding Deed

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**Locked Bag 6009**

**ORANGE NSW 2800**

**Upload invoice for Instalment 1 \***

Attach a file:

## How to Submit your Funding Deed & Next Steps

### HOW TO SUBMIT YOUR FUNDING DEED

Now that you have completed the Funding Deed information & uploaded your invoice for release of Instalment 1, and supporting documents, you will need to:

1. Save Progress
2. Go to **last page** of form and select "**Download PDF**" - this will provide you with a full version of your Funding Deed for signing.
3. **Print off a FULL copy** of your Funding Deed and have the authorised office bearers sign the Deed then get these witnessed by a 3rd or 4th person
4. Once signed, **scan the FULL Funding Deed** into your computer and then upload a copy of this back into the question below this section that says "**upload Signed Funding Deed**"
5. **Save progress and then submit** in SmartyGrants for review by the Department. You will **receive an email notification** if this has been submitted successfully.

### NEXT STEPS

1. Once reviewed by the Department, if no additional information is required a copy of the executed Funding Deed will be emailed to you for your records.
2. Funding will be requested for release at the same time you receive a copy of your executed Deed.
3. You will receive a remittance to your nominated email address once funding has been released & cleared.

### Contact Details for the Grants Management Office (GMO)

The Grants Management Office (GMO) can be contacted via email at: gmo@regional.nsw.gov.au or 1300 107 754.

**Please quote your R4R8 Application ID number** in the subject header of the email or when contacting the Department regarding your project.

## Execution of Deed

\* indicates a required field

**Signed, Sealed and Delivered for: \***

Name of the Organisation receiving funding.

**ABN**

# Resources for Regions 8 - Funding Deed

## Form Preview

### Execution Clause 1

Please note that signatories CANNOT witness each other.

**I/we warrant that I/we have authority to sign this Deed on behalf of the organisation and agree with the Terms and Conditions of this Deed.**

#### First Authorised Officer

Signature of first Authorised Officer:

#### Second Authorised Officer

Signature of second Authorised Officer:

Name & Title of first Authorised Officer

Name & Title of second Authorised Officer

In accordance with its constitution and, if applicable, any requirements for execution contained in the statute that established the recipient organisation in the presence of:

In accordance with its constitution and, if applicable, any requirements for execution contained in the statute that established the recipient organisation in the presence of:

Witness signature

Witness signature

Name of witness

Name of witness

Date

Must be a date.

Date

Must be a date.

### Department Use Only - Execution Clause

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 Officer of the Department

Signature of Witness

Name of Authorised Signatory

Name of Witness

Position of Authorised Signatory

Date of Execution

Must be a date.

## Upload Signed Funding Deed

### **Attach signed Funding Deed \***

Attach a file:

Sample