

## Funding Deed -

### Primary Industries Productivity and Abatement Program – Living Carbon Grants

The Department of Climate Change, Energy, the Environment and Water  
(**Department**); and

[insert Recipient name] (**Recipient**)

#### Recitals

The Department has agreed to provide the Recipient with the Grant for the purpose of carrying out the Project.

The Recipient has agreed to accept and use the Grant to carry out the Project in accordance with this Deed.

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## Project Details

### Project Details

Item 1	Department Details
Name:	The Crown in the right of the State of New South Wales acting through the Department of Climate Change, Energy, the Environment and Water
ABN:	27 578 976 844
Address for notices:	4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
Email address for notices:	<a href="mailto:Netzero.land@environment.nsw.gov.au">Netzero.land@environment.nsw.gov.au</a>
Agency Contact Person:	Name: Position: Telephone: Email:

  

Item 2	Recipient
Name:	<insert full legal Recipient name>
Legal entity status:	<input type="checkbox"/> Company <input type="checkbox"/> Individual <input type="checkbox"/> Other: <specify>
Trustee of a trust:	The Recipient [is] [is not] entering into this Deed as a trustee of a trust. <i>Drafting note to Applicant: please note further clauses may be applicable if the applicant is a trust entity.</i>
Business Name:	<insert>
ABN:	<insert>
Address for notices:	<insert address for service of notices>
Email address for notices:	<Insert email address for service of notices, if required. The email address for notices should be accessible by more than one person.>

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**Item 3****Project Details**

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Funding Program: Living Carbon grants administered under the Net Zero Land program of the Primary Industries Productivity and Abatement Program (**PIPAP**).

Project: <insert name and description of funded project>

Project Objectives: <insert name and description of objectives>

Commencement Date:

Expiry Date:

Term:

Project Milestones: As described in Attachment B – Milestone Payments and Reporting Attachment.

Project Income:

Project income	Total \$ (ex GST)
Grant from the Department	\$<insert>
Third Party Contributions	\$
	<insert>
<b>Total Activity Income:</b>	<b>\$&lt;insert&gt;</b>

Project Budget: The Project Budget showing the budget allocation of the Project Income for the term of the Project is attached at Attachment C – Project Budget.

Third Party Contributions: <Specify contributions, funds or expenditure made available by third parties to the Project>

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**Item 4****Funding and Payment**

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Funds or Funding: <Insert maximum amount provided by the Department>

Payment Recipient Created Tax Invoices will not be issued by the Department in respect of the Funding.

Subject to this Deed, the Funds will be paid by direct transfer to the Recipient's Nominated Account in accordance with the terms of this Agreement.

Nominated Account: Account name: <insert>

Account number: <insert>

Financial institution: <insert>

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**Item 5****Not Used**

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**Item 6****Notified Policies and Standards**

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- The NSW Procurement Policy Framework published at <https://buy.nsw.gov.au/policy-library/policies/procurement-policy-framework> in so far that it relates to the Project.
- The NSW Department of Planning and Environment Code of Ethics and Conduct published at [https://www.dpie.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/348992/Code-of-Ethics-and-Conduct.pdf](https://www.dpie.nsw.gov.au/__data/assets/pdf_file/0008/348992/Code-of-Ethics-and-Conduct.pdf);
- The NSW Government's Net Zero Plan Stage 1: 2020-2030 (Net Zero Plan) published at <https://www.environment.nsw.gov.au/topics/climate-change/net-zero-plan>.
- The NSW Primary Industries Productivity and Abatement Program published at <https://www.energysaver.nsw.gov.au/reducing-emissions-nsw/primary-industries-productivity-and-abatement>.
- The NSW Grant Administration Guide published at <https://www.nsw.gov.au/grants-and-funding/grants-administration-guide>
- The [Principles of Free, Prior and Informed Consent](https://humanrights.gov.au/our-work/appendix-4-elements-common-understanding-free-prior-and-informed-consent-social-justice) will apply to all engagements with Aboriginal\* people/organisations as specified in <https://humanrights.gov.au/our-work/appendix-4-elements-common-understanding-free-prior-and-informed-consent-social-justice>.

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**Item 7****Reports**

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Specified in Attachment B – Milestone Payments and Reporting Requirements or as otherwise required by this Deed.

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**Item 8****Intellectual Property and Indigenous Cultural Intellectual Property**

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IP ownership

The default provision applies.

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**Item 9****Acknowledgement**

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As at the Commencement Date, the NSW Government Guidelines for Funding Acknowledgement is found at:

<https://www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines/funding-acknowledgment-guidelines>>

The Acknowledgement may be amended as notified by the Department from time to time.

<b>Item 10</b>		<b>Insurance</b>	
<b>Type of Insurance</b>	<b>Insured Amount (\$AUD)</b>	<b>Additional period after Deed termination or expiry</b>	
Broad form public liability	[insert]	Not applicable	
Workers compensation	As prescribed under WHS Law, as applicable	Not applicable	
Comprehensive motor vehicle	Applicable	Not applicable	

<b>Item 11</b>		<b>Attachments</b>	
Attachment A	Project Plan		
Attachment B	Milestone Payment and Reporting Attachment		
Attachment C	Project Budget		
Attachment D	Indigenous Cultural and Intellectual Property Principles		
Attachment E	Additional Conditions		

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## Execution

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### Executed as a Deed:

**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 Climate Change, Energy, the Environment and Water by its authorised signatory but not so as to incur personal liability:

Electronic signature of me  
[name] affixed by me on  
00/00/00 [time pm/am]

Electronic signature of me  
[name] affixed by me on  
00/00/00 [time pm/am]

Signature of Authorised Signatory

Signature of Witness

Name of Authorised Signatory

Name of Witness

Position of Authorised Signatory

Address of Witness

By signing this document, the witness states that it witnessed the signing of this document over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

Date

Date

**Signed, sealed and delivered** for and on behalf of **[Insert Company Name with 2+ Directors]** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Electronic signature of me  
[name] affixed by me on  
00/00/00 [time pm/am]

Electronic signature of me  
[name] affixed by me on  
00/00/00 [time pm/am]

Signature of Director (1)

Signature of Director (2) / Company Secretary

Name of Director

Name of Director / Company Secretary

Date

Date

**Signed, sealed and delivered** for and on behalf of **[Insert Company Name with 1 Director]** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Electronic signature of me  
[name] affixed by me on  
00/00/00 [time pm/am]

Signature of Sole Director

Name of Sole Director

Date

**Signed, sealed and delivered by [Insert Individual's Name] in the presence of:**

Electronic signature of me  
[name] affixed by me on  
00/00/00 [time pm/am]

Electronic signature of me  
[name] affixed by me on  
00/00/00 [time pm/am]

Signature

Signature of Witness

Name of Witness

Date

Address of Witness

By signing this document, the witness states that it witnessed the signing of this document over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

Date

**Signed, sealed and delivered for and on behalf of [Insert Partnership Name] by its Partner who is authorised to sign on behalf of the partnership and in the presence of:**

Electronic signature of me  
[name] affixed by me on  
00/00/00 [time pm/am]

Electronic signature of me  
[name] affixed by me on  
00/00/00 [time pm/am]

Signature of Authorised Signatory

Signature of Witness

Name of Authorised Signatory

Name of Witness

Name of Partner and position within Organisation

Address of Witness

By signing this document, the witness states that it witnessed the signing of this document over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

Date

Date



**Signed, sealed and delivered** for and on behalf of **[Insert Incorporation Association Name]** in accordance with its articles of incorporation or constitution and any requirements for execution contained in the statute that establishes the incorporated association and in the presence of:

Electronic signature of me  
[name] affixed by me on  
00/00/00 [time pm/am]

Electronic signature of me  
[name] affixed by me on  
00/00/00 [time pm/am]

Signature of Authorised Signatory (1) Signature of Witness

Name of Authorised Signatory (1) Name of Witness

Position of Authorised Signatory Address of Witness

By signing this document, the witness states that it witnessed the signing of this document over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

Date Date

Electronic signature of me  
[name] affixed by me on  
00/00/00 [time pm/am]

Electronic signature of me  
[name] affixed by me on  
00/00/00 [time pm/am]

Signature of Authorised Signatory (2) Signature of Witness

Name of Authorised Signatory (2) Name of Witness

Position of Authorised Signatory Address of Witness

By signing this document, the witness states that it witnessed the signing of this document over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

Date Date

## **1 General Terms and Conditions**

### **1.1 Parts of this Deed and priority**

- (a) This Deed consists of the following parts (in order of precedence):
  - (i) the Project Details;
  - (ii) these General Terms and Conditions;
  - (iii) the Attachments; and
  - (iv) any other documents incorporated by reference.
- (b) If there is any inconsistency between these parts, unless expressly stated otherwise it will be resolved by applying the above order of precedence, with (i) taking highest priority.

### **1.2 Term**

- (a) This Deed will commence on the Commencement Date.
- (b) Unless terminated earlier, this Deed will continue for the Term and end on the Expiry Date.

## **2 The Project**

### **2.1 Recipient Obligations**

- (a) The Recipient must:
  - (i) following request by the Department, provide the Department with a completed Project Risk Assessment within the time frame required by the Department;
  - (ii) use the Funds solely for the Project and in accordance with the Project Budget within the Term;
  - (iii) comply with the reporting requirements set out in Attachment B;
  - (iv) carry out the Project:
    - (A) within the period specified for each Milestone in Attachment B;
    - (B) in accordance with the Project Plan and the Project Budget;
    - (C) in accordance with any reasonable written directions given by the Department;
    - (D) diligently, to a professional standard and ensuring that any personnel who are engaged on the Project are appropriately qualified, trained and experienced and hold any required clearances, licences, consents or permits; and
    - (E) in compliance with all applicable laws, Grant program conditions (as specified in the relevant grant guidelines for the Grant) and any Notified Policies and Standards;
  - (v) not knowingly or intentionally, or with malice, do or omit to do anything which may:
    - (A) damage, bring into disrepute or ridicule; or
    - (B) attract public or media attention which may be prejudicial or otherwise detrimental to,

the Department, a Government Agency or the State of New South Wales (including their agents, employees and Personnel);

- (vi) not use the Funding to reimburse itself or pay consultants, contractors or employees for the costs incurred in preparing and developing the Recipient's application for the Grant; and
- (vii) hold all necessary licences, consents and approvals that may be required to conduct the Project.

## **2.2 Project Requirements**

- (a) The Recipient acknowledges that:
  - (i) if any part of the Project relates to the implementation of Carbon Project(s), then the Funding and continuation of the Project is conditional upon the declaration of those Carbon Project(s) under section 27 of Carbon Act and the subsequent registration of the Carbon Project(s) under the ACCU Scheme administered by the CER. If the requirements of this clause are not met within the time specified in the Project Plan, then the Department may terminate this Deed in accordance with clause 16.1;
  - (ii) the Recipient, who will be the project proponent (as defined under the Carbon Act) of the Carbon Project being developed with support from this Project, must deal directly with the CER with respect to the declaration of the Carbon Project(s) and registration under the ACCU Scheme;
  - (iii) the Recipient, who will be the project proponent (as defined under the Carbon Act) of the Carbon Project being developed with support from this Project, will follow the requirements of the CER for declaration and approval under the Carbon Act and for registration under the ACCU Scheme; and
  - (iv) the Department (and the State of New South Wales) will not be involved or responsible for any aspect of the registration, compliance with, and ongoing management of the Carbon Projects with respect to the Project and the Carbon Act, the ACCU Scheme or the CER.
- (b) The Recipient must certify the Project with Accounting for Nature Limited ABN 25 629 446 493 in accordance with the timing specified in Attachment B. If throughout the term the Recipient wishes to use an alternative biodiversity accreditation or biodiversity certification scheme, the Recipient must seek the Department's prior written consent (in the Department's absolute discretion, with or without conditions).

## **2.3 Compliance with Law**

The Recipient will, in delivering the Project:

- (a) be responsible for recognising and complying with all applicable Law (including WHS, planning Law and the Carbon Act);
- (b) hold all necessary licences, insurances, consents and approvals that may be required to conduct the Project and otherwise fulfil its obligations under this Deed;
- (c) not do anything that would cause the Department to breach its obligations under any Law; and
- (d) not enter into any arrangements or commitments in relation to the Project that are incompatible or inconsistent with the purpose of the Funding.

## **2.4 Third Party Funding**

- (a) The Recipient agrees that all Third-Party Contributions have been listed in the Project Details as at the Commencement Date.

- (b) If throughout the Term, the Recipient makes an application or otherwise acquires any other Third-Party Contributions, then the Recipient must provide prior notice of to the Department and confirm:
  - (i) the amount of the Third-Party Contributions;
  - (ii) the counterparties (including without limitation the relevant counterparty's ABN/ACN) for the Third-Party Contributions;
  - (iii) specific uses for the Commencing Third-Party Contributions; and
  - (iv) timing for the payment and use of the Commencing Third-Party Contributions (for example, the phase or stage).
- (c) If the Recipient obtains a Third-Party Contribution that is not listed in the Project Details at the Commencement Date, the Department may elect at any time, in its absolute discretion to:
  - (i) reduce the Funding amount under clause 15; or
  - (ii) terminate this Deed under clause 16.1(d).

The Recipient acknowledges that prior notice to the Department of the additional Third-Party Contribution does not diminish or otherwise waive the rights of the Department under this clause.

### **3 Work, Health and Safety**

- (a) The Recipient must develop appropriate mitigation plans for work, health and safety risks to manage and enable the reporting of work, health and safety risks throughout the Project life cycle. The Recipient must provide the Department with copies of such mitigation plans and reports following request from the Department.
- (b) The Recipient must:
  - (i) comply with, and must ensure that all of its Personnel, invitees and any volunteers comply with, all applicable laws and regulations, including WHS Laws when performing work under this Deed;
  - (ii) so far as is reasonably practicable, consult, co-operate and co-ordinate activities with any other person who, concurrently with the Recipient, has or may have a work health and safety duty under the WHS Laws in relation to the same matter (including if applicable, the Department); and
  - (iii) ensure, so far as is reasonably practicable, that any activity or other work performed in connection with this Deed is without risk to the health and safety of persons who may in any way be affected by such activity or work.
- (c) If a Notifiable Incident (as defined in the WHS Laws) occurs arising out of or in connection with the Project, the Recipient must:
  - (i) report the incident to the Department within 1 Business Day following the occurrence of the Notifiable Incident and confirm the details in writing within 3 Business Days following the occurrence of the Notifiable Incident; and
  - (ii) within 14 days following the occurrence of the Notifiable Incident, provide the Department with copies of any notices or other documentation provided to or issued by the relevant government regulator in relation to the Notifiable Incident: and
  - (iii) promptly provide the Department with such other information as may be required by the Department to facilitate the notification to or investigation of the Notifiable Incident.

- (d) The Recipient acknowledges and agrees that the Department's access to management plans and reports under clause 3(a) does not:
  - (i) diminish or reduce the Recipient's WHS obligations under this Deed or at Law; or
  - (ii) constitute an approval of those management plans or reports, or constructive notice of any circumstances or breach, relating to WHS or otherwise.

#### **4 Subcontractors**

- (a) The Recipient is:
  - (i) solely responsible for all its Subcontractors and any subcontracted work, including ensuring the suitability of the Subcontractor to perform the subcontracted work;
  - (ii) solely responsible for ensuring that the Subcontractor is aware of and bound by the terms and conditions of this Deed relevant to the Subcontractor's performance; and
  - (iii) liable for their acts and omissions as if such acts and omissions were those of the Recipient.
- (b) If required by the Department, the Recipient must provide a subcontractor's statement in the form requested by the Department for the purposes of:
  - (i) section 175B of the *Workers Compensation Act 1987* (NSW),
  - (ii) Attachment 2 Part 5 to the *Payroll Tax Act 2007* (NSW); and
  - (iii) section 127 of the *Industrial Relations Act 1996* (NSW).
- (c) Nothing in this Deed creates any contractual relationship between the Department and any of the Recipient's Subcontractors.

#### **5 Funding and payment**

- (a) Within 5 Business Days before or after the date of completion of each Milestone, the Recipient must provide the Department with a Correctly Rendered Tax Invoice that clearly identifies the Milestone Payment Amount claimed for completion of the relevant Milestone.
- (b) The Department will pay the relevant Milestone Payment to the Recipient on condition that:
  - (i) the Recipient has completed all its obligations for the relevant Milestone to the Department's reasonable satisfaction;
  - (ii) the Recipient has provided any required Reports to the Department due to be delivered under that Milestone or within the time period of that Milestone, and has completed those Reports to the Department's satisfaction; and
  - (iii) the Recipient provides any additional information requested by the Department to assist the Department in determining whether or not the Funding is due and payable for that Milestone.
- (c) The Department may withhold payment until such time as all the conditions under clause 5(b) have been achieved by the Recipient.
- (d) Payment of any amount of the Funding is not an admission or a waiver by the Department that the Recipient has met the Recipient's obligations under this Deed.

- (e) The Department will pay a Correctly Rendered Tax Invoice within 30 days after both:
  - (i) subject always to clause 5(d), written confirmation from the Department (acting promptly) that the conditions in clause 5(b) have been met; and
  - (ii) receipt of a Correctly Rendered Invoice by the Department.
- (f) The Recipient's Nominated Account must be an account with an Australian branch of an established bank, building society or credit union, that is solely controlled by the Recipient and allows for the Funding to be separately identified and audited in accordance with Australian Accounting Standards.

## **6 GST**

- (a) Unless otherwise indicated, all consideration for any supply under this Deed is exclusive of any GST imposed in relation to the supply.
- (b) If:
  - (i) despite any other provision of this Deed, GST is imposed on a supply the Recipient makes to the Department;
  - (ii) the Recipient is registered under the GST Law; and
  - (iii) the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply;

the Department will pay the Recipient 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.
- (c) The Recipient must immediately notify the Department if the Recipient's GST registration status changes during the Term.
- (d) If, for any reason, the Department pays to the Recipient an amount under this clause 6 (GST) which is more than the GST imposed on a particular supply by the Recipient to the Department, the Recipient must immediately repay to the Department the excess or the Department may set off the excess against any other amounts due to the Recipient.
- (e) Subject to this clause 6, if the Project Details specifies that RCTIs will issue in respect of the Grant, the Recipient agrees that the:
  - (i) Department will issue the Recipient with an RCTI; and
  - (ii) Recipient will not issue a tax invoice,

in respect of any taxable supply that the Recipient makes under this Deed.

## **7 Withholding payment and repayment**

- (a) Without limitation to clause 5(c), the Department may, by notice to the Recipient, withhold or suspend payment of any Funds if and for so long as it reasonably believes that:
  - (i) the Recipient has not complied with this Deed;
  - (ii) the Recipient is unlikely to conduct the Project or administer the Grant in accordance with this Deed; or
  - (iii) the Recipient's actions will cause damage to the reputation of the Department, the State of New South Wales or this Grant Program.
- (b) If any amount of the Funding:
  - (i) has been incorrectly claimed or overpaid;

- (ii) has not been spent in accordance with this Deed;
  - (iii) is surplus to the requirements of the Milestone; or
  - (iv) is unspent upon termination or expiry of this Deed;
- then the Department may (at its discretion), by written notice:
- (v) require the Recipient, within no less than twenty (20) Business Days of the notice:
    - (A) repay the relevant amount to the Department; or
    - (B) otherwise deal with the relevant amount as directed by the Department; or
  - (vi) deduct that amount from any future payments of the Funding, or other funding, payable by the Department to the Recipient.
- (c) The Recipient agrees that where the Recipient is:
- (i) unable; or
  - (ii) fails for any reason (including but not limited to insolvency or liquidation of the Recipient or termination of the Deed under clause 16.1),
- to complete all of the Project in its entirety by the Expiry Date or any other date agreed in writing by the Department, then the Department may, in the Department's discretion, require the Recipient to repay any or all of the Funds amount already paid to the Recipient.
- (d) If the Recipient does not make any required repayment of the Funds under this Deed by the due date for payment, the Department may recover the amount as a debt due and owing to the Department without the need for further proof.
  - (e) If the Department withholds or suspends payment of any amount of the Funds, the Recipient must continue to perform its obligations under this Deed.

## **8 Acknowledgement of Funding and publicity**

- (a) Prior to any public announcement or release of any promotional materials related to this Deed or the Project, the Recipient agrees to seek the Department's prior written consent.
- (b) The Recipient must:
  - (i) acknowledge the Department's support of the Project, Grant program or the Funds, in the form directed by the Department:
    - (A) in any public statement about the Project, Grant program or the Funds;
    - (B) on the home page of any website established in connection with the Project, Grant program or the Funds; and
    - (C) on any equipment or other facility funded wholly or in part by the Department arising out of or in connection with Project, Grant program or the Funds; and
    - (D) in accordance the Funding Acknowledgement Guidelines available here (as may be amended or updated, including by a new online location, from time to time):  
<https://www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines/funding-acknowledgement-guidelines>

- (ii) comply with any Department requirements in respect of the form and content of any acknowledgement of the Funds, as specified in the Project Details or as otherwise directed from time to time; and
- (iii) use best efforts to provide a reasonable period of prior notice to ensure the Department and its Minister are given an opportunity to participate in media coverage or other promotion of the Project;
- (iv) not use the Department or NSW Government branding or logos except with the Department's prior written consent and in all cases in accordance with the NSW Government's Style Guide, which:
  - (A) may be updated from time to time; and
  - (B) at the Commencement Date is found at:  
<https://www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines/funding-acknowledgement-guidelines>
- (c) Recipient agrees that the Department may publicise, disclose and report on the provision of the Grant to the Recipient, including but not limited to details of the Recipient's name, business address, amount and purpose of the Grant, title and description of the Project and the nature and outcomes of the Project.
- (d) On request by the Department at any time, the Recipient must promptly and permanently remove any acknowledgement of the Grant and any Department or NSW Government logo from any material, promotional or otherwise, relating to the Project.

## **9 Reports and review**

### **9.1 Reports**

- (a) The Recipient must prepare and submit to the Department:
  - (i) the required Reports as at the times specified in this Deed;
  - (ii) a Milestone Report which includes (without limitation) a Financial Report in a form directed by the Department, including at a minimum:
    - (1) a Project Budget update, including the actual spend of the Project against the Funding and any Third-Party Contributions; and
    - (2) evidence, including receipts, that all expenditure has been spent in accordance with the Project Budget;
  - (iii) a Final Report for the Project at the time specified in Attachment B; and
  - (iv) promptly on request from the Department (acting reasonably), any additional reports or information that may be requested by the Department from time to time, including requests for information for publication.
- (b) If any Reports contain Confidential Information of the Recipient, the Recipient must mark the relevant parts of the Report as 'Confidential Information', which will be treated in accordance with clause 12. The Department reserves the right to request the Recipient provide reasons substantiating the categorisation of information as Confidential Information and if the Department does not agree:
  - (i) the Department will notify the Recipient;
  - (ii) the Recipient and the Department will promptly meet in good faith to discuss and settle the characterisation of the information; and
  - (iii) if the parties cannot agree on the characterisation of the relevant information following discussion, proceed to dispute resolution in accordance with clause 14.



- (c) Despite clause 9.1(b), the Recipient acknowledges that any Reports provided or collated under or in connection with this Deed or Project may be:
  - (i) considered as supporting documentation for any Government Agency with respect to any government audit; and
  - (ii) be used, adapted or modified by the Department for any government purpose, including for the purpose of evaluation.
- (d) If the Department does not accept a Report as satisfactory, the Recipient must submit a revised Report within ten Business Days following the Department's notice of rejection.

## 9.2 Review

- (a) The Department may regularly review (either directly or through a third party) the Recipient's implementation of this Deed, including:
  - (i) its conduct of the Project; and
  - (ii) its expenditure of the Funding.
- (b) The Recipient must cooperate fully with any review. To facilitate the Department's review the Recipient must, on reasonable notice:
  - (i) make appropriate Personnel available to meet with, and/or discuss, the implementation of the Deed;
  - (ii) make available for inspection and the making of copies as appropriate, all relevant Records requested and assist with the inspection and the obtaining of any requested copies; and
  - (iii) allow access to any site of the Project to inspect the conduct of the Project and any Records.
- (c) The Department must give the Recipient prior notice of its requirements in relation to an audit and use its reasonable endeavours to minimise disruption and interference to the Recipient's performance of its obligations under this Deed.
- (d) Except where otherwise determined by the Department, the Recipient is responsible for its own costs of participating in an audit and such costs are not to be paid out of the Funding or any interest earned on the Funding.
- (e) Without limitation to any other rights of the Department, the Recipient must promptly take any reasonable action required by the Department to rectify any error, non-compliance or inaccuracy identified in an audit in relation to the Project or the Recipients' performance of this Deed.
- (f) The Recipient is not entitled to any delay costs or other costs or expenses of whatever nature relating in any way to an audit.

## 10 Records

- (a) The Recipient must:
  - (i) keep and maintain adequate financial and operational Records in respect of its implementation of this Deed, including Records of:
    - (A) its conduct of the Project; and
    - (B) books of account, financial receipts and expenditure and income, its receipt and expenditure of the Funding and any Third Party Contribution in accordance with Australian accounting standards,
 during the Term and for seven (7) years following termination or expiry of this Deed;

- (ii) provide copies of the financial and operational Records to the Department or the NSW Audit Department promptly on request;
  - (iii) permit the Department (either directly or through a third party contractor) or the NSW audit Department to inspect and audit the Recipient's accounts any other documents, including any application documents, relating to the Project; and
  - (iv) provide all reasonable assistance to comply with requests by the Department, the relevant third-party contractor (if applicable) or the NSW audit Department for other information or particulars concerning the Project within 14 days of such request.
- (b) The Recipient must keep financial accounts and records relating to the Project so as to enable:
- (i) all receipts and payments related to the Project to be identified in the Recipient's accounts and reported in accordance with this Deed; and
  - (ii) the generation of an income and expenditure statement for each Financial Year of the Project against the Project Budget, including:
    - (A) a comparison of the income and expenditure in each Financial Year; and
    - (B) the audit of those records in accordance with Australian auditing standards.

## **11 Intellectual Property and Indigenous Cultural and Intellectual Property**

### **11.1 Intellectual Property**

- (a) Intellectual Property in the Project Material vests in the Recipient unless otherwise specified in this Deed (including any Attachment or attachment to this Deed). The Recipient must obtain all Intellectual Property and other protected rights necessary to undertake the Project.
- (b) The Recipient warrants that:
  - (i) in carrying out the Project and granting the rights to the Department under this Deed the Recipient will not infringe any Intellectual Property rights; and
  - (ii) any Reports, information or Deliverables provided by the Recipient (including as part of an evaluation) will not contain anything that, to its knowledge, is libellous or defamatory.
- (c) Nothing in this Deed affects the ownership of Intellectual Property in Existing Material (including third party Material) or Indigenous Cultural and Intellectual Property.
- (d) The Recipient grants (and will ensure any relevant third-party Intellectual Property owners grant) the Department and the State a permanent, non-exclusive, transferable, irrevocable, worldwide, royalty-free and sublicensable licence to use, reproduce, communicate, publish, adapt and modify the Project Material for non-commercial, government purposes (including for the purposes of evaluating this Grant).
- (e) The Recipient must obtain, and, if requested, provide to the Department in conjunction with the required Final Report or acquittal, signed Moral Rights consents from all creators of the Project Material:
  - (i) if specified in the Project Details that authorship will be acknowledged, to their use and adaptation by the Department and the State without restriction, subject to acknowledgment of the authorship of the creator; or

- (ii) otherwise, to their use and adaptation by the Department and the State without restriction or any requirement to attribute authorship to the creators.
- (f) If requested by the Department, the Recipient must provide the Department with a copy of any Project Material in the format reasonably requested.
- (g) Promptly following a request by the Department, the Recipient must provide to the Department any Shared Project Data in accordance with the terms in Attachment E. For the avoidance of doubt, this clause survives expiry or termination of this Deed.

## **11.2 Indigenous Cultural and Intellectual Property**

In the course of completing the Project, the Parties agree that the terms of Attachment D (Indigenous Cultural and Intellectual Property Principles) applies:

- (a) to Indigenous Cultural and Intellectual Property collected or obtained;
- (b) to any occurrence of the Specified Acts for Indigenous Cultural and Intellectual Property; and
- (c) at times otherwise directed by the Department (in any notified policies or otherwise).

## **12 Confidentiality and Privacy**

### **12.1 Confidentiality**

- (a) Neither Party may disclose the other's Confidential Information without the other party's prior consent unless the disclosure is:
  - (i) required by Law, Parliament, the Department's responsible Minister or by this Deed;
  - (ii) to a Party's internal management Personnel to enable effective management or auditing of contract-related activities;
  - (iii) by the Department to a Minister of the Crown in right of the State of New South Wales or to the employees of that Minister's Department;
  - (iv) reasonably required by a person, including a contracted auditor of the Department, for the purpose of performing this Deed;
  - (v) by the Department to a Government Agency where reasonably necessary to perform a government function, including research and analysis in respect of the Grant program, monitoring performance of this Deed, evaluation of the outcomes of this Deed and/or the Grant program and reporting on the Grant program;
  - (vi) by the Department to a third party for the sole purpose of evaluating the Grant programs;
  - (vii) by a Party to its legal or other professional advisers, auditors, contractors, consultants or employees in order to comply with obligations, or to exercise rights, under this Deed; or
  - (viii) to that Party's insurer for the purpose of claim management.
- (b) Each Party will ensure that any third party to which it discloses Confidential Information under a permitted disclosure is made aware of the confidential nature of the information.
- (c) The Recipient agrees to use its best endeavours to mark its Confidential Information as "Confidential Information".

### **12.2 Compliance with Privacy Legislation**

- (a) To the extent that the Recipient deals with Personal Information in conducting the Project, the Recipient must:
- (i) comply, and ensure that its Personnel comply, with applicable Privacy Legislation;
  - (ii) obtain written consent from each person from which the Recipient collects Personal Information for the Department to use that Personal Information in accordance with this Deed or for government purposes, including without limitation for clause 12.2(d) and 12.2(e);
  - (iii) not cause the Department to breach any obligations imposed by the *Privacy and Personal Information Protection Act 1998*; and
  - (iv) immediately notify the Agency if it becomes aware of an actual or potential breach of privacy.
- (b) As soon as practicable after becoming aware of any Security Breach, or where the Department notifies the Recipient that the Department has reasonable cause to believe there has been a Security Breach, the Recipient must (at the Recipient's cost):
- (i) conduct a root cause analysis;
  - (ii) share the results of the Recipient's analysis and the Recipient's remediation plan with the Department on request;
  - (iii) take all reasonable steps to prevent the Security Breach from reoccurring; and
  - (iv) provide to the Department, to the extent known at the time:
    - (A) the date of the Security Breach;
    - (B) a description of the Security Breach;
    - (C) a list of actions taken by the Recipient to mitigate the impact; and
  - (v) a summary of the information and data lost, accessed or disclosed in the Security Breach.
- (c) Where the Recipient is required by law to produce or disclose any information or to develop or provide any response or explanation to a government authority in relation to any incident (including any Security Breach) concerning the handling, management, safekeeping or protection of any Personal Information in connection with this Deed, the Recipient must (to the extent such action is permitted by Law):
- (i) provide notice to the Department as soon as reasonably possible of the nature and content of the information to be produced or disclosed; and
  - (ii) prior to providing a response to the government authority or disclosing any Personal Information, engage in reasonable consultation with the Department regarding its proposed response or explanation.
- (d) The Department may disclose information contained in Reports, documents and materials to a third party for the purpose of evaluation of the Department's Grant programs. The Department will notify the third party that the information may contain Confidential Information or Personal Information and request that any third party agrees to keep all information acquired, material prepared or collected and any findings of the Project, confidential.
- (e) This clause 12.2 is:

- (i) at all times subject to any legal obligation for the Department to disclose information (for example, under statute, for a parliamentary inquiry or under order from an Australian court); and
- (ii) an essential term of the Agreement and is included to enable the Agency to comply with any of its obligations under Privacy Laws, including with respect to an eligible data breach under the *Privacy and Personal Information Protection Act 1998* (NSW).

### **12.3 Disclosure of Information**

- (a) The Recipient acknowledges that, under the *Government Information (Public Access) Act 2009* (NSW) or under the NSW Grants Administration Guide legislated by the *Government Sector Finance Act Amendments (Grants) Act 2023* (NSW), the Department may be required or authorised to publicly disclose information about this Deed and the Recipient consents to such disclosure.
- (b) The Recipient agrees, on the request of the Department, to coordinate with the Department in connection with any request received by the Department for the release of information under the *Government Information (Public Access) Act 2009* (NSW) or the *Government Sector Finance Act Amendments (Grants) Act 2023* (NSW).

### **12.4 Evaluation of Project**

- (a) The Recipient acknowledges that:
  - (i) the Department may request that the Recipient take part in an evaluation of the Grant by the Department;
  - (ii) any information provided to the Department as part of the evaluation will not be Confidential Information unless expressly stated by the Recipient prior to providing that information; and
  - (iii) the Department may disclose information gathered as part of an evaluation to any third party, however to the extent that information contains Confidential Information or Personal Information:
    - (A) the Department will notify that third party that the information may contain Confidential Information or Personal Information; and
    - (B) request that the third party agrees to keep all information acquired, material prepared or collected and any findings of the Project confidential.
- (b) The Recipient agrees that the Department may contact the Recipient with a request for Project updates, Data or further information throughout or following expiry of this Deed with respect to:
  - (i) the outcomes and lessons learned from the implementation and maintenance of the Project;
  - (ii) the amount of carbon credits earned and how those carbon credits have been used (for example, insetting or sale for offsetting);
  - (iii) if carbon credits have been sold, whether co-benefits (for example, biodiversity conservation) added any value to the carbon credit price; and/or
  - (iv) any other matter arising out of or in connection with the Grant or the Project.

## **13 Risk Management**

### **13.1 Recipient representations and warranties**

The Recipient represents and warrants that, as the date of the Recipient's execution of this Deed and for every day of the Term of this Deed:

- (a) **(information)**: all information provided by the Recipient to the Department is true and correct;
- (b) **(authority)**: the Recipient has the full power and authority to enter into this Deed and to perform the Recipient's obligations, including as required under the Carbon Act;
- (c) **(no conflict of interest)**: other than those (if any) disclosed in the Recipient's Grant application, to the best of the Recipient's knowledge, neither the Recipient nor the Recipient's Personnel have any actual, perceived or potential conflicts of interest in relation to the Project; and
- (d) **(working with children)**: the Recipient has ensured that its officers, agents, Subcontractors and volunteers engaged in child-related work (if applicable), have working with children check clearance, as required under the *Child Protection (Working with Children) Act 2012* (NSW).

### 13.2 Notice of adverse events

- (a) The Recipient must immediately notify the Department if the Recipient becomes aware of any of the following adverse events (**Adverse Event**):
  - (i) any material change to any representation and warranty given under this Deed;
  - (ii) any significant delay or suspension of a Milestone or the Project, including if a Milestone or Project is inactive for more than forty (40) Business Days; or
  - (iii) any other matter that is reasonably likely to adversely affect the Recipient's conduct of the Project, a Milestone or more generally the performance this Deed.
- (b) In consultation with the Department, the Recipient must:
  - (i) take all available steps with prior approval by the Department, to lessen the impact of any such Adverse Event; and
  - (ii) comply with the Department's reasonable directions with respect to such Adverse Event.
- (c) Any approval or direction by the Department under clause 13.2(b) is not a waiver of any right of the Department under this Deed or at Law with respect to the relevant Adverse Event.

### 13.3 Insurance

- (a) The Recipient must procure and maintain, with a reputable insurance company, each of the following policies:
  - (i) broad form public liability insurance (incorporating products liability insurance) for the minimum amount specified in the Project Details in respect of each and every occurrence and unlimited in the number of such occurrences over any one period of cover, during the Term and for any additional period post termination or expiry specified in the Project Details;
  - (ii) volunteer personal accident insurance for any volunteers carrying out any part of the Project for \$20,000,000 in respect of each and every occurrence and unlimited in the number of such occurrences over any one period of cover, during the Term and for any additional period post termination or expiry specified in the Project Details;

- (iii) workers' compensation in accordance with applicable legislation in respect of all the Recipient's employees, if applicable; and
  - (iv) any other policy specified in the Project Details.
- (b) The Recipient must not do, permit or suffer any act, matter or thing or omission whereby any of the policies referred to in this clause to lapse, be vitiated, rendered void or voidable.
  - (c) The Recipient must, on request, produce evidence satisfactory to the Department that its required insurance policies are current.
  - (d) Without limitation to clause 13.3(a) each Party warrants that it has and will maintain appropriate insurance to cover any liability it may occur in relation to this Deed.

#### 13.4 Indemnities

- (a) The Project is at the Recipient's risk. The Recipient:
  - (i) accepts full responsibility for the performance of the Project; and
  - (ii) releases Those Indemnified from and against all actions, claims, demands and other proceedings that the Recipient may make or recover against Those Indemnified in relation to, in connection with or arising from the Project except to the extent that any negligent or unlawful act or omission by Those Indemnified contributed to the relevant loss or liability.
- (b) The Recipient indemnifies and keeps indemnified the Department and the Crown in right of the State of New South Wales and their officers and employees (together, **Those Indemnified**) from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:
  - (i) the Project and any use of the Funds;
  - (ii) the Recipient's breach of this Deed;
  - (iii) any unlawful or negligent act or omission by the Recipient, the Recipient's employees or the Recipient's Subcontractors in connection with this Deed;
  - (iv) any illness, injury or death of any person the Recipient, the Recipient's employees or the Recipient's Subcontractors cause or contribute to in connection with this Deed;
  - (v) any loss or damage to real or personal property that the Recipient, the Recipient's employees or the Recipient's Subcontractors cause or contribute to in connection with this Deed; and
  - (vi) or any act or omission by the Recipient, the Recipient's employees or the Recipient's Subcontractors in connection with this Deed that is in infringement of any Intellectual Property or privacy rights of the Department or any third party.
- (c) The Recipient's liability to indemnify Those Indemnified:
  - (i) will not be affected in any way by any terms of insurance or any refusal by the insurer to indemnify the Recipient under a policy of insurance;
  - (ii) will be reduced proportionately to the extent one or more of Those Indemnified negligent or unlawful acts or omissions, or their officers, employees or agents contributed to the relevant loss or liability; and

- (iii) does not exclude or reduce the Recipient's liability to any party that may arise by operation of the common law, statute or the other terms of this Deed.
- (d) The Recipient's release in favour of, and obligation to indemnify, Those Indemnified who are not the Department under this Deed may be held on trust by the Department or the State of New South Wales, and may be fully and effectively enforced by the Department or the State of New South Wales, on behalf of Those Indemnified.

## 14 Disputes

- (a) A party claiming that a dispute in relation to this Deed (**Dispute**) has arisen must provide a Notice to the other party including details of the Dispute (**Dispute Notice**).
- (b) Following receipt of a Dispute Notice, each Party must refer the Dispute to a senior representative, who:
  - (i) does not have prior direct involvement in the Dispute; and
  - (ii) has authority to negotiate and settle the Dispute.
- (c) If the Dispute is not resolved within 10 Business Days from the date the Dispute Notice (or such longer period as agreed by the parties in writing), either party may refer the Dispute for mediation by the Australian Commercial Dispute Centre (ABN 87 003 042 840) for resolution in accordance with the mediation rules of the Australian Commercial Dispute Centre for resolution.
- (d) The mediation will be conducted in accordance with the Australian Commercial Dispute Centre Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- (e) If the dispute is not settled within twenty (20) Business Days (or such other period as agreed in writing) after appointment of the mediator, or if no mediator is appointed within twenty (20) Business Days of the referral of the dispute to mediation, the Parties may pursue any other procedure available at law for the resolution of the dispute.
- (f) Subject to clause 14(g), the parties must follow the Dispute resolution procedures set out in this clause 14 before commencing litigation or taking similar action.
- (g) Nothing in this clause 14 will prejudice the right of a party to seek injunctive or urgent declaratory relief.

## 15 Reduction in Funding

- (a) By giving 20 Business Days' prior written notice to the Recipient and without limiting other rights under this Deed, the Department may reduce the Funds payable to the Recipient (at the Department's discretion) if the Recipient obtains further Third-Party Contributions for the Project under clause 2.4(c).
- (b) The Recipient must enter into a variation to reflect the reduction in Funding on terms acceptable to the Department.

## 16 Termination

### 16.1 Termination by Department for cause

Without limiting other rights under this Deed or at Law, the Department may terminate this Deed on notice to the Recipient with effect from the date specified in the notice if:

- (a) (**Breach capable of remedy**): the Recipient breaches a provision of this Deed and fails to remedy that breach within twenty (20) Business Days following receipt



of a notice requiring the Recipient to do so (or such longer period as determined by the Department);

- (b) **(Breach not capable of remedy)**: the Recipient breaches a provision of this Deed and, in the Department's reasonable opinion, the breach is incapable of remedy;
- (c) **(Inappropriate conduct)**: in the Department's reasonable opinion, the Recipient's actions will or has caused damage to the reputation of the Department, the State or its Grant program;
- (d) **(Third Party Contributions)**: the Recipient obtains throughout the Term additional Third-Party Contributions that are not specified in the Project Details at the Commencement Date and the Department elects to terminate this Deed under clause 2.4(c);
- (e) **(Material Change in Circumstances)**: in the Department's reasonable opinion, there has been a material change in circumstances of the Recipient's financial position, structure or identity;
- (f) **(Change in Control)**: the Recipient has undergone or will undergo a Change in Control of its organisation that, in the Department's reasonable opinion, renders the Recipient no longer eligible to receive the Grant; or
- (g) **(Insolvency)**: to the extent permitted by Law, the Recipient becomes insolvent, is the subject of a debtors or creditors petition under the *Bankruptcy Act 1966* (Cth), resolves to go into administration or liquidation, or if a summons for its winding up is presented to a Court or it enters into any scheme of arrangement with its creditors.

## 16.2 Termination by Department without cause

- (a) Without limiting other rights under this Deed or at law, but subject to the terms of this clause 16.2 the Department may terminate this Deed for convenience without cause (and without the need to give reasons) by giving at least twenty (20) Business Days' prior written notice to the Recipient.
- (b) If the Department terminates this Deed without cause under this clause 16.2 then subject to the satisfactory delivery of any requirements under clause 16.3, the Department will pay the Recipient for:
  - (i) the Milestones completed or part thereof which has not been paid prior to the termination date (**Milestone Termination Costs**); and
  - (ii) the Recipient's reasonable, substantiated costs (other than loss of profit or income) necessarily and directly incurred as a result of the termination (**Early Termination Costs**),

provided that the:

- (iii) Recipient satisfactorily delivers those Milestones or parts thereof the subject of the Milestone Termination Costs in accordance with the terms of this Deed;
- (iv) Recipient promptly submitting within 5 Business Days of the termination, a Milestone Report and Financial Report;
- (v) Recipient provides the Department with all required Reports and completion of all Deliverables up to the date of termination;
- (vi) Recipient uses its best efforts to minimise the Recipient's Early Termination Costs; and

- (vii) total amount of Early Termination Costs payable will not exceed the total amount of the unpaid Funds forfeited through termination under this clause 16.2.

### 16.3 On termination

- (a) The Recipient must:
  - (i) stop the performance of the Recipient's obligations under this Deed either:
    - (A) before the end of the notice period required under this Deed or as specified in the notice of termination; or
    - (B) if there is no notice period, within 10 Business Days of receipt of the notice of termination; and
  - (ii) on receipt of notice of termination, take all available steps to minimise loss resulting from the termination.
- (b) Without limiting any rights or remedies of the Department, the Department is not obliged to pay to the Recipient any outstanding monies or other Funds under this Deed except those required under 16.2(b).
- (c) Unless otherwise agreed in writing by the Department, the Recipient must and without limitation to clause 16.2(b), within ten Business Days of termination:
  - (i) **(Return unspent Funding)**: repay to the Department, in accordance with its direction any:
    - (A) unspent Funds;
    - (B) Funds paid to the Recipient under this Deed that is in excess of the Department's liability at the date of termination;
  - (ii) **(Provide Reports and other Material including Shared Project Data)**: provide to the Department:
    - (A) any Reports due to, or otherwise reasonably requested by, the Department; and
    - (B) any Project Material which is owned by, or licensed to, the Department under this Deed, in a format, and with associated explanatory material, which permit the Department to exercise its Intellectual Property rights in respect of that Project Material; and
  - (iii) **(Return Confidential Information)**: without limitation to the right of the Department to request the return and destruction of Confidential Information at any time, on request from the Department return to the Department any Confidential Information provided by the Department.
- (d) If the Recipient does not make any required repayment of unspent Funding by the due date for payment, the Department may recover the amount as a debt due and owing to the Department without the need for further proof.
- (e) On termination or expiry of this Deed:
  - (i) accrued rights and obligations are not affected; and
  - (ii) the Department is released from, and has no liability for, any Claims or liabilities including from any third party claiming through the Recipient, arising from or in connection with Department's termination under this clause 14(f).
- (f) This clause 14(f) does not exclude or reduce the rights of either party arising by operation of the common law or statute or the other terms of this Deed.

## **17 General**

### **17.1 Survival**

The following clauses survive termination or expiry of this Deed: clause 1.1 (Parts of this Deed and priority), clause 6 (GST), clause 7 (Withholding payment and repayment); clause 8 (Acknowledgement of Funding and publicity), clause 9 (Reports and review); clause 10 (Records); clause 11 (Intellectual Property and Indigenous Cultural and Intellectual Property); clause 12 (Confidentiality and Privacy); clause 13.3 (Insurance); clause 13.4 (Indemnities); clause 14 (Disputes); clause 16.3 (On termination); this clause 17.1 (Survival); clause 17.2 (Notices), clause 17.9 (Governing law and jurisdiction), Attachment E (Data Licence and Access), and any other clause (in this Deed or any Attachments) which by its nature is intended to survive this Deed.

### **17.2 Notices**

- (a) A notice under this Deed must be in writing and delivered to the address or email address of the recipient Party as specified in the Project Details or as that Party otherwise directs. A notice under this Deed will be taken to be delivered:
  - (i) if by hand or by registered post, on delivery to the Party's address for service and a signature is received as evidence of delivery;
  - (ii) if by post (other than registered post), on the sixth (6th) Business Day after posting;
  - (iii) if by email, upon receipt by the sender of confirmation of delivery notification from an email server or a written acknowledgement from the recipient).
- (b) Despite the immediately preceding subclause if a notice is delivered or received on a day that is not a Business Day or is delivered or received later than 5.00 pm (Sydney, New South Wales time), it will be taken to have been given or made at 9.00 am on the next Business Day.

### **17.3 Relationship**

- (a) The Recipient acknowledges that neither the Recipient nor any of the Recipient's Personnel are employees, partners or agents of the Department.
- (b) The Recipient must not, and must ensure that the Recipient's Personnel do not, represent that the Recipient or a member of the Recipient's Personnel are an employee, partner or agent of the Department or the State or that it is able to bind the Department or the State.

### **17.4 Variations, consents and waivers**

- (a) All variations to this Deed and all consents, approvals and waivers must be in writing.
- (b) All variations must be signed by both Parties prior to the implementation of that variation.

### **17.5 Recipient Assignment, Novation and Transfer**

- (a) The Recipient must not assign, novate or transfer its obligations or interests under this Deed, without the prior written consent of the Department (in the absolute discretion of Department which may be given with or without conditions).
- (b) A Change of Control of the Recipient is a deemed assignment of the Recipient's obligations or interests under this Agreement for the purposes of clause 17.5(a).

### **17.6 No Fetter on Powers**

Nothing in this Deed in any way:

- (a) restricts or affects the unfettered discretion of the Department to exercise any of its powers, functions or responsibilities under any law;
- (b) requires the Department to interfere with or influence the exercise by any person or Governmental Agency of any statutory function or responsibility;
- (c) requires the Department to exercise any power, function or responsibility or otherwise act in a manner that it regards as not in the public interest; or
- (d) requires the Department to develop or implement policy, or take any steps to procure legislation, by reference only or predominantly to the interests, objectives or expected outcomes of this Deed.

#### **17.7 Conflict of Interest**

- (a) The Recipient must at all times during the term, use the Recipient's best endeavours to:
  - (i) keep itself informed of any potential conflicts of interest; and
  - (ii) take necessary steps to prevent and mitigate the effects of any conflicts of interest in accordance with the requirements of this clause 17.7 or as otherwise directed by the Department.
- (b) The Recipient must not:
  - (i) act as a contractor or consultant (as the case may be) to any person who carries on or is involved in any capacity in an activity or business; or
  - (ii) carry on or be involved in any capacity in an activity or business, which may conflict with, or adversely affect, the Recipient's ability to carry out the Recipient's obligations under this Deed.
- (c) If, during the term of this Deed a conflict of interest arises, may be perceived to arise, or appears likely to arise, then without limitation to clause 13.2, the Recipient must:
  - (i) inform the Department as soon as practicable after becoming aware that the conflict of interest has arisen, or appears likely to arise;
  - (ii) make full disclosure of all relevant information relating to the conflict, including, but not limited to the Recipient's strategy for managing the relevant conflict of interest; and
  - (iii) take such steps as the Department requires to resolve or otherwise deal with the conflict of interest.
- (d) If the Recipient or any of the Recipient's Personnel are found to have:
  - (i) breached this clause 17.7, clause 13.1(c) or clause 13.2;
  - (ii) offered any inducement or reward to any public servant or employee, agent or subcontractor of the Department or the NSW Government in connection with this Deed;
  - (iii) committed corrupt conduct as defended under the *Independent Commission Against Corruption Act 1988* (NSW);
  - (iv) a record or alleged record of unethical behaviour; or
  - (v) in the Department's reasonable opinion, engaged in improper conflicts of interest,

the Department may, in its absolute discretion, terminate this Deed for breach under clause 16.1.

- (e) The Department may, in its discretion, request that the Recipient provides written comments within a specified time before the Department terminates this Deed under clause 17.7(d) for the Department's consideration. Any documents provided under this clause do not diminish or reduce the application of the Department's absolute discretion.

#### **17.8 Counterparts**

This Deed may be executed in any number of counterparts which taken together will form one agreement.

#### **17.9 Governing law and jurisdiction**

The Deed is subject to and must be construed in accordance with the laws for the time being in force in New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

#### **17.10 Entire Deed**

This Deed constitutes the entire Deed and understanding between the Parties as to its subject matter. Any prior arrangements, representations or undertakings as to the subject matter of this Deed are superseded.

#### **17.11 Waiver and exercise of rights**

- (a) 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.
- (b) 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.

#### **17.12 Severability**

If any part of this Deed is prohibited, void, illegal or unenforceable, then that part is severed from this Deed but without affecting the continued operation of the remainder of the Deed.

#### **17.13 Electronic Signature and Exchange permitted**

- (a) In relation to the electronic exchange of documents:
  - (i) Parties may exchange executed counterparts of this Deed, or any other document required to be executed under this Deed, by delivery from one Party to the other Party by emailing a pdf (portable document format) copy of the executed counterpart to that other Party as an attachment to an email or by transmitting the executed counterpart electronically via a secure digital platform such as DocuSign ("Electronic Delivery"); and
  - (ii) Electronic Delivery of an executed counterpart will constitute effective delivery of the executed counterpart as if the original had been received, from the date and time that the email was sent, provided that the sending Party does not receive a delivery failure message within a period of 24 hours of the email being sent.
- (b) Electronic signatures complying with a law applicable in New South Wales will be deemed original signatures for the purposes of this Deed and any such digital, scanned or electronically applied signature is to be treated in all respects as having the same effect as an original signature

## 18 Interpretation

### 18.1 Definitions

In this Deed, unless the context otherwise dictates, where appearing with a capital letter:

**Aboriginal Person(s)\*** means any Aboriginal person(s) who asserts and expresses their ICIP rights and interest.

**Note:** To honour the principle of self-determination, this definition does not prescribe which terminology is used to describe, define or name the relevant Aboriginal person(s). The Department respects the rights of the Aboriginal person(s) to define themselves and the terminology or naming conventions used in describing themselves. Use of the term 'Aboriginal person(s)' in the context of this document is intended to be inclusive of all definitions, terms and naming conventions provided by the Aboriginal person(s) who are asserting and expressing their ICIP rights and interests.

**Accounting for Nature (AfN)** An independent not-for-profit organisation that administers the Accounting for Nature® Framework ('the Framework'). The Framework provides a system for measuring, verifying, certifying, and publicly reporting Environmental Condition Accounts ('Environmental Accounts')

**ACCU Scheme** (formerly known as the Emissions Reduction Fund or ERF) means the ACCU Scheme administered by the CER.

**Adverse Event** has the meaning given in clause 13.2(a).

**Best Practice ICIP Guidelines** means the Aboriginal Affairs NSW Aboriginal Cultural and Intellectual Property Protocol, as amended from time to time, available at [https://www.aboriginalaffairs.nsw.gov.au/media/website\\_pages/our-Department/staying-accountable/aboriginal-cultural-and-intellectual-property-acip-protocol/AANSW-Aboriginal-Cultural-and-Intellectual-Property-ICIP-Protocol.pdf](https://www.aboriginalaffairs.nsw.gov.au/media/website_pages/our-Department/staying-accountable/aboriginal-cultural-and-intellectual-property-acip-protocol/AANSW-Aboriginal-Cultural-and-Intellectual-Property-ICIP-Protocol.pdf)

**Business Day** means any day which is not a Saturday, Sunday or gazetted public holiday in the State of New South Wales.

**Carbon Act** means the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth).

**Carbon Project** means verified carbon sequestration activities, registered with the ACCU Scheme, which reduce, avoid, or remove greenhouse gas emissions from the atmosphere and contribute to the mitigation of climate change.

**CER** means the Australian Clean Energy Regulator, the independent statutory authority established under the *Clean Energy Regulator Act 2011* (Cth),

**Change in Control** means any change during the Term in any person who directly or indirectly exercise/s effective control over the Recipient (including the ability to determine the outcome of decisions about the financial and operating and other policies of the Recipient) by holding the majority of voting shares, units or other interests in the Recipient or by any other means, but does not include a change in respect of a local council if that change is due to an election.

**CI Act** means *Security Legislation Amendment (Critical Infrastructure) Act 2021* (Cth).

**Claim** means all allegations, proceedings, applications, actions, claims, suits, demands, losses (including costs, damages, expenses and liability, including consequential loss, indirect loss, loss of profit, loss of revenue, damages for loss of opportunity and legal costs), which may be brought against, made upon, or incurred by the Department, the State of New South Wales or their Personnel.

**Confidential Information** means any written or oral information of a Party that:

(a) is by its nature confidential;

- (b) is designated as confidential; or
- (c) the receiving Party knows or ought to know is confidential,

but does not include information which is or becomes public knowledge other than by breach of this Deed.

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

**Contribution** or **Recipient Contribution** means the Recipient's contribution toward the costs of the Project, as specified in the Project Details.

**Correctly Rendered Tax Invoice** means a tax invoice that:

- (a) complies with the requirements of the GST Law;
- (b) sets out details of the Project and Milestone undertaken for which the relevant Milestone Payment is claimed, applicable GST and the total amount payable; and
- (c) contains any other details and is accompanied by any other supporting information reasonably required by the Department.

**Data** means any facts, metadata, statistics, instructions, concepts or other information in a form that is capable of being communicated, analysed or processed (whether by an individual or by a computer or other automated means) which may or may not form Material, and includes any:

- (a) Third Party Data; and
- (b) any enhancements to that Data.

**Deed** means this Deed as described in clause 1.1 (Parts of this Deed and priority).

**Deliverable** means the requirements to be performed by the Recipient to the satisfaction of the Department in order for the Recipient to complete the Milestones.

**Department** means the Department of Environment and Climate Change as identified in the Project Details.

**Dispute** has the meaning given in clause 14(a).

**Dispute Notice** has the meaning given in clause 14(a).

**Early Termination Costs** has the meaning given in clause 16.2(b).

**Existing Material** means Material that a party makes available for the purpose of the Project, whether upon commencement of this Deed or throughout the Term of this Deed that is:

- (a) wholly in existence prior to the Commencement Date of this Deed and has not been modified or adapted for the purposes of this Deed or Project; and
- (b) developed independently of this Deed or the Project to which this Grant relates; and
- (c) does not include Indigenous Cultural and Intellectual Property.

**Final Report** means a complete report documenting the conduct and achievements of the Project, as further defined in Attachment B.

**Financial Report** means the report provided in accordance with the requirements under clause 9.1(a)(ii) at the times specified in this Deed.

**Financial Year** means the period commencing on 1 July in one calendar year and ending on 30 June the following calendar year.

**Funds or Funding** means the maximum amount of funds to be provided to the Recipient for the Project under this Deed.

**Government Agency** means any of the following:

- (a) a government sector agency (within the meaning of the *Government Sector Employment Act 2013* (NSW));
- (b) a New South Wales Government agency;
- (c) any other public authority that is constituted by or under an Act or that exercises public functions for or on behalf of the State of New South Wales (other than a State-owned corporation); or
- (d) any State-owned corporation prescribed by regulations under the *Public Works and Procurement Act 1912* (NSW).

**Grant** means the provision of Funds for the Project in accordance with the terms of this Deed.

**GST** has the meaning given to this term in the GST Law.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), related legislation and any delegated legislation.

**Incorporated Existing Materials** means any Existing Materials incorporated in or supplied with the Project Material.

**Indigenous Cultural and Intellectual Property or ICIP** means the cultural heritage, traditional knowledge and traditional cultural expressions belonging to Aboriginal person(s) as referred to in Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples. Cultural heritage, traditional knowledge and traditional cultural expression comprises all objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to particular Aboriginal person(s) or their territory. Indigenous Cultural and Intellectual Property includes:

- (a) cultural knowledge (knowledge of Country and what healthy Country looks like, ecological knowledge, scientific, agricultural, technical knowledge, ritual knowledge);
- (b) traditional cultural expression (traditional land management practices, stories of Country, art, designs and symbols and literature);
- (c) language (including oral or written language words);
- (d) performances (ceremonies, dance and song);
- (e) cultural objects (including, but not limited to arts, crafts, ceramics, jewellery, weapons, tools, visual arts, photographs, textiles, contemporary art practices);
- (f) human remains and tissues;
- (g) places, sacred and historically significant sites and burial grounds;
- (h) the secret and sacred material and information (including sacred/historically significant sites and burial grounds); and



- (i) documentation of Aboriginal and Torres Strait Islander peoples' heritage in all forms of media such as films, photographs, artistic works, books, reports and records taken by others, sound recordings and digital databases.

**ICIP Protocols** means the Department's Indigenous Cultural and Intellectual Property protocols, if any, as notified from time to time.

**Intellectual Property** means all industrial and intellectual property rights whether created now or in the future, whether recognised in Australia or overseas, whether or not they are registered or capable of being registered and includes (without limitation) the rights in patents, knowhow, copyright, designs, semi-conductor or circuit layout rights, trade marks, trade secrets, plant breeder's rights, business or company names or other proprietary rights but does not include Moral Rights or Indigenous Cultural and Intellectual Property.

**Law(s)** means any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated from time to time in any relevant jurisdiction (including the Commonwealth or any State or Territory government) and any applicable common law and rule or principle of equity.

**Legally Committed** means at any time, a present or accrued obligation on the Recipient under contract or at Law to pay money to a third party. It does not include any future obligation to make payment to a third party:

- (a) which is subject to any outstanding condition to payment (other than the expiration of time) or other contingency that has not been satisfied at that time; or
- (b) which the Recipient has a right to cancel, suspend or terminate under the contract or under Law.

**Material** includes all forms of works and subject matter in which Intellectual Property may subsist, created or stored by any means, including (without limitation) documents, equipment, designs, templates, computer programs, software and applications, products, processes, devices, technologies, information and Data.

**Milestone** means each Milestone and the Deliverables associated with that Milestone, as identified Attachment A – Project Plan.

**Milestone Payment** means, subject always to the terms of this Deed, the portion Funding of the Grant payable for the completion of each relevant Milestone as identified in Attachment B.

**Milestone Period** means the period for the performance and completion of each Milestone as identified as such in Attachment B.

**Milestone Report** means the report that provides details of the activities carried out to achieve each relevant Milestone to be provided by the Recipient as part of the completion of each Milestone.

**Milestone Termination Costs** has the meaning given in clause 16.2(b)(i).

**Moral Rights** means those rights recognised as belonging to the author or creator of Intellectual Property and includes, without limitation, those rights recognised under Part IX of the *Copyright Act 1968* (Cth), including the right of attribution, the right against false attribution and the right of integrity of creatorship.

**Notified Policies and Standards** has the meaning given in the Project Details.

**Parties** means the parties to this Deed and **Party** means either one of them.

**Party's Representative** means, in relation to each Party, the person named as such in the Project Details or such other person as the Party may, from time to time, nominate in writing.

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

**Personnel** means any person employed or engaged by a Party.

**Privacy Legislation** means the *Privacy and Personal Information Protection Act 1998* (NSW), *Health Records and Information Privacy Act 2002* (NSW) and the *Privacy Act 1988* (Cth) and includes any directions, regulations, codes of practice and principles made under these Acts.

**Project** means the Grant project identified as such in the Project Details to be carried out in accordance with this Deed.

**Project Budget** means the project budget specified in Attachment C.

**Project Data** means Data or Third Party Data collected or otherwise able to be gathered by the Recipient for, under, or in connection with this Deed and includes any Enhancements.

**Project Details** means the Project Details specified at the outset of this Deed.

**Project Material** means any Material (including the Reports, Project Data or information provided as part of an Evaluation) created or developed by the Recipient in conducting the Project and/or performing this Deed and includes Incorporated Existing Materials.

**Project Plan** means the project plan annexed at Attachment A.

**RCTI** means recipient created tax invoice.

**Recipient** means the entity identified as such in the Project Details.

**Records** includes documents, information and data stored by any means and all copies and extracts of the same.

**Reports** means (in no order of priority):

- (a) the reports specified as required in Attachment B;
- (b) the Final Report;
- (c) the Milestone Reports;
- (d) the Financial Reports; and
- (e) any other report reasonably requested by the Department.

**Security Breach means:**

- (a) any unauthorised use of, loss of, access to or disclosure of Department Data, Shared Project Data, Confidential Information of the Department or Personal Information;
- (b) an eligible data breach under the *Privacy and Personal Information Protection Act 1998* (NSW); or
- (c) any other security breach or data breach relating to Department Data, Shared Project Data, Confidential Information of the Department or Personal Information that is governed by applicable Laws.

**Shared Project Data** means the Project Data shared with the Department on request of the Department or as otherwise required to be shared with the Department under the terms of this Deed.

**Specified Acts for Intellectual Cultural and Intellectual Property** means any of the following classes or types of acts or omissions undertaken by or on behalf of the Parties:

- (a) using, reproducing, adapting or commercialising all or any Indigenous Cultural and Intellectual Property;
- (b) supplementing Indigenous Cultural and Intellectual Property with any other material;
- (c) or using Indigenous Cultural and Intellectual Property in a different context to that originally envisaged,

but does not include false attribution of ownership or custodianship.

**State** means the Crown in right of the State of New South Wales.

**Subcontractors** means any subcontractor engaged by the Recipient to perform part or all of this Deed.

**Supply** has the meaning given to this term by the GST Law.

**Third-Party Contributions** means any contributions (including in-kind contributions), funding or expenditure made towards or in connection with the Project by a party that is not the Department or the Recipient.

**Third Party Data** means Data collected through a third party, including specialist software.

**Term** means the duration of this Deed as specified in the Project Details or until the date on which this Deed is terminated, whichever occurs first.

**Those Indemnified** has the meaning given under clause 13.4(b).

**WHS Laws** means the *Work Health & Safety Act 2011* (NSW) and the *Work Health and Safety Regulations 2017* (NSW) and any ancillary rules, guides, orders, directions, regulations, codes of practice and other instruments under them, as amended from time to time.

## 18.2 Construction

Except where the context otherwise requires:

- (a) The terms set out in the left-hand column of the Project Details have the meaning ascribed to them in the right-hand column of the Project Details.
- (b) Where any time limit pursuant to this Deed falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day.
- (c) A reference to a statute, regulation, ordinance or by-law will be deemed to extend to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing that law from time to time.
- (d) A reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable.
- (e) Where a word or phrase is given a defined meaning in this Deed, any other part of speech or other grammatical form in respect of such word or phrase shall unless the context otherwise requires have a corresponding meaning.

- (f) No rule of construction operates to the detriment of a Party only because that Party was responsible for the preparation of this Deed or any part of it.
- (g) Where there occurs a reference to the doing of anything by the Department including giving any notice, consent, direction or waiver, this may be done by any duly authorised officer of the Department.
- (h) Where the Recipient is comprised of more than one person, each obligation of the Recipient will bind those persons jointly and severally and will be enforceable against them jointly and severally.
- (i) The headings and contents list in this Deed are for convenience only and do not affect the interpretation of this Deed.
- (j) Where the Department is required to act reasonably in the performance of this Deed, that shall be read as a requirement to act as would a Party in the position of the Department which is acting reasonably in its own best interests.
- (k) A reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually.
- (l) Persons will be taken to include any natural or legal person, including bodies corporate, government agencies and vice versa.
- (m) Reference to a party includes references to their respective directors, officers, employees and agents of the party.
- (n) The meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions.

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## Attachment B – Milestone Payment and Reporting Attachment

**Table 2: Attachment B – Milestone Payments and Reporting Attachment\***

Milestone	Activity	Amount	Description	Due Date
	Agreement		Executed by both parties	Within 30 Business Days of receiving this Agreement
1	Report 1	Progress Report 1	Reporting on the following: <ul style="list-style-type: none"> <li>Evidence of AfN method registration</li> <li>Update on completed and upcoming tasks</li> <li>Evidence of photo points set-up</li> <li>Report on risks and issues encountered</li> </ul> Confirmation survey 1 is complete	Within one month of funding deed being executed by both parties (actual due date to be added upon execution of deed)
	Payment 1	80% of total grant amount (actual amount to be added upon execution of deed)		Upon receipt, review, and approval of Progress Report 1 by DCCEE
2	Report 2	Progress Report 2	Reporting on the following: <ul style="list-style-type: none"> <li>Evidence of AfN account certification</li> <li>Update on completed and upcoming tasks with photographic evidence</li> <li>Evidence of completion of mandatory communication requirements</li> <li>Report on risks and issues encountered</li> </ul> Budget update with evidence of spending	Within 6 months of funding deed being executed by both parties (actual due date to be added upon execution of deed)
				Upon receipt, review, and approval of Progress Report 2 by DCCEE
3	Report 3	Progress Report 3	Reporting on the following: <ul style="list-style-type: none"> <li>Update on completed and upcoming tasks with photographic evidence</li> <li>Update on stem survival</li> <li>Report on risks and issues</li> </ul> Budget update with evidence of spending	Within 12 months of funding deed being executed by both parties (actual due date to be added upon execution of deed)

Milestone	Activity	Amount	Description	Due Date
	Payment 2	10% of total grant amount (actual amount to be added upon execution of deed)		Upon receipt, review, and approval of Progress Report 3 by DCCEEW
4	Report 4	Progress Report 4 (Final report)	<p>Final Report means a complete report on the conduct of the Project including:</p> <ul style="list-style-type: none"> <li>• Completed outcomes table assessing the project's findings against initially stated objectives</li> <li>• Photographic and other evidence confirming completed outcomes</li> <li>• Evidence of submitted annual AfN registration and certification</li> <li>• Evidence of the ACCU method year 1 approval by the Clean Energy Regulator</li> <li>• Evidence of an ecological assessment</li> <li>• Budget reflecting the entirety of the project with evidence of spending</li> <li>• Confirmation survey 2 is complete</li> <li>• Any additional information which may be reasonably required by DCCEEW</li> <li>• Final update on overall risks and issues encountered over the duration of the project</li> </ul>	Within 18 months of funding deed being executed by both parties (actual due date to be added upon execution of deed)
	Payment 3	10% of total grant amount (actual amount to be added upon execution of deed)		Upon receipt, review, and approval of Progress Report 4 (final report) by DCCEEW (actual due date to be added upon execution of deed)

\*All task descriptions are subject to amendment. Your expected delivery table will be finalized in time for funding deed execution.

**Attachment C – Project Budget**

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## Attachment D – Indigenous Cultural and Intellectual Property Principles

### 1 Defined Terms

- 1.1 Any capitalised terms not defined in this Attachment D have the meaning prescribed under clause 18 of this Deed.

### 2 Indigenous Cultural and Intellectual Property Generally

- 2.1 The Parties acknowledge that, as at the Commencement Date:
- (a) the best practice guidelines for the management of Indigenous Cultural and Intellectual Property are set out in the Best Practice ICIP Guidelines;
  - (b) the Department or the New South Wales Government may update the Best Practice ICIP Guidelines from time to time.
- 2.2 The Department may, on notice, require the Recipient to comply with all or part of the Best Practice ICIP Guidelines, in addition to any other requirements in this Annexure D.
- 2.3 The parties agree that nothing in this Deed affects the ownership of any Indigenous Cultural and Intellectual Property collected or obtained in the course of performing the Project.
- 2.4 Prior to performing any Specified Acts for ICIP with any ICIP collected or obtained in the course of performing the Project, the parties agree that if the Department:
- (a) has implemented ICIP Protocols, the parties will adhere to those ICIP Protocols; or
  - (b) has not implemented ICIP Protocols, the parties will collect or obtain and use the relevant ICIP in accordance with the principles clause 3 to this Attachment D.
- 2.5 Without limitation to clause 2.3, prior to any Specified Acts for ICIP, the Department may request the Recipient provide an ICIP plan outlining the process for managing ICIP under this Deed, which must relevantly consider the ICIP Protocols or the principles outlined in clause 3 of this Attachment D, for the Department' approval.
- 2.6 If ICIP Protocols apply, the parties agree to implement and follow that protocol when performing Specified Acts for ICIP or with any ICIP collected or obtained in the course of performing this Deed.
- 2.7 The Recipient must:
- (a) maintain records of implementation of the relevant ICIP protocol, including copies of all consents collected for proposed Specified Acts for ICIP;
  - (b) upon request, provide the Department with copies of the consents and other records maintained in accordance with this clause; and
  - (c) if applicable, adhere to the ICIP Management Plan.
- 2.8 To the extent any of ICIP is incorporated into the Project Material, Milestone Deliverables or the Recipient's Existing Material, the Recipient must:
- (a) obtain from the relevant Aboriginal Person(s) prior written consent to the Specified Acts for ICIP (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts for ICIP by the Parties;
  - (b) upon request of the Department, promptly provide the executed original of each such consent to the Department;

- (c) ensure that the relevant Aboriginal Person(s) are appropriately attributed for use of their ICIP in accordance with any directions provided by the Aboriginal Person(s);
- (d) ensure that the relevant Aboriginal Person(s) are appropriately attributed for use of their ICIP in accordance with any directions provided by the Aboriginal Person(s) with respect to;
  - (i) attribution required by completing the table at clause 3.2 of this Attachment D; or
  - (ii) cultural mourning protocol required by completing the table at clause 3.3 of this Attachment D; and
- (e) not use the ICIP for any other purpose other than as part of performing the Project, or as otherwise contemplated by or in connection with this Deed.

**2.9** In addition to the consent obtained under clause 2.8 of this Attachment D, the Department may direct the Recipient on written notice, to seek consent from the relevant Aboriginal Person for the Commonwealth Government to undertake Specified Acts for ICIP, if the Commonwealth Government have provided funding or otherwise have an interest in the Project.

**2.10** The Parties agree that any secret or sacred information will not be incorporated into the Project Material or Existing Material unless the Recipient has obtained prior written consent from the relevant Aboriginal Person. If prior written consent has been obtained by the Recipient, the Recipient must notify the Department in writing of the part of the ICIP that is secret or sacred information.

**2.11** Despite any other provisions in this Deed, if the Recipient fails to comply with this Attachment D then without limitation to any other rights the Department may have, the Department may terminate this Deed on notice to the Recipient, on and from the date specified in the notice. Clause 16.3 will apply to termination under this clause.

### **3 ICIP Principles**

#### **3.1 ICIP Principles**

Principle	Description
<i>Principle 1 – Respect</i>	The rights of Indigenous people and communities to own, protect, maintain, control and benefit from their cultural heritage should be respected.
<i>Principle 2 – Self-determination</i>	Indigenous people have the right to self-determination and to be empowered in decisions that affect their arts and cultural affairs.
<i>Principle 3 – Communication, consultation and consent</i>	Indigenous people have the right to be consulted and give their free prior informed consent for the use of their cultural heritage.
<i>Principle 4 – Interpretation</i>	Indigenous people have the right to be recognised and represented as the primary guardians and interpreters of their cultural heritage.
<i>Principle 5 – Cultural Integrity and authenticity</i>	Maintaining the integrity of cultural heritage is vital to the continued practice of culture.
<i>Principle 6 – Secrecy and confidentiality</i>	Indigenous people have the right to keep secret and sacred their cultural heritage. Confidentiality concerning aspects of Indigenous peoples’ personal and cultural affairs should also be respected.
<i>Principle 7 – Attribution</i>	Indigenous people have the right to be respectfully acknowledged and attributed as the traditional owners and custodians of their cultural heritage.
<i>Principle 8 – Benefit Sharing</i>	Indigenous people and communities have the right to benefit from their contribution and for the sharing of their cultural heritage, particularly if commercially applied.
<i>Principle 9 – Continuing Cultures</i>	Indigenous cultures are dynamic and evolving, and the protocols within each group and community will also change. Consultation and free prior informed consent are ongoing processes.
<i>Principle 10 – Recognition and protection</i>	Indigenous people have the right to protection of their cultural heritage and intellectual property rights in that cultural heritage. Laws, policies and contracts should be developed and implemented to respect these rights.

**\*Credit: True Tracks© Principles, Terri Janke & Company Lawyers.**

### 3.2 Credit Wording/Attribution

The following wording will be used to credit the Aboriginal\* person(s) who assert and express their ICIP rights and interests:

Name:	[Insert details]
Description:	[Insert details]
<p><b>**NOTE to Recipient:</b> To honour the principle of self-determination, this credit wording and attribution section does not prescribe which terminology is used to describe the relevant Aboriginal person(s). Examples for this section may include: Community Member, Knowledge Holder, Cultural Fire Practitioner. Otherwise, the parties may wish to use “Not applicable”.</p>	

### 3.3 Cultural Mourning Protocols

Name:	[Insert details]
Relation:	[Insert details]
Address:	[Insert details]
Contact Number:	[Insert details]

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## Attachment E – Additional Conditions

### A. Data Sharing

#### 1 Defined Terms

1.1 Any capitalised terms not defined in this Annexure have the same meaning as in the Deed.

1.2 For the purposes of this Annexure:

**'Data'** means any facts, metadata, statistics, instructions, concepts or other information in a form that is capable of being communicated, analysed or processed (whether by an individual or by a computer or other automated means) which may or may not form Material, and includes any:

- (a) Third Party Data; and
- (b) any Enhancements.

**'Data Location Conditions'** means:

- (a) ensuring that Department Data and Personal Information is at all times handled and processed in accordance with all applicable Laws, including the Privacy Legislation and the *State Records Act 1998* (NSW) (to the extent applicable);
- (b) not transferring any Department Data and Personal Information to a jurisdiction that is the subject of any sanction, embargo, export control or similar Laws;
- (c) ensuring that Department Data and Personal Information is at all times protected in accordance with the terms of this Agreement; and
- (d) compliance with any other requirements or conditions with respect to the location of Department Data and Personal Information as specified by the Department.

**'Data Protection Plan'** means the Recipient's written plan with respect to data management and protection.

**'Enhancements'** includes in relation to Data:

- (a) any modification, data enrichment, data appends (modifications made to the primary Data from other Data sources), updates or adaptation of the Data or any work derived from the Data;
- (b) machine readable representations of the Data or any work derived from the Data; and
- (c) any material at the date of its creation that is intended to be used with the Data or any work derived from the Data.

**'Government Department'** means any of the following:

- (a) a government sector Department (within the meaning of the *Government Sector Employment Act 2013* (NSW));
- (b) a New South Wales Government Department;
- (c) any other public authority that is constituted by or under an Act or that exercises public functions for or on behalf of the State of New South Wales (other than a State owned corporation); or
- (d) any State owned corporation prescribed by regulations under the *Public Works and Procurement Act 1912* (NSW).

**'Machine Learning Tool or Machine Learning and Artificial Intelligence Algorithms'** and Systems means any intelligence technology, programs and the use

of advanced computing algorithms that can augment decision making by identifying meaningful patterns in Data or Department Data.

**'Project Data'** means Data or Third Party Data collected or otherwise able to be gathered by the Recipient for, under, or in connection with this Deed and includes any Enhancements.

**'Security Incident'** means any incident, event or issue that causes or has the intent or potential to cause a privacy or security breach or any loss of, unauthorised access to, or use, modification, disclosure or other misuse of, Services Data or Department Data.

**'Shared Project Data'** means the Project Data shared with the Department on request of the Department or as otherwise required to be shared with the Department under the terms of this Deed.

**'Spatial Data'** means any Shared Project Data that consists of survey data, derived spatial data, maps, or any dataset or derived dataset consisting of linear or geospatial data, format or features.

**'Third Party Data'** means Data collected through a third party, including specialist software.

**'Virus'** means a computer program, code, device, product or component that is designed to threaten, inhibit, impair or pose a threat or hazard to the security or integrity of the Department's operations or systems.

## **2 Data Licence and Access**

- 2.1** The Recipient will provide access to the Shared Project Data:
- (a) in accordance with the access mode required by the Department (acting reasonably);
  - (b) at no cost, on the date(s) or intervals specified in this Deed or as otherwise agreed in writing; and
  - (c) materially in accordance with any specifications required by the Department.
- 2.2** The Recipient grants to the Department a permanent, non-exclusive, irrevocable, worldwide, transferable, royalty free and sublicensable, licence to use, reproduce, communicate, publish, adapt and modify the Shared Project Data for non-commercial, government purposes (**Data Licence**).
- 2.3** To the extent that any of the Recipient's Intellectual Property is incorporated into any Shared Project Data, then that Intellectual Property is subject to the Data Licence.
- 2.4** Despite any other clause in this Deed, Intellectual Property in any outputs or Enhancements of the Shared Project Data completed, created or otherwise developed by the Department (or its successors or sublicensees) will be owned by the Department (or its successors or sublicensees) immediately on creation.
- 2.5** Nothing in this Deed affects, transfers, assigns, sublicences any right, title or interest of and including either party's Intellectual Property in the Shared Project Data (including any Enhancements), except to the extent of the Data Licence and the terms of clause 2.4 of this Attachment E.
- 2.6** The Recipient agrees that the Department may use the Shared Project Data to directly or indirectly create, fetch, cache, index or retrieve any of the Shared Project Data, and may create a database of the Shared Project Data (which may be part or wholly the Shared Project Data) for any purpose.

### **3 Data Generally**

Without limitation to clause 4 of this Attachment E or any other term of the Deed, the Recipient must:

- (a) ensure that all Project Data has been or is collected or obtained in compliance with all Laws, including without limitation the collection of all required Moral Consents and all Privacy Legislation; and
- (b) has all appropriate rights for the disclosure of the Shared Project Data to the Department to be used for any purpose, including without limitation disclosure for any government function or purpose (subject to any confidentiality requirements in this Deed).

### **4 Information Security Requirements**

**4.1** Without limitation to clause 4.2 of this Attachment E below, the Recipient agrees to comply with any information security requirements directed by the Department from time to time.

**4.2** At all times the Recipient must:

- (a) if required by the Department, promptly provide the Department with the Recipients ISO27001 certification or other information security attestations;
- (b) provide the Department with Shared Project Data which:
  - (i) is verified and tested in accordance with best industry practices, to be free from any Virus;
  - (ii) will be uninterrupted and will not result in a loss of Data generally;
  - (iii) will display correctly in the Department's particular technology environment to the extent such specification is notified to the recipient in writing prior to the transfer of the Shared Project Data;
  - (iv) labelled, available and suitable for use by the Department in accordance with any specifications, accuracy, reliability and completeness, functionality, standards and access requirements directed by the Department;
  - (v) accurate, free from defect and provided as-is, with any error or omission in the Shared Project Data promptly notified to the Department; and
  - (vi) delivered in the format required by the Department, which for the avoidance of doubt cannot be over email unless expressly permitted by the Department.
- (c) If requested by the Department, the Recipient will prepare a Data Protection Plan which:
  - (i) sets out measures for how the Recipient will:
    - (A) comply with Privacy Legislation and any other obligations of privacy, security and confidentiality under this Deed;
    - (B) protect any Personal Information and any Confidential Information in the Project Data; and
    - (C) prevent, respond to and mitigate against any Security Incidents; and
  - (ii) covers such other matters as reasonably required by the Department.

## **5 Data Types**

- 5.1** To the extent the Shared Project Data includes Spatial Data, the Recipient must on requested by the Department, provide any user documentation to the Department and provide the Spatial Data in the specific format requested by the Department to meet any maximum or minimum export or format requirements (such as in 3D or to allow visualisation or real-time access). The metadata file must meet ISO 19139 standards and all other NSW Information Security requirements and metadata portal requirements.
- 5.2** The Recipient acknowledges that the Department may use the Services Data directly or indirectly to:
- (a) create, test, train or improve any Machine Learning and Artificial Intelligence Algorithms and Systems; or
  - (b) create, fetch, cache, index or retrieve any of the Data and may create a database of the Data for any purpose.
- 5.3** The Data Licence extends to all rights under this clause 5 of Attachment E unless expressly excluded by the Recipient and agreed to by the Department in writing prior to the transfer of the Shared Project Data.