

## Funding Deed

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# NSW Landcare Enabling Program- Innovations and Partnerships Grant

Local Land Services

Business Unit      Programs & Partnerships

Grantee              [Click here to enter text.](#)

Project Number    [Click here to enter text – LEP-I&P-00X](#)

SAMPLE



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## Background

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- A. The NSW Government established the Landcare Enabling Program 2023-2027. The Innovations and Partnerships Grant Program is Phase 3 of the Landcare Enabling Program 2023-2027.
- B. The Innovations and Partnerships Grant Program is designed to enhance the capacity, efficiency and self-sustenance of the NSW Landcare movement and to support innovation and foster partnerships for Landcare.
- C. You have applied for the Grant under the Landcare Enabling Program for your project.
- D. LLS will pay the Grant to you, and you agree to be responsible for delivering the Project, reporting and other obligations, as set out in this Deed.

SAMPLE

## Details

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<b>LLS</b>	Name	Local Land Services, a body corporate established by Local Land Services Act 2013
	ABN	57 876 455 969
	Region	<a href="#">Click here to enter text.</a>
	Address	<a href="#">Click here to enter text.</a>
<b>LLS Authorised Officer</b> <i>(refer to <b>clause 28</b> - Notices)</i>	Name	Peter-John Layton
	Position	Director, Programs & Partnerships
	Address	66 Harrington St, The Rocks, NSW 2000
	Mobile	0409 758 157
	E-mail	Landcare.admin@lls.nsw.gov.au
<b>Grantee ('You')</b>	Name	<a href="#">Click here to enter text.</a>
	Address	<a href="#">Click here to enter text.</a>
	ABN	<a href="#">Click here to enter text.</a>
<b>Your Authorised Officer</b> <i>(refer to <b>clause 28</b> - Notices)</i>	Name	<a href="#">Click here to enter text.</a>
	Position	<a href="#">Click here to enter text.</a>
	Address	<a href="#">Click here to enter text.</a>
	Telephone	<a href="#">Click here to enter text.</a>
	Mobile	<a href="#">Click here to enter text.</a>
	E-mail	<a href="#">Click here to enter text.</a>
<b>Grant Program</b>	Innovations and Partnerships Grant Program	
<b>Program Guidelines</b>	The published guidelines for the Program, as updated from time to time, are available at this link: <a href="#">[insert link]</a>	
<b>Project</b>	<a href="#">Click here to enter title of Project</a> The Project is funded under the Program. Details of the Project are set out in <b>Schedule A</b> and documents attached or cross-referenced in this Deed.	
<b>Site</b> <i>(where the Project will be carried out)</i>		
<b>Grant</b>	A maximum total amount of \$ <a href="#">Click here to enter total amount of Grant</a> (GST exclusive) payable in Instalments as set out in <b>Schedule A</b> .	

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**Commencement Date** of this Deed The date on which this Deed is executed by the last party.

**Date of this Deed**

*(refer to clause 2- Term)*

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**Your Contribution** [Click here to enter text.](#) (GST Exclusive) [payable as set out in **Schedule A**]

*(refer to clause 3.2)*

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**Invoice Requirements** Send invoice to Landcare.admin@lls.nsw.gov.au

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## Special Conditions

### SC1 Lead Applicant

If you are the lead applicant for a consortium which applied for the Grant, you warrant that you have an agreement in place with the other consortium members setting out the members' roles and responsibilities in relation to the Project. You remain solely responsible for the performance of the Project and compliance with the terms and conditions of this Deed.

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# Terms and Conditions

## Definitions and Term

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### 1. Interpretation and Definitions

#### 1.1. Interpretation

In this Deed, unless the context requires otherwise:

- (a) the capitalised terms defined in the Details have the meaning ascribed to them there;
- (b) where any time limit under this Agreement falls on a day which is not a Business Day, 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) specific examples do not limit the meaning of general words introduced by “including” or “for example” or similar expressions;
- (e) monetary amounts are expressed in Australian dollars;
- (f) references to persons include bodies corporate, government agencies and vice versa;
- (g) references to the parties include references to respective directors, officers, employees and agents of the parties;
- (h) nothing in this Agreement is to be interpreted against a party solely on the grounds that the party put forward this Agreement or any part of it; and
- (i) where an expression is defined, any other grammatical form of that expression has a corresponding meaning.

#### 1.2. Definitions

**Activity** means the activities and/or agreed results which you must achieve for the Project as described in Schedule A – Project Plan.

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

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

**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** 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.

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

- (a) sets out your contact details including ABN (or a statement that you do not have an ABN);
- (b) specifies the amount to be paid, and whether or not this includes GST;
- (c) identifies this Deed and any Activities to which the payment applies; and
- (d) is sent in accordance with the Invoice Requirements specified in the Details or otherwise notified by LLS.

**Data Breach** means any suspected or actual access to, or disclosure of, information in your possession or control which includes data or Personal Information:

- (a) that LLS provided to you; or
- (b) that you have obtained in the course of providing the Services;

unless such access or disclosure complies with this Deed.

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

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

**Instalment** means a payment of part of the Grant which LLS will pay to you as set out in **Schedule A**.

**Intellectual Property** or IP includes:

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

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

**Law** means any applicable:

- (a) statute, rule, regulation, by-law or statutory instrument of the Commonwealth, any State or Territory, or local government area;
- (b) order, request or direction issued by a regulator or other authority; or
- (c) other requirement having the force of law;

as amended, consolidated or replaced from time to time.

**Notice** means any approval, consent, instruction, order, direction, statement, request or certificate, or other communication one party gives to another party in writing under this Deed.

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

**Privacy Law** means the Law concerning use of Personal Information in NSW, the Commonwealth, or another Australian jurisdiction, as applicable.

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

**Transfer the Site** means sell, lease, or otherwise transfer control of the Site.

## 2. Term

- 2.1. This Deed will commence on the Commencement Date.
- 2.2. This Deed will end when you have completed the Project to LLS' satisfaction and LLS has paid all Instalments due.

## What you must do

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### 3. Your general obligations and warranties

- 3.1. You must:
  - (a) ensure the Grant is used only for the approved Project;
  - (b) ensure each Activity is completed within the Activity Period in accordance with this Deed;
  - (c) comply with the Schedule B - Reporting Requirements;
  - (d) comply with all Commonwealth, State and local government laws that are relevant to the Project, this Deed, or your registration as an entity;
  - (e) comply with all policies, guidelines and reasonable directions LLS provides to you;
  - (f) comply with the Program Guidelines;
  - (g) avoid damage to property and the environment when carrying out the Project, and make good any such damage at your expense;
  - (h) prevent nuisance or inconvenience to anyone who may be affected when carrying out the Project; and
  - (i) not do anything that may cause damage to the reputation of LLS or the Program.
- 3.2. If specified in the Details, you must make Your Contribution within the time frames set out in Schedule A.
- 3.3. Without limiting 3.1(d), you must, before starting work on the Project, obtain all permits and approvals, and pay any related fees and charges, required by or under relevant Laws., including where applicable, permits and approvals for:
  - (a) native vegetation clearing;
  - (b) works in streams;
  - (c) threatened species; or
  - (d) Aboriginal cultural heritage.
- 3.4. You acknowledge that:

- (a) it is an offence under the *National Parks and Wildlife Act 1974 (NSW)* to harm or desecrate Aboriginal objects or places;
- (b) you may have a duty under that Act to conduct due diligence checks prior to commencing the Project; and
- (c) If you find any Aboriginal objects during the Project, you must cease the Project immediately and notify the NSW Office of Environment and Heritage.

3.5. You represent and warrant that at the date you execute this Deed:

- (a) all information which you have provided to LLS is true and correct;
- (b) you have full power and authority to enter into this Deed and to perform your obligations;
- (c) you have all rights, title, licences, property, and regulatory approvals necessary to lawfully perform the Project (including consent of any relevant native title holders or claimants and traditional owners recognised under land rights legislation);
- (d) you have the expertise, skills, and resources to perform your obligations under this Deed; and
- (e) you are not aware of any circumstances, including any financial circumstances or litigation or other proceeding that are taking place, pending, or threatened, which might affect your ability to perform the Deed, or which may cause damage to the reputation of LLS or the Program.

3.6. You must notify LLS as soon as:

- (a) you become aware of any material change to any representation and warranty given under this Deed, including if your financial circumstances change or you become subject to legal proceedings;
- (b) you become aware of any significant delay or suspension of the Project;
- (c) you are unable to proceed with the Project; or
- (d) you become aware of any other matter that is reasonably likely to adversely affect your conduct of the Activities; and

in consultation with LLS, you must take available steps to lessen the impact of any such event on the Project.

#### **4. Ownership of Site and access**

4.1. If you own the Site or hold it under a Western Lands lease:

- (a) you warrant that you have no current plans to Transfer the Site during the term of this Deed; and
- (b) you agree that if you decide to Transfer the Site during the term of this Deed you will:
  - i. promptly Notify LLS, providing contact details of the persons or entities involved in the proposed transaction (including any real estate agent);
  - ii. inform those involved in the proposed transaction of the existence of this Deed and the obligations to carry out the Activities;
  - iii. seek to have this Deed novated to the incoming purchaser, tenant, or transferee of the Site for the remainder of the Project; and

- iv. if for any reason the parties do not novate this Deed to the incoming purchaser, tenant, or transferee of the Site, within 60 days of the conclusion of the property transaction, repay the portion of the Grant applicable to Activities that have not yet been completed, within 30 days of receiving an invoice from LLS.

4.2. If you are not the owner of the Site:

(a) you warrant that you have obtained the written agreement of the landowner that:

- i. you (and your agents and subcontractors) have permission to access the Site and to complete the Project at the Site;
- ii. the landowner has no current plans to Transfer the Site during the term of this Deed;
- iii. the landowner will notify you promptly of any such plans; and
- iv. you will notify LLS immediately on being informed of any such plans.

(b) you indemnify, and agree to keep indemnified, LLS, the Crown in right of the State of NSW and their officers, employees and agents against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred by any of those indemnified arising directly or indirectly from any Claim by the land owner in connection with the Project.

4.3. You must give LLS and its agents reasonable access to the Site to inspect the progress of the Project, carry out surveys, undertake monitoring and any related purposes for the Term.

## 5. No overlap with other funding

5.1. You agree that there must be no overlap between the Activities funded under this Deed and activities covered by any other funding arrangements you have entered into, or that you may enter subsequently.

5.2. You agree to:

- (a) notify LLS immediately of any existing or proposed funding arrangement that concerns the Project, the Activities, or any related matters (**Related Funding**); and
- (b) cooperate with LLS and the provider of the Related Funding to ensure that there is a clear distinction between the Activities funded by this Deed and the activities you are required to carry out under the Related Funding deed.

## 6. Variations to the Project

6.1. If you wish to vary the Project, including any Activity or other matter set out in Schedule A such as:

- (a) changes to the scope of the Project or the Site or revised priorities for the Project; or
- (b) changes to the timeframe for delivery of the Project, including extensions to completion of Activities;

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

- 6.2. Following your request for a variation under clause 6.1, LLS will decide whether or not to approve your request in its sole discretion. No variation is approved until LLS notifies you in writing of its approval.

## About the Grant

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### 7. Project costs

- 7.1. The Grant is the maximum amount LLS will pay you in respect of the Project.
- 7.2. You:
  - (a) warrant that you have prepared or approved the scope of works and costs estimate for the Project before signing this Deed;
  - (b) agree that you are responsible for any costs for the Project that exceed the Grant, whether or not you expected to incur such costs before signing this Deed, and will obtain any additional funding necessary to carry out the Project; and
  - (c) agree that you are responsible for all maintenance costs relating to the Project after termination or expiry of this Deed.

### 8. Paying Instalments

- 8.1. LLS will pay the Instalments as set out in Schedule A on condition that you provide LLS with:
  - (a) a Correctly Rendered Invoice that clearly identifies the Instalment you are claiming;
  - (b) evidence that you have performed the Activities within the applicable Activity Periods; and
  - (c) any additional information which LLS requires to satisfy itself that you are complying with all of your obligations under this Deed.
- 8.2. LLS will pay an Instalment within 30 days of receiving all documents required under clause 8.1.
- 8.3. Notwithstanding clauses 8.1 and 8.2, if LLS pays you an Instalment, it may require you to repay all or part of the amount under clause 10 (Repaying and deducting amounts).
- 8.4. On receiving an Instalment, you must immediately deposit it in your account with an Australian branch of an established bank, building society or credit union, which is solely controlled by you and allows for the Grant to be separately identified. You must keep the Instalment monies on trust for LLS in such account until you require it for an Activity, or repay it to LLS under clause 10 (Repaying and deducting amounts).

## **9. Changing and withholding Instalments**

- 9.1. LLS may change the amount of the Instalment, but not the total Grant, by issuing you with a Notice setting out the details of the changes.
- 9.2. LLS may, on giving Notice, withhold payment of any Instalment if, and for so long as, LLS reasonably believes that:
- (a) you have not complied with this Deed; or
  - (b) circumstances exist which might affect your ability to perform the Deed or which may cause damage to the reputation of LLS or the Program.
- 9.3. If LLS withholds an Instalment under this clause, you must continue to perform your obligations under this Deed.

## **10. Repaying and deducting amounts**

- 10.1. If LLS considers that any amount of the Grant:
- (a) has been incorrectly claimed or overpaid;
  - (b) has not been spent in accordance with this Deed;
  - (c) is surplus to the requirements of the Activity; or
  - (d) is unspent upon termination or expiry of this Deed,
- then LLS may, by Notice:
- (e) require you to repay that amount to LLS within 20 Business Days or to otherwise deal with that amount as directed by LLS;
  - (f) deduct that amount from any future Instalments; or
  - (g) set off that amount against any payment which LLS is due to pay to you on a different funding program.
- 10.2. Any repayment LLS claims from you under this clause will be a debt due and owing by you to LLS without the need for further proof.

## **11. Reducing the Grant**

- 11.1. Without limiting other rights under this Deed, LLS may reduce the amount of the Grant by giving you at least 20 Business Days' notice if:
- (a) LLS does not receive sufficient funds from the Commonwealth Government, or other relevant source, to provide the Grant for the Project; or
  - (b) there is a change in NSW Government policy which affects the Program, the Project or allocation of funds for the Grant.
- 11.2. If LLS reduces the Grant under this clause, LLS will:
- (a) agree with you any necessary consequent variation to this Deed, for example, by reducing the scope of the Activities; and

- (b) pay your reasonable, substantiated costs (other than loss of profit or income) which you necessarily and directly incur from the reduction in the Grant and any consequent variation to the Deed, provided that:
- i. you use your best efforts to minimise those costs; and
  - ii. those costs do not exceed the amount by which the Grant has been reduced under this clause.

## 12. GST

- 12.1. Words and expressions used in this clause which are defined in the GST Law have the same meanings given to them in the GST Law.
- 12.2. All consideration for any supply under this Agreement is exclusive of any GST in relation to the supply, unless otherwise stated.
- 12.3. If:
- (a) despite any other provision of this Deed, GST is imposed on a supply made under this Deed; and
  - (b) the party that provides consideration for the supply is or will be entitled to receive an input tax credit in relation to that supply,
- that party will pay an additional amount equal to the GST imposed on that supply at the time and in the manner specified in this Deed, if required by a Correctly Rendered Invoice.
- 12.4. If you are not registered under the GST Law, you will not be entitled to receive any additional amount as provided under this clause.
- 12.5. If for any reason LLS pays you an amount under this clause which is more than the GST imposed on the supply, you must repay the excess to LLS on demand or LLS may set off the excess against any other amounts due to you.

## Reporting and monitoring

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### 13. Progress Reports

- 13.1. You must provide LLS with written progress reports at the times and containing the information specified in Schedule B – Reporting Requirements (“**Progress Reports**”).
- 13.2. If any Progress Report contains information confidential to you, you must mark the relevant parts of the Progress Report accordingly.
- 13.3. If LLS does not accept a Progress Report as satisfactory, you must submit a revised Progress Report within ten Business Days of your receipt of LLS’s request.

## 14. Financial information

- 14.1. You must provide financial statements of income and expenditure in respect of the Grant (“**the Statements**”) to LLS within 60 Business Days of:
- (a) completion of the Project or termination of this Deed; and
  - (b) the end of each Financial Year during the Project.
- 14.2. The Statements must include a definitive statement as to whether:
- (a) the financial information for the Project represents the financial transactions fairly and is based on proper accounts and records; and
  - (b) the Grant was expended for the Project and in accordance with this Deed.
- 14.3. You must keep financial accounts and records relating to the Project so as to enable:
- (a) all receipts and payments related to the Project to be identified in your accounts and reported in accordance with this Deed;
  - (b) unless notified by LLS, the preparation of financial statements in accordance with Australian Accounting Standards; and
  - (c) generation of an income and expenditure statement for each financial year of the Project with the budget, including:
    - iii. a schedule of the Significant Assets acquired, sold, written-off or otherwise disposed of during each financial year; and
    - iv. a comparison of the income and expenditure in each financial year against the budget; and
    - v. the audit of those records in accordance with Australian Auditing Standards.

## 15. Evaluation

- 15.1. To assist LLS to monitor and evaluate the Project, the Program, and your performance, you must, on reasonable notice and in a timely manner:
- (a) provide the data and reports specified in Schedule B;
  - (b) make appropriate personnel available to meet with LLS;
  - (c) make reliable and adequate records available to LLS;
  - (d) allow LLS and its authorised representative reasonable access to the Site to inspect the conduct of Activities;
  - (e) provide other information which LLS requires concerning the Project, your structure, your finances, or your financial viability; and
  - (f) participate in any survey or feedback regarding the Project or Program.

## Material and Information

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### 16. Intellectual Property

- 16.1. Intellectual Property in all Project Material vests in you.

- 16.2. You grant LLS a non-exclusive, irrevocable, royalty-free licence (including the right to sub-license) to use the Project Material for any purposes.
- 16.3. You warrant that the use of Project Material in accordance with this Deed will not infringe any third party's IP rights.

## 17. Confidential Information

- 17.1. Neither party may disclose the other's Confidential Information without its prior consent unless the disclosure:
- (a) is required or authorised by law or by this Deed;
  - (b) is reasonably required by a person, including a contracted auditor of LLS, for purposes of this Deed;
  - (c) is to that party's own professional advisers for the purpose of obtaining advice; or
  - (d) in the case of LLS, is required:
    - i. by Parliament or LLS's responsible Minister; or
    - ii. for LLS to perform a governmental function including research and analysis in respect of the Program, monitoring performance of this Deed, evaluating the outcomes of this Deed or the Program, and reporting on the Program.
- 17.2. 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.

## 18. Privacy and data

- 18.1. To the extent that you deal with Personal Information in conducting the Project, you must:
- (a) comply with applicable Privacy Law;
  - (b) not cause LLS to breach any of its obligations under *the Privacy and Personal Information Protection Act 1998*;
  - (c) immediately notify LLS if you become aware of a Data Breach or other actual or potential breach of privacy; and
  - (d) include equivalent requirements regarding Personal Information (including this clause) in any subcontract you enter into for the provision of any of the Activities under this Deed.

## 19. Public Announcements and Acknowledgement

- 19.1. You must:
- (a) seek the consent of LLS prior to any public announcement about the Project and prior to you using any branding or logos of LLS or the NSW Government;
  - (b) acknowledge the support of LLS, as directed by LLS 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; and
  - iii. on any equipment or other facility funded wholly or in part by LLS;
- (c) comply with the applicable NSW Government guidelines for acknowledging funding; and
- (d) use your best efforts to ensure that LLS and its Minister are given a reasonable opportunity to participate in media coverage or other promotion of the Project.

19.2. You agree that LLS may disclose information about the Project and the Grant in any media, such as media releases, social media, case studies, promotional material and in response to media enquiries.

## **20. Disclosure of Information**

20.1. You acknowledge that LLS is required to publish detailed information about the Grant on the NSW Government Grants and Funding Finder at [nsw.gov.au/grants-and-funding](http://nsw.gov.au/grants-and-funding), except to the extent such information would identify individuals or otherwise conflict with the law. You must provide any information which LLS needs to meet those publication requirements including, where relevant, any funding amounts which you transfer to indirect grantees as downstream recipients.

## **Dealing with Risk**

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### **21. Insurance**

- 21.1. You must maintain, at your own cost, during the term of this Deed:
- (a) a broadform public liability policy of insurance to the value of at least \$20 million in respect of each claim and unlimited in the aggregate as to the number of occurrences in the policy period;
  - (b) workers' compensation insurance as required by all relevant laws of Australia relating to workers compensation; and
  - (c) any additional insurance policies LLS requires in writing.
- 21.2. You must not do or permit anything that could lead to any of the policies referred to in this clause being vitiated or rendered void or voidable.
- 21.3. If requested by LLS, you must provide a copy of valid and current certificates of currency for each or any of the policies described above which will include the policy number, expiry date, level of cover (per claim and aggregate), policy excess, summary of cover (including exclusions and endorsements) and jurisdictional limits.
- 21.4. Without limiting clause 21.1, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.

## 22. Indemnities

22.1. You must indemnify and keep indemnified LLS, the Crown in right of the State of New South Wales and their officers, employees and agents against any loss (paid or payable including legal costs and expenses on a solicitor/own client basis) or liability by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person in connection with:

- (a) the Grant or the use of any outcomes from the Project;
- (b) your breach of this Deed;
- (c) any unlawful or negligent act or omission by you, your employees or your subcontractors in connection with this Deed;
- (d) any illness, injury or death of any person you, your employees or your subcontractors cause or contribute to, in connection with this Deed;
- (e) any loss or damage to real or personal property you, your employees or your subcontractors cause or contribute to, in connection with this Deed; or
- (f) any act or omission by you, your employees or your subcontractors in connection with this Deed that is in infringement of any Intellectual Property, or privacy rights of LLS or any third party.

22.2. Your liability to indemnify LLS under this clause:

- (a) will be reduced proportionately to the extent that LLS's negligent or unlawful acts or omissions, or those of its officers, employees or agents contributed to the relevant loss or liability; and
- (b) does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Deed.

## Terminating the Deed

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### 23. Termination by either party for breach

23.1. Where a party has breached this Deed:

- (a) the other party may give a Notice to that party requiring it to rectify that breach within 30 days of receiving that Notice; and
- (b) if the party which received the Notice fails to rectify that breach in time, the other party may terminate this Deed immediately by giving a further Notice.

### 24. Termination by LLS for cause

24.1. LLS may terminate this Deed by Notice, with effect on the date stated in the Notice, if:

- (a) you have provided misleading or incorrect information in your application for funding or in reports, invoices or information you provide in connection with this Deed;
- (b) LLS considers that termination is necessary to avoid damage to the reputation of LLS or the Program;

- (c) you breach any of the provisions concerning Your general obligations and warranties, Confidential Information, Privacy and data, Insurance, or Assignment;
- (d) LLS considers that there has been a material change in circumstances in your financial position, your structure or your identity; or
- (e) you become insolvent, if you are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966*, or if you resolve to go into administration or liquidation or have a summons for your winding up presented to a Court or enter into any scheme of arrangement with your creditors.

## 25. Termination by LLS – without cause

- 25.1. LLS may terminate this Deed without cause (and without the need to give reasons) by giving you at least 20 Business Days' notice.
- 25.2. LLS will pay your reasonable, substantiated costs (other than loss of profit or income) necessarily and directly incurred as a result of such termination provided that:
  - (a) you use your best efforts to minimise those costs; and
  - (b) the total amount of those costs will not exceed the total amount of unpaid Grant forfeited through termination under this clause.

## 26. Consequences of termination

- 26.1. On termination or expiry of this Deed, accrued rights and obligations are not affected.
- 26.2. You must, within 10 Business Days of termination:
  - (a) repay to LLS any unspent portion of the Grant;
  - (b) provide to LLS:
    - i. any reports due or that LLS otherwise reasonably requests; and
    - ii. any Project Material which LLS owns, or which is licensed to LLS under this Deed, in a format which permits LLS to exercise its IP rights in respect of that Project Material; and
  - (c) destroy any Confidential Information LLS has provided to you.
- 26.3. If LLS requires you to repay an amount under clause 10 (Repaying and deducting amounts), you must repay that amount in accordance with the notice.
- 26.4. Clauses 23 to 26 (Termination) do not limit the rights of a party under this Deed or at law.

## Other Legal Matters

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### 27. Dispute Resolution

- 27.1. If a dispute arises in relation to this Deed (“a **Dispute**”), a party must comply with this clause before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.

- 27.2. A party claiming that a dispute has arisen must notify the other party giving details of the dispute ("**Dispute Notice**") in accordance with the requirements of clause 28 (Notices).
- 27.3. Following receipt of a Dispute Notice, each party must refer the Dispute to a senior representative, who:
- (a) does not have prior direct involvement in the Dispute; and
  - (b) has authority to negotiate and settle the Dispute.
- 27.4. If the Dispute is not resolved within 10 Business Days from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice must refer the Dispute for mediation by the [Australian Disputes Centre](#) ("**ADC**") for resolution in accordance with the mediation rules of the ADC.
- 27.5. If the Dispute is not resolved within 40 Business Days after referral to mediation, either party may initiate proceedings in court.
- 27.6. Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.

## **28. Notices**

- 28.1. Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered or emailed to the other party's Authorised Officer.
- 28.2. The receiving party will be deemed to have received the Notice as follows:
- (a) if hand delivered, on the day on which it is delivered or left at the relevant address;
  - (b) if sent by email before 5.00pm on a Business Day, the first of the following occurring:
    - i. when the sender receives an automated message confirming delivery; or
    - ii. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
  - (c) if sent by email after 5pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
- 28.3. Any such mode of service will be in all respects valid notwithstanding that the party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.

## **29. General**

- 29.1. **Survival:** The following clauses survive termination or expiry of this Deed: clauses concerning warranties, Repaying and deducting amounts, Financial Information, Evaluation, Intellectual Property, Confidential Information, Privacy and Data, Insurance, Indemnities, Consequences of Termination, Dispute Resolution, Keeping of records,

Governing law, this clause (Survival) and any other clause which by its nature is intended to survive this Deed.

- 29.2. **Subcontractors:** You remain fully responsible for the performance of the Project if you subcontract the performance of any part of the Project.
- 29.3. **Keeping of records 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 Activities (“**Records**”), and must retain such Records for a minimum of seven (7) years after expiry or termination of this Deed;
  - (b) authorise LLS and any State or Commonwealth Government department or agency (“**Auditors**”) that has provided moneys to LLS for the purposes of the Project to which the Activities relate, to examine and inspect, at reasonable times and on reasonable Notice, any Project Material you hold, and allow any such Records to be copied; and
  - (c) must provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.
- 29.4. **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 LLS in writing if such a conflict or risk of such a conflict arises.
- 29.5. **Entire agreement:** This Deed states all the express terms the parties have agreed on. It supersedes all prior contracts, obligations, representations, conduct and understandings between the parties relating to the subject matter of this Deed.
- 29.6. **Variation:** This Deed may only be varied by agreement in writing including by an exchange of emails confirming the agreed variation.
- 29.7. **Inconsistency:** If there is any inconsistency between provisions in this Deed then the order of precedence will be:
- (a) the Details; then
  - (b) the Special Conditions; then
  - (c) these Terms and Conditions; then
  - (d) any Schedules or attached Annexures; then
  - (e) the Program Guidelines.
- 29.8. **Negation of employment, partnership or agency:** This Deed does not create a relationship of agency, partnership, and/or employment between the parties.
- You must not represent yourself as being an employee or agent of LLS or as otherwise able to bind or represent LLS.
- 29.9. **Severability:** If any part of this Deed is held to be invalid or ineffective, that part is removed from this Deed. If that happens, it does not affect the validity of what remains.

29.10. **Waiver:** If a party fails to exercise any of its rights under this Deed, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights and will not stop a party from relying on the terms of this Deed to their full force and effect.

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

29.11. **Assignment:** You must not assign, novate or otherwise deal with any of your rights, obligations or interests under this Deed, without LLS's prior written consent.

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

29.13. **Electronic execution:** Each party agrees that the other may execute this Deed electronically as provided for in the *Electronic Transactions Act 2000*.

29.14. **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.

SAMPLE

## Executed as a deed

### Local Land Services

Signed, sealed and delivered for and on behalf of Local Land Services by its authorised signatory but not so as to incur personal liability:

Signature of authorised signatory	Signature of witness
Name of authorised signatory	Name of witness
Position of authorised signatory	Address of witness
	Date

Include text if person is witnessing the signature remotely.  
Delete if witness is present in person (not remote.)  
By signing this document, the witness states that they 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)*.

### You (Company/Organisation)

Signed, sealed and delivered for on and on behalf of [Click here to enter Company/Organisation name](#) in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of Director (1)	Signature of Director (2)/Company Secretary
Name of Director (1)	Name of Director (2)/Company Secretary
Date	Date

## Alternative Signature Blocks

### You (Authorised Signatory eg University, Council)

By entering into this Deed the signatory warrants that the signatory is duly authorised to execute this Deed on behalf of [Click here to enter University/Council name](#).

Signed, sealed and delivered for and on behalf of [Click here to enter University/Council name](#), 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
Date	Date

Include text if person is witnessing the signature remotely.  
Delete if witness is present in person (not remote.)  
By signing this document, the witness states that they 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)*.

## Schedule A - Project Plan

**Program:** NSW Landcare Enabling Program- Innovations and Partnerships Grant

**Program evaluation criteria:** *insert the criteria which LLS will use to evaluate how this Project has met the objectives of the Program*

**Project:** *Insert information relevant to the particular Project – this may be information from the Application, updated to reflect the Project as approved.*

**Example points:**

- *Description of Project*
- *Purpose of Project*
- *Summary of Activities and who is responsible: (e.g. subcontractors, project management arrangements etc)*
- *Key performance indicators*
- *Performance standards*
- *Timing*
- *Budget*

**Acquittal requirements:** *Insert*

**Activities - Summary Table:**

Description of Activities	Evidence of completion/compliance	Instalment (excluding GST)	Your Contribution (excluding GST) (If applicable)	Activity Period
<i>[Insert description of Activity. Or cross reference an attachment, e.g. "Complete XX as specified in Attachment 1"]</i>	<i>E.g. XX document/ statutory declaration/ report]</i>			<i>[e.g. "by 1 Oct 2024"]</i>
e.g. 1. complete [XX activity] to LLS's satisfaction				
e.g. 2. provide [XX report] to LLS's satisfaction				
		Total	Total	

Sub Project	Organisation or group responsible for this activity	Deliverables	Evidence of completion/compliance	Instalment (excluding GST)	Your Contribution (excluding GST) (If applicable)	Milestone Due Date
<i>Name of Sub Project as listed in the application</i>		<i>[Insert description of Activity. Or cross reference an attachment, e.g. "Complete XX as specified in Attachment 1"]</i>	<i>E.g. XX document/ statutory declaration/ report]</i>			<i>[e.g. "by 1 Oct 2024"]</i>
		e.g. 1. complete [XX activity] to LLS's satisfaction				
		e.g. 2. provide [XX report] to LLS's satisfaction				
				Total	Total	

## Schedule B – Reporting Requirements

### Progress Reports

1. You must provide Progress Reports to LLS on the status of all on-going and completed Activities for the period to which the report relates, consisting of:
  - (a) a brief description of the Activities' objective/s;
  - (b) all Activities undertaken during the reporting period;
  - (c) the status of results achieved to date from the Project;
  - (d) the amount of the funding from the Grant and what has been spent on the Activities so far; and
  - (e) the amount or details of Your Contribution that has been expended so far.
2. You must provide the Progress Reports quarterly and at other times as requested by LLS.

### Meetings and site visits

3. LLS may meet with you, at LLS's discretion, to discuss progress on the Project.
4. LLS may make site visits from time to time to ascertain progress of the Activities on providing reasonable notice to you.

### Evaluation

5. You must provide performance information and data for the purposes of clause 15 (Evaluation).