

Funding Deed

Department	NSW Department of Climate Change, Energy, the Environment and Water
Agency/Division	Capacity Building and Market Development Division
Recipient	
Funding Deed Number	

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Details

Table 1: Details

Department	Name	The Crown in 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)
	Agency/ Division	Capacity Building and Market Development Division
	Address	4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
Department Authorised Officer <i>(refer to clause 8.2 - Notices)</i>	Name	
	Position	
	Address	
	Telephone	
	E-mail	
Recipient ('You')	Name	
	Address	
	ABN	
Your Authorised Officer <i>(refer to clause 8.2 - Notices)</i>	Name	
	Position	
	Address	
	Telephone	
	E-mail	
Project	Business Decarbonisation Program - Heat Pump Feasibility Project as more fully described in Schedule A.	
Funds or Funding	Heat Pump Feasibility Grant	
	A maximum total amount of \$30,000 (GST exclusive) payable in Instalments.	
Commencement Date <i>(refer to clause 2 - Term)</i>	The date this Agreement is signed by both parties.	
Expiry Date <i>(refer to clause 2 - Term)</i>		

Additional Insurance Policies

Table 2: Additional Insurance Policies (see clause 6.1)

Types of Insurances	Minimum Sum Insured	Tick if Required
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Terms

1 Definitions and Interpretation

1.1 Interpretation

Unless the context requires otherwise, in this Deed:

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

1.2 Definitions

Activity means the activity(s) described in **Schedule A – Project Plan**, which aim to fulfil one or more of the Objectives of the Project.

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

Additional Funds has the meaning given to it in clause 4.3(b).

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

Change Request Form means:

- (a) a completed “Heat Pump Feasibility Grant Variation Request” in the form prescribed in [Grant Management System](https://netzeronsw.smartygrants.com.au/HPFG) (GMS) [https://netzeronsw.smartygrants.com.au/HPFG], or such other change request form as may be prescribed by the Department from time to time; and
- (b) in respect of the Schedule, Annexure and/or Details, you are requesting a variation of a proposed new form of the Schedule, Annexure and/or Details.

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

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

- (a) is by its nature confidential (or which a party knows or ought to know (acting reasonably) is confidential);
- (b) has been designated as confidential by a party;
- (c) is capable of protection at common law or equity as confidential information; or
- (d) is derived or produced partly from the information in paragraphs (a), (b) or (c) above,

but does not include information that:

- (e) is in the public domain; or
- (f) is independently known or developed by the party receiving the information other than as a result of a breach of this Deed or any other obligation of confidentiality owed by or to any other person.

Correctly Rendered Tax Invoice means a tax invoice that:

- (a) complies with the requirements of the GST Law;
- (b) sets out details of the Activity undertaken for which the Funding or the relevant Instalment 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.

Debt Financier means:

- (a) a financial institution providing debt finance to you for the purpose of funding the Project; or
- (b) any security trustee or agent of any such financial institution.

Deed means this funding deed document and includes the Details, Terms, Schedule A – Project Plan and any other schedules, annexures or other documents cross-referenced in this deed.

Funding or Funds means the funds as set out in the Details.

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

[Heat Pump Feasibility Funding Guidelines](#) means the guidelines with this title released to the public for applications for funding, such as is provided under this Deed.

Instalments means that part of the Funding which the Department pays to you in the amounts and on the dates set out in Schedule A.

Intellectual Property or IP includes:

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

but does not include Moral Rights.

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

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

Objectives means the objectives of the Activities described in **Schedule A – Project Plan**, and the objectives of the funding as detailed in the [Heat Pump Feasibility Funding Guidelines](#).

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

Project Material means material created as part of or in performance of the Project including any documents or data.

Representatives of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer, contractor or sub-contractor of that party.

2 Term

- (a) This Deed will commence on the Commencement Date.
- (b) Unless terminated earlier, this Deed will expire on the later of the:
 - (i) Expiry Date; or
 - (ii) date on which each party has performed all its obligations under this Deed.

3 What you must do

3.1 Your obligations

You must:

- (a) ensure the Funding or any Instalment is used only for the Project;
- (b) ensure each Activity is completed within the Activity Period in accordance with this Deed;
- (c) comply with the reporting requirements set out in this Deed;
- (d) comply with all Commonwealth, State and Local government laws that are relevant to the Project, this Deed, or your registration as an entity;
- (e) carry out your obligations under this Deed with a high degree of professional care and skill including in accordance with any performance standards specified in the Schedules; and
- (f) comply with all policies, guidelines and reasonable directions the Department provides to you including, but not limited to, any guidelines applicable to the funding such as the [Heat Pump Feasibility Funding Guidelines](https://www.energy.nsw.gov.au/heat-pump-feasibility-grant-funding-guidelines) [https://www.energy.nsw.gov.au/heat-pump-feasibility-grant-funding-guidelines].

3.2 Your representatives

You must ensure that all of your Representatives involved in the Project:

- (a) are suitably qualified, experienced and competent;
- (b) hold all licences, consents, permits or registrations required under any State, Territory or Commonwealth legislation for them to carry out their role in relation to the Project;

- (c) are authorised to liaise with the Department by you prior to any such Representative liaising on your behalf with the Department, including but not limited to any specialist consultants as detailed in Schedule A;
- (d) are fit and proper people to undertake the Project; and
- (e) comply with the obligations of this Deed.

3.3 Trustee Warranties

If you enter into this Deed as a trustee of a trust (**Trust**), you represent and warrant that:

- (a) the Trust has been duly established;
- (b) the Department has been provided with a true and correct copy of the trust deed of the Trust or the Department has waived this requirement in writing;
- (c) you have been validly appointed as the sole trustee of the Trust and no action has been taken, or to your knowledge has been proposed, to remove you as trustee;
- (d) you have full and valid power and authority to enter into this Deed and perform the obligations under it on behalf of the Trust;
- (e) you have entered into this Deed for the proper administration of the Trust;
- (f) you have obtained or duly satisfied all necessary resolutions, consents, approvals and procedures to enter into this Deed and perform the obligations under it;
- (g) you have the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under this Deed;
- (h) you will not, without the consent of the Department, do anything which:
 - (i) amends the trust deed of the Trust in any manner which is likely to be adverse to the interests of the Department;
 - (ii) reduces its right of indemnity from the assets of the Trust;
 - (iii) effects or facilitates the termination of the Trust; or
 - (iv) effects or facilitates the resettlement of the assets of the Trust; and
- (i) you will exercise its right of indemnity under the trust deed in respect of liabilities it incurs under this Deed.

4 About the Funding

4.1 Paying the Funding

- (a) The Funds is the maximum amount (up to \$30,000) to be paid by the Department for or in connection with the Project and which is to not exceed 75% of the Project cost for each of the milestones to be funded by the Department in accordance with this Deed.
- (b) Milestones 2 & 3 are not part of the Project under this Deed unless:
 - (i) You have completed all the requirements for milestone 1 as specified in Schedule A; and
 - (ii) the Department has determined that you have met the criteria to progress to milestone 2 and 3 as detailed in Schedule A including the following:

- (A) you have sufficient metering data; or
 - (B) you have been approved by the Department to remedy insufficient metering data and you have agreed to remedy insufficient metering data within the Activity Period for milestone 2; and
- (iii) You have decided to proceed to milestone 2 & 3 in accordance with the requirements of Schedule A and have confirmed this to the Department in writing.
- (c) The Department's determination under clause 4.1(b)(ii) may take 20 Business Days or longer with the Department having discretion to:
 - (i) extend the period for this determination;
 - (ii) utilise independent consultant technical advisors to support the Department in the Department's assessment; and
 - (iii) request such additional information as it determines it needs to make this determination.
- (d) You are not entitled to Funding for milestone 3 unless milestone 3 is included as part of the Project under this Deed further to clause 4.1 (b) and you have met all the requirements for milestone 2 & 3 as detailed in Schedule A.
- (e) You agree that:
 - (i) You have prepared or reviewed the scope of works and costs estimate for the Project before signing this Deed;
 - (ii) You are responsible for any costs that exceed the Funds for the Project (whether you expected to incur such costs or not at any time before or after signing this Deed);
 - (iii) You must obtain any additional funding necessary to carry out the Project at your own cost and risk (and at all times in accordance with clause 4.3);
 - (iv) You must ensure that you have sufficient funds in addition to the Funds to complete the Project in accordance with this Deed;
 - (v) Funds for milestone 3 are conditional on certain requirements being met as detailed in this clause 4.1 and Schedule A and you will not be entitled to Funds for Activities that relate to milestone 3, despite not being in breach of this agreement, if these conditions have not been met; and
 - (vi) You are responsible for all costs associated with and arising from the Project.
- (f) The Department will pay an Instalment in accordance with Schedule A on condition that:
 - (i) the Department receives a Correctly Rendered Tax Invoice from you that clearly identifies the Instalment you are claiming;
 - (ii) if payment is due at the end of the Activity Period:
 - (A) you have provided the Department with the evidence of compliance required under **clause 5** and the Schedule(s) showing that you have performed the Activities at the times set out in the Schedules; and
 - (B) the Activities have been performed to the satisfaction of the Department.

- (iii) you have provided the Department with any other information reasonably requested by the Department;
 - (iv) the applicable Activity has been performed to the satisfaction of the Department within the Activity Period;
 - (v) the review process by the Department of any invoices together with the assessment by the Department of completion of required Activities may take 20 Business Days or longer in the Department's discretion, with no invoices payable until the Department determines the requirements of milestones and for payment of milestone related invoices have been met;
 - (vi) the total amount requested under the Correctly Rendered Tax Invoice, together with all other Instalments previously provided to you under this Deed, does not exceed the total amount of the Funds; and
 - (vii) the Department is not aware of any breach by you of this Deed at the time of payment.
- (g) Notwithstanding other clauses in this Deed, no payment by the Department under this Deed:
- (i) constitutes a waiver of any rights of the Department under this Deed;
 - (ii) constitutes an admission that the performance of the Project is in conformity with this Deed; or
 - (iii) will be deemed to release you from your obligations under this Deed.

4.2 Withholding, Suspension, Changes to Instalments and Repayment

- (a) The Department may change the amount of the Instalment by issuing you with a Notice setting out the details of the changes.
- (b) If you are not complying with this Deed, the Department may withhold or suspend payment of an Instalment until you comply with your obligations to the Department's satisfaction.
- (c) If the Department withholds or suspends an Instalment, you must continue to perform your obligations under this Deed.
- (d) You must repay within 28 days of a demand being sent:
 - (i) any Instalment or part thereof spent in breach of this Deed;
 - (ii) any money that is unspent from the Instalments;
 - (iii) any overpayment; and
 - (iv) any interest earned on any Instalment required to be repaid.
- (e) The Department may set off the amount of any overpayment or claim for repayment against any future Instalment due.
- (f) Any repayment the Department claims from you under this **clause 4.2** will be a debt due and owing by you to the Department.

4.3 Additional Funding

- (a) You acknowledge and agree that:

- (i) prior to the execution of this Deed, you have not received funding from another NSW Government entity, agency or statutory body to undertake the Project; and
- (ii) throughout the term of this Deed, you must not receive funding from another NSW Government entity, agency or statutory body to undertake the Project unless in accordance with the terms of this clause.
- (b) You must provide prior written Notice to the Department before receiving additional funding for this Project from another source, including without limitation a government or non-government organisation, but not a Debt Financier (**Additional Funds**).
- (c) The prior written Notice for the Additional Funds must include details about the funding source and the amount of the Additional Funds. You must promptly respond to any questions or request for further information from the Department following the Notice for Additional Funds.
- (d) You must not receive Additional Funds for the Project, if that results in you receiving funding in excess of Project costs, notwithstanding any other terms of this Deed.

4.4 Holding of Funding

- (a) If Instalments are paid at the beginning of an Activity Period, each Instalment must be held from the date it is received either:
 - (i) in a separate bank account used solely in connection with the Funding; or
 - (ii) into a general bank account provided that sufficient accounting controls are in place to track the expenditure of the Funding.
- (b) You must manage the account and financial records so that all receipts and expenditure of the Funding is clearly identifiable and ascertainable at all times.

4.5 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 you make to the Department under this Deed; and
 - (ii) the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply,

the Department will pay you an additional amount equal to the GST imposed on that supply, at the time and in the manner payment is otherwise payable under this Deed in relation to that supply.

- (c) If you are not registered under the GST Law you will not be entitled to receive any additional amount as provided under this **clause 4.5**.
- (d) If for any reason the Department pays you an amount under this **clause 4.5** which is more than the GST imposed on the supply, you must repay the excess to the Department on demand or the Department may set off the excess against any other amounts due to you.

5 Material and Information

5.1 Reporting Requirements

- (a) You agree to provide the Department with written reports at the times and containing the information specified in **Schedule A – Project Plan (“Reports”)**.
- (b) Within 5 Business Days’ of receipt of a written request from the Department, you must provide any other information the Department reasonably requires from time to time concerning the Project.
- (c) If any of the Report or any other information provided to the Department contains information confidential to you, you should mark the relevant parts accordingly.
- (d) The Department may, within 20 Business Days, or such longer period as the Department may determine in its absolute discretion, of receiving a Report provide you with any further instructions the Department requires you to take to complete in association with the relevant Activity or Activities to the Department’s satisfaction. Any such instruction given under this clause in no way:
 - (i) constitutes a waiver of any rights of the Department under this Deed;
 - (ii) constitutes an admission that the performance of the Project is in conformity with this Deed; or
 - (iii) will be deemed to release you from your obligations under this Deed.
- (e) You must provide evidence of income and expenditure in respect of the Funding (‘the Statements’) to the Department within 60 Business Days after:
 - (i) completion of the Activity or any termination of this Deed, whichever is the earliest; and
 - (ii) the completion of each Financial Year in which the Funding has been provided.
- (f) The Statements must include a certification provided by an officer with proper authority to make representations on your behalf that:
 - (i) the financial information contained in the Statements is accurate and represents the complete account of financial transactions for the Project;
 - (ii) the Statements have been prepared fairly, and are based on proper accounts and records which comply with Australian accounting standards; and
 - (iii) the Funding was expended only for the Project and otherwise in accordance with this Deed.

5.2 Intellectual Property

- (a) Intellectual Property in all Project Material vests in you, unless otherwise stated in the Special Conditions.
- (b) You grant the Department a perpetual, irrevocable, transferable, sub-licensable and royalty free licence to use the IP in the Project Material and Reports for any non-commercial purpose.
- (c) You warrant that, in carrying out any of the Activities, undertaking the Project and in granting the licence in clause 5.2(b), you have not and will not infringe the Intellectual Property or Moral Rights of any person.

- (d) You warrant that any use or adaptation of the Project Material or Reports by the Department in accordance with this Deed will not infringe intellectual property rights of any third party or the right of attribution of authorship conferred on authors by the *Copyright Act 1968* (Cth).

5.3 Confidential Information

- (a) Each party must maintain the confidentiality of all commercially sensitive information it receives from the other party, including the amount of the Funding, except in accordance with clause 5.5 (Public Announcements), as required by law or as otherwise agreed in writing.
- (b) You agree that the Department may disclose your Confidential Information to:
 - (i) the relevant executive government of that government agency's jurisdiction for the purpose of that government's functions or duties;
 - (ii) the NSW Parliament or a NSW Parliamentary Committee; or
 - (iii) to NSW ministers and any employees of the office of the relevant NSW minister.

5.4 Privacy

You will:

- (a) ensure that Personal Information that is provided by the Department or collected by you under or in connection with this Deed is used only for the purposes of this Deed and is protected against loss, unauthorised access, use, modification and disclosure, or against other misuse;
- (b) not disclose any Personal Information without the written consent of:
 - (i) the individual to whom the Personal Information relates; or
 - (ii) the Department,unless otherwise required or authorised by law;
- (c) comply with the Information Protection Principles applying to NSW public sector agencies under the Privacy and Personal Information Protection Act 1998 (NSW) when doing any act or engaging in any practice in relation to Personal Information as if you were an agency directly subject to that Act; and
- (d) include equivalent requirements regarding Personal Information (including this clause 5.4) in any subcontract entered into for the provision of any of the Activities under this Deed.

5.5 Public Announcements and Acknowledgement

You must:

- (a) consult with and seek the Department's written consent (in the Department's absolute discretion) prior to any public announcement, media releases or statements, or the release of any promotional-related materials about any of the Activities or the Project.
- (b) acknowledge the support of the Department, as directed by the Department from time to time:

- (i) in any public statements about the Project;
 - (ii) on the home page of any web site established in connection with the Project;
 - (iii) on any equipment or other facility funded wholly or in part by the Department.
- (c) acknowledge the Department's support of the Project and comply with the applicable NSW Government Guidelines, including without limitation the NSW funding acknowledgement guidelines, available as at the Commencement Date at <https://www.nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines> (which may be updated or replaced from time to time).

The Department may publish recipient name and address, the title and brief description, including outcomes, aims of the Project and the amount of the Funds and any other information as required to meet regulatory requirements including the requirements of the Grants Administration Guide, as amended from time to time or replaced.

5.6 Disclosure of Information

- (a) You consent to the Department disclosing or otherwise using:
- (i) your de-identified application data;
 - (ii) information contained in any Reports;
 - (iii) information presented by you in any evaluation, including under clauses 5.6(c) and 5.6(d); and
 - (iv) any other de-identified project data,
- arising out of or in connection with this Deed for any purposes, including without limitation in training, evaluation and other portfolio purposes.
- (b) You acknowledge that, under the *Government Information (Public Access) Act 2009*, the Department may be required to publicly disclose information about this Deed at <https://tenders.nsw.gov.au>. None of the disclosure obligations require the disclosure of:
- (i) the commercial-in-confidence provisions of a contract;
 - (ii) any matter that could reasonably be expected to affect public safety or security; or
 - (iii) information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009*.
- (c) You may nominate any items you consider are confidential and why, to assist the Department in determining what items to disclose.
- (d) You agree to comply with, contribute to and participate in, the periodic evaluation (by way of interview or otherwise) of this Project on request by the Department.
- (e) You agree, on 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).

6 Dealing with Risk

6.1 Insurance

- (a) You must maintain, at your own cost:
 - (i) a broadform public liability policy of insurance to the value of at least \$10 million in respect of each claim and in the aggregate as to the number of occurrences in the policy period;
 - (ii) workers' compensation insurance as required by all relevant laws of Australia relating to workers compensation;
 - (iii) the Additional Insurance Policies listed in the Details for the minimum sum provided.
- (b) If specified as being required in the Details, a professional indemnity insurance policy must be maintained for a period of 7 years from the end of the Deed.
- (c) You must not do, permit or suffer any act, matter or thing or omission whereby any of the policies referred to in this clause lapse or may be vitiated, rendered void or voidable.
- (d) On request by the Department, you must provide a copy of valid and current certificates of currency for each or any of the policies described above.
- (e) Without limitation to **clause 6.1(a)** each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.

6.2 Indemnities

- (a) You must indemnify and keep indemnified the Department, the Crown in right of the State of New South Wales and their officers, employees and agents from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:
 - (i) the Funding or the use of any outcomes from the Project;
 - (ii) your breach of this Deed;
 - (iii) any unlawful or negligent act or omission by you, your employees or your subcontractors in connection with this Deed;
 - (iv) any illness, injury or death of any person you, your employees or your subcontractors cause or contribute to, in connection with this Deed;
 - (v) any loss or damage to real or personal property you, your employees or your subcontractors cause or contribute to, in connection with this Deed; or
 - (vi) any act or omission by you, your employees or your subcontractors in connection with this Deed that is in infringement of any Intellectual Property, or privacy rights of the Department or any third party.
- (b) Your liability to indemnify the Department under this clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Department, its officers, employees or agents contributed to the relevant loss or liability.

- (c) Your liability to indemnify the Department under this clause does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Deed.
- (d) You remain fully responsible for the performance of the Project if you subcontract or delegate the performance of any part of the Project.

7 Terminating the Deed

7.1 Termination

- (a) Where a party has breached this Deed:
 - (i) the other party may give a Notice to that party requiring it to rectify that breach within 10 days of receiving that Notice; and
 - (ii) if the party which received the Notice fails to rectify that breach in time, the other party may terminate this Deed immediately by giving a further Notice.
- (b) The Department may terminate this Deed by Notice, with effect on the date stated in the Notice, if:
 - (i) you breach any of the following provisions: **clause 3.1** (Your Obligations), **clause 4.4** (Holding of Funding), **clause 5.1** (Reporting Requirements), or **clause 10.10** (Assignment);
 - (ii) the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity;
 - (iii) the Department considers that the Project is no longer viable; or
 - (iv) you become insolvent, are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966*, resolve to go into administration or liquidation, or if a summons for your winding up is presented to a Court or you enter into any scheme of arrangement with your creditors.
- (c) This **clause 7.1** does not exclude or reduce the rights of a party to terminate the Deed arising by operation of the common law or statute or the other terms of this Deed.
- (d) On termination or expiry of this Deed:
 - (i) accrued rights and obligations are not affected; and
 - (ii) the Department will pay any Instalments due and payable (after taking into account any Instalments already made prior to that date); or
 - (iii) the Department will not pay any Instalments or part thereof to you if you have not complied with or otherwise are in breach of this Deed.

8 Other Legal Matters

8.1 Dispute Resolution

- (a) If a dispute arises in relation to this Deed ("a Dispute"), a party must comply with this **clause 8.1** before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.
- (b) A party claiming that a dispute has arisen must notify the other party in writing giving details of the dispute (Dispute Notice) in accordance with the requirements of **clause 8.2** (Notices).

- (c) 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.
- (d) If the Dispute is not resolved within 10 Business Days, from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice under **clause 8.1(b)** must refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.
- (e) If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
- (f) Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.

8.2 Notices

- (a) Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered, posted or emailed to the Authorised Officer specified in the Details or as otherwise notified in writing.
- (b) The receiving party will be deemed to have received the Notice as follows:
 - (i) if hand delivered, on the day on which it is delivered or left at the relevant address;
 - (ii) if sent by post:
 - (A) if posted within Australia using Express Post, the priority letter service option of regular post, or the priority service option for Registered Mail, on the fourth Business Day after the day on which it is posted;
 - (B) if posted within Australia using the regular post option, on the fifth Business Day after the day on which it is posted;
 - (C) if posted to or from outside Australia, on the tenth Business Day after the day on which it is posted;
 - (iii) if sent by email before 5.00pm on a Business Day, the first of the following occurring:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not be delivered;
 - (iv) if sent by email after 5.00pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
- (c) Any such mode of service will be in all respects valid notwithstanding that the party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.

9 Variations to the Deed

9.1 Variations

- (a) Subject to clause 9.2, any variation of this agreement must be in writing and signed by both the parties.
- (b) The parties acknowledge there is to be no increase in the amount of Funds provided under this Agreement. The parties may otherwise vary any item in a Schedule, Annexure or the Details, other than:
 - (i) changes the parties to the agreement; or
 - (ii) any extensions of a milestone due date by more than 20 Business Days; or
 - (iii) any extension to the Expiry Date by more than 60 Business Days;without both parties needing to sign an amending agreement. Such variation will only be effective on and from the date that the Department provides notice to You that the Department accepts the replacement form of Schedule, Annexure and/or Details attached to or included in the relevant Change Request Form as submitted in accordance with the process set out in clause 9.2, or on and from such other date as determined by the Department.

9.2 Variation requests

- (a) You may request a variation of this agreement by providing the Department with a Change Request Form through the Department's [grant management system](https://netzeronsw.smartygrants.com.au/HPFG) [https://netzeronsw.smartygrants.com.au/HPFG], which is currently GMS.
- (b) You must include in your Change Request Form a detailed justification and complete evidence of that justification and You must provide, at request of the Department and in the timeframes requested, any further information required by the Department.
- (c) Any request for milestone delivery date variations must be notified as soon as reasonably practicable upon becoming aware of the delay
- (d) You acknowledge that approval for any change request may only be granted by the Department in exceptional circumstances. The Department has the right to withhold or provide its consent in its absolute discretion to any requested variation.
- (e) Where the requested variation is reasonably required to address a Force Majeure Event, the Department will act reasonably in providing or withholding its consent (which may include the Department carrying out a due assessment of the varied Project against the criteria the Department applied to assess an application for funding under the [Heat Pump Feasibility Funding Guidelines](https://www.energy.nsw.gov.au/heat-pump-feasibility-grant-funding-guidelines) [Page not found https://www.energy.nsw.gov.au/heat-pump-feasibility-grant-funding-guidelines | NSW Climate and Energy Action]).

10 General

10.1 Survival

The following clauses survive termination or expiry of this Deed: clause 5.1 (Reporting Requirements); clause 5.2 (Intellectual Property); clause 5.3 (Confidential Information); clause 5.4 (Privacy); clause 6.1 (Insurance); clause 6.2 (Indemnities); clause 7.1 (Termination); clause

10.2 (Keeping of records); this clause 10.1, and any other clause which by its nature is intended to survive this Deed.

10.2 Keeping of records, audit and rights of access to such records:

You:

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

10.3 Statutory functions

Nothing in this Deed in any way:

- (a) fetters any powers or discretion of the Department;
- (b) restricts or affects the unfettered discretion of the Department to exercise any of its powers, functions or responsibilities under any law;
- (c) requires the Department to interfere with or influence the exercise by any person or government agency of any statutory function or responsibility;
- (d) 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
- (e) requires the Department or any Department personnel 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.

10.4 Force majeure

- (a) A party (Affected Party) is excused from performing its obligations under this Deed to the extent it is prevented by circumstances which:
 - (i) are beyond its reasonable control including natural disasters, acts of war, pandemic, epidemic, riots and strikes outside the Affected Party’s organisation; and
 - (ii) could not have been prevented or overcome by the Affected Party (or, where the Affected Party is the Recipient, the Recipient and its Subcontractors) exercising a standard of care and diligence consistent with that of a prudent and competent person operating within the relevant industry,

(Force Majeure Event).

- (b) For purposes of this clause 10.4(a), a lack of funds or any strike, lockout or labour dispute affecting the Recipient’s performance under this Deed will not be considered a Force Majeure Event.

- (c) When the circumstances described in this clause 10.4(a) arise, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance and must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Deed.
- (d) The Department is not obliged to pay to the Recipient any funding for so long as circumstances described in clause 10.4(a) prevent the Recipient from performing its obligations under this Deed.
- (e) If non-performance or diminished performance by the Affected Party due to the circumstances under clause 10.4(a) continues for a period of more than 90 consecutive days, or 90 days in aggregate in any 6 month period, the other party may terminate this Deed immediately by giving the Affected Party written notice.

10.5 Conflict of Interest

You must not carry on or be involved in any capacity in an activity or business, which may conflict with, or adversely affect, your ability to carry out your obligations under this Deed, and you will immediately notify the Department in writing if such a conflict or risk of such a conflict arises. You must ensure any conflicts of interest or any potential conflicts of interest of your specialist consultant(s) and sub-contractor(s) are notified immediately to the Department.

10.6 Entire Deed

This Deed states all the express terms agreed by the parties as to the matters referred to in this Deed. It supersedes all prior contracts, obligations, representations, conduct and understandings between the parties relating to the subject matter of this Deed.

10.7 Inconsistency

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

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

10.8 Negation of employment, partnership or agency

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

10.9 Waiver

- (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.

10.10 Assignment

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

10.11 Counterparts

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

10.12 Governing Law

The laws of New South Wales govern this Deed and the parties submit to the non-exclusive jurisdiction of the courts in that State.

10.13 Execution

- (a) Subject to all applicable Laws, the parties may execute this Deed and any document entered into under it (including without limitation any variations of this Deed), electronically and in one or more counterparts. Notwithstanding the manner in which a document under this Deed is submitted or accepted, the terms of this Deed will apply.
- (b) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this document and any variation of it:
 - (i) Insertion of an image (including a scanned image) of the person's own unique signature on to the document;
 - (ii) insertion of the person's name on to the document; or
 - (iii) use of a stylus or touch finger on a touch screen to sign the document; provided that in each of the above cases, words to the effect of 'Electronic signature of me, [NAME], affixed by me on [DATE]' are also included on the document;
 - (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or Adobe Sign) to sign the document; or
 - (v) as otherwise agreed in writing (including via email) between the parties.
- (c) The parties agree that the above methods are reliable as appropriate for the purpose of signing this document and that electronic signing of this document by or on behalf of a party indicates that party's intention to be bound to the terms of this Deed.
- (d) A signed copy of this document transmitted by email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original executed copy of this document for all purposes.

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** by its authorised signatory but not so as to incur personal liability:

Signature of Authorised Signatory

Signature of Witness

Name of Authorised Signatory

Name of Witness

Position of Authorised Signatory

Address of Witness

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

[Use this if signing on behalf of a company with more than one director or a director and secretary]

Signed, Sealed and delivered for on and on behalf of

Ltd in accordance with section 127 of the *Corporations Act 2001* by:

Signature of Director(1)

Signature of Director(2)/Company Secretary

Name of Director (1)

Name of Director(2)/Company Secretary

Date

Date

[Use this if signing on behalf of a company with a sole director]

Signed, Sealed and delivered for on and on behalf of

Ltd in accordance with section 127 of the *Corporations Act 2001* by:

Signature of Sole Director

Name of Sole Director

Date

[Use this if signing as an authorised representative]

By entering into this Deed the signatory warrants that the signatory is duly authorised to execute this Deed on behalf of

Signed, sealed and delivered for and on behalf of

by its authorised signatory:

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

Schedule A – Project Plan

Table 3: Schedule A – Project Plan

Specialist Consultant(s) details (This section must include the names, roles and contact details of all consultants and sub-contractors involved in the delivery of the Project, as approved by the Department at the grant application stage)	<p>Specialist Consultant's Organisation Name:</p> <p>Principal Consultant Name:</p> <p>Principal Consultant Position:</p> <p>Principal Consultant Phone Number:</p> <p>Principal Consultant Email:</p> <p>If you wish to change your nominated and approved specialist consultant(s) (or sub-contractor(s)) during milestone delivery and remain eligible for Funding, you must seek our approval. The Department will assess the new consultant(s) against the relevant assessment criterion outlined in Table 3 of the Heat Pump Feasibility Grant Funding Guidelines [https://www.energy.nsw.gov.au/heat-pump-feasibility-grant-funding-guidelines] as a condition for the continuation of your Funding. A variation to the funding agreement may be available if the new consultant(s) is approved along with a hold on the milestone timeframes while this is resolved.</p>
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Description of Activities	Total amount funded by the Department (excluding GST)	Total eligible milestone cost (excluding GST) (If applicable)	Activity Period	When to send invoice
<p>Before commencing Milestone 1 Activities, you will need to complete a pre-implementation survey to support the ongoing enhancement of our programs. We will email you the necessary links to access the survey.</p> <p>Milestone 1 Activities:</p> <p>You must:</p> <ol style="list-style-type: none"> 1. Ensure your specialist consultant(s) completes milestone 1 activities including: <ol style="list-style-type: none"> 1.1. read the instructions on the use of the heat pump screening tools ('Heat Pump Estimator' and 'Heat Pump Readiness Questionnaire') 1.2. facilitate heat pump screening session(s); 1.3. conduct metering and barriers assessment; and 1.4. prepare milestone 1 report in accordance with the template [https://www.energy.nsw.gov.au/heat-pump-feasibility-grant-milestone-1-report-template] and requirements provided by the Department. <p>The above activities must meet all of the requirements specified in the Heat Pump Feasibility Grant Funding Guidelines [https://www.energy.nsw.gov.au/heat-pump-feasibility-grant-funding-guidelines].</p> <ol style="list-style-type: none"> 2. Submit the following documentation through the Department's grant management system [https://netzeroNSW.smartygrants.com.au/HPFG] or 	Up to \$5,000 (up to 75% of the total cost of services provided by the specialist consultant(s) in delivering milestone 1 activities).			On completion of milestone 1 activities

Description of Activities	Total amount funded by the Department (excluding GST)	Total eligible milestone cost (excluding GST) (If applicable)	Activity Period	When to send invoice
<p>such other link or in such other form as notified by the Department to you in writing from time to time:</p> <ul style="list-style-type: none"> 2.1 the completed milestone 1 report; 2.2 the specialist consultant(s)'s itemised invoice to you; 2.3 your invoice to the Department for milestone 1 payment; 2.4 your decision as to whether you agree to proceed to milestone 2 under this Deed; and 2.5 your decision to use part of the total approved grant Funding for eligible metering costs (See Table 10 of Heat Pump Feasibility Grant Funding Guidelines [https://www.energy.nsw.gov.au/heat-pump-feasibility-grant-funding-guidelines] for eligibility details) as detailed in your metering barrier resolution plan. If you decide yes, you must within the Activity Period of milestone 1: <ul style="list-style-type: none"> - let the Department know through the Department's grant management system [https://netzeronsw.smartygrants.com.au/HPFG], and - submit quotes for metering related costs for the Department to make assessment and approval of the eligibility of metering costs 				

Description of Activities	Total amount funded by the Department (excluding GST)	Total eligible milestone cost (excluding GST) (If applicable)	Activity Period	When to send invoice
<p>The Department will then decide whether you have met the criteria to progress to milestone 2, subject to meeting the activities as detailed in this Schedule required for the Funding to the Department's satisfaction, with that decision to be made by the Department based on the conditions detailed in 'Step 9: decision to progress to milestone 2' section of the Heat Pump Feasibility Grant Funding Guidelines [https://www.energy.nsw.gov.au/heat-pump-feasibility-grant-funding-guidelines].</p>				

Description of Activities	Total amount funded by the Department (excluding GST)	Total eligible milestone cost (excluding GST) (If applicable)	Activity Period	When to send invoice
<p>Milestone 2 Activities:</p> <p>You must:</p> <ol style="list-style-type: none"> 1. Action the metering barrier resolution plan(s) made in the milestone 1 report; and 2. Ensure your specialist consultant(s) prepares milestone 2 report in accordance with the template [https://www.energy.nsw.gov.au/heat-pump-feasibility-grant-milestone-2-report-template] and requirements provided by the Department. <p>The above activities must meet all of the requirements specified in the Heat Pump Feasibility Grant Funding Guidelines [https://www.energy.nsw.gov.au/heat-pump-feasibility-grant-funding-guidelines].</p> <ol style="list-style-type: none"> 3. Submit the following documentation through the Department's grant management system [https://netzeroNSW.smartygrants.com.au/HPFG] or such other link or in such other form as notified by the Department to you in writing from time to time: <ol style="list-style-type: none"> 3.1 the complete milestone 2 report; and 3.2 evidence of metering barrier(s) having been resolved: itemised invoice(s), and photo(s). <p>Following the Department's review of documents received from you as to milestone 2, the Department may provide feedback on the proposed heat</p>	<p>There is no payment at milestone 2.</p>		<p>Within 10 weeks of receiving confirmation of successful completion of milestone 1.</p>	-

Description of Activities	Total amount funded by the Department (excluding GST)	Total eligible milestone cost (excluding GST) (If applicable)	Activity Period	When to send invoice
<p>pump design which must be considered by you and your specialist consultant(s). You must ensure that your specialist consultant(s) documents how this feedback has been considered in developing the final heat pump design in milestone 3 and that documentation must be provided to the Department in a form satisfactory to the Department for you to be eligible for any milestone 3 funding.</p>				

Description of Activities	Total amount funded by the Department (excluding GST)	Total eligible milestone cost (excluding GST) (If applicable)	Activity Period	When to send invoice
<p>Milestone 3 Activities</p> <p>You must:</p> <ol style="list-style-type: none"> 1. Ensure that your specialist consultant(s) prepares milestone 3 report in accordance with the template [https://www.energy.nsw.gov.au/heat-pump-feasibility-grant-milestone-3-report-template] and requirements provided by the Department. <p>The above activities must meet all of the requirements specified in the Heat Pump Feasibility Grant Funding Guidelines [https://www.energy.nsw.gov.au/heat-pump-feasibility-grant-funding-guidelines].</p> <ol style="list-style-type: none"> 2. Submit the following documentation through the Department's grant management system [https://netzeroNSW.smartygrants.com.au/HPFG] or such other link or in such other form as notified by the Department to you in writing from time to time: <ol style="list-style-type: none"> 2.1 the milestone 3 report and supporting documentation (if any); 2.2 the specialist consultant(s)'s itemised invoice to you; and 2.3 your invoice to the Department for milestone 3 payment. 	<p>Up to \$25,000, covering:</p> <ul style="list-style-type: none"> • up to 75% of the total eligible costs of the services provided by the specialist consultant(s) in delivering milestones 2&3; and • up to 50% of the total eligible costs of the metering (hardware/software) determined as eligible by the Department at milestone 1 and evidenced as implemented. 		<p>Within 8 weeks of receiving confirmation of successful completion of milestone 2 activities</p>	<p>On completion of milestone 3 activities</p>

Description of Activities		Total amount funded by the Department (excluding GST)	Total eligible milestone cost (excluding GST) (If applicable)	Activity Period	When to send invoice
You will also need to complete a post-implementation survey to help enhance our programs. We will email you the necessary links to access the survey.					
Total		Up to \$30,000			
Invoicing Requirements (if required)	Refer to clause 4.1(f)				