

Department of Regional NSW

Mobile Coverage

regional.nsw.gov.au

October 2022

Mobile Coverage Project – Active Sharing Partnership

Funding Deed – Access Provider



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Funding Deed - Access Provider

Dated

Agency/Division: **The Crown in right of the State of New South Wales acting through the
Department of Regional NSW**
ABN 19 948 325 463

Recipient [#insert]
ABN [#insert]

AFT

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Deed

dated

Parties

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

Department

Agency/Division Regional Development and Programs

Address

Name

Recipient

Address

ABN

DRAFT

Introduction

As part of New South Wales Government's Regional Digital Connectivity Program, the Mobile Coverage – Active Sharing Partnership grant opportunity (**Grant Opportunity**) aims to significantly improve areas of no or poor Coverage where people live, work and play in regional New South Wales through investment in infrastructure, emerging technologies and services.

The Department has agreed to support the Activities and the achieving of the Objectives by providing to the Recipient, and the Recipient agrees to accept, an amount of Funds in respect of Projects forming part of the Grant Opportunity subject to the terms and conditions of this Deed.

It is agreed

1. Definitions and interpretation

1.1 Definitions

In this Deed, unless the contrary intention appears:

4G means fourth generation mobile telecommunications.

5G means fifth generation mobile telecommunications.

Abandoned means circumstances in which no Activities have been carried out in respect of the Project for 60 consecutive days, other than to the extent the Recipient's obligations to carry out such Activities have been excused in accordance with clause 23.

Access Charges means the reasonable costs which the Consortium Access Seekers pay to the Recipient to access the Site in order to provide a Mobile Service.

Access Provider means a person that receives funding from the Department pursuant to the Grant Opportunity for the purposes of Build Activities.

Access Seeker means a person, other than an Access Provider, which is an MNO.

Active Infrastructure Sharing mean the sharing of electronic infrastructure of the network including radio access network (consisting of antennas/transceivers, base station, Backhaul networks and controllers) and core network (consisting of servers and core network functionalities).

Active Sharing Partnership Funding Deed or **ASP Funding Deed** means a funding deed between each Consortium Access Seeker and the Department in relation to the Project.

Active Sharing Services has the meaning given to that term in clause 10.3(a).

Activity or **Activities** means all things the Recipient is required to do to comply with its obligations under this Deed to achieve the Objectives, and includes undertaking (or arranging a Related Body Corporate to undertake) the Build Activities and Operational Activities.

Activity Material means any Material:

- (a) provided or required to be provided to the Department under or in connection with this Deed or the Activity; or
- (b) derived at any time from the Material referred to in paragraph (a), including all Reports, but excludes Existing Material and Government Material.

Affected Site means a Site that has been affected by a Site Frustration Event.

Alleged Misconduct means an allegation which raises a reasonable suspicion of misconduct which may have a serious impediment to the delivery of the Project or the performance of activities under the Project, including serious or persistent harassment or bullying, or a criminal offence such as theft, fraud or assault.

Annexures means the annexures to this Deed.

Applicable Cure Period has the meaning given to that term in clause 26.1(c)i.

Approved Cure Plan has the meaning given to that term in clause 26.1(c).

Assets means any items of tangible or intangible property (including any component of a telecommunications network and other infrastructure, technology and plant and equipment) which are purchased, leased, created, upgraded, or otherwise brought into existence by, for or on behalf of the Recipient as part of the Project.

Asset Completion means in respect of a Site, subject to clause 4.2, that stage in the performance of the Build Activities when all of the Assets in respect of that Site have been installed, tested, commissioned and otherwise completed in accordance with this Deed.

Asset Completion Date means the actual date that Asset Completion is achieved for a Site.

Asset Completion Report has the meaning given to that term in clause 4.2(d).

Authorisation means any authorisation, approval, licence, permit, consent, determination, certificate, notice, requirement or permission from any Authority which must be obtained or satisfied (as the case may be) to undertake the Project.

Authority means any Commonwealth, State, Territory, local or foreign government or semi-governmental authority, court, administrative or other judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality or any other person having jurisdiction in connection with the Project.

Backhaul means a link between the core or backbone of a network and sub-networks, transporting data from a series of disparate locations to a more centralised location.

Build Activities means those Activities that are required to design, supply, construct, install and commission the Assets, and configure and connect them, so as to achieve Asset Completion at each Site in accordance with this Deed.

Build Parameters has the meaning given to that term in clause 4.2(b)i.

Build Period has the meaning given to that term in clause 4.2(a).

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

C-19 Emergency has the meaning given to that term in clause 24.1.

CCA means the *Competition and Consumer Act 2010* (Cth).

Change in Control in relation to the Recipient or its permitted successors (in this definition referred to as the **First Party**), means a person or persons who does not Control the First Party (in this definition referred to as the **Acquiring Party**) acquiring Control of the First Party, unless the Acquiring Party is itself Controlled directly or indirectly by a person who Controlled the First Party. A Change in Control will not occur as a result of the transfer, issue, redemption, buyback, cancellation, repurchase or reorganisation of marketable securities in an entity that is listed or, in connection with the relevant transaction becomes listed, on a recognised public stock exchange (provided that such Change in Control does not result in the First Party ceasing to be listed as a result of such transaction).

Claim means any action, claim, demand, proceedings or liability of any nature.

Commencement Date means the date set out in Item 3 of the Details.

Confidential Information means information that is, by its nature, confidential and:

(a) has been designated by the disclosing party as confidential; or

(b) the receiving party knows or ought to know is confidential,

including:

(c) in the case of the Department, information relating to other contractors of the Department; and

(d) security classified information,

but does not include information that:

(e) is or becomes public knowledge other than by breach of this Deed;

(f) is in the possession of a party without restriction in relation to disclosure before the date of receipt; or

(g) has been independently developed or acquired by the receiving party.

Consortium Access Seekers means, in respect of a Site, the Access Seekers identified as the Consortium Access Seekers for the Site as set out in Item 3 and Figure 3–Sites of the Project Schedule.

Consortium Agreement means a binding agreement between the Recipient and each Consortium Access Seeker to allow the Recipient to comply with its obligations under this Deed and which covers matters of significance with respect to this Deed, including services offered, technology type and evolution, spectrum allocation, geographical locations, land and tower access, reduction of footprint or removal of technologies, transition obligations, co-operation, regulatory approvals, contract terms, extensions, termination, fee structure, billing and payment, network service levels and quality of services, usage forecasts, governance framework, suspension of service, fair use policy and general obligations on the Access Provider.

Control of an entity has the same meaning as “control” in section 50AA of the Corporations Act provided that:

(a) in the case of a corporation, it includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors of that corporation, the voting rights of any of the voting shares of the corporation or the management of the affairs of the corporation;

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

(c) in the case of a partnership, it includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the management of the affairs of the partnership; and

(d) in the case of the Recipient, it includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the manner in which the Project is undertaken,

in each case, whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the entity or otherwise.

Controller has the meaning given to it in section 9 of the Corporations Act.

Corporations Act means the *Corporations Act 2001 (Cth)*.

Coverage means, in respect of a Site and an Access Seeker, the ability to make or receive Mobile Services using the network of the Access Seeker at that Site.

Coverage Modelling means the agreed modelling of Coverage for the purposes of this Deed, as set out in the Specifications.

CPI means the annual percentage increase for the period for which the calculation is being made

determined by the “All Groups Consumer Price Index” applicable to the city of Sydney as published by the Australian Bureau of Statistics and in the event of such index being discontinued or abolished, then such index as the Australian Bureau of Statistics or its successors will substitute therefor.

Deed means this document, including any schedule or annexure to it.

Detailed Proposal means the application (including template documents of the Department, any supporting documentation, coverage maps and other attachments provided by the Recipient) submitted by the Recipient in respect of the Grant Opportunity.

Details means the details set out in Schedule 1.

Dispute Notice has the meaning given to that term in clause 30.1(b).

Draft Cure Plan has the meaning given to that term in clause 26.1(a)i.B.

Existing Material means all Material in existence prior to the Commencement Date or developed independently of this Deed:

- (a) incorporated in;
 - (b) supplied with, or as part of; or
 - (c) required to be supplied with, or as part of,
- the Project Documents or the Activity Material.

External Controller means an administrator, Controller, trustee, provisional liquidator, liquidator or any other person holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

Facilities Access Code means *A Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities made under the Telecommunications Act 1997*.

Force Majeure Event has the meaning given to that term in clause 23.1.

Funding Terms means the terms set out at Schedule 3.

Funds means the funds paid or payable by the Department to the Recipient under this Deed as set out in Item 6 of the Project Schedule.

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

Good Industry Practice means practices followed when works and services are undertaken in accordance with all of the following:

- (a) in a sound and workman-like manner;
- (b) with due care and skill;
- (c) using materials of merchantable quality which are fit for the Project and enable it to achieve the Objectives;
- (d) in accordance with all applicable Laws; and
- (e) consistently with best practice for:
 - i. the performance of design, engineering, procurement, supply, construction, testing, commissioning, maintaining and operating of a facility that has the same or similar performance requirements of the Project;
 - ii. the performance of design, engineering, procurement, supply, construction and testing of works that are similar to the works to be undertaken with respect to the Project; and
 - iii. commissioning, maintaining and operating equipment that is similar to the equipment utilised in respect of the Project.

Government Body means the government of the State of New South Wales, including any governmental agency, department or authority.

Government Material means any Material:

- (a) provided by the Department or the NSW Government to the Recipient for the purposes of this Deed; or
- (b) derived at any time from the Material referred to in paragraph (a).

Grant Opportunity has the meaning given to that term in Recital A.

GST Law has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means the occurrence of any of the following events:

- (a) in relation to a corporation (including in its capacity as trustee of a trust):
 - i. its Liquidation;
 - ii. the appointment of an External Controller to the corporation or any of its property;
 - iii. it entering into or resolving to enter into a Scheme;
 - iv. it ceasing or threatening to cease carrying on its business;
 - v. it becoming insolvent within the meaning of section 95A of the Corporations Act, presumed to be insolvent under sub-section 459C(2) of the Corporations Act or otherwise stopping or suspending, or threatening to stop or suspend, payment of all or a class of its debts as and when they become due and payable;
 - vi. it being taken to have failed to comply with a statutory demand as a result of sub-section 459F(1) of the Corporations Act;
 - vii. any distress, attachment or writ of execution in an amount greater than \$20,000 being issued, levied or enforced against it or its property;
 - viii. any judgment in an amount of greater than \$20,000 being issued, levied or enforced against it or its property that is not set aside, satisfied or stayed (through appeal or otherwise) within 10 Business Days; or
 - ix. any security interest being enforced against its property in respect of a liability in excess of \$20,000 at any time; and
- (b) in relation to any person, the person is served with any claim or anything analogous to or having a similar effect to anything described above in this definition under the law of the relevant jurisdiction.

Integration Completion means in respect of a Site, that stage in the Consortium Access Seeker's performance of their activities under an ASP Funding Deed when all of the Assets in respect of that Site have been installed, tested, commissioned and otherwise completed in accordance with such ASP Funding Deed.

Integration Completion Date means the actual date that Integration Completion is achieved for a Site.

Intellectual Property Rights includes:

- (a) all copyright;
- (b) all rights in relation to inventions, plant varieties, trademarks, designs and circuit layouts; and
- (c) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include:
 - (d) Moral Rights;
 - (e) the non-proprietary rights of performers; or
 - (f) rights in relation to Confidential Information.

Joint Stakeholder Engagement Plan means the plan prepared, reviewed and updated by the Recipient in collaboration with the Consortium Access Seekers, subject to approval by the Department (in accordance with clauses 3.2 and 14(d)), and including the information set out in Schedule 5. For the avoidance of doubt, the Joint Stakeholder Engagement Plan must be included in the Project Management Plan.

Late Entrant means any access seeker (including an Access Seeker) other than a Consortium Access Seeker.

Law means:

- (a) any Act, regulation or other statutory instrument or proclamation of any applicable jurisdiction in which any act or obligation in connection with this Deed is or is to be carried out or regulated, including the rules of any recognised securities exchange;
- (b) any applicable law, whether of a legislative, equitable or common law nature; and
- (c) any judgment, decree or similar order with mandatory effect or any binding requirement or mandatory approval of an Authority.

Liquidation means a winding up or liquidation (whether voluntary or involuntary), provisional liquidation, dissolution, deregistration, or steps are taken, orders are made or resolutions are passed to give effect to any of the foregoing (including the calling of meetings or the filing of applications).

Loss includes any loss, cost, damage, expense (including reasonable legal fees) or liability, whether arising under contract (including any breach of this Deed), in equity, under statute, in tort (including for negligence or negligent misrepresentation) or otherwise.

Material means the subject matter of any category of Intellectual Property Rights.

Milestone means each of the milestones set out in the Rollout Schedule. For clarity, Asset Completion is deemed to be a Milestone.

Milestone Dates means in respect of a Milestone, the target date on which the Milestone is required to be achieved, as detailed in the Rollout Schedule. For clarity, the Target Asset Completion Date is deemed to be the Milestone Date for the Asset Completion Milestone.

Mobile Network Operators or MNOs means a company that:

- (a) supplies or proposes to supply a public mobile telecommunications service within the meaning of the Telco Act; and
- (b) holds an apparatus or a spectrum licence (or both) for the supply of public mobile telecommunications services under the *Radiocommunications Act 1992* (Cth).

Mobile Services means 'public mobile telecommunications services' (as defined in section 32 of the Telco Act) supplied to retail and/or wholesale customers.

Modern Slavery has the meaning given in section 5 of the *Modern Slavery Act 2018* (NSW).

Moral Rights includes the following rights of an author of copyright Material:

- (a) the right of attribution of authorship;
- (b) the right of integrity of authorship; and
- (c) the right not to have authorship falsely attributed.

NSW Government means the government of the State of New South Wales, including any governmental agency, department or authority of New South Wales.

Objectives means to:

- (a) deliver new and improved mobile coverage to regional NSW locations where people live, work and play using Active Infrastructure Sharing;
- (b) encourage competition in the regional telecommunications market to provide consumers with greater quality, affordability and choice in their telecommunications provider;
- (c) identify fit-for purpose commercial and delivery models for Active Infrastructure Sharing that can be implemented at scale in future government funding programs; and
- (d) demonstrate the suitability of different types of Active Infrastructure Sharing solutions in delivering coverage and connectivity outcomes for regional NSW.

Operational Activities means those Activities that are required to operate, maintain and repair an Asset in accordance with this Deed.

Operational Parameters has the meaning set out in clause [4.3\(a\)](#).

Operational Period means, with respect to each Site, the period commencing on the Integration Completion Date at the Site, and expiring on the 10 year anniversary of that Integration Completion Date, unless otherwise agreed by the Department.

Passive Infrastructure Sharing means the sharing of space or physical supporting infrastructure which does not require active operation co-ordination between Access Seekers. For the avoidance of doubt, Passive Infrastructure Sharing includes Site and mast sharing and co-location.

Permitted Passive Sharing Access Seekers has the meaning set out in clause [10.4](#).

Personal Information has the meaning given to that term in the Privacy Laws.

Personnel means in relation to a person, any employee, officer, agent or professional adviser or subcontractor of that agent or adviser.

Privacy Laws means the Privacy and *Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW), the Department's privacy policies, and all other applicable privacy laws, codes and policies, including the *Privacy Act 1988* (Cth).

Project means each of the projects (including the proposed solution(s)) identified in Item 1 and Item 2 of the Project Schedule and more particularly described in the Detailed Proposal.

Project Documents means the Reports to be created by the Recipient and approved by the Department in accordance with this Deed, which are required to be provided in order to achieve the applicable Milestones. For the avoidance or doubt, the Project Documents include the Project Management Plan, the Joint Stakeholder Engagement Plan, the Asset Completion Reports and the Rollout Completion Report.

Project Management Plan means the plan prepared, reviewed and updated by the Recipient, subject to approval by the Department, in accordance with clause [3.2](#) and [Schedule 5](#).

Project Schedule means the schedule set out in [Schedule 2](#).

Project Steering Committee has the meaning given to that term in clause [8.2\(a\)](#).

Quarter means a financial quarter, being the three month period commencing on any 1 January, 1 April, 1 July or 1 October.

Ready For Service or **RFS** means in respect of a Project, the stage that all Consortium Access Seekers have performed their activities under their ASP Funding Deeds such that all of the Assets in respect of all Sites have been installed, tested, commissioned, integrated and otherwise completed in accordance with such ASP Funding Deeds.

Ready For Service Date or **RFS Date** means the actual date that RFS is achieved for a Project.

Recipient Contributions means the financial and in-kind contributions of the Recipient as set out in Item 5 of the Project Schedule.

Related Body Corporate has the meaning given to 'related body corporate' in the Corporations Act, but on the basis that 'subsidiary' has the meaning given to Subsidiary in this Deed and that 'body corporate' includes any entity or trust.

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

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

Replacement Site means a Site selected in accordance with clause 3.8 to replace an Affected Site and which, to the satisfaction of the Department:

- (a) will result in no material change to the Coverage achieved at the Affected Site; and
- (b) involves no additional cost as compared to the Affected Site.

Reports means the reports (and statements) that the Recipient is required to provide to the Department in accordance with clause 15.1 and Schedule 5.

Reputational Proceedings means any inquiry, investigation, conciliation, mediation, arbitration or such similar proceedings against the Recipient or any director, officer, employee, subcontractor or agent of the Recipient that could, or has the potential to, in the reasonable opinion of the Department, have an adverse effect on the reputation of the Project, the Department or NSW Government.

Risk Management Plan means the plan prepared, reviewed and updated by the Recipient, subject to approval by the Department, as set out in Schedule 5. For the avoidance of doubt, the Risk Management Plan must be included in the Project Management Plan.

Rollout Completion means in respect of a Project, that stage when all Sites in that Project have achieved Asset Completion in accordance with this Deed.

Rollout Completion Date means the actual date that Rollout Completion is achieved for a Project.

Rollout Completion Report means the report required to be reviewed and updated by the Recipient, subject to approval by the Department, as set out in Schedule 5.

Rollout Schedule means the table of Milestones and Milestone Dates set out at Figure 1–Rollout Schedule of the Project Schedule.

Schedules means the schedules to this Deed.

Scheme means an arrangement, assignment, composition, merger, amalgamation, reconstruction or moratorium with or for the benefit of creditors or any class or group of creditors (including an administration or arrangement under Part 5.3A of the Corporations Act), other than for the purposes of a solvent reconstruction or amalgamation as approved by the Department.

Serious Incident means an incident that:

- (a) is likely to impact on the Recipient's ability to deliver the Project or otherwise fulfil its obligations under the Deed;
- (b) arises in respect of work, health and safety in connection with the delivery of the Project;
- (c) requires an emergency response, or involves death or serious injury or any criminal activity; or
- (d) has or may attract significant public interest and attention.

Site means the site or sites in regional New South Wales where each Project is to be undertaken, as set out in Item 4 of the Project Schedule.

Site Frustration Event means:

- (a) an event, incident, matter or circumstance which:
 - i. prevents the Recipient from constructing the Asset on the relevant Site;
 - ii. causes a material delay in the construction of the Asset on the relevant Site; or
 - iii. causes a material increase in the cost of constructing the Asset on the relevant Site; or
- (b) the Department declares a Site Frustration Event in accordance with clause 3.6(g)i.

SmartyGrants Portal means the grants administration system through which the Department administers certain aspects of the Project.

Specifications means the specifications and other requirements for the Assets, Activities or other part of the Project as set out in Item 7 of the Project Schedule.

Subcontractor means any person to which the Recipient has subcontracted work in connection with the Project.

Subsidiary has the meaning given to 'subsidiary' in the Corporations Act but so that:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (b) a corporation or trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

Supplier has the meaning given to that term in clause 6(c).

Suspected Breach has the meaning given to that term in clause 25.1.

Target Asset Completion Date of a Site means the target date for the achievement of Asset Completion of the Site, specified as such in Figure 3-Sites of the Project Schedule or as extended in accordance with this Deed.

Target Integration Completion Date of a Site means the target date for the achievement of Integration Completion of the Site, specified as such in Figure 3-Sites of the Project Schedule or as extended in accordance with this Deed or any ASP Funding Deed.

Target Ready For Service Date means the date set out in Item 4 of the Details.

Telco Act means the *Telecommunications Act 1997* (Cth).

Term has the meaning given to that term in clause 2.

Total Funds means the maximum aggregate amount of Funds payable by the Department under this Deed, as set out in the Project Schedule (as may be reduced in accordance with this Deed).

Total Recipient Contributions means the total of the Recipient Contributions as set out in the Project Schedule.

WHS Law means all applicable Laws relating to work health and safety and electrical safety, and includes:

- (a) *Work Health and Safety Act 2011* (Cth);
- (b) *Work Health and Safety Regulations 2011* (Cth); and
- (c) *Work Health and Safety Act 2011* (NSW).

1.2 Interpretation

(a) Reference to:

- i. one gender includes the others;
- ii. the singular includes the plural and the plural includes the singular;
- iii. a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
- iv. a party includes the party's executors, administrators, successors and permitted assigns;
- v. a thing includes the whole and each part of it separately;
- vi. a statute, regulation, code or other law or a provision of any of them includes:
 - A. any amendment or replacement of it; and
 - B. another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
- vii. dollars means Australian dollars unless otherwise stated.

(b) "Including" and similar expressions are not words of limitation.

(c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

- (d) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (e) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Deed or the inclusion of the provision in this Deed.
- (f) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

1.3 Parties

- (a) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (b) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (c) A party which is a trustee is bound both personally and in its capacity as a trustee.

1.4 Priority of documents

If there is any inconsistency between any of the documents forming part of this Deed, those documents will be interpreted in the following descending order of priority to the extent of the inconsistency:

- (a) the Funding Terms;
- (b) the Schedules (with the exception of the Funding Terms);
- (c) any attachments to the Schedules;
- (d) clauses 1-32;
- (e) the Detailed Proposal; and
- (f) documents incorporated by reference in this Deed (except the Detailed Proposal).

2. Term

This Deed begins on the Commencement Date and continues until the later of:

- (a) the date on which the Recipient completes all its obligations under this Deed to the satisfaction of the Department; and
- (b) the date on which the Operational Period which is last in time expires,

unless terminated earlier by the Department (**Term**).

3. The Project and planning

3.1 The Project and Activities

Subject to the terms of this Deed, the Project and all Activities must be carried out in accordance with the Project Schedule (including as depicted in Figure 2 – Project flowchart) and Project Management Plan.

3.2 Project Management Plan

The Recipient must:

- (a) within 30 Business Days of the Commencement Date, develop the Project Management Plan as required for the performance of the Activity in accordance with this clause 3.2 and Schedule 5;
- (b) ensure that the Project Management Plan is consistent with the requirements of this Deed and, as required, is updated from time to time in accordance with this clause 3; and
- (c) provide a copy (even if in draft format) of the Project Management Plan to the Department, promptly upon request.

3.3 Project Documents

- (a) The Recipient must submit the relevant Project Documents to the Department for review and approval in accordance with clauses 3.3 and 3.4 by:
- i. the date described in clause 3.2 for the Project Management Plan (including all plans incorporated in the Project Management Plan);
 - ii. the relevant date or timeframe referred to in clause 15.1, the Project Schedule and/or Schedule 5; or
 - iii. an alternative date agreed by the Department in writing, at its sole discretion.
- (b) The Project Documents must be submitted to the Department electronically via the SmartyGrants Portal in the template provided by the Department, unless otherwise directed by the Department.
- (c) Where applicable, the Recipient must consult with each of the Consortium Access Seekers in developing the Project Documents. Nothing in this clause prevents the Recipient and the Consortium Access Seekers from preparing and submitting a jointly prepared set of Project Documents.
- (d) The Project Documents must:
- i. be in the template or form provided by the Department;
 - ii. be in English;
 - iii. be free of errors or defects;
 - iv. be current, complete, accurate and sufficient to enable the Department and its Personnel to make full and proper use of the relevant Project Documents; and
 - v. comply with the reasonable requirements specified by the Department and other requirements of this Deed.
- (e) A Project Document will not be deemed approved by the Department until the Department notifies the Recipient in writing that it approves the relevant Project Document.
- (f) When the Project Management Plan is approved under this clause 3 or varied in accordance with clause 3.7, the Recipient must provide to each of the Consortium Access Seekers a copy of such approved or varied Project Management Plan. The Department may (but is not required to) provide to each of the Consortium Access Seekers a copy of such approved or varied Project Management Plan.

3.4 Review of Project Documents

- (a) The Department will:
- i. review the relevant Project Document prepared and submitted by the Recipient; and
 - ii. within 20 Business Days of the submission to the Department of the Project Document or resubmitted Project Document (or any alternative timeframe notified by the Department (acting reasonably)):
 - A. approve that Project Document in writing; or
 - B. reject that Project Document or any part of that Project Document in writing if, in its reasonable opinion, the Project Document or part of that Project Document does not comply with the requirements of this Deed or other reasonable requirements specified by the Department (including any inconsistencies or non-compliance with any of the ASP Funding Deeds).
- If the Department does not approve a Project Document or resubmitted Project Document within 20 Business Days of the submission to the Department, then that Project Document or resubmitted Project Document is deemed to have been rejected in whole under clause 3.4(a)ii.B unless otherwise directed by the Department
- (b) If the Recipient and the Consortium Access Seekers submitted a jointly prepared Project Document for review, the Department may approve or reject that Project Document or any part of that Project Document by notice to the Recipient and the Consortium Access Seekers. For clarity, the Department may reject any part of such a jointly prepared Project Document with respect to the Recipient only and accept the rest of that Project Document with respect to the Consortium Access Seekers.

- (c) The Department will accompany any rejection under clause 3.4(a)ii.B or 3.4(b) with a written description of why the relevant Project Document or part of that Project Document does not comply with the requirements of this Deed or other reasonable requirements specified by the Department.
- (d) If the Department gives the Recipient a notice rejecting the relevant Project Document under clause 3.4(a)ii.B or 3.4(b), the Recipient must, within 10 Business Days (or any alternative reasonable timeframe notified by the Department), prepare a revised version of the relevant Project Document or part of that Project Document which addresses all of the amendments and issues required by the Department.
- (e) For the purpose of clause 3.4(d), the Recipient is only required to make amendments to the relevant Project Document or part of that Project Document that have previously been required by the Department to be amended but remain unaddressed by the Recipient in any resubmission of the relevant Project Document.
- (f) The parties must repeat the process in this clause 3.4 (and at least three times) until the Department approves the Project Document in accordance with this clause 3.4 or exercises its rights under clause 3.4(g).
- (g) If the parties repeat the process in this clause 3.4 three or more times and the Department does not approve the Project Document, then without limiting the Department's rights and remedies:
 - i. the Department may cancel the relevant Site to which the Project Document relates or reduce the scope of the Project in accordance with clause 27; or
 - ii. the Department may terminate this Deed immediately upon notice in writing to the Recipient.

3.5 Acknowledgements

The Recipient acknowledges and agrees that:

- (a) the Department is not responsible and accepts no liability for any Claims or Loss in connection with the Project Documents, their approval or rejection;
- (b) the Department will not be acting as 'design authority' and will not assume or owe any duty of care to the Recipient to review or comment on, direct any amendments to or approve the Project Documents, pursuant to clause 3.4;
- (c) any review or comment on, amendments directed to or approval of the Project Documents or failure by the Department to review or comment on, direct amendment to or approve the Project Documents, will not:
 - i. limit or relieve the Recipient of any obligation or liability under this Deed;
 - ii. limit any right the Department has under this Deed;
 - iii. constitute acceptance by the Department of the performance of the Recipient's obligations under this Deed;
 - iv. be considered as a representation or acknowledgement that the Project Documents comply with this Deed; or
 - v. give rise to any claim on the Recipient's part, whether under this Deed or otherwise at Law; and
- (d) the Recipient has not in any way relied (and will not rely) upon any review or comment on, direction or approval by the Department, in relation to the Project Documents or the failure by the Department to perform any such function (including any failure to perform such function correctly).

3.6 Delay and extension of time

- (a) The Recipient must take all reasonable steps to minimise delays.
- (b) The Recipient must:
 - i. notify the Department in writing, as soon as reasonably practicable, of any material delay or anticipated material delay to the progress of the Project or achievement of any Milestone or Asset Completion of a Site, and such notice must include:

- A. the reason for the material delay;
 - B. the anticipated impact on the Project, Milestone or Asset Completion of a Site; and
 - C. the steps the Recipient is taking or will take to overcome the material delay; and
- ii. keep the Department and the Consortium Access Seekers updated as to the status of any such material delay.
- (c) If the anticipated delay to achieving Asset Completion of a Site by its original Target Asset Completion Date is:
- i. 4 weeks or more (and without limiting clause 3.6(d)), the Recipient must update the Rollout Schedule and provide it to the Department by notice in writing; or
 - ii. less than 4 weeks, the Recipient may update the Rollout Schedule and provide it to the Department by notice in writing.
- (d) If the Recipient becomes aware that it will be delayed in achieving Asset Completion of a Site by its original Target Asset Completion Date for any reason by more than 8 weeks, the Recipient must include, in the notice given under clause 3.6(b)i:
- i. details of the actions that the Recipient has taken or proposes to take to remedy, or mitigate the impact of, the delay; and
 - ii. a request for the extension to the Target Asset Completion Date of that Site (**EOT Request**).
- (e) The Department will consider all EOT Requests and will approve or reject the EOT Request within 20 Business Days of receiving it. Subject to clause 3.6(g), the Department must approve an EOT Request if the delay is caused by a Force Majeure Event.
- (f) Upon approval by the Department of an EOT Request, the Recipient must update the Rollout Schedule and provide such updated Rollout Schedule to the Department and Consortium Access Seekers within 10 Business Days.
- (g) If the Recipient submits two or more EOT Requests in respect of the same Site, then without limiting the Department's rights and remedies:
- i. the Department may declare a Site Frustration Event;
 - ii. the Department may cancel the affected Site or reduce the scope of the Project in accordance with clause 27; or
 - iii. the Department may terminate this Deed immediately upon notice in writing to the Recipient.
- (h) The Department may in its absolute discretion extend any Milestone Date(s), the Target Asset Completion Date, the Target Ready For Service Date and/or any other dates relevant to the progress of the Project or achievement of a Milestone, and provide to the Recipient and Consortium Access Seekers notice in writing of such extension. For the avoidance of doubt, the Department reserves the right to grant such extension under this clause 3.6(h) regardless of whether it receives any notice from the Recipient of the kind provided under clause 3.6(b) or any EOT Requests.

3.7 Variation of the Project and Activities

- (a) Subject to clause 3.7(f) and the Funding Terms, if the Recipient wishes to request a variation to the Project Schedule, Project Management Plan and/or Activities (including adjusting Total Funds, Funds, Total Recipient Contributions and/or Recipient Contributions required for one or more Milestones or postponement of a Milestone Date), the Recipient must submit a notice to the Department in writing setting out:
- i. details of the proposed variation to the Project Schedule, Project Management Plan and/or Activities and reasons for the request;
 - ii. in respect of a proposed variation to an Activity, reasons why the Activity cannot be performed in such away as is currently provided in the Project Schedule and Project Management Plan; and

- iii. the impact the proposed variations will have on:
 - A. the Consortium Access Seekers;
 - B. delivery of the Activity;
 - C. Total Funds, Funds, Total Recipient Contributions and/or Recipient Contributions;
 - D. achievement of the Objectives; and
 - E. the Milestones.
- (b) If the Recipient intends to submit a proposed variation that will likely affect any of the Consortium Access Seekers, then the Recipient must:
 - i. provide a copy of the proposed variation request to each of the affected Consortium Access Seekers prior to submission, to enable the Consortium Access Seekers to consider, prepare and submit its own proposed variation (if applicable); and
 - ii. if a Consortium Access Seeker indicates to the Recipient that Consortium Access Seeker wishes to submit its own proposed variation, coordinate the timing of submission with that Consortium Access Seeker so that Recipient's proposed variation and Consortium Access Seeker's proposed variation are consistent and submitted to the Department at the same time.
- (c) If the Recipient receives a copy of any proposed variation from a Consortium Access Seeker prepared under its ASP Funding Deed in relation to a Site, the Recipient:
 - i. may, if applicable, submit its own proposed variation under this clause 3.7; and
 - ii. will coordinate the content and the timing of its submission with the Consortium Access Seeker so that the proposed variations are consistent and submitted to the Department at the same time.
- (d) The Department will give the Recipient a written notice accepting or rejecting the Recipient's request for a variation under this clause 3.7. The Department has absolute discretion in accepting or rejecting the Recipient's request. Without limitation, the Department may reject the Recipient's request if it is inconsistent with the equivalent proposed variation from an affected Consortium Access Seeker. Upon approval by the Department of a variation under this clause 3.7, the Recipient must update the Rollout Schedule and provide such updated Rollout Schedule to the Department and Consortium Access Seekers.
- (e) The Department may require the Recipient and the affected Consortium Access Seekers to meet and discuss the proposed variations with the Department.
- (f) The Recipient must ensure that no variation will adversely affect the Activity, the Project or the Recipient's compliance with this Deed.

3.8 Notification of Site Frustration Event and subsequent variation

- (a) If, during the Term:
 - i. the Recipient determines that there is or is likely to be a Site Frustration Event; or
 - ii. the Department notifies the Recipient of its declaration of a Site Frustration Event in accordance with clause 3.6(g)i,the Recipient must notify each of the Consortium Access Seekers and the Department (unless declared by the Department) no later than 5 Business Days after becoming aware of the Site Frustration Event or likely occurrence of the Site Frustration Event.
- (b) If a notice is issued by the Recipient to the Department under clause 3.8(a):
 - i. the Recipient and Consortium Access Seekers must meet (e.g. by video conference, phone or in person) and, within 20 Business Days from the date of the notice being issued by the Recipient to the Department under clause 3.8(a), in co-operation with the Consortium Access Seekers consider a Replacement Site;

- ii. no later than 20 Business Days from the date of the notice being issued by the Recipient to the Department under clause 3.8(a), the Recipient and the Consortium Access Seekers must by joint notice to the Department request a proposed Replacement Site and include the following information in such joint notice:
 - A. all relevant information regarding the Replacement Site, including co-ordinates, Coverage, costs and any reasons why the site is viable as a Replacement Site;
 - B. reasons for the occurrence of the Site Frustration Event and the steps the Recipient and the Consortium Access Seekers have taken to mitigate against the occurrence of the Site Frustration Event, including relevant supporting information and evidence (for example, reasons why a Site cannot be acquired and evidence that the relevant Authority has refused approval of the Asset/s at the Site);
 - C. a list of alternative sites, including co-ordinates, Coverage, costs, that the Recipient has considered as locations for the Asset/s including reasons why each alternative site was not viable; and
 - D. any other information that is reasonably requested by the Department.
- (c) If a joint notice is issued by the Recipient and Consortium Access Seekers to the Department in accordance with clause 3.8(b)ii, the Department must, within 20 Business Days of receiving such joint notice, provide to the Recipient a written notice accepting or rejecting the request for the proposed Replacement Site. The Department has absolute discretion in accepting or rejecting the Recipient's request. Upon approval by the Department of a proposed Replacement Site under this clause 3.8(c), the Recipient must update the Rollout Schedule and provide such updated Rollout Schedule to the Department and Consortium Access Seekers.
- (d) If:
 - i. the Recipient and the Consortium Access Seekers do not reach agreement on a proposed Replacement Site within 20 Business Days from the date of the notice being issued by the Recipient to the Department under clause 3.8(a); or
 - ii. the Department rejects the Recipient's request for the proposed Replacement Site in accordance with clause 3.8(c);then without limiting the Department's rights and remedies:
 - iii. the Department may cancel the Affected Site or reduce the scope of the Project in accordance with clause 27; or
 - iv. the Department may terminate this Deed immediately upon notice in writing to the Recipient.
- (e) The Recipient (including the Recipient's Personnel) must not inform any person that there is a Site Frustration Event until after the required notices are issued under this clause 3.8, unless otherwise agreed in writing by the Department. This clause 3.8(e) does not prevent the Recipient from:
 - i. informing the Recipient's Personnel that there is a Site Frustration Event; and
 - ii. engaging with local councils on matters related to a potential Site Frustration Event.

4. Activities

4.1 General Activities

Subject to the terms of this Deed, the Recipient must:

- (a) undertake the Activities in accordance with Good Industry Practice and in a cost-effective, timely and expeditious manner in accordance with the Project Schedule and Project Management Plan; and
- (b) meet the Milestone Dates.

4.2 Build Activities

- (a) The Recipient must commence the Build Activities within 10 Business Days after the Commencement Date or another date agreed by the parties. The Build Period is the period commencing from the commencement of the Build Activities and ending on the completion of Build Activities.

- (b) During the Build Period for each Site, the Recipient must:
- i. conduct the Build Activities so as to:
 - A. achieve Asset Completion by the corresponding Milestone Dates (and in any event, no later than the Target Asset Completion Date);
 - B. comply with Good Industry Practice; and
 - C. meet the Specifications,
(together, the **Build Parameters**); and
 - ii. supply, or procure the supply of, all plant and equipment, resources, materials or other works and the provision of all labour and other services necessary to carry out the Build Activities and satisfy the Build Parameters, whether or not expressly referred to in this Deed.
- (c) The Recipient must:
- i. reasonably cooperate and coordinate with the Consortium Access Seekers so that the Recipient and the Consortium Access Seekers can complete their respective activities on the Site in a timely and coordinated manner;
 - ii. keep the Consortium Access Seekers regularly informed of the progress of the Build Activities, the estimated date of Asset Completion, and the estimated date by which the Consortium Access Seekers may carry out and finalise its integration activities and (if applicable) access the Site; and
 - iii. notify the Consortium Access Seekers in writing of the date from which the Consortium Access Seekers may carry out and finalise its integration activities and (if applicable) access the Site, and such notice must be given as early as is practicable and in any case no later than 5 Business Days after Asset Completion of that Site.
- (d) If the Recipient reasonably believes that all Assets at a Site satisfy the Build Parameters, the Recipient must:
- i. on a bi-monthly basis (on such date as may be required by the Department), provide to the Department a report which includes:
 - A. certification that the Assets satisfy the Build Parameters; and
 - B. all reasonable information, documentation and/or other evidence that substantiate the Recipient's belief that the Assets satisfy the Build Parameters,for each Site in which the Recipient reasonably believes all Assets satisfy the Build Parameters (Asset Completion Report). For the avoidance of doubt, a single Asset Completion Report for a single two month period may report on one or more Sites in the applicable two month period; and
 - ii. immediately notify each of the Consortium Access Seekers that Asset Completion has occurred at that Site.
- (e) Following receipt of the Asset Completion Report for a Site but no later than 6 months after the Rollout Completion Date, the Department may engage a third party to independently test and verify whether or not the Assets satisfy the Build Parameters. The Department may notify the Recipient if the Department is not satisfied that the Assets satisfy the Build Parameters, in which case the parties will meet to discuss the Department's concerns, and the Recipient will promptly take such remedial action as is required to ensure that the relevant Assets satisfy such Build Parameters. A Site does not satisfy the Build Parameters until the Department provides to the Recipient notice that the Site has achieved Asset Completion and the Department's concerns (if any) are addressed to the Department's reasonable satisfaction.

4.3 Operational Activities

- (a) During the Operational Period for each Site, the Recipient must carry out the Operational Activities so as to:
- i. meet the Specifications;
 - ii. comply with Good Industry Practice;

- iii. operate, maintain and repair the Assets on the Site in such a manner as to comply with the Recipient's obligations under this Deed; and
 - iv. support and permit the active and passive sharing of the Assets in accordance with clause 10, (together, the **Operational Parameters**).
- (b) The Recipient will be responsible for all costs associated with the Operational Activities (including maintenance, repairs and upgrades to the Assets during the Operational Period for each Site).
- (c) Except as otherwise set out in this Deed, the Department will not:
- i. pay the Recipient any fees or provide any grant, funding or subsidy to support any of the Operational Activities; or
 - ii. make any contribution (of any kind) towards any charge, expense or other cost incurred by the Recipient in connection with the Operational Activities.
- (d) The Department is not liable for, or in connection with, any Loss or Claim (and the Recipient is not entitled to make any Claim) arising out of or in connection with the performance of the Operational Activities under this Deed, except as otherwise set out in this Deed.

5. Funding

5.1 Applicable terms

The parties acknowledge and agree that they will be bound by, and must comply with, the Funding Terms.

5.2 Use of the Funds

- (a) The Recipient must apply, spend or legally commit the Funds only for the purposes of undertaking the Activities and any Project in accordance with the terms and conditions set out in this Deed.
- (b) Without limiting any other right or remedy of the Department, the Department may by notice direct the Recipient not to spend Funds if the Recipient has not achieved a Milestone that was due to be achieved before the date of notification, or the Recipient is otherwise in breach of this Deed.
- (c) The Recipient must not spend any Funds that it has not already legally committed for expenditure after it receives notice from the Department under clause 5.2(b) unless and until the Department notifies the Recipient otherwise.

6. GST

- (a) In this clause 6:
 - i. unless otherwise stated, words and expressions which are not defined in this Deed but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
 - ii. a reference to a party or an entity includes the representative member of any GST group of which the relevant party or entity is a member.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided to the Department under this Deed are exclusive of GST.
- (c) Subject to this clause 6, if a party (**Supplier**) makes a taxable supply to another party (**GST Recipient**) under or in connection with this Deed in respect of which GST is payable, the GST Recipient must pay the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for the taxable supply was specified to include GST). The additional amount is payable at the same time that any part of the consideration for the supply is first paid or provided, subject to the Supplier providing a tax invoice to the GST Recipient.
- (d) If an adjustment event arises in respect of a taxable supply made by the Supplier under this Deed, the amount payable by the GST Recipient will be recalculated to reflect the adjustment event and a payment will be made by the GST Recipient to the Supplier or by the Supplier to the GST Recipient as the case requires. The Supplier must provide an adjustment note to the GST Recipient in accordance with the GST Law.

- (e) If the GST payable in relation to a supply is less than the amount the GST Recipient has paid the Supplier under clause 6(c), the Supplier is only obligated to pay a refund of GST to the GST Recipient to the extent the Supplier receives a refund of that GST from the Australian Taxation Office.
- (f) If a payment to a party under this Deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled on the acquisition of the supply to which that loss, cost or expense relates.

7. Assets

7.1 Acquisition of Assets

The Department acknowledges that the Recipient will use the Funds to acquire Assets and that those Assets will be owned by the Recipient.

7.2 Terms applicable to Asset

The Recipient must use any Asset acquired or built with the Funds in accordance with this Deed and for the purposes of the Activity.

7.3 Assets generally

- (a) In respect of any Asset acquired or built with the Funds, the Recipient must during the Term (unless otherwise agreed with the Department in writing):
 - i. obtain and maintain good title to that Asset;
 - ii. not encumber or dispose of that Asset;
 - iii. hold that Asset securely and safeguard it against theft, loss, damage or unauthorised use;
 - iv. use all reasonable endeavours to maintain that Asset in good working order;
 - v. maintain that Asset (including conducting preventative and remedial maintenance) to at least the same standard, and in the same or more favourable manner, as equivalent or similar assets on the rest of the Recipient's network;
 - vi. maintain all appropriate insurances in respect of that Asset;
 - vii. if required by Law, maintain registration and licensing of that Asset;
 - viii. be fully responsible for, and bear all risks relating to, the use or disposal of that Asset; and
 - ix. if requested by the Department, maintain an Assets register as specified by the Department, and provide a copy of the register to the Department on request.
- (b) If any Asset is lost, damaged or destroyed, the Recipient must reinstate or replace the Asset (including by using the proceeds of insurance) without using any of the Funds and this clause 7 continues to apply to the reinstated or replaced Asset.

7.4 Sale, disposal and dealings

- (a) If the Recipient owns an Asset, the Recipient must not dispose of, transfer or otherwise deal with that Asset unless:
 - i. the Department provides prior written consent to the Recipient that the Recipient may dispose of, transfer or otherwise deal with the relevant Asset;
 - ii. the disposal is conducted on an arms-length basis; and
 - iii. any conflicts of interest relevant to the disposal, transfer or dealing are disclosed to the Department pursuant to clause 20.3.
- (b) If the Recipient owns an Asset and the Recipient disposes of (including any write-offs) or transfers that Asset to a Related Body Corporate of the Recipient, then clause 7.4(a) does not apply and consent of the Department is not required if the Recipient provides a warranty to the Department that the Recipient's Related Body Corporate has sufficient financial and operational capacity to perform the obligations under this Deed in connection with the Asset.

8. Performance and compliance

8.1 Undertakings

Without limiting the Recipient's obligations set out in this Deed, the Recipient must:

- (a) (**co-operation**): co-operate with the Department, the Consortium Access Seekers and other parties, and attend any meetings reasonably requested by the Department, for the purpose of achieving the Objectives;
- (b) (**consortium**): have entered into, and continue to be bound by, a Consortium Agreement with each Consortium Access Seeker;
- (c) (**standards**): undertake the Project and Activities diligently, efficiently, safely and to a high professional standard in accordance with this Deed;
- (d) (**Laws**): comply with:
 - i. all applicable Laws, including any WHS Laws;
 - ii. all relevant Australian industry standards, codes, best practice and guidelines or, where none apply, relevant international industry standards, codes, best practice and guidelines; and
 - iii. applicable NSW government policies and all reasonable directions issued by the Department to the Recipient;
- (e) (**adverse effect notification**): during the Term:
 - i. provide to the Department a report promptly after becoming aware of any incidents or developments (such as materialisation of a risk) which results in a material adverse impact to any part of the Project, including incidents or developments that will delay or prevent any part of the Build Activities, increase the cost of the Build Activities or decrease the expected services at a Site;
 - ii. advise the Department as soon as possible of any circumstances which have or which are reasonably likely to have a material adverse effect on the Recipient's ability to comply with this Deed;
 - iii. advise the Department as soon as possible of any breach of any Laws or any incident in respect of any Site that may be notifiable to any Authority under WHS Laws;
 - iv. advise the Department as soon as possible of any circumstances related to the Project which have or are reasonably likely to have a material adverse effect on the Department's or the NSW Government's reputation; and
 - v. notify the Department as soon as practicable of any significant concerns of local community groups in respect of the Project or Activities of which the Recipient becomes aware;
- (f) (**transactions with a Related Party**): ensure that any transaction between the Recipient and any Related Parties in connection with the Project or Activities are on terms no less favourable to the Recipient than the terms of a comparable transaction negotiated at arms' length with an unrelated third party;
- (g) (**monitoring**): meet with the Department at the times and in the manner reasonably required by the Department to discuss any issues in relation to this Deed, the Project or the Activities;
- (h) (**information**): provide any information reasonably requested by the Department in connection with this Deed, the Project or the Activities;
- (i) (**visitations**): during the Term:
 - i. allow and provide the Department and its Personnel with escorted access to the Sites; and
 - ii. demonstrate the activities relating to or arising from the Project to the Department and its Personnel and provide detailed explanations where requested,provided that all persons accessing the Sites must comply with any health, safety or other policies and procedures applicable to the relevant Sites as a condition of entry; and

- (j) (**notification**): notwithstanding any other provision of this Deed, notify the Department immediately if it becomes aware that:
- i. it has not undertaken the Project and/or Activities as required under this Deed or has not spent the Funds in accordance with this Deed;
 - ii. it has, or may have, committed a breach of this Deed;
 - iii. it has received, or has requested to receive, other funds from the NSW Government or the Commonwealth in connection with the Project and/or Activities;
 - iv. an Insolvency Event has occurred or is likely to occur with respect to the Recipient; or
 - v. there is a change to any of the following (after the Commencement Date):
 - A. any other funds provided for the use of the Project and/or the Activities; or
 - B. any legal and/or beneficial right to use, access or have title to any Asset (including any land rights), where such right was provided by an Authority.

8.2 Project governance during Build Period

- (a) Within 3 months following the Commencement Date, a steering committee, group or body will be established by the Department for the purpose of overseeing and/or coordinating the delivery of the Project during the Build Period (including in relation to the development, construction, commissioning and operation of the Project) (**Project Steering Committee**).
- (b) The parties acknowledge and agree that:
- i. the Department will, in its absolute discretion, send at least one nominated representative to observe any meeting of the Project Steering Committee;
 - ii. the Project Steering Committee will include representatives from the Consortium Access Seekers;
 - iii. the Recipient must provide the Department with at least 5 Business Days' prior written notice of each meeting of the Project Steering Committee in order to give the Department a reasonable opportunity to send a representative to observe each meeting;
 - iv. all decisions or recommendations made, and actions taken, by the Project Steering Committee are based on the Project Steering Committee's own information, enquiries, independent advice and/or considerations;
 - v. any contribution made to the Project Steering Committee by the Department as an observer will not bind the Project Steering Committee; and
 - vi. the Project Steering Committee's decisions, recommendations and actions will not bind the Department.
- (c) The Recipient acknowledges and agrees that neither the Department nor any Department observer will have any liability to the Recipient in connection with the Department observer's attendance or non-attendance at any Project Steering Committee meetings.

9. Site risks and access

9.1 Site risks

- (a) As between the Department and the Recipient, the Recipient accepts sole responsibility for, and assumes the risk of, all Loss arising out of or in connection with the nature, characteristics and physical conditions of a Site, including:
- i. all aspects of health and safety for, or in connection with, the Activity and as required under WHS Law;
 - ii. all contamination in, under or around a Site and the removal of any contamination from a Site;
 - iii. any non-standard soil or subsurface conditions; and
 - iv. environmental, heritage, native title and geotechnical risks.

- (b) Except as otherwise set out in this Deed, the Recipient will be responsible for, at its own cost:
- i. felling and lopping of trees, clearing and removing vegetation and undergrowth, and undertaking any required excavations or other land surface preparations;
 - ii. erecting temporary workshops, sheds and other buildings and erecting fencing or other security; and
 - iii. installing any services, including water, electricity, gas, fuel, telephone, drainage, sewerage, fibre optic cable and electronic communication services,
- to the extent necessary to perform the Activities, and the Department is not liable for, or in connection with, any Claim or Loss arising out of or in connection with the nature, characteristics and physical or environmental conditions of a Site.
- (c) The Recipient must in performing the Activities and in co-operation with the Consortium Access Seekers:
- i. not bring on to a Site, or produce, any contaminants, pollution or other hazardous materials, or otherwise cause any contamination; and
 - ii. make good any contamination caused or contributed to by the Recipient on a Site or arising out of or in any way in connection with the Activities.

9.2 Access to Sites

The Recipient is solely responsible for procuring each Site and obtaining access to and from a Site as required to perform the Activities (including any Authorisations required for such access) and the Department is not liable for, or in connection with, any Claims or Loss arising out of or in connection with any failure to obtain access to a Site or delay in accessing a Site.

10. Mobile Services and sharing partnership

10.1 Mobile Services

- (a) Subject to clause 10.5, the Recipient must, during the Operational Period of each Site:
- i. ensure the Project provides, at a minimum, 4G Mobile Services at the Site in accordance with the Specifications;
 - ii. in partnership with the Consortium Access Seekers, maintain or improve the Coverage at the Site, and not deliberately reduce the Coverage provided at the Site in any material way (other than temporarily to the extent necessary for the maintenance, upgrade, repair or replacement of the Assets, Site and Backhaul required to deliver the Mobile Services);
 - iii. ensure that the Assets, Site and Backhaul which provide Mobile Services from the Site are:
 - A. made available as equivalent or similar services to those generally available from the Recipient on the rest of the Recipient's network; and
 - B. subject to the price and non-price terms and conditions for equivalent or similar services offered by the Recipient over the rest of the Recipient's network.
- (b) The Department acknowledges that:
- i. the Recipient does not guarantee that Assets, Site and Backhaul which provide Mobile Services will be fault free;
 - ii. the Coverage provided by Access Seekers from this Site may vary during the Operational Period for each Site based on environmental and technical factors beyond the Recipient's control; and
 - iii. the Recipient is permitted to modify or replace the Assets, Site and Backhaul which provide Mobile Services at a Site to the extent that the Recipient undertakes a network, technology or platform upgrade or enhancement, including any upgrades to existing network (including 5G) or any successor technology or platform, but any material ongoing reduction in Coverage caused by such modification or replacement must be prior approved by the Department.

10.2 Active and passive sharing offerings

- (a) Subject to this clause 10, the Recipient must during the Operational Period in respect of the Assets at each Site:
- i. offer Active Infrastructure Sharing to all Consortium Access Seekers in accordance with clause 10.3(a)i and Late Entrants in accordance with clause 10.3(a)ii; and
 - ii. offer Passive Infrastructure Sharing to all Late Entrants that are not MNOs in accordance with clause 10.4, including an applicable Authority.
- (b) In performing its obligations (including providing access to Access Seekers) under this clause 10, the Recipient must comply with:
- i. all applicable Laws;
 - ii. the Code and any other instrument, declaration, code made pursuant to applicable Laws in connection with access to telecommunications facilities and infrastructure; and
 - iii. the requirements of the Department and any Authority.

10.3 Active Infrastructure Sharing

- (a) During the Operational Period of each Site, the Recipient must:
- i. offer to provide access to the Assets on the Site, the Site and associated Backhaul to the Consortium Access Seekers to enable the Consortium Access Seekers to make use of such Assets, Site and Backhaul to provide Mobile Services on the Consortium Access Seeker's network on the basis of Active Infrastructure Sharing; and
 - ii. subject to the physical and capacity constraints of the Assets on the Site, offer to provide access to the Assets on the Site, the Site and associated Backhaul to Late Entrants to enable the Late Entrants to make use of such Assets, Site and Backhaul to provide Mobile Services on the Late Entrant's network on the basis of Active Infrastructure Sharing,
(collectively, **Active Sharing Services**).
- (b) The Recipient must ensure that its offer to Late Entrants under clause 10.3(a)ii is made in accordance with the Telco Act and Facilities Access Code.
- (c) The Recipient must not offer to provide access to the Assets on the Site, the Site or associated Backhaul to Access Seekers for the purposes of Active Infrastructure Sharing other than in accordance with clauses 10.3(a) and 10.3(b).

10.4 Passive Infrastructure Sharing

- (a) During the Operational Period of each Site, the Recipient must subject to the physical and capacity constraints of the Assets on the Site, offer to provide access to those parts of the Assets on the Site, the Site and associated Backhaul that are not required for the purpose of Active Infrastructure Sharing in accordance with clause 10.3 (Relevant Facilities) to Late Entrants that are not MNOs (**Permitted Passive Sharing Access Seekers**) to enable the Permitted Passive Sharing Access Seekers to make use of such Assets, Site and Backhaul to provide services which are not Mobile Services on the Permitted Passive Sharing Access Seeker's network on the basis of Passive Infrastructure Sharing.
- (b) The Recipient must not offer to provide access to the Assets on the Site, the Site and associated Backhaul:
- i. to any person for the purpose of Passive Infrastructure Sharing other than in accordance with clause 10.4(a);
 - ii. if the provision of such access comprises Passive Infrastructure Sharing:
 - A. that would have a material detrimental impact on the provision of Active Sharing Services in accordance with clause 10.3; or
 - B. in respect of Sites that are not designated as 'suitable for co-location' in Figure 3–Sites of the Project Schedule; or

iii. for the avoidance of doubt:

- A. to Consortium Access Seekers for the purpose of Passive Infrastructure Sharing; or
- B. to Late Entrants that are MNOs for the purpose of Passive Infrastructure Sharing.

10.5 Licence granted to the Department

- (a) The Recipient grants a licence the Department on the terms set out in Schedule 4.
- (b) The provisions of Schedule 4 are essential terms of this Deed.
- (c) Any breach by the Recipient of Schedule 4 will entitle the Department to terminate this Deed immediately upon notice in writing to the Recipient.
- (d) The rights of the Recipient in clause 10 are subject to the terms of Schedule 4.

11. Government Material

11.1 Ownership

- (a) Ownership of all Government Material, including Intellectual Property Rights in that Material (whether in existence prior to the Commencement Date, developed independently of this Deed or developed in connection with this Deed), remains vested at all times in the NSW Government (including the Department, if applicable).
- (b) The Department (subject to any existing third party rights) grants the Recipient a limited, revocable, non-sublicensable, non-exclusive licence to use any Government Material made available to the Recipient under this Deed for the sole purposes of this Deed in accordance with any conditions or restrictions specified in this Deed or that the Department may notify to the Recipient. The Recipient may grant sub-licences to Access Seekers, but only for the purposes of this Deed.

11.2 Possession of Government Material

On and from the expiry of the Term, the Recipient may retain all Government Material remaining in its possession, unless otherwise notified by the Department.

11.3 Maintain Government Material

The Recipient must keep safely and maintain Government Material the Recipient has been given for the purposes of this Deed.

12. Intellectual Property Rights

12.1 Ownership

Subject to this clause 12, as between the Department and the Recipient (but without affecting the position between the Recipient and a third party) the Intellectual Property Rights in Activity Material vest immediately in the Recipient on creation.

12.2 Licence of Activity Material and Project Documents

The Recipient grants to the Department (or must procure for the Department) a permanent, perpetual, irrevocable, royalty-free, worldwide, non-exclusive licence (including with a right of sublicense) to use, copy, reproduce, communicate, adapt, modify and exploit the Activity Material and Project Documents, including the Intellectual Property Rights in the Activity Material and Project Documents, for the purposes of:

- (a) the Grant Opportunity, the Project and this Deed;
- (b) evaluating the Project (and further phases of the Project); and
- (c) developing other public policy and programmes.

12.3 Licence of Existing Material

This clause 12 does not affect the ownership of any Intellectual Property Rights in any Existing Material. The Recipient, however, grants to the Department or must arrange for the grant to the Department of a permanent, perpetual, irrevocable, royalty-free, world-wide non-exclusive licence (including with a right of sub-licence) to use, copy, reproduce, communicate, adapt, modify and exploit the Existing Material of the Recipient, including the Intellectual Property Rights in Existing Material, in conjunction with the Project Documents and the Activity Material, for the purposes of:

- (a) the Grant Opportunity, the Project and this Deed;
- (b) evaluating the Project (and further phases of the Project); and
- (c) developing other public policy and programmes.

12.4 Dealing with Intellectual Property Rights

The Recipient:

- (a) must, if requested by the Department to do so, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 12; and
- (b) warrants that the Recipient is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Activity Material, the Project Documents and the Existing Material in accordance with this clause 12.

12.5 Specified Acts relating to Moral Rights

For the purposes of this clause 12, the Specified Acts means any of the following classes or types of acts or omissions by or on behalf of the Department:

- (a) reproducing, adapting or exploiting all or any part of the Existing Material, Activity Material or Project Documents without attribution of authorship;
- (b) supplementing the Existing Material, Activity Material or Project Documents with any other Material;
- (c) using the Existing Material, Activity Material or Project Documents in a different context to that originally envisaged;
- (d) releasing the Existing Material, Activity Material or Project Documents to the public under an open access licence; or
- (e) using, copying, reproducing, communicating or adapting the Existing Material, Activity Material or Project Documents to the extent necessary for the Department to exercise its rights and perform its obligations under this Deed.

12.6 Consent to Specified Acts

- (a) The Recipient agrees:
 - i. to obtain from each author of any Existing Material, Activity Material or Project Documents a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts by the Department or any person claiming under or through the Department; and
 - ii. upon request, to provide the executed original of any such consent to the Department.
- (b) For the avoidance of doubt, this clause 12.6 does not extend the scope of the licences in clauses 12.2 and 12.3.

13. Confidentiality and privacy

13.1 Confidentiality

- (a) Each party must:
- i. keep the Confidential Information of the other party confidential and secure;
 - ii. not use or copy the Confidential Information of the other party for any purpose other than to perform that party's obligations or exercise that party's rights under this Deed;
 - iii. only allow access to the Confidential Information of the other party to the officers, employees, agents and professional advisers of that party who have a need to know the Confidential Information and who are bound by obligations of confidence to that party to at least the standard contemplated by this clause 13.1;
 - iv. not disclose the Confidential Information of the other party to any third party; and
 - v. not use the Confidential Information of the other party to the disadvantage of that other party.
- (b) The obligations of confidence contemplated by clause 13.1(a) do not apply to the extent that:
- i. the Confidential Information is required to be disclosed under applicable Law;
 - ii. a party provides written consent to the disclosure of the Confidential Information;
 - iii. disclosure is required for the purposes of this Deed, including to a party's legal and financial advisers on a confidential basis; and
 - iv. the information disclosed is already in the public domain other than due to a breach of this Deed by a party.
- (c) Despite anything else in this Deed, the Department may disclose any Confidential Information:
- i. to Authorities as required or authorised by applicable Law; and
 - ii. to Ministers and their advisors or in response to a request by a House or a Committee of the Parliament of the State of New South Wales.
- (d) The Recipient acknowledges that the GIPA Act requires documents to be disclosed subject to specified exemptions and therefore disclosure of this Deed may be required under that Act.
- (e) Nothing in this Deed prevents the Department disclosing the identity of the Recipient, the nature of the Project or the amount of the Funds by way of a statement of a policy or governmental nature including any statement in Parliament.
- (f) The Recipient acknowledges that the Department may disclose to the Recipient information about or provided by an Authority to the Department in connection with this Deed, or the Consortium Access Seekers to the Department under an ASP Funding Deed, and agrees that such information must be treated as Confidential Information of the Department for the purposes of this Deed.
- (g) The Department is expressly permitted to disclose information received from the Recipient under this Deed to the Consortium Access Seekers to the extent that the Department considers such disclosure is necessary or desirable for the successful delivery of the Project, provided that the Department discloses such information under the confidentiality terms of the ASP Funding Deed.

13.2 Privacy

The Recipient must:

- (a) use and disclose Personal Information provided by the Department or collected by the Recipient under this Deed only for the purposes of performing its obligations under this Deed;
- (b) comply with all applicable Privacy Laws in connection with the Activities as if it were a person subject to the Privacy Laws;
- (c) not do any act or engage in any practice that would breach the Privacy Laws if done or engaged in by the Department and must not do or omit to do anything that causes the Department to be in breach of the Privacy Laws;

- (d) comply with all reasonable directions by the Department to the Recipient relating to the Department's compliance with the Privacy Laws or resolution of any complaint alleging a breach of any Privacy Laws in connection with the Project;
- (e) comply with any directions, guidelines, determinations or recommendations of the Information Commissioner or Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this Deed;
- (f) ensure that any subcontract entered into for the purpose of fulfilling the Recipient's obligations under this Deed contains provisions to ensure that the Subcontractor has the same awareness and obligations as the Recipient has under this clause 13.2, including this requirement in relation to subcontracts; and
- (g) immediately notify the Department if the Recipient becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 13.2, whether by the Recipient or any Access Seekers or Subcontractor.

14. Publicity

Unless otherwise notified by the Department to the Recipient in writing:

- (a) the Recipient must not, without the prior written consent of the Department:
 - i. engage in any publicity concerning the Project or the Funds (including public announcements, public notices, land owner requests (except with respect to seeking Authorisations), or similar activities or events);
 - ii. publicise or report on the Project or the awarding of the Funds in any public channels (including media announcements, website announcements and the like); or
 - iii. publish any promotional materials in relation to the Project or the Funds in any media, channel or forum;
- (b) the Recipient must provide the Department with at least 25 Business Days' notice of any proposed media event, unless as otherwise agreed by the Department in writing;
- (c) the Recipient must co-operate with the Department and comply with the Department's directions and applicable policies in relation to all publicity in connection with the Project, the Activities and the Funds. Without limiting the foregoing, the Recipient must comply with the NSW Government Brand Framework (available at <https://www.nsw.gov.au/branding/nsw-government-brand-framework>);
- (d) the Recipient must, within 30 Business Days of the date of this Deed, develop and agree in writing with the Department and Consortium Access Seekers a Joint Stakeholder Engagement Plan in connection with the Project;
- (e) the Recipient must update the Joint Stakeholder Engagement Plan Quarterly to ensure that for each Site that has not yet reached Asset Completion, there are communication activities:
 - i. with relevant stakeholders including the local community, local councils, and relevant State and Federal members of Parliament;
 - ii. sufficient to ensure that the community receives regular updates on the Activities; and
 - iii. to ensure the community is promptly informed of any changes to the location of the Site or changes to the Target Asset Completion Date, including the reasons for the change;
- (f) the Department may publicise, make public announcements in respect of and report on the Project and the award of the Funds. Without limiting any other provision of this Deed, the Department and the NSW Government may include or refer to the name of the Recipient, the Project (including the location of the Sites) and amounts of Funds awarded in any report, publications, announcements and communications, both internally within the NSW Government and to the public; and

- (g) unless otherwise directed in writing by the Department, the Recipient must ensure that the NSW Government's support for the Project is acknowledged on all promotional materials (including announcements, events, websites, activities and signage as specified by the Department) in accordance with the NSW Government's Funding Acknowledgement Guidelines (available at <https://www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines/funding-acknowledgment-guidelines>).

15. Reporting and other Materials (records, books and accounts)

15.1 Reporting

The Recipient must provide to the Department:

- (a) each of the Reports of the nature, within the timeframes, and at the intervals set out in Schedule 5;
- (b) each of the Reports required to be provided by the Recipient to the Department in order to achieve the applicable Milestone; and
- (c) such other information as the Department may request from time to time in relation to the Project, the Activities and the use of the Funds.

Each Report provided by the Recipient to the Department under this Deed must be submitted to the Department electronically via the SmartyGrants Portal in the template provided by the Department (unless otherwise directed by the Department).

15.2 Records, books and accounts

The Recipient must:

- (a) at all times maintain, and must ensure that its Subcontractors maintain, full, true, separate and up-to-date records, books and accounts in relation to the Project, the Activities, the Funds and this Deed, including operational records, financial records and records in relation to application of the Funds. Such records, books and accounts must, without limitation:
 - i. detail all Activities undertaken by the Recipient;
 - ii. record all receipts and expenses related to the Activities, including those involving foreign exchange transactions;
 - iii. enable all receipts and expenses related to the Activities to be identified and reported on in accordance with this Deed;
 - iv. enable the amounts payable by the Department under this Deed to be determined;
 - v. be kept in a manner that permits them to be conveniently and properly audited or reviewed; and
 - vi. enable the extraction of all information relevant to this Deed; and
- (b) retain and require its Subcontractors to retain for a period of 1 year after the expiry or termination of this Deed, all records, books and accounts relating to the Project, the Activities, the Funds and this Deed.

15.3 Costs

The Recipient must bear its own costs of complying with this clause 15.

16. Evaluation, accounts and audit

16.1 Evaluation

- (a) The Department may undertake an evaluation of the Project and/or the Activities at any time, either directly or through a third party adviser.
- (b) The Recipient must provide at its own cost, all reasonable assistance to the Department (and any adviser) for such review or evaluation.

- (c) The Recipient must provide, upon request by the Department, any information reasonably required by the Department on the implementation and progress of the Project and/or the Activities in the format requested by the Department.

16.2 Audits and access

- (a) Subject to clause 16.2(d), during the Term and for 1 year after the expiry or termination of this Deed, the Department or its nominee may:
 - i. conduct audits relevant to the performance of the Recipient's obligations under this Deed and in respect of the Project and/or the Activities; and
 - ii. upon giving the Recipient reasonable notice, access the Recipient's premises, require the provision of records and information, and inspect and copy any documentation or records reasonably necessary for that purpose.
- (b) The Recipient must, in accordance with clause 15.2, retain all relevant records relating to the Project and/or the Activities for at least 1 year after the expiry or termination of this Deed.
- (c) The Recipient must provide all reasonable assistance to the Department and its nominee (if any) in connection with any such audit or access.
- (d) In carrying out an audit or accessing the Recipient's premises, the Department will, and will procure that any nominee, use reasonable endeavours to minimise any disruption to the activities contemplated in this Deed caused by any audit or access, and will comply with the Recipient's reasonable workplace and site access policies as notified by the Recipient to the Department in writing from time to time.
- (e) Where an audit under this clause 16.2 identifies, in the Department's opinion, that the Recipient is in breach of this Deed, then the Department may recover from the Recipient the costs incurred in conducting that audit. The Recipient acknowledges and accepts that it is not permitted to use Funds to meet any such costs.

17. Transparency

17.1 Notifiable incidents

The Recipient must notify the Department immediately of any of the following:

- (a) when it becomes aware of Alleged Misconduct or a Serious Incident in relation to the delivery of the Project;
- (b) material complaints received in relation to the delivery of the Project;
- (c) the occurrence of any event which may cause adverse publicity in relation to the Project;
- (d) if the Recipient believes on reasonable grounds that a Consortium Access Seeker intends to leave the consortium that it shares with the Recipient;
- (e) if another NSW Government body or agency terminates an arrangement with the Recipient under which it receives funding; or
- (f) any current, pending or threatened Reputational Proceedings.

17.2 GIPA Act

- (a) The Department and the Recipient are committed to principles of transparency consistent with the GIPA Act.
- (b) The Department and the Recipient will act consistently with the requirements of the GIPA Act in performing their obligations under this Deed.
- (c) To the extent that the Recipient or any Subcontractor is required to provide services to the public on behalf of the Department, within 3 days of receiving a written request by the Department, the Recipient, or any relevant Subcontractor, must provide the Department with immediate access to information referred to in section 121(1) of the GIPA Act contained in records held, and in such a medium, as the Department may reasonably require.

- (d) The Department may in its absolute discretion publish detailed information about work under the Deed on the Department's website. This may include information about the Recipient's policies, plans, processes and the Department's evaluations of the Recipient's performance under this Deed.

18. Warranties

18.1 General warranties

The Recipient warrants and undertakes to the Department that:

- (a) **(corporate power)**: it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (b) **(authority)**: it has the right, power and authority to enter into, perform and observe its obligations under this Deed;
- (c) **(consortium)**: it and the Consortium Access Seekers have entered into a Consortium Agreement with each other to allow the Recipient to perform its obligations under this Deed;
- (d) **(internal governance)**: the execution, delivery and performance of this Deed has been duly and validly authorised by it;
- (e) **(binding obligations)**: this Deed constitutes legal, valid and binding obligations and is enforceable in accordance with its terms, subject to laws generally affecting creditors' rights and to principles of equity;
- (f) **(transaction permitted)**: it will not be breaching any Law, Authorisation or agreement by signing and performing this Deed;
- (g) **(no misleading information)**: all information provided to the Department in connection with this Deed, the Project and the Activities is true, correct and complete in all material respects and is not misleading at the time given to the Department;
- (h) **(not a trustee)**: it does not enter into this Deed as trustee of any trust (unless otherwise stated in this Deed);
- (i) **(employee entitlements)**: it is not subject to any judicial decision against it relating to employee entitlements (not including decisions under appeal) where it has not paid the claim;
- (j) **(Authorisations)**: it has obtained and will maintain all Authorisations necessary for the purposes of this Deed, the Project and the Activities;
- (k) **(legal capacity)**: it has full legal capacity to own its own property, undertake the Project and/or Activities and to carry out the transactions under this Deed (as applicable);
- (l) **(financial capacity)**: it has, or will have, sufficient funds to complete the Project and/or Activities;
- (m) **(insolvency)**: no Insolvency Event has occurred, and there are no reasonable grounds to suspect that an Insolvency Event will occur, in respect of the Recipient; and
- (n) **(qualifications)**: the Recipient and its Personnel and Subcontractors (as applicable) have the necessary experience, skill, knowledge, expertise and competence to undertake the Project and/or Activities and hold (or will hold when required) such licences, permits or registrations as are required under all applicable Laws to undertake the Project and/or Activities, and are fit and proper people.

18.2 Build Activities warranty

The Recipient warrants and undertakes to the Department that each Asset will, on Asset Completion, comply with the applicable Build Parameters.

18.3 Operational Activities warranties

The Recipient warrants and undertakes to the Department that, on and from Asset Completion of each Site:

- (a) each Asset will satisfy the Operational Parameters;

- (b) the Recipient can and will provide the Operational Activities using the Assets in accordance with this Deed; and
- (c) the Recipient can and will obtain and maintain any licences, approvals, permissions, powers or consents necessary for the Operational Activities.

18.4 Reliance on warranties

- (a) Each warranty given by the Recipient under this clause 18 will, unless otherwise specified, be made on the signing of this Deed by the Recipient and be repeated each day of the Term.
- (b) As soon as practicable after becoming aware of any matter which is likely to impact upon the accuracy of a warranty given under this clause 18 (if applicable), or the Recipient's ability to comply with a warranty given under this clause 18 (if applicable), the Recipient must give written notice to the Department detailing that matter and its likely impact on the Recipient's ability to comply with that warranty. This does not limit any rights of the Department in respect of such warranty.
- (c) The Recipient acknowledges and agrees that the Department has entered into this Deed and performs this Deed in reliance on the warranties given by the Recipient under this clause 18.

19. Liability and indemnities

19.1 Liability

- (a) The Department is not responsible and accepts no liability for:
 - i. any aspect of the operation of the Recipient's or Access Seeker's business;
 - ii. the Project;
 - iii. the payment of any amount over and above the Funds that may be needed or requested in connection with the Project;
 - iv. any Claim against the Department in respect of, and any Loss of the Recipient in connection with:
 - A. the exercise by the Department of any rights of the Department under or in connection with any ASP Funding Deed; or
 - B. any Consortium Agreement in respect of any act or omission by the Department under this Deed;
 - v. any cost overruns or overspends in relation to the Project; or
 - vi. any other circumstances where the Recipient has insufficient funds to carry out the Project.
- (b) To the fullest extent permitted by Law:
 - i. the Department's liability in connection with this Deed is limited in the aggregate to the Total Funds; and
 - ii. the Recipient releases and discharges, and must procure that its Personnel releases and discharges, the Department from all Claims for any Loss which, but for the provisions of this clause, might be brought or made by the Recipient and its Personnel against the Department.

19.2 Indemnities

The Recipient indemnifies the Department and its Personnel (referred to in this clause 19.2 as **those indemnified**) from and against any Loss arising out of or as a consequence of:

- (a) the carrying out of any works or services by the Recipient, the Access Seekers or any of their Subcontractors, or the operation of the Assets (where applicable) or other equipment or plant in connection with the Project and/or Activities; or
- (b) without limiting the previous paragraphs:
 - i. any breach of this Deed by the Recipient or its Personnel;

- ii. any negligence in relation to the Project and/or the Activities on the part of the Recipient or its Personnel; or
- iii. any wrongful or unlawful act or omission in relation to the Project and/or the Activities on the part of the Recipient or its Personnel.

The Department holds the rights in this clause 19.2 on trust for its Personnel and may enforce the indemnity against the Recipient for and on behalf of its Personnel.

19.3 Liability reduced proportionally

The Recipient's liability to indemnify those indemnified will be reduced proportionally to the extent that any breach of this Deed by those indemnified, or any negligent act or omission of those indemnified, contributed to the Loss.

20. Dealing with risk

20.1 Risk management

- (a) The Recipient is responsible for, accepts and must manage all the risks of and associated with the Activities, including any rights and obligations that the Recipient might have in relation to the Access Seekers.
- (b) The Recipient must maintain appropriate risk mitigation measures in connection with this Deed, the Project and the Activities which may include preparing, maintaining and using risk registers.

20.2 Insurance

The Recipient must, in connection with the Project, the Activities and the Assets:

- (a) maintain, and use reasonable endeavours to ensure that its Subcontractors maintain:
 - i. 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;
 - ii. workers' compensation insurance as required by all relevant Laws relating to workers compensation;
 - iii. a professional indemnity insurance policy during the Term and for a period of 7 years from the expiry or termination of the Deed;
 - iv. the insurances required by Item 5 of the Details for the minimum sum provided; and
 - v. other insurances that would be maintained by a prudent business undertaking the Project and the Activities or operating the Assets (where applicable), or reasonably required by the Department;
- (b) not do, permit or suffer any act, matter or thing or omission whereby any of the policies referred to in this clause 20.2 may be vitiated, rendered void or voidable; and
- (c) if requested by the Department, provide certificates of currency or other sufficient evidence to satisfy the Department that such insurances have been procured and maintained and diligently pursue any Claim under those insurances.

Without limitation to clause 20.2(a), the Recipient warrants that it has and will maintain appropriate insurance to cover any Loss or Claim it may incur in relation to this Deed.

20.3 Conflict of interest

- (a) The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Deed, no conflict of interest exists or is likely to arise in the performance of its obligations under this Deed.
- (b) If, during the Term a conflict of interest arises, or appears likely to arise, the Recipient must:
 - i. notify the Department immediately in writing;
 - ii. make full disclosure of all relevant information relating to the conflict; and
 - iii. take such steps as the Department may require to resolve or otherwise deal with the conflict.

21. Change in Control

- (a) The Recipient must obtain the prior written consent of the Department in respect of any Change in Control of the Recipient during the Term.
- (b) The Department must not unreasonably withhold its consent under clause 21(a).
- (c) For purposes of clause 21(b) and without limitation, it will be deemed reasonable to withhold consent where the Department has formed the view, acting reasonably, that:
 - i. the Change in Control would be inconsistent with the basis upon which the Department formed a view that the Recipient:
 - A. met the applicable assessment criteria;
 - B. was eligible to receive the Funds; or
 - C. was capable of undertaking the Project and the Activities (as applicable), at the Commencement Date;
 - ii. the Change in Control would result in the Recipient not having the financial, technical or commercial capability to develop, construct, commission or operate the Project or perform its obligations under this Deed; or
 - iii. the Change in Control would materially reduce the likelihood of achieving the Objectives.
- (d) The Recipient must provide the Department with any information about the proposed Change in Control reasonably requested by the Department to allow the Department to assess whether to provide its consent, including any information relating to the matters set out in clause 21(c).
- (e) The Department may require as a condition to its consent that any person acquiring control of the Recipient (**Acquiring Party**, as defined in the definition of Change in Control) enters into a deed in a form and substance acceptable to the Department pursuant to which such Acquiring Party undertakes to ensure that the Recipient complies with its obligations under this Deed.
- (f) The Recipient represents and warrants that it has disclosed to the Department any circumstances or intentions of which it is actually aware that are reasonably likely to give rise to a Change in Control of the Recipient before the Commencement Date.

22. Modern Slavery

- (a) The Recipient acknowledges that it is not aware of any Modern Slavery risks or practices in its supply chain or operations.
- (b) Should the Recipient become aware of any Modern Slavery:
 - i. risks in its supply chain or operations, it must notify the Department of those risks and advise the Department of the steps it is taking to eliminate or minimise those risks; or
 - ii. practices being carried out within its operations or supply chain, it must:
 - A. in writing, immediately notify the Department of those practices and of the remediation action it proposes to take; and
 - B. at its cost, implement the remediation action referred to in clause 22(b)ii.A and take any such additional remediation action as may be required by the Department acting reasonably.
- (c) If the Recipient is a 'reporting entity' for the purposes of any State or Commonwealth Modern Slavery legislation, including the *Modern Slavery Act 2018* (Cth), it must comply with such legislation and provide the Department with a copy of any report it is required to prepare under that legislation at the Department's request.

23. Force Majeure

23.1 Force Majeure Event

In this Deed, **Force Majeure Event** means any event or circumstance or combination of events or circumstances occurring after the Commencement Date:

- (a) that is not within the reasonable control or foresight of the Recipient;
- (b) the occurrence or effect of which the Recipient could not have avoided through compliance with its obligations under this Deed and the exercise of reasonable care and conducting its activities in accordance with Good Industry Practice; and
- (c) that causes or results in the prevention or delay of the Recipient from performing its obligations under this Deed,

including the following, to the extent they satisfy clauses 23.1(a) to 23.1(c):

- (d) an act of God, including floods and fire but excluding inclement weather such as prolonged periods of precipitation;
- (e) war, hostilities, invasion, kidnapping, act of foreign enemies, military mobilisation or embargo;
- (f) acts or threats of terrorism;
- (g) rebellion, revolution or insurrection; and
- (h) riot, vandalism or sabotage.

23.2 Exclusions

Notwithstanding clause 23.1, the following will not constitute a Force Majeure Event:

- (a) lack of funds, financial hardship or the inability of the Recipient to make a profit or achieve a satisfactory rate of return resulting from performance or failure to perform its obligations under this Deed;
- (b) the inability of the Recipient to obtain financing or insurance, either completely or on commercially acceptable terms;
- (c) a shortage of materials, consumables, equipment or utilities required by the Recipient, except to the extent it is itself caused by a Force Majeure Event;
- (d) a breakdown or failure of the Recipient's equipment, property or an asset caused by normal wear and tear;
- (e) any event or circumstance arising due to a failure by the Recipient to properly maintain any equipment, property or an asset or to hold sufficient stock of spares, except to the extent it is itself caused by a Force Majeure Event;
- (f) strikes, industrial disturbances or other industrial action other than on a national or State-wide basis;
- (g) the failure of any person (other than the Department) to perform an obligation it owes to the Recipient, except to the extent such failure is caused by any event or circumstance that, had it happened to the Recipient, would have been a Force Majeure Event under this Deed; and
- (h) the failure or inability of any person to pay any sum due and payable.

23.3 Non-performance excused

Subject at all times to clauses 23.2 and 23.4, non-performance (wholly or in part) as a result of a Force Majeure Event by the Recipient of any obligation required by this Deed to be performed will, other than as explicitly set out in this Deed:

- (a) be excused during the time and to the extent that the Force Majeure Event prevents such performance, wholly or in part; and
- (b) not give rise to any liability to the Department or any liability of any kind arising out of, or in any way connected with, that non-performance.

23.4 Notification and diligence

The benefit of clause 23.3 is conditional on the Recipient complying with all of the following at all applicable times:

- (a) notifying the Department as soon as reasonably possible:
 - i. of full particulars of the Force Majeure Event;
 - ii. of the date of commencement and expected duration of the Force Majeure Event; and
 - iii. providing an estimate of the period of time required to enable it to resume full performance of its obligations;
- (b) keeping the Department informed of any material changes or developments to any of the matters referred to in clause 23.4(a);
- (c) using all reasonable diligence and means consistent with Good Industry Practice to remedy or abate the Force Majeure Event as expeditiously as possible, including making payment or applying any relevant insurance proceeds to remedying or abating the Force Majeure Event as expeditiously as possible;
- (d) resuming performance as expeditiously as possible after the Force Majeure Event has terminated or abated to an extent that permits resumption of performance (in whole or in part); and
- (e) notifying the Department when the Force Majeure Event has terminated or abated to an extent that permits resumption of performance (in whole or in part) to occur.

23.5 Termination or cancellation or reduction in scope for prolonged Force Majeure Event

If non-performance by the Recipient due to a Force Majeure Event continues for a period of more than 60 consecutive days, the Department may:

- (a) terminate this Deed immediately by giving the Recipient written notice; or
- (b) cancel or reduce the scope of the Project in accordance with clause 27.

24. COVID-19

24.1 C-19 Emergency

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**).

24.2 C-19 Emergency procedure

- (a) 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:
 - i. the nature and extent of the obligations affected by the C-19 Emergency;
 - ii. the ways in which the C-19 Emergency will affect its ability to perform those obligations; and
 - iii. 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.
- (b) When a party receives a notice under this clause 24.2, 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 this Deed.

24.3 Termination for C-19 Emergency

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

- i. there is likely to be significant delay before the Recipient will be able to complete its obligations; or
 - ii. the Deed is no longer viable,
- the Department may terminate the Deed by notice, with effect on the date stated in the notice.
- (b) The Recipient releases the Department from any claims in connection with the termination of this Deed under this clause 24.3.

25. Suspension

25.1 Suspension for Suspected Breach

If the Department has a right under any other provision of this Deed to suspend this Deed or acting reasonably believes that:

- (a) the Recipient has, or is reasonably likely to have, breached this Deed;
- (b) the Recipient is unlikely to be able to achieve the Objectives; or
- (c) there is a serious concern relating to the Recipient's performance of its obligations under this Deed or its undertaking or operation of the Project that requires investigation,

(each a **Suspected Breach**), the Department may, by written notice to the Recipient, immediately suspend the Department's obligations to provide any Funds under this Deed pending resolution of the Suspected Breach under this clause 25.1.

25.2 Investigation of Suspected Breach

The Department will take all reasonable steps to investigate a Suspected Breach as expeditiously as possible. The Recipient must respond to any requests for information or provide any assistance reasonably required to allow the Department to complete its investigation.

25.3 Rights following investigation

- (a) If, on completion of its investigation, the Department reasonably concludes that the Suspected Breach is unsubstantiated, its obligations to provide funding under this Deed will resume and the Department will promptly notify the Recipient.
- (b) If, on completion of its investigation, the Department reasonably concludes that the Suspected Breach is substantiated, the Suspected Breach will be treated as a breach of this Deed and clause 26.1 will apply.

26. Breach of this Deed and termination

26.1 Defaults

- (a) If in the Department's opinion (acting in good faith and reasonably), the Recipient has not complied with its obligations under this Deed in a manner which seriously compromises its capacity to undertake the Activity, the Department may:
 - i. if the Department considers on reasonable grounds that the non-compliance is capable of remedy – by notice require the Recipient to:
 - A. remedy the non-compliance within 30 Business Days, and if such non-compliance is not remedied within that time then clause 26.2(d) will apply; or
 - B. immediately suspend the payment of the Funds to the Recipient and require the Recipient to prepare and submit to the Department within 10 Business Days a draft plan describing the actions and measures which the Recipient will diligently pursue to remedy the non-compliance (including the proposed cure period which must be no longer than 2 months, unless a later period is agreed by the Department in writing) (**Draft Cure Plan**); or
 - ii. if the Department considers on reasonable grounds that the non-compliance is not capable of remedy – by notice terminate this Deed immediately.

- (b) Within 10 Business Days after receipt of a Draft Cure Plan which has been submitted by the Recipient under clause 26.1(a)i.B, the Department must, acting reasonably, either:
 - i. approve the Draft Cure Plan by notifying the Recipient; or
 - ii. reject the Draft Cure Plan by notifying the Recipient and providing reasons to the Recipient for its rejection.
- (c) If the Department approves a Draft Cure Plan pursuant to clause 26.1(b)i (**Approved Cure Plan**):
 - i. the period of time in the Approved Cure Plan to remedy the default is the cure period (**Applicable Cure Period**); and
 - ii. the Recipient must comply with and implement the Approved Cure Plan (or otherwise diligently pursue the remediation of the default) and remedy the default within the Applicable Cure Period.
- (d) If the Department rejects a Draft Cure Plan pursuant to clause 26.1(b)ii, the Recipient, in consultation in good faith with the Department, must amend the Draft Cure Plan to meet the Department's reasonable requirements and submit the amended Draft Cure Plan to the Department for the Department's approval, in which case clause 26.1(b) will apply to the amended Draft Cure Plan as if it were originally submitted under clause 26.1(a)i.B.
- (e) If the Recipient:
 - i. fails to submit a Draft Cure Plan in accordance with clause 26.1(a)i.B or the Department rejects a Draft Cure Plan pursuant to clause 26.1(b)ii;
 - ii. fails to amend a rejected Draft Cure Plan to meet the Department's requirements and submit the amended Draft Cure Plan in accordance with clause 26.1(d); or
 - iii. fails to comply with and implement an Approved Cure Plan (or otherwise diligently pursue the remediation of the non-compliance),and such failure is not remedied by the Recipient within 4 Business Days of notice from the Department regarding that failure, the Department may terminate this Deed immediately by giving the Recipient a second notice.

26.2 Termination for breach

The Department may terminate this Deed with immediate effect by giving notice to the Recipient, if:

- (a) within 2 months following the Commencement Date (or such other date agreed by the Department), the Recipient has failed to enter into a Consortium Agreement with any of the Consortium Access Seekers;
- (b) any Consortium Agreement or ASP Funding Deed in relation to the Project is terminated for any reason;
- (c) the Department has a right under any other provision of this Deed to terminate this Deed;
- (d) the Recipient breaches a provision of this Deed and does not remedy the breach within 30 Business Days' following notice by the Department to remedy the breach;
- (e) there is, in the Department's opinion, an unacceptable delay or anticipated delay to the progress of the Project or the achievement of any Milestones;
- (f) the Recipient commits a material breach of clause 10;
- (g) the Recipient engages in Project-related publicity without the consent of the Department or the Recipient otherwise breaches clause 14;
- (h) the Recipient ceases business or becomes subject to an Insolvency Event;
- (i) the Recipient Abandons the Project or otherwise indicates that it is unable or unwilling to comply with this Deed;
- (j) the Recipient commits a wilful breach of this Deed or any fraud in connection with this Deed, the Project or any Activities;

- (k) the Department is reasonably satisfied that any statement provided by the Recipient and relied on by the Department to approve the Funds is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the Funds;
- (l) the Recipient fails to maintain progress towards completion of the Project to the extent reasonably satisfactory to the Department;
- (m) there is a Change in Control of the Recipient which the Department reasonably believes will negatively affect the Recipient's ability to comply with its obligations under this Deed;
- (n) there has been or there is any current, pending or threatened Reputational Proceedings; or
- (o) the Recipient no longer has the requisite authorisations, licences, accreditations, registrations or consents to perform its obligations under this Deed.

27. Cancellation or reduction for convenience

27.1 Cancellation or reduction

- (a) The Department may cancel or reduce the scope of the Project (in whole or in part):
 - i. at any time by notice to the Recipient with immediate effect in accordance with:
 - A. clause 3.4(g)i where the Department does not approve a Project Document;
 - B. clause 3.6(g) where the Recipient submits two or more EOT Requests in respect of the same Site;
 - C. clause 3.8(d) if the Department elects to cancel the Affected Site or reduce the scope of the Project;
 - D. clause 23.5 in respect of a prolonged Force Majeure Event;
 - ii. at any time by notice to the Recipient with immediate effect if:
 - A. any Consortium Agreement or ASP Funding Deed in relation to the Project is terminated for any reason; or
 - B. the scope of the Project under any Consortium Agreement or ASP Funding Deed is reduced pursuant to the terms of the applicable Consortium Agreement or ASP Funding Deed; or
 - iii. at any time by providing 20 Business Days' notice to the Recipient for any reason, including:
 - A. due to a change in government policy; or
 - B. due to a Change in Control of the Recipient which the Department reasonably believes will negatively affect the Recipient's ability to comply with this Deed.
- (b) On receipt of a notice to cancel or reduce the scope of the Project under clause 27.1(a), the Recipient agrees to:
 - i. stop the performance of the relevant obligations as specified in the notice;
 - ii. take all available steps to minimise any Loss resulting from such cancellation or reduction;
 - iii. continue performing any part of the Project that is not affected by the notice if requested to do so by the Department; and
 - iv. in the event of a:
 - A. reduction, within 10 Business Days report on any amount of the Funds paid to the Recipient not yet spent or legally committed, and such amounts must be repaid or dealt with in accordance with clause 29; or
 - B. cancellation, provide the Department within 7 Business Days such information as may be required by the Department:
 - (1) to verify that the amount of the Funds paid to the Recipient in accordance with this Deed; and

- (2) identify any part of the Funds not spent or legally committed as at the date the notice of cancellation is received, which must be repaid or dealt with in accordance with clause 29.

(c) The Department will act reasonably in exercising its rights under this clause 27.1.

27.2 Consequences of cancellation or reduction

- (a) In the event of a cancellation or reduction under clause 27.1(a), the Department is liable to the Recipient only to:
 - i. pay any part of the Funds due and owing for Activities satisfactorily performed as at the date of the notice, but only to the extent that those monies have been spent or legally committed on the Activities; and
 - ii. reimburse any reasonable and substantiated expenses the Recipient unavoidably incurs that relate directly to such cancellation or reduction that are not covered by clause 27.2(a)i.
- (b) In the event of reduction, the amount of the Funds will be reduced in proportion to the reduction in the scope of the Project, as reasonably determined by the Department.
- (c) The Department's liability to pay any amount under this clause 27:
 - i. is subject to the Recipient's compliance with this Deed;
 - ii. will not include:
 - A. any compensation for loss of prospective profits or benefits that would have been conferred on the Recipient but for the cancellation or reduction in scope of the Deed under this clause 27; and
 - B. any liability owed by the Recipient to any Access Seeker affected by the cancellation or reduction; and
 - iii. is limited to an amount that, when added to all other amounts already paid under this Deed, does not exceed the amount of the Total Funds.

28. Consequences of termination

28.1 Impact on payments and Funding

- (a) Upon the termination or expiry of this Deed:
 - i. all payments due under this Deed will immediately cease;
 - ii. the Department is not obliged to pay to the Recipient any compensation, or any outstanding amount of Funding under this Deed (including in respect of any liability that the Recipient may have to one or more Access Seekers); and
 - iii. the Recipient must immediately suspend dealing with the Funds in its possession or control.
- (b) If this Deed is terminated by the Department in accordance with its terms, the Department is liable to the Recipient only to pay any part of the Funds due and owing for Activities satisfactorily performed as at the effective date of termination in accordance with this Deed.

28.2 Provision of documentation and unspent Funds

Upon termination or expiry of this Deed, the Recipient must deliver to the Department within 20 Business Days:

- (a) all Reports due under this Deed at the date of termination or expiration; and
- (b) any unspent or legally uncommitted Funds, or Funds not spent in accordance with the Deed, which will be a debt due to and recoverable by the Department, unless the Department explicitly directs the Recipient to retain the unspent Funds and such direction is evidenced in writing.

28.3 Accrued rights

Termination of this Deed will not affect the accrued rights and remedies of the parties prior to termination.

29. Repayments of the Funds

29.1 Circumstances giving rise to repayment

Notwithstanding anything else in this Deed, the Department may, in its absolute discretion, require the Recipient to repay:

- (a) (**overpaid or misspent funds**): at any time, the amount of any Funds or any other amounts which, in the Department's opinion (acting reasonably), have:
 - i. been overpaid to the Recipient;
 - ii. have not been spent or legally committed at the end of the Term; or
 - iii. been spent or used other than in accordance with this Deed;
- (b) (**breach**) if this Deed is terminated by the Department pursuant to clause 26.2, the full amount of any Funds which have been paid to the Recipient by the Department under this Deed;
- (c) (**Abandonment**): an amount equal to all the Funds provided under this Deed if the Recipient Abandons the Project prior to its completion and does not resume performance of the Project; or
- (d) (**wilful or fraudulent breach**): at any time, an amount equal to all the Funds paid to the Recipient if the Recipient has wilfully or fraudulently breached this Deed.

29.2 Repayment notice

The Department may give the Recipient a repayment notice requiring the Recipient to repay to the Department an amount which the Department is entitled to recover under clause 29.1. If the Department gives the Recipient such notice, the Recipient must, within 20 Business Days of the date of the repayment notice, repay the amount specified in the repayment notice.

29.3 Consequences of repayment notice

- (a) If the Department issues a repayment notice under this clause 29 requiring the Recipient to repay any Funds:
 - i. the Recipient must pay interest on any part of the amount that is outstanding at the end of the time period specified in the notice until the outstanding amount is repaid in full; and
 - ii. the Department may recover the amount and any interest under this Deed as a debt due to the Department without further proof of the debt being required.
- (b) Interest payable under this 29.3 will be accrued as daily interest at a rate equivalent to 3% per annum above the rate of CPI (Consumer Price Index – All Groups, Weighted Average of Eight Capital Cities) for the relevant period.

29.4 Acknowledgement

The Recipient acknowledges that the amounts to be paid to the Department under this clause 29 are a genuine pre-estimate of the losses incurred by the Department for the defaults described in this clause 29.

30. Dispute resolution

30.1 Disputes resolution generally

- (a) If any dispute arises in connection with this Deed, it must be resolved according to this clause 30.
- (b) Either party may give the other a notice in writing (**Dispute Notice**) setting out the details of a dispute. Within 5 Business Days after the date on which a party gives the other party a Dispute Notice, representatives of the parties must meet and use reasonable endeavours to resolve the dispute.
- (c) To the extent that a dispute affects the Recipient's arrangement with any of the Consortium Access Seekers, the Recipient must consult with the Consortium Access Seeker in the management of the dispute resolution process.

- (d) If the dispute is not resolved in the meeting of the representatives of the parties under clause 30.1(b), senior management representatives of the parties must, within 10 Business Days after the receipt of the Dispute Notice under clause 30.1(b), meet and use reasonable endeavours to resolve the dispute.

30.2 Referral to mediation

- (a) If a dispute is not resolved in accordance with clause 30.1(d) within 20 Business Days of the Dispute Notice under clause 30.1(b), the dispute must be referred to mediation according to clause 30.2(b).
- (b) Where a dispute is referred to mediation, the parties:
- i. will conduct the mediation in New South Wales in accordance with the mediation rules of the Resolution Institute;
 - ii. will jointly appoint the mediator, or if the parties cannot agree on the mediator within 5 Business Days of referral to mediation, the Chairperson of the New South Wales Chapter of the Resolution Institute will determine the mediator;
 - iii. may be legally represented at the mediation;
 - iv. will each bear their own costs in connection with the mediation, the mediation venue and the mediator; and
 - v. will continue to perform their obligations under this Deed notwithstanding the existence of the dispute.

30.3 Other rights

- (a) It is a condition precedent to the right of either party to commence litigation other than for interlocutory relief that it has complied with clauses 30.1 to 30.2.
- (b) Each party must:
- i. pay its own costs of complying with this clause 30; and
 - ii. continue to perform its obligations under this Deed notwithstanding the existence of a dispute.

30.4 Disputes between Consortium Access Seekers and Consortium Access Providers

If any dispute arises between the Recipient and any Consortium Access Seekers in connection with this Deed and/or a Consortium Agreement (**Consortium Dispute**):

- (a) the dispute must be resolved between the parties involved in the Consortium Dispute, to the exclusion of the Department;
- (b) the Department will not bear any risk or costs in connection with the Consortium Dispute;
- (c) if the dispute is not resolved between the parties involved in the Consortium Dispute within a reasonable period of time from when the Consortium Dispute arises, the dispute must be referred to mediation. Where a Consortium Dispute is referred to mediation, the parties involved in the Consortium Dispute:
- i. will conduct the mediation in Australia in accordance with the mediation rules of the Resolution Institute;
 - ii. will jointly appoint the mediator, or if the parties cannot agree on the mediator within 5 Business Days of referral to mediation, the Chairperson of the New South Wales Chapter of the Resolution Institute will determine the mediator;
 - iii. may be legally represented at the mediation;
 - iv. will each bear their own costs in connection with the mediation, the mediation venue and the mediator;
 - v. will continue to perform their obligations under this Deed notwithstanding the existence of the Consortium Dispute;
 - vi. will promptly notify the Department of the outcome of the mediation;

- (d) the Recipient must provide to the Department as and when required by the Department any requested information regarding the Consortium Dispute and the proposed resolution (if any); and
- (e) if the parties involved in the Consortium Dispute are unable to resolve the Consortium Dispute within 120 days from the dispute arising, the Department may terminate this Deed immediately by notice in writing to the Recipient.

31. Assignment, novation and subcontracting

31.1 Assignment, transfer or novation by Recipient

The Recipient must not assign, transfer, novate, create any security interest or other interest in or deal in any other way with any of its right, title to or interest in this Deed without obtaining the prior written consent of the Department which it may withhold in its absolute discretion.

31.2 Assignment, transfer or novation by the Department

- (a) The Department may assign, transfer or novate this Deed or any of its rights or obligations under or in connection with this Deed (in whole or in part):
 - i. to another Government Body; or
 - ii. for machinery of government changes, including if, by operation of law, the Department is reconstituted into a new body or legal entity or the functions of the Department, relevant to this Deed, are transferred to a different body or legal entity,by providing notice to the Recipient.
- (b) If Department gives notice to the Recipient under clause 31.2(a):
 - i. from the date of that notice that other Government Body, body or legal entity will assume the responsibilities and rights of the Department as if it were a named party to this Deed; and
 - ii. if required by Department, all parties will execute a deed of novation or any other document reasonably required by the Department to effect the assignment, transfer or novation.

31.3 Subcontracting

Where the Recipient subcontracts any aspect of the Project and/or Activities, it is fully responsible for:

- (a) undertaking the Project and/or Activities, and for the performance of all of its obligations under this Deed; and
- (b) the Subcontractor's acts and omissions.

32. General

32.1 No security

The Recipient must not, without the prior written consent of the Department, use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of any litigation:

- (a) the Funds; or
- (b) this Deed or any rights under this Deed.

32.2 Costs and duty

- (a) Each party must pay its own costs of negotiating, preparing, executing and varying this Deed.
- (b) The Recipient must pay any taxes and duties payable in respect of this Deed and the Project.

32.3 Notices and communications

- (a) Any notice, approval or consent must be:
 - i. in writing, in English and from a person duly authorised by the party; and

- ii. sent by express post or by email to the recipient's address (as applicable) specified in Item 1 and Item 2 of the Details (or as updated by notice from time to time).
- (b) Any notice, approval or consent takes effect when it is taken to be received and is taken to be received:
- i. if sent by express post, on the Business Day after the date it was mailed if mailed before 5.00pm or otherwise on the second Business Day after it was mailed; or
 - ii. if sent by email, on the day and at the time it is sent (as recorded on the sender's server), unless the sender receives an automated message that the email has not been delivered, or the intended recipient of the notice notifies the sender within 1 Business Day that the email has not been delivered, but if the delivery or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day in the receiver's locality.

32.4 Entire agreement

This Deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

32.5 Variation

Except as otherwise provided for in this Deed, no agreement or understanding varying or extending this Deed is legally binding upon either party unless the agreement or understanding is in writing in the form of a deed of amendment and signed by both parties.

32.6 Further assurance

Each party must do, at its own cost, everything reasonably necessary (including executing documents) to give full effect to this Deed and any transaction contemplated by it.

32.7 Severability

A term, or part of a term, of this Deed that is illegal or unenforceable may be severed from this Deed and the remaining terms, or parts of the terms, of this Deed continue in force.

32.8 Survival

Clauses 5.2 (Use of the Funds); 15.2(b) (Records, books and accounts); 16 (Evaluation, accounts and audit); 17.2 (GIPA Act); 18 (Warranties); 19 (Liability and indemnities); 20.2 (Insurance); 29 (Consequences of termination); 29 (Repayment of the Funds); 30 (Dispute resolution); 32.8 (Survival) and 32.14 (Governing law) survive the expiry or termination of this Deed, together with any provisions of this Deed which expressly or by implication from its nature is intended to survive the expiry or termination of this Deed.

32.9 Exercise of rights and waiver

- (a) Except where this Deed expressly states otherwise, a party may, in its absolute discretion, give conditionally or unconditionally, or withhold, any acceptance, agreement, approval or consent under this Deed.
- (b) A waiver of any provision of or right under this Deed must be in writing and signed by the party entitled to the benefit of that provision or right and is effective only to the extent set out in any written waiver.

32.10 Relationship

This Deed does not create a relationship of employment, agency or partnership between the parties. The parties must not represent themselves, and must ensure that their officers, employees, agents and Subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

32.11 Indemnities

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion and expiry of this Deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

32.12 Counterparts

This Deed may be executed in counterparts. All executed counterparts constitute one document.

32.13 Electronic execution

A party may execute this Deed (and any variation and renewal of this Deed) with a digital signature generated by DocuSign or Adobe Sign, or by any other generally accepted technology which the parties agree satisfies applicable requirements for execution by digital signature of the document (including requirements of the *Electronic Transactions Act 1999* (Cth) and any equivalent State or Territory legislation). A party who receives such a digital signature may assume that such execution was validly and lawfully performed by the other party.

32.14 Governing law

This Deed is governed by the law of New South Wales and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales.

DRAFT

Executed as a deed and delivered on the date shown on the first page.

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 of Regional NSW** ABN 19 948 325 463 by its authorised signatory, but not so as to incur personal liability, in the presence of:

Signature of witness

Signature of authorised representative

Name of witness (BLOCK LETTERS)

Name of authorised representative (BLOCK LETTERS)

Address of witness

DRAFT

You (Company/Organisation)

Signed sealed and delivered for and on behalf of [#insert] ABN [#insert] in accordance with section 127 of the Corporations Act 2001:

Signature of Director/Company Secretary

Signature of Director

Name of Director/Company Secretary
(BLOCK LETTERS)

Name of Director (BLOCK LETTERS)

Schedule 1 – Details

Item number	Description	Details
1	The Department's details	<p>The Crown in right of the State of New South Wales acting through the Department of Regional NSW ABN: 19 948 325 463 Address: 1 Monaro Street, Queanbeyan NSW 2620 Contact: Manager, Regional Digital Connectivity Phone: [#insert number] Email: mcp.grants@regional.nsw.gov.au</p>
2	The Recipient's details	<p>[#insert] ABN: [#insert] Address: [#insert address] Contact: [#insert name] Phone: [#insert number] Email: [#insert email]</p>
3	<p>Commencement Date (clause <u>2</u>)</p>	[The date of this Deed.]
4	<p>Target Ready For Service Date (clause <u>1.1</u>)</p>	31 December 2025
5	<p>Insurances (clause <u>20.2</u>)</p>	

Schedule 2 – Project Schedule

Item 1	Item 2	Item 3	Item 4	Item 5	Item 6	Item 7
Project ID	Project name	Consortium Access Seekers	Site(s)	Recipient Contribution	Funds	Specifications
[#TBA]	[#TBA]	[#TBA] [#Drafting note: To insert the Access Seekers that form part of the consortium. This item is intentionally blank at present, and will be populated based on the structure and team composition of the successful consortium.]	[#TBA]	[#TBA]	[#TBA]	As set out in the Detailed Proposal, including: • [#TBA]
[#TBA]	[#TBA]	[#TBA]	[#TBA]	[#TBA]	[#TBA]	[#TBA]
[#TBA]	[#TBA]	[#TBA]	[#TBA]	[#TBA]	[#TBA]	[#TBA]
[#TBA]	[#TBA]	[#TBA]	[#TBA]	[#TBA]	[#TBA]	[#TBA]

Schedule 2 – Project Schedule

Figure 1 – Rollout Schedule

Milestone number	Milestone	Reports required to achieve Milestone	Milestone Date	Recipient Contributions (excluding GST)	Funds (i.e. NSW Government contributions) (excluding GST)
1	[#TBA]	[#TBA]	[#TBA]	[#TBA]	[#TBA]
2	[#TBA]	[#TBA]	[#TBA]	[#TBA]	[#TBA]
3	[#TBA]	[#TBA]	[#TBA]	[#TBA]	[#TBA]
		Total			0

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Schedule 2 – Project Schedule

Figure 2 – Project flowchart

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Schedule 2 – Project Schedule

Figure 3 – Sites

Site ID	Description and information	Coordinates	Specifications	Coverage	Length of state or national highways	Size in square km of new handheld coverage	Funding required per site including consideration of recipient vs government	Date of SAED expected	Target Asset Completion Date	Target Integration Completion Date	Consortium Access Seekers
[#TBA]	[#TBA -General geographic area description]	[#TBA -Lats and longs]	[#TBA -Site specifications including solution type, retail mobile service, tower height and backhaul type]	[#TBA -Coverage metrics including number of premises and government assets within new handheld coverage]	[#TBA]	[#TBA]	[#TBA]	[#TBA]	[#TBA]	[#TBA]	[#TBA]

Schedule 3 – Funding Terms

1. Definitions and interpretation

In this Schedule, unless the contrary intention appears:

- (a) terms which are capitalised have the same meaning as set out in clause 1 of the Deed; and
- (b) the following terms have the following meanings:
 - i. **Actual Asset Capital Costs** means the total construction costs (including all materials and equipment, labour and services) of the Assets that the Recipient expended or legally committed for or in relation to an individual Site.
 - ii. **Additional Asset** means an asset to be constructed by the Recipient at an Additional Site that the parties agree to add to the Project Schedule in accordance with clause 3.3(d) of these Funding Terms.
 - iii. **Additional Site** has the meaning given to that term in clause 3.3(d) of these Funding Terms.
 - iv. **Bank Account** has the meaning given to that term in clause 5(a) of these Funding Terms.
 - v. **Cost Overrun**, in respect of a Site, means the amount by which the Actual Asset Capital Costs of the Site exceeds the Estimated Asset Capital Costs for that Site.
 - vi. **Cost Underrun**, in respect of a Site, means the amount by which the Actual Asset Capital Costs of the Site is less than the Estimated Asset Capital Costs for that Site.
 - vii. **Determination Notice** has the meaning given to that term in clause 2.2(a) of these Funding Terms.
 - viii. **Estimated Asset Capital Costs** means, in respect of a Site, the Recipient's estimate of the Actual Asset Capital Costs of that Site as specified in the Project Schedule.
 - ix. **Payment Criteria** has the meaning given to that term in clause 2.3 of these Funding Terms.
 - x. **Proposed Additional Sites** has the meaning given to that term in clause 3.3(b) of these Funding Terms.
 - xi. **Reconciliation Statement** has the meaning given to that term in clause 3.1(b)ii of these Funding Terms.
 - xii. **Undisbursed Funds** means the Total Funds less any amounts already paid to the Recipient under this Deed.

2. Funding

2.1 Funds

- (a) Subject to satisfaction of the Payment Criteria, the Department will pay the Funds to the Recipient in respect of each Milestone, in accordance with the Project Schedule, Project Management Plan and these Funding Terms.
- (b) The Department may set-off any money due for payment by the Department to the Recipient under this Deed against any money owed by the Recipient:
 - i. to the Department under this Deed or any other agreement between the parties under which the Department provides funding to the Recipient; or
 - ii. to the NSW Government under any other agreement.

2.2 Funds Payment

- (a) The Department must, within 20 Business Days of its receipt from the Recipient of the applicable Report corresponding to the satisfaction of a Milestone and all other information reasonably required for the Department to determine whether or not the Payment Criteria for a Milestone are satisfied, provide the Recipient with a notice setting out:

- i. the Department's determination as to whether or not the Payment Criteria have been satisfied; and
- ii. if the Department has determined that the Payment Criteria have not been satisfied, the reasons for that determination,

(Determination Notice).

- (b) After the Department has provided to the Recipient a Determination Notice confirming that the Payment Criteria for a Milestone have been satisfied, the Department must, within 20 Business Days of receiving the applicable correctly rendered invoice (in accordance with clause 4 of these Funding Terms), deposit the corresponding Funds payable upon achievement of that Milestone into the Bank Account.

2.3 Payment Criteria

The Recipient must satisfy the following **Payment Criteria**, each in a form and substance that is acceptable to the Department, as a condition precedent to payment or release of the Funds in connection with a Milestone:

- (a) the Recipient must have submitted an invoice which complies with the requirements set out in clause 4 of these Funding Terms;
- (b) the Recipient must, in respect of each Milestone, have achieved the relevant Milestone and confirmed to the Department that, in the Recipient's opinion, the relevant Milestone has been achieved in accordance with the Rollout Schedule and Project Management Plan;
- (c) the Recipient must have provided all Reports to the Department in accordance with Schedule 5 due to be provided in order to achieve the applicable Milestone;
- (d) the aggregate Funds requested, when taken with all other Funds previously provided to the Recipient under this Deed, must not exceed the Total Funds;
- (e) the Recipient has entered into, and continues to be bound by, a Consortium Agreement with each of the Consortium Access Seekers; and
- (f) the Department, acting reasonably, must be satisfied that the Recipient is not in breach of this Deed at the relevant time.

2.4 Contributions

- (a) Other than with respect to payment of the Funds in accordance with this Deed, the Recipient is responsible for providing or securing all funds and resources, and bearing all costs necessary, to carry out the Project and Activities (including on account of cost overruns).
- (b) Unless otherwise agreed by the Department and the Recipient in writing, the Recipient must ensure that the Recipient Contributions are provided and used for the Project in accordance with the Project Schedule and Project Management Plan.

3. 3 Cost overruns and underruns

3.1 Reconciliation Statement

- (a) The Parties acknowledge that for any particular Site there may be a Cost Overrun or a Cost Underrun.
- (b) Within 20 Business Days from the date on which each Quarter commences during the Build Period, the Recipient will provide the Department with a statement:
 - i. setting out the Actual Asset Capital Costs and the Estimated Asset Capital Costs for each Site that achieved Asset Completion; and
 - ii. setting out the balance of Cost Underruns against Cost Overruns (each a **Reconciliation Statement**).

- (c) Each Reconciliation Statement must include the following information:
- i. for each Site that has reached Asset Completion:
 - A. the Actual Asset Capital Costs against the Estimated Asset Capital Costs;
 - B. the total labour costs component of the Actual Asset Capital Costs; and
 - C. the total materials and equipment component of the Actual Asset Capital Costs, for that Site;
 - ii. the total Actual Asset Capital Costs against the total Estimated Asset Capital Costs across all Sites that have reached Asset Completion by the date of the statement; and
 - iii. the Cost Underruns and Cost Overruns (if any) in respect of those Sites that have reached Asset Completion by the date of the statement.
- (d) The Reconciliation Statement must be certified in writing by a person duly authorised to make the certification on behalf of the Recipient and who occupies a senior executive position within the Recipient's organisation.

3.2 Cost Overruns

- (a) The Recipient must also maintain a record of the balance of the Funds showing the relative contribution of each party to the Cost Underruns, based on the proportion of that party's financial contribution to the Estimated Asset Capital Costs as set out in the Project Schedule. This record may be maintained as part of the Reconciliation Statement or separately.
- (b) In calculating the balance of the Funds, the Recipient may apply Cost Underruns within the Funds to offset Cost Overruns in accordance with the process set out in clause 3.3.
- (c) The Recipient must notify the Department, as soon as possible after the Recipient becomes aware that a Cost Overrun is, or will likely be, greater than 125% of the Estimated Asset Capital Cost for the relevant Site.
- (d) The Recipient acknowledges and agrees that it is liable for any Cost Overruns and the Department is not required to provide any additional amounts to the Recipient unless expressly stated in this Deed.

3.3 Cost Underruns

- (a) During the Build Period, the Recipient may apply any Cost Underruns in respect of a Site, for or towards:
- i. Cost Overruns on other Sites; and/or
 - ii. Additional Sites agreed by the Department (if any) in accordance with clause 3.3(d), provided that Cost Underruns are from Sites that have reached Asset Completion. The Parties will meet Quarterly to review the progress of the Rollout Schedule and the current status of the Cost Underruns and Cost Overruns. If requested by the Department (including at any such meeting), the Recipient must consult with the Department in respect of the inclusion of Additional Sites in the Project Schedule, using funding from Cost Underruns.
- (b) The Recipient must meet with the Department within 20 Business Days of applying for a Cost Underrun under clause 3.3(a) to discuss the inclusion of additional sites in the Project Schedule, which are proposed to be located in New South Wales (**Proposed Additional Sites**).
- (c) The Recipient must notify the Department in writing of any Proposed Additional Sites by the date that is 60 Business Days prior to the Target Asset Completion.
- (d) Following receipt of notice of the Proposed Additional Site, the Department must provide notice to the Recipient within 20 Business Days whether it accepts that such Proposed Additional Sites (**Additional Site**) be added to the Project Schedule.

- (e) Asset Completion for an Additional Site may go beyond the Target Ready For Service Date but if Asset Completion for such Additional Site is not achieved by the date that is 6 months after the Target Ready For Service Date, then, unless the Department and the Recipient agree otherwise in writing:
 - i. the Department's share of the Cost Underrun allocated to that Additional Site must be refunded to the Department; and
 - ii. the Recipient may choose not to build at that Additional Site.

4. Invoices

4.1 Invoice content

An invoice submitted by the Recipient must:

- (a) meet the requirements of a tax invoice as set out in the GST Law;
- (b) be in a form approved by the Department;
- (c) set out:
 - i. any agreement number provided by the Department and Project title; and
 - ii. the amount of funding to be paid by the Department together with the supporting documentation and any other evidence specified by the Department; and
- (d) include any other details reasonably requested by the Department from time to time.

4.2 Recipient obligations

The Recipient must:

- (a) submit invoices to the address or email address listed in Item 1 of the Details; and
- (b) co-operate with any request by the Department with respect to invoicing and payment where the Department advises that it is moving to a different payment system.

5. Bank Account

Unless the Department otherwise agrees in writing, the Recipient must:

- (a) ensure that the Funds are held in an account in the Recipient's name, and which is not controlled by any person other than the Recipient with a deposit-taking institution in Australia authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia (**Bank Account**);
- (b) maintain a separate ledger in relation to the account for the sole purpose of accounting for, and administering, any Funds paid to the Recipient;
- (c) notify the Department, prior to the receipt of any the Funds, of details sufficient to identify the Bank Account; and
- (d) identify the receipt and expenditure of Funds separately within the Recipient's accounting records so that at all times the Funds are identifiable and ascertainable.

Schedule 4 – Licence to the Department

1. The Recipient agrees that to the extent that the Assets and Sites comprise any *facility, telecommunications transmission tower, sites or eligible underground facilities* (collectively, **Telecommunications Assets**), it grants a perpetual, irrevocable, exclusive, royalty-free licence to the Department to the parts of such Telecommunications Assets described in paragraph 2 (**Licensed Facilities**) for the purposes of the Department and the NSW Government (**Licence**).
2. The Licensed Facilities comprise those parts of the Telecommunications Assets that do not include any assets or facilities that are utilised by:
 - (a) Consortium Access Seekers and Late Entrants for the purpose of those Access Seekers engaging in Active Infrastructure Sharing in accordance with clause 10.3 of the Deed; or
 - (b) Permitted Passive Sharing Access Seekers for the purpose of those Access Seekers engaging in Passive Infrastructure Sharing in accordance with clause 10.4 of the Deed.
3. As contemplated by sections 372L(8), 581Y(4)(a) and 581ZD(8)(a), and clauses 17(2A)(a), 33(6)(a), 34(6)(a) and 35(6)(a) of Schedule 1, of the Telco Act the Recipient must not grant any rights in the Licensed Facilities to an Access Seeker which proposes to use the Telecommunications Assets for a purpose which would deprive the Department or NSW Government of any right to fully exploit the Licence.
4. Subject to the provision of written notice by the Department to the Recipient, the Licence may be vested in or transferred by the Department to any other NSW Government agency or any successor department or agency to the Department.
5. *Italicised terms* which are used in paragraph 1 that are defined in the Telco Act have the meanings given in that Act.

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Schedule 5 – Reports and statements

The Recipient is required to provide the following reports and statements during the Term, or as otherwise reasonably required by the Department from time to time:

Item	Pinpoint Ref	Type of report	Due date for the report	Required frequency of the report	Milestone (if any) at which report is required to achieve that Milestone	Minimum information required in the report
1	Clauses <u>3.2</u> and <u>15.1(a)</u> ; Rollout Schedule	Project Management Plan	Within 30 Business Days of the Commencement Date	Once following execution of this Deed	[Milestone 1]	<p>At a minimum, the Project Management Plan must contain:</p> <ul style="list-style-type: none"> (a) a schedule for the delivery of Sites in the format approved by all consortium team members and the Department; (b) a project organisation chart, resources, and descriptions/roles; (c) interface with Consortium Access Seekers; (d) progress reporting against the baseline schedule; (e) financial progress reporting / budget forecast; (f) planning and schedule control procedures; (g) health and safety quality plan including control procedures; (h) emergency procedures; (i) project specific environmental compliance regime; (j) design & engineering basis of design; (k) construction method statement; (l) industrial & employee relations; (m) subcontractor management & control; (n) logistics; (o) permits & approvals; (p) procurement plan & management control processes; (q) change management; and (r) meetings / governance procedures / guidelines. <p>The Project Management Plan must include a Risk Management Plan and Joint Stakeholder Engagement Plan.</p>

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Item	Pinpoint Ref	Type of report	Due date for the report	Required frequency of the report	Milestone (if any) at which report is required to achieve that Milestone	Minimum information required in the report
2	Clause <u>3.2</u>	Risk Management Plan	Within 30 Business Days of the Commencement Date	Once following execution of this Deed	[Milestone 1]	At a minimum, the Risk Management Plan must contain: <ul style="list-style-type: none"> (a) a populated risk register, in the template approved by the Department, outlining all identified risks and their associated mitigation measures; (b) risk identification; (c) development of the risk register; (d) assessment of risks; (e) evaluation of treatment options; (f) risk exposure matrix to determine the current risk exposure; (g) implementation activities; (h) planning for contingencies; (i) monitoring and updating the risk register and Risk Management Plan; (j) finalization review; and (k) detail on how the risk register will be monitored and updated during the Term.
3	Clauses <u>3.2</u> and <u>14(d)</u>	Joint Stakeholder Engagement Plan	Within 30 Business Days of the Commencement Date, quarterly thereafter	Quarterly	[Milestone 1]	At a minimum, the Joint Stakeholder Engagement Plan must contain: <ul style="list-style-type: none"> (a) relevant details for the Assets; (b) planned communications activities with relevant stakeholders including Consortium Access Seekers, the local community, local councils, and relevant State and Federal members of Parliament broken down by each funded Asset; (c) sufficient details to ensure the community receives regular updates on the Asset(s) and is promptly informed of any change to the location of the Site or change to the Target Asset Completion Date for the Asset(s), including the reasons for the change; (d) the roles and responsibilities of each of the Consortium Access Seekers and the Recipient in delivering the activities listed in the Joint Stakeholder Engagement Plan; and (e) a statement warranting each of the Consortiums Access Seekers and the Recipient to abide by and work together to deliver the activities outlined in the stakeholder engagement activities listed in the Joint Stakeholder Engagement Plan.

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Item	Pinpoint Ref	Type of report	Due date for the report	Required frequency of the report	Milestone (if any) at which report is required to achieve that Milestone	Minimum information required in the report
4	Clause <u>15.1(a)</u>	Progress Report	Within 10 Business Days of the end of each calendar month	Monthly until the Rollout Completion Date	N/A	At a minimum, the Progress Report must contain: <ul style="list-style-type: none"> (a) a breakdown of work undertaken on the funded Assets at the time of the Progress Report's submission; (b) updated schedule for the delivery of the funded Sites; (c) any anticipated changes to the consortium composition and scope (including whether any Consortium Access Seekers have or may terminate or amend the scope of their Consortium Agreements with the Recipient); (d) details of any EOT Request; (e) updated Project Management Plan (if required); (f) updated Risk Management Plan (if required); and (g) updated Joint Stakeholder Engagement Plan (if required).
5	Clause <u>4.2(d)</u> i and <u>15.1(a)</u> ; Rollout Schedule	Asset Completion Report	On such date as may be required by the Department during each two month period	Once every two months (on such date as may be required by the Department) until the Rollout Completion Date, which might include a report for one or more Sites achieving Asset Completion in the applicable two month period	[Milestone 2]	At a minimum, the Asset Completion Report must contain: <ul style="list-style-type: none"> (a) a description of the completed Asset(s), including: <ul style="list-style-type: none"> (i) the site name and addresses; (ii) site latitude and longitude; (iii) tower type and height; (iv) aerial type and height; (v) battery backup; (vi) backhaul transmission technology; (vii) service and spectrum offering; (viii) description of additional service offerings and/or resilience measures (if applicable); and (ix) number of MNOs providing a retail Mobile Service or committed to provide a retail Mobile Service from the completed Asset at the time of the report's submission; (b) as-built drawing of the completed Asset(s) covering site layout and tower elevation;

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Item	Pinpoint Ref	Type of report	Due date for the report	Required frequency of the report	Milestone (if any) at which report is required to achieve that Milestone	Minimum information required in the report
5						<p>(c) operational Coverage map for the completed Asset(s), meeting the following requirements:</p> <ul style="list-style-type: none"> (i) must have a granularity no greater than 100 metres squared, with an RSRP resolution of 1-dBm, down to a minimum value of -120 dBm; and (ii) must be provided in either MapInfo TAB, ESRI Shape or GML format; <p>(d) a description of the:</p> <ul style="list-style-type: none"> (i) kilometres of National Roads, State Highways, Regional Roads provided new and overlapping handheld coverage by the completed Asset; (ii) number of GNAF residential and non-residential premises provided new and overlapping handheld coverage by the completed Asset; (iii) number of full-time equivalent (FTE) jobs created during the Asset's construction, including a breakdown of Aboriginal, youth and disability targeted jobs; and (iv) number of FTE jobs created on an ongoing basis including a breakdown of Aboriginal, youth and disability targeted jobs; <p>(e) an asset cost reconciliation statement setting out actual expenditure against estimated expenditure for each of the funded Assets that achieved asset completion in the prior financial quarter, including a description of:</p> <ul style="list-style-type: none"> (i) cost overruns or underruns, and (ii) breakdown of costs across program components including site acquisition and preparation, deployment of backhaul and land acquisition and preparation (including power supply), etc.; <p>(f) a statutory declaration warranting that, as at the date of the Asset Completion Report's submission:</p> <ul style="list-style-type: none"> (i) Coverage provided from the completed Asset is as set out in the operational Coverage map calculated according to the Recipient's desktop predictive methodology; (ii) all amounts due and payable by the Recipient to any subcontractor, consultant or supplier engaged in respect of the works undertaken to achieve Asset Completion have been duly paid by the Recipient; and <p>(g) any other information reasonably requested by the Department.</p>

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Item	Pinpoint Ref	Type of report	Due date for the report	Required frequency of the report	Milestone (if any) at which report is required to achieve that Milestone	Minimum information required in the report
6	Clause <u>15.1(a)</u> ; Rollout Schedule	Rollout Completion Report	Within 20 Business Days of the end of the Quarter in which the Rollout Completion Date is achieved.	Once following the Rollout Completion Date.	[Milestone 3]	At a minimum, the Rollout Completion Report must contain: <ul style="list-style-type: none"> (a) a statement warranting that the Recipient has, to the best of its knowledge, fulfilled all obligations under the Deed including the deployment of infrastructure, and the provision and delivery of retail Mobile Services; and (b) an audited statement of receipts and expenditure in respect of the Funds, including a statement as to whether the financial information provided to the Department in connection with the Activities represents the financial transactions fairly and in accordance with Australian Accounting Standards.
7	Clause <u>15.1(a)</u>	Operational Period Reports	Within 20 Business Days of the end of each calendar year.	Annually during the first three years of the Operational Period following Asset Competition for each Site. On request thereafter, for the minimum Operational Period for each Site (and the Department may not request this report for more than once per calendar year).	N/A	At a minimum, Operational Period Reports must provide: <ul style="list-style-type: none"> (a) a statement confirming the number of Consortium Access Seekers providing a retail Mobile Service from the Assets; (b) a statement confirming the number of Access Seekers, who are not Consortium Access Seekers, providing a Mobile Service from the Assets, including a description of the additional services; and (c) a description of any service disruptions that lasted for more than 7 days as a direct consequence of a failure of the service provided by a funded Asset.

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Item	Pinpoint Ref	Type of report	Due date for the report	Required frequency of the report	Milestone (if any) at which report is required to achieve that Milestone	Minimum information required in the report
8	Clause 8.1(e)	Adverse Effect Notification	Within 10 Business Days of becoming aware of any incidents or developments (such as materialisation of a risk) which results in a material adverse impact to any part of the Project	As required during the Term	N/A	At a minimum, the Adverse Effect Notification must notify the Department of any: <ul style="list-style-type: none"> (a) circumstances which have or which are reasonably likely to have a material adverse effect on the Recipient's ability to comply with this Deed, if applicable; (b) breach of any Laws or any incident in respect of any Site that may be notifiable to any Authority under WHS Law, if applicable; (c) circumstances related to the Project which have or are reasonably likely to have a material adverse effect on the Department's or the NSW Government's reputation, if applicable; and (d) significant concerns of local community groups in respect of the Project or Activities of which the Recipient becomes aware.
9	Clause 22(c)	Modern Slavery Report	As required by Law	As required by Law	N/A	As required by Law.

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Item	Pinpoint Ref	Type of report	Due date for the report	Required frequency of the report	Milestone (if any) at which report is required to achieve that Milestone	Minimum information required in the report
10	Paragraph 3.1 of Schedule 3	Reconciliation Statement	Within 20 Business Days from the date on which each Quarter commences	Each Quarter during the Build Period	N/A	<p>At a minimum, the Reconciliation Statement must:</p> <ul style="list-style-type: none"> (a) set out the Actual Asset Capital Costs and the Estimated Asset Capital Costs for each Site that achieved Asset Completion; (b) set out the balance of Cost Underruns against Cost Overruns; (c) include the following information: <ul style="list-style-type: none"> (i) for each Site that has reached Asset Completion: <ul style="list-style-type: none"> A. the Actual Asset Capital Costs against the Estimated Asset Capital Costs; B. the total labour costs component of the Actual Asset Capital Costs; and C. the total materials and equipment component of the Actual Asset Capital Costs, (ii) the total Actual Asset Capital Costs against the total Estimated Asset Capital Costs across all Sites that have reached Asset Completion by the date of the statement; and (iii) the Cost Underruns and Cost Overruns (if any) in respect of those Sites that have reached Asset Completion by the date of the statement; and (d) be certified in writing by a person duly authorised to make the certification on behalf of the Recipient and who occupies a senior executive position within the Recipient's organisation.

