| **Aboriginal-owned Assets Program** | |
| --- | --- |
| |  |  | | --- | --- | | **Department** | **Regional NSW** | | **Grantee** | **Click here to enter text.** | | **Project** | **Click here to enter text.** | | **Activities (funded under this Deed)** | **Stage 1 – Detailed Project Plan**  **AND/OR**  **Stage 2 – Project Delivery** | | |
|  |  |
|  |  |
| Light blue waratah motif on a dark blue background |  |

Background

1. The Aboriginal-owned Assets Program provides funding for directly damaged Aboriginal-owned and/or managed infrastructure in disaster declared Local Government Areas under the 2022 severe weather and flood events ARGN 1012 and ARGN 1025.
2. You have applied for funding under the Program for your Project.

**OPTION - FUNDING FOR STAGE 1 ONLY**

1. The Department will provide funding for Stage 1 to you to develop a detailed Project Plan for the Project. The Department then will assess the Project Plan and determine whether to fund Stage 2, being delivery of the Project, under a separate Funding Deed. This Funding Deed covers Stage 1 only.

**OPTION - FUNDING FOR STAGE 2 ONLY**

C. The Department provided funding for Stage 1 to you to develop a detailed Project Plan for the Project. The Department has assessed the Project Plan and approved funding for Stage 2 for delivery of the Project. This Funding Deed covers Stage 2.

**OPTION – FUNDING FOR STAGES 1 & 2**

C. The Department will provide funding for Stage 1 to you to develop a detailed Project Plan and for Stage 2 for delivery of the Project. This Funding Deed covers both Stage 1 and Stage 2.

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Details

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| --- | --- | --- | --- |
| **Department** | Name | The Crown in right of the State of New South Wales acting through Regional NSW | |
|  | ABN | 19 948 325 463 | |
|  | Division | Regional Development & Programs | |
|  | Address | 1 Monaro St, Queanbeyan NSW | |
| **Department Authorised Officer** | Name | Click here to enter text. | |
| Position | Click here to enter text. | |
| Address | Click here to enter text. | |
| Telephone | Click here to enter text. | |
| Mobile | Click here to enter text. | |
| E-mail | Click here to enter text. | |
| **Grantee** (‘**You**’) | Name | Click here to enter text. | |
| Address | Click here to enter text. | |
| ABN | Click here to enter text. | |
| **Your Authorised Officer** | Name | Click here to enter text. | |
| Position | Click here to enter text. | |
| Address | Click here to enter text. | |
| Telephone | Click here to enter text. | |
| Mobile | Click here to enter text. | |
| E-mail | Click here to enter text. | |
| **Program** | Aboriginal-owned Assets Program | |
| **Project** | Click here to enter title of Project | | | |
| **Activities** (funded under this Deed) | Stage 1 – Develop a detailed Project Plan for the Project  AND/ OR  Stage 2 – Implement and deliver the Project  The Activities are funded under the Program. Details of the Activities are set out in **Schedule A.** | |
| **Site**(of Project) | Click here to enter text. | |
| **Grant** | A maximum total amount of $ Click here to enter total amount of Grant (GST exclusive) payable in instalments, which is for the Activities. | |
| **Commencement Date** (of this Deed) | The date on which this Deed is executed by the last party. | |
| Special Conditions  **SC1. Your own advice**  The Department strongly recommends that you obtain your own financial and legal advice before entering into this Deed. The Grant may be assessable under business income tax laws. There may be other tax or financial consequences for your organisation.  **SC2. Ownership of Site and infrastructure**  You warrant that:   1. you are the owner or manager of the directly damaged social infrastructure; and 2. if you are not the owner of all or part of the Site, you have obtained the written approval and agreement of the landowner to carry out the Activities at the Site.   **SC3. No other funding nor from insurance**  You warrant that you have not received funds towards the funded Activities from any other State or Australian government program nor from an insurance claim. You must not spend the Grant on costs that you have claimed, or are able to claim, through any other State or Australian government program of assistance or private insurance.  **SC4. Project Management**   1. The Department draws your attention to your obligation under **clause 3.1(b)** to ensure that each Activity is completed within the Activity Period. 2. In addition to the Department’s rights under this Deed and at law, the Department may, at any time, notify you that the Department is concerned about how you are managing an Activity. 3. The Department may recommend that you engage a subcontractor (such as Public Works) to carry out project management or other such services. That subcontract would be at your cost (with no additional funding from the Department). You would remain responsible for the subcontractor in accordance with **clause 22.2** (Subcontractors).   **[INCLUDE IF FUNDING DEED COVERS STAGE 2]**  **SC5. Maintenance of Assets**  In this clause:  **“Assets”** means the infrastructure, facilities or improvements created by the Project. “**Maintenance Period**” means the period of five years commencing on completion of the Project.   1. You must maintain, and not demolish, eradicate, remove, dispose of nor otherwise interfere with, the Assets during the Maintenance Period. 2. If you intend to convert or dispose of Assets during the Maintenance Period, you must notify the Department immediately with details of the intended conversion or disposal. 3. Where the Department so requests, you must repay to the Department the Grant within 20 Business Days of the disposal or conversion of the Asset that is in breach of this clause. 4. If the Department notifies you that it requires repayment of any amount under this clause, that amount will become a debt due and payable to the Department. 5. **Clause 2.2** does not apply and, unless terminated earlier, this Deed will end on expiry of the Maintenance Period.   **[INCLUDE IF FUNDING DEED COVERS STAGE 2]**  **SC6. Timing**  You must:   1. commence construction of the Project within 12 months of the Commencement Date; and 2. complete the Project **by 30 May 2025**. | | |  | | |

Terms and Conditions

Definitions and Term

1. Interpretation and Definitions
   1. Interpretation

Unless the context requires otherwise, in this Deed:

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

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

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

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

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

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

1. is by its nature confidential
2. a party has designated as confidential;
3. is capable of protection at common law or equity as confidential information; or
4. is derived or produced partly from information described in paragraph (a), (b) or (c) above,

but does not include information that:

1. is in the public domain; or
2. a party receiving the information independently knows or develops other than as a result of a breach of this Deed or any other obligation of confidentiality owed by or to any other person.

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

1. sets out your contact details including ABN
2. specifies the amount to be paid, and whether or not this includes GST;
3. identifies this Deed and any Activities to which the payment applies; and
4. is sent to the email address otherwise notified by the Department.

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

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

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

**Intellectual Property or IP** includes:

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

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

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

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

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

**Program Guidelines** means the published guidelines for the Program available at <https://www.nsw.gov.au/sites/default/files/2023-03/Aboriginal-owned-Assets-Program-Guidelines.pdf> which may be updated from time to time.

**Project Material** means any data, reports, online content or other material created as part of or in performance of the Project, which you provide to the Department.

1. Term
   1. This Deed will commence on the Commencement Date.
   2. Unless terminated earlier, this Deed will end once you have completed the Activities to the Department’s satisfaction and the Department has paid all Instalments due.

What you must do

1. Your general obligations
   1. You must:
2. ensure the Grant or any Instalment is used only for the approved Activities;
3. ensure each Activity is completed within the Activity Period in accordance with this Deed;
4. comply with the reporting requirements set out in **Schedule B**;
5. comply with all Commonwealth, State and Local government laws that are relevant to the Project, this Deed, or your registration as an entity;
6. comply with all policies, guidelines and reasonable directions the Department provides to you; and
7. comply with the Program Guidelines.
8. No overlap with other funding
   1. You agree that there must be no overlap between the Activities funded under this Deed and activities covered by any other funding arrangements you have entered into, or that you may enter subsequently.
   2. You agree to:
9. notify the Department immediately of any existing or proposed funding arrangement that concerns the Project, the Activities or any related matters (**Related Funding**); and
10. cooperate with the Department and the provider of the Related Funding to ensure that there is a clear distinction between the Activities funded by this Deed and the activities you are required to carry out under the Related Funding Deed.
11. Variation
    1. If you wish to vary the Project, including any Activity or other matter set out in **Schedule A** such as:
12. changes to the nature of the Project or the scope of works, Site or revised priorities for the Project; or
13. changes to the timeframe for delivery of the Project, including extensions to completion of Activities,

you must first make a written request to the Department and provide such information as is reasonably required by the Department.

* 1. Following your request for a variation under **clause 5.1**, the Department will consider whether to approve your request and make a decision in its sole discretion. No variation is approved unless and until the Department approves the variation in writing.
  2. You must advise the Department immediately:

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

About the Grant

1. Activity costs
   1. The Grant is the maximum amount to be paid for the Activities and you agree that:
      1. you have prepared or reviewed a scope of works or costs estimate for the Activities before you signed this Deed;
      2. you are responsible for any costs that exceed the Grant for the Activities (whether you expected to incur such costs or not at any time before or after you signed this Deed) and you must obtain any additional funding necessary to carry out the Activities; and
      3. (where the Activities include delivery of the Project) you are responsible for all maintenance costs arising from the Project.
   2. You must ensure no more than 20% of the Grant is applied or used to recover project management or administrative costs which you incur in respect of the Activities (such costs may include accommodation, transport, contingency and on-costs for eligible wages).
   3. Where the actual cost of the Activities is less than the Grant:
      1. you must notify the Department of any unspent Grant before the end of the Activities;
      2. the Department may reduce the final Instalment to reflect the actual cost incurred to deliver the Activities; and
      3. you must return to the Department all Grant money paid to you that exceeds the actual cost of carrying out the Activities (including any interest earned on such funds) within 28 days after completion of the Activities (or termination of the Deed).
2. Paying the Grant
   1. The Department will pay the Instalments as set out in **Schedule A** on condition that:
3. the Department receives a Correctly Rendered Invoice from you that clearly identifies the Instalment you are claiming;
4. you have provided the Department with the evidence of compliance required under **clause 10** (Reporting) and the Schedule(s) showing that you have performed the Activities at the times set out in the Schedules; and
5. the Activities have been performed to the satisfaction of the Department.
   1. Notwithstanding **clause 7.1**, if the Department pays you an Instalment, this does not constitute an admission that the performance of the Activities is in conformity with this Deed and no payment will be deemed to release you from your obligations under this Deed.
6. Withholding, Suspension, Changes to Instalments and Repayment
   1. The Department may change the amount of the Instalment by issuing you with a Notice setting out the details of the changes.
   2. If you are not complying with this Deed the Department may withhold or suspend payment of an Instalment until you comply with your obligations to the Department’s satisfaction.
   3. If the Department withholds or suspends an Instalment you must continue to perform your obligations under this Deed.
   4. You must repay within 28 days of a demand being sent:
7. any Instalment spent in breach of this Deed;
8. all unspent Instalments;
9. any overpayment
10. any interest earned on any Instalment required to be repaid.
    1. Where you have failed to comply with this Deed, the Department will calculate the amount of repayment you must make in proportion with the extent to which you have failed to complete the Activities.
    2. The Department may set off the amount of any overpayment or claim for repayment against any future Instalment due.
    3. Any repayment the Department claims from you under this **clause 8** will be a debt due and owing by you to the Department.
11. GST
    1. Unless otherwise indicated, all consideration for any supply under this Deed is exclusive of any GST imposed in relation to the supply.
    2. If:
12. despite any other provision of this Deed, GST is imposed on a supply you make to the Department under this Deed; and
13. the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply,
14. the Department will pay you an additional amount equal to the GST imposed on that supply, at the time and in the manner payment is otherwise payable under this Deed in relation to that supply.
    1. If you are not registered under the GST Law you will not be entitled to receive any additional amount as provided under this **clause9**.
    2. If for any reason the Department pays you an amount under this **clause 9** which is more than the GST imposed on the supply, you must repay the excess to the Department on demand or the Department may set off the excess against any other amounts due to you.

Material and Information

1. Reporting Requirements
   1. You agree to provide the Department with written progress reports at the times and containing the information specified in **Schedule B** – Reporting Requirements (“Progress Reports”).
   2. You must also provide any other information the Department reasonably requires from time to time concerning the Project.
   3. If any Progress Report contains information confidential to you, you should mark the relevant parts of the Progress Report accordingly.
   4. You must provide financial statements of income and expenditure in respect of the Grant (‘the Statements’) to the Department within 60 Business Days after:
2. completion of the Activity or any termination of this Deed, whichever is the earliest; and
3. the completion of each Financial Year in which a Grant is made.
   1. The Statements must include a definitive statement as to whether:
4. the financial information for the Activities represents the financial transactions fairly and is based on proper accounts and records; and
5. the Grant was expended for the Activities and in accordance with this Deed.
   1. You must keep financial accounts and records relating to the Activities so as to enable:
6. all receipts and payments related to the Activities to be identified in your accounts and reported in accordance with this Deed;
7. unless notified by the Department, the preparation of financial statements in accordance with Australian Accounting Standards; and
8. generation of an income and expenditure statement for each financial year of the Activities with the budget, including:
9. a schedule of the Capital Equipment acquired, sold, written-off or otherwise disposed of during each financial year; and
10. a comparison of the income and expenditure in each financial year against the budget; and
11. the audit of those records in accordance with Australian Auditing Standards.
    1. You must:
12. participate in an evaluation to determine the extent to which the Activities have contributed to the objectives of the Program; and
13. provide evidence of how the Activities have resulted in measurable benefits consistent with the objectives of the Program.
14. Intellectual Property
    1. Intellectual Property in all Project Material vests in you.
    2. You grant the Department a non-exclusive, irrevocable, royalty-free licence (including the right to sub-license) to use the Project Material for any purposes.
15. Confidential Information
    1. Each party must maintain the confidentiality of all Confidential Information it receives from the other party (subject to **clause 14**) unless otherwise agreed in writing.
16. Privacy
    1. You will:
17. ensure that Personal Information that is provided by the Department or collected by you under or in connection with this Deed is used only for the purposes of this Deed and is protected against loss, unauthorised access, use, modification and disclosure, or against other misuse;
18. not disclose any Personal Information without the written consent of:
19. the individual to whom the Personal Information relates; or
20. the Department,

unless otherwise required or authorised by law;

1. comply with the Information Protection Principles applying to NSW public sector agencies under the *Privacy and Personal Information Protection Act 1998* (NSW) when doing any act or engaging in any practice in relation to Personal Information as if you were an agency directly subject to that Act; and
2. include equivalent requirements regarding Personal Information (including this **clause 13**) in any subcontract entered into for the provision of any of the Activities under this Deed.
3. Public Announcements and Acknowledgement
   1. You agree that all projects under the Program must appropriately acknowledge and recognise that they are jointly funded by the Australian and NSW governments under the Disaster Recovery Funding Arrangements.
   2. You must seek the consent of the Department (via floods.recovery@regional.nsw.gov.au) prior to any public announcement or publicity about the Project, as the announcement may need to be done jointly by the Australian and NSW governments.
   3. You must comply with any directions from the Department on the nature and content of any announcements, promotional material or publicity relating to the Project. This includes media releases, social media, websites, signage and advertising.
   4. You must include both the Australian and NSW governments’ logos on any publications plus the following disclaimer: “*Although funding for this product has been provided by both the Australian and NSW governments, the material contained herein does not necessarily represent the views of either government*.”
   5. You agree that the Australian and NSW governments may disclose information about you, the Activities, the Project and the Grant in any media, such as media releases, social media, case studies, promotional material and in response to media enquiries.
4. Disclosure of Information
   1. You acknowledge that under Part 6.5 of the *NSW Government Grants Administration Guide*, the Department is required to publish detailed information about the Grant on the NSW Government Grants and Funding Finder at nsw.gov.au/grants-and-funding, except to the extent such information would identify individuals or otherwise conflict with the law.

Dealing with Risk

1. Insurance
   1. You must maintain, during the term of this Deed:
2. a broadform public liability policy of insurance to the value of at least $20 million in respect of each claim and in the aggregate as to the number of occurrences in the policy period;
3. workers’ compensation insurance as required by all relevant laws of Australia relating to workers compensation; and
4. any additional insurance policies specified by the Department.
   1. You must not do, permit or suffer any act, matter or thing or omission whereby any of the policies referred to in this clause may be vitiated, rendered void or voidable.
   2. On request by the Department, you must provide a copy of valid and current certificates of currency for each or any of the policies described above.
   3. Without limitation to **clause 16.1**, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.
5. Indemnities
   1. You must indemnify and keep indemnified the Department, the Crown in right of the State of New South Wales and their officers, employees and agents from and against any loss (paid or payable including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:
6. the Grant or the use of any outcomes from the Project;
7. your breach of this Deed;
8. any unlawful or negligent act or omission by you, your employees or your subcontractors in connection with this Deed;
9. any illness, injury or death of any person you, your employees or your subcontractors cause or contribute to, in connection with this Deed;
10. any loss or damage to real or personal property you, your employees or your subcontractors cause or contribute to, in connection with this Deed; or
11. any act or omission by you, your employees or your subcontractors in connection with this Deed that is in infringement of any Intellectual Property, or privacy rights of the Department or any third party.
    1. Your liability to indemnify the Department under this clause will be reduced proportionately to the extent that the Department’s negligent or unlawful acts or omissions, or those of its officers, employees or agents contributed to the relevant loss or liability.
    2. Your liability to indemnify the Department under this clause does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Deed.

Terminating the Deed

1. Termination
   1. Where a party has breached this Deed:
2. the other party may give a Notice to that party requiring it to rectify that breach within 30 days of receiving that Notice; and
3. if the party which received the Notice fails to rectify that breach in time, the other party may terminate this Deed immediately by giving a further Notice.
   1. The Department may terminate this Deed by Notice, with effect on the date stated in the Notice, if:
4. you have provided misleading or incorrect information in your application for funding or in this Deed;
5. you breach any of the following provisions: **clause 3.1** (Your General Obligations); **clause 16** (Insurance), **clause 12** (Confidential Information) and **clause 22.10** (Assignment);
6. the Department considers the Project no longer viable;
7. the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity; or
8. you become insolvent, if you are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966*, or if you resolve to go into administration or liquidation or have a summons for your winding up presented to a Court or enter into any scheme of arrangement with your creditors.
   1. This **clause 18** does not exclude or reduce the rights of a party to terminate the Deed arising by operation of the common law or statute or the other terms of this Deed.
9. Consequences of termination
   1. On termination or expiry of this Deed:
10. accrued rights and obligations are not affected; and
11. the Department will pay any Instalments due (after taking into account any Instalments already made prior to that date).

Other Legal Matters

1. Dispute Resolution
   1. If a dispute arises in relation to this Deed (“a Dispute”), a party must comply with this **clause 20** before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.
   2. A party claiming that a dispute has arisen must notify the other party giving details of the dispute (Dispute Notice) in accordance with the requirements of **clause 21** (Notices).
   3. Following receipt of a Dispute Notice, each party must refer the Dispute to a senior representative, who:
2. does not have prior direct involvement in the Dispute; and
3. has authority to negotiate and settle the Dispute.
   1. If the Dispute is not resolved within 10 Business Days, from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice must refer the Dispute for mediation by the [Australian Disputes Centre Limited](https://disputescentre.com.au/) (ADC) for resolution in accordance with the mediation rules of the ADC.
   2. If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
   3. Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.
4. Notices
   1. Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered or emailed to the Authorised Officer specified in the Details.
   2. The receiving party will be deemed to have received the Notice as follows:
5. if hand delivered, on the day on which it is delivered or left at the relevant address;
6. if sent by email before 5.00pm on a Business Day, the first of the following occurring:
7. when the sender receives an automated message confirming delivery; or
8. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
9. if sent by email after 5pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
   1. Any such mode of service will be in all respects valid notwithstanding that the party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.
10. General
    1. **Survival**:

The following clauses survive termination or expiry of this Deed: **clause 10** (Reporting Requirements), **clause 11** (Intellectual Property), **clause 12** (Confidential Information), **clause 13** (Privacy), **clause 16** (Insurance), **clause 17** (Indemnities), **clause 18** (Termination), **clause 22.3** (Keeping of records), this **clause 22.1** and any other clause which by its nature is intended to survive this Deed.

* 1. **Subcontractors**: You remain fully responsible for the performance of the Activities if you subcontract the performance of any part of the Activities.
  2. **Keeping of records and rights of access to such records** You:

1. must keep complete and accurate records and books of account with respect to your performance of the Activities (the “Records”), and must retain such Records for a minimum of seven (7) years after expiry or termination of this Deed;
2. authorise the Department and any State or Commonwealth Government department or agency (the “Auditors”) that has provided moneys to the Department for the purposes of the Project to which the Activities relate, to examine and inspect, at reasonable times and on reasonable Notice, any Project Material you hold, and allow any such Records to be copied; and
3. must provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.
   1. **Conflict of Interest:** You must not carry on or be involved in any capacity in an activity or business, which may conflict with, or adversely affect, your ability to carry out your obligations under this Deed, and you will immediately notify the Department in writing if such a conflict or risk of such a conflict arises.
   2. **Entire Deed**: This Deed states all the express terms agreed by the parties as to the matters referred to in this Deed. It supersedes all prior contracts, obligations, representations, conduct and understandings between the parties relating to the subject matter of this Deed.
   3. **Severability:** If any clause (or part of any clause) in this Deed is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of other clauses of this deed.
   4. **Inconsistency**: If there is any inconsistency between provisions in this Deed then the order of precedence will be:
4. the Details; then
5. the Special Conditions; then
6. these Terms and Conditions; then
7. any Schedules or attached Annexures.
   1. **Negation of employment, partnership or agency:** This Deed does not create a relationship of agency, partnership, and/or employment between the parties. You must not represent yourself as being an employee or agent of the Department or as otherwise able to bind or represent the Department.
   2. **Waiver:** If a party fails to exercise any of its rights under this Deed, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect estop a party from relying on the terms of this Deed to their full force and effect.

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

* 1. **Assignment**: You must not assign or novate your obligations or interests under this Deed, without the prior written consent of the Department.
  2. **Counterparts**: This Deed may be signed in any number of counterparts which taken together will constitute one instrument.
  3. **Electronic execution:**  Each party agrees that the other may execute this Deed electronically as provided for in the *Electronic Transactions Act 2000*.
  4. **Governing Law:** The laws of New South Wales govern this Deed and the parties submit to the non-exclusive jurisdiction of the courts in that State.

Executed as a deed

| **Department** | | |
| --- | --- | --- |
| Signed, sealed and delivered for and on behalf of the Crown in right of the State of New South Wales acting through the **Department** by its authorised signatory but not so as to incur personal liability: | | |
|  | |  |  | |
| Signature of Authorised Signatory | |  | Signature of Witness | |
|  | |  |  | |
| Name of Authorised Signatory | |  | Name of Witness | |
| Position of Authorised Signatory | |  | Address of Witness | |
|  | |  | Date | |

| **You (Company/Organisation)** | | |
| --- | --- | --- |
| Signed, Sealed and delivered for on and on behalf of Click here to enter Company/Organisation name Ltd in accordance with section 127 of the *Corporations Act 2001* by: | | |
|  |  |  |
| Signature of Director(1) |  | Signature of Director(2)/Company Secretary |
|  |  |  |
| Name of Director (1) |  | Name of Director(2)/Company Secretary |
|  |  |  |
| Date |  | Date |

Schedule A – Activities

**Project:**

**Activities:**

Stage 1 – You must use the Grant to develop a detailed Project Plan for the Project. You may engage a third-party provider to assist you. The Department must provide written consent to your engagement of that third-party provider. Development of the Project Plan may include detailed designs or Quantity Survey estimates.

Upon completion of Stage 1, the Department will check alignment of the Project Plan with the Assessment Panel’s determination and the Program Guidelines. The Department will then determine whether to fund the second stage. If so, the parties will enter into a second Funding Deed.

AND / OR

Stage 2 –The Department has agreed to provide the Grant for you to implement and deliver the Project in accordance with the Project Plan which was developed under Stage 1.

| Description of Activities | | | Evidence of completion | Instalment  (excluding GST) | Your Contribution (excluding GST)  (If applicable) | Activity Period | When to send invoice |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | | |  |  |  |  |  |
|  | | |  |  |  |  |  |
|  | | |  |  |  |  |  |
|  | | |  | Total | Total |  |  |
| Objectives of the Project |  | <<Insert>> | | | | | |
|  |  |  | | | | | |

Schedule B – Reporting Requirements

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