



# **Deed of Agreement**

for the provision of a grant from the

**NSW Environmental Trust**

(in partnership with the NSW Environment Protection Authority)

## **Waste Less Recycle More Initiative**

Waste and Recycling Infrastructure Fund

Resource Recovery Facility Expansion  
and Enhancement Grants Program

## DEED OF AGREEMENT

THIS DEED is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2014.

### BETWEEN

**NSW ENVIRONMETAL TRUST** (ABN 81 134 983 977) of 10 Valentine Avenue Parramatta acting for and on behalf of the Crown in right of the State of New South Wales ("The Trust")

### AND

«OrganisationName» (ABN «ABNAppOrg») of «PostalAddress1» «PostalSuburb» «PostalState» «PostalPostcode» (the "**Recipient**").

### RECITALS

- A. In February 2013, the NSW Government announced the five-year \$465.7 million *Waste Less Recycle More* initiative in response to the findings of an independent review of the Waste and Environment Levy. The Waste and Environment Levy is legislated under the *Protection of the Environment Operations Act 1997* which requires licensed waste facilities in NSW to pay a contribution for each tonne of waste received for disposal at the facility. The levy is the key policy used to drive waste avoidance and resource recovery by providing an economic incentive to reduce waste disposal and stimulate investment and innovation in resource recovery technologies. The *Waste Less Recycle More* initiative represent the refocussing of waste levy funding to support new and innovative waste and recycling programs that will deliver long-term change.
- B. A major part of the *Waste Less Recycle More* initiative is the *Waste and Recycling Infrastructure Fund* which supports two major contestable grants programs:
1. the *Resource Recovery Major Infrastructure Grants Program* and;
  2. the ***Resource Recovery Facility Expansion and Enhancement Grants Program (this program)***.
- C. The *Resource Recovery Facility Expansion and Enhancement Grants Program* is designed to accommodate a broad range of expansion and enhancement projects for existing recycling facilities located in levy paying areas of NSW and which primarily process materials from these areas. Projects will be considered based on their ability to increase recycling of waste materials from households and businesses in a cost effective manner. It will focus on expanding and enhancing infrastructure and plant for:
- recovery of recyclables from sorted and unsorted waste from business and households; and
  - reuse, recycling and reprocessing of recyclable materials from business and households such as plastics, timber, paper, cardboard and consumer packaging processing and stabilisation of residual business and household waste.
- D. The Recipient has submitted an application for a grant from the *Resource Recovery Facility Expansion and Enhancement Grants Program*, which is attached as Attachment A to this Deed.
- E. The NSW Environmental Trust approved a grant from the *Resource Recovery Facility Expansion and Enhancement Grants Program* to the Recipient to fund all or part of the cost of this application and the Minister for the Environment has certified the expenditure in accordance with Section 8 of the *Environmental Trust Act 1998*.
- F. The Recipient has agreed to undertake the project as outlined in the Project Plan which is attached as Attachment B to this Deed and accepts the grant on the terms and conditions of this Deed.

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# Operative Provisions

## 1. Interpretation

### 1.1 Definitions

1.1.1 In this Deed, except where the context otherwise requires:

**“Applicable Objective”** has the meaning set out in Item 13 of Schedule 1.

**“Attachment”** means an attachment to this Deed;

**“Budget”** means the budget contained in Schedule 2;

**“Business Day”** means the day which is not a Saturday, Sunday or public holiday in Sydney, New South Wales;

**“Commencement Date”** means the date specified in Item 2 of Schedule 1;

**“Completion Date”** means the date on which the Project must be completed, which is the date specified in the first column of Schedule 3;

**“Confidential Information”** means any information that is by its nature confidential; and

a. is designated by a Party as confidential and is described in Item 6 of Schedule 1; or

b. a 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;

**“Creditable Acquisition”** has the same meaning given to it in GST Law;

**“Deed”** means this agreement including the Schedules and Attachments;

**“Project Plan”** means the plan which is Attachment B to this Deed which contains a detailed description of how the Recipient intends to carry out the Project, as amended in accordance with this Deed;

**“Final Evaluation Report”** means the final report to be provided to the Trust by the Recipient under clause 7.2;

**“Grant”** means the grant specified in Item 4 of Schedule 1;

**“GST”** means a tax, levy, duty, charge, or deduction imposed by the GST Law calculated by reference to the value of anything supplied but does not include any related additional tax, interest, penalty, fine, or other charge imposed in relation to the late or incorrect payment of GST;

**“GST Law”** means *A New Tax System (Goods & Services Tax) Act 1999*, related legislation and any delegated legislation made pursuant to such legislation;

**“Independent Auditor’s Report”** means the certification set out in Schedule 5;

**“Input Tax Credit”** has the same meaning given to it in GST Law;

**“Instalment”** means an instalment of the Grant;

**“Intellectual Property”** includes patent, know-how, copyright, design, semi-conductor or circuit layout rights, trade mark, trade, business or company names or other proprietary rights and any rights to registration of such rights, whether created before or after the Commencement Date in Australia or elsewhere;

**“Monitoring and Evaluation Report”** means a report on project outputs as required under clause 7.2 of this Deed;

**“Milestone”** is a significant event in the project that signals the commencement and/or completion of some part of the project, or a stage at which agreed parts of the Project will be completed as specified in the first column of Schedule 3;

**“Milestone Date”** means the date which a Milestone is to be achieved, as set out in the second column of Schedule 3;

**“Milestone Report”** means a report of the work carried out by the Recipient to achieve a Milestone as required under clause 7.2 of this Deed;

**“Moral Rights”** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing at the Commencement Date or which may come into existence on or after the Commencement Date;

**“Party”** means a party to this Deed;

**“Project”** means the project described in the Project Plan (Attachment B to this Deed), with the title set out in Item 3 of Schedule 1;

**“Project Materials”** means all material created by or on the Recipient’s behalf for the purpose of the Project, including documents, software and data stored by any means;

**“Recipient’s Application”** means the Recipient’s application for a grant from the Resource Recovery Facility Expansion and Enhancement Grants Program which is Attachment A to this Deed;

**“Reports”** means the reports required to be prepared by the Recipient in accordance with clause 7.2;

**“Schedule”** means a schedule to this Deed;

**“Special Conditions”** means any additional conditions applicable to the Project, set out in Item 10 of Schedule 1;

**“Supply”** has the same meaning given to it in the GST Law;

**“Supporting Documentation”** means the relevant supporting documentation, as specified in Item 5 of Schedule 1;

**“Tax Invoice”** means a request for payment that meets the requirements specified in Item 11 of Schedule 1;

**“Taxable Supply”** has the meaning given to it in the GST Law; and

**“Term”** means the duration of this Deed as set out in Item 2 of Schedule 1 or until the date on which this Deed is terminated, whichever occurs first.

## **1.2 Interpretation**

1.2.1 In this Deed, except where the context otherwise requires:

- a. A singular word includes the plural, and vice versa.
- b. A word which suggests one gender includes the other gender.
- b. If a word is defined, another part of speech has a corresponding meaning.
- c. Any person or company shall mean and include the legal personal representative, successor in title, and permitted assigns of such person or company as the circumstances may require.
- d. Words and expressions importing natural persons include partnerships, bodies corporate, associations and governmental and local authorities and agents.

- e. A reference to legislation (including subordinate legislation) is to legislation in force from time to time.
- f. A Party to this Deed includes a permitted assignee or permitted substitute of that Party.

1.2.2 Headings are for convenience only and do not affect interpretation.

1.2.3 No rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Deed or any part of it.

1.2.4 If a day on or by which a Party must do something under this Deed is not a Business Day the Party must do it on or by the next Business Day.

1.2.5 Monetary references are references to Australian currency.

1.2.6 If the Recipient is comprised of more than one person, each of the Recipient's obligations will bind those persons jointly and severally and will be enforceable against the Recipient jointly and severally.

## 2. Term of the deed

2.1 This Deed commences on the Commencement Date and continues for the Term.

## 3. Provision of grant

3.1.1 The Trust will pay the Grant for the Project to the Recipient in accordance with and subject to the terms of this Deed.

3.1.2 Unless Item 4 of Schedule1 specifies that the Grant is payable in a lump sum, the Grant is payable in instalments.

## 4. Claiming a payment

4.1.1 Payment of each instalment of the Grant is conditional upon:

- a. the Recipient meeting each and every obligation imposed on the Recipient in relation to that particular Milestones to the satisfaction of the Trust; and
- b. the Recipient submitting the Supporting Documentation specified in Item 5 of Schedule 1 in a form satisfactory to the Trust.

4.1.2 Subject to this Deed, the Trust will pay each Instalment to the Recipient on or before the payment date specified in the fourth column of Schedule 3.

4.1.3 The Parties acknowledge that payments of instalments under this clause 4 are made in order to assist the Recipient in progressing the project and are conditional upon completion of the entire Project. In the event that the Recipient becomes unable or unwilling to complete the Project some or all of the payments made under this clause 4 are refundable in accordance with clause 5.4.

## 5. Use of the grant

### 5.1 Expenditure of the grant

5.1.1 The Recipient must use the Grant solely for the purpose of carrying out the Project in accordance with the Deed.

5.1.2 The Recipient must not enter into any arrangements or commitments in relation to the Project that are incompatible or inconsistent with the purpose of the Grant.

## **5.2 Budget**

- 5.2.1 The Recipient must spend the Grant in accordance with the Budget unless otherwise approved in writing by the Trust.

## **5.3 Delayed or inactive projects**

- 5.3.1 The Recipient must notify the Trust immediately if:
- a. the Project will not commence within 60 days of the Commencement Date; or
  - b. the Project has been inactive for a period of 60 days or more.

## **5.4 Repayment of the grant**

- 5.4.1 The Recipient must immediately (or within such time as may be otherwise agreed) repay to the Trust any part of the Grant spent other than in accordance with this Deed.
- 5.4.2 The Recipient must, within 14 days of the termination of this Deed, repay to the Trust any part (or if required by the Trust, the whole) of the Grant which has been paid to the Recipient and not already spent or committed by the Recipient.
- 5.4.3 The Recipient acknowledges that:
- a. where the Recipient is unable, or fails for any reason (including but not limited to insolvency or liquidation of the Recipient or termination of the Deed under clause 20) to complete all of the Project in its entirety by the Completion Date or any other date agreed by the Parties; and
  - b. any portion of the Project already completed does not, in the absence of further action by the Recipient, achieve the Applicable Objective,

The Trust may require the Recipient to repay that portion of any Grant money already paid to the Recipient that is, in the Trust's opinion, attributable to the portion of the Project which did not achieve the Applicable Objective.

The obligation to repay any Grant money paid applies even where such payments were made in respect of milestones for which the particular milestone obligations had been completed at the time of the payment.

- 5.4.4 Any money repayable to the Trust under clause 5.4 is a debt due to the Trust.

## **5.5 Bank account**

- 5.5.1 The Recipient must establish and maintain a separate interest-bearing account at a financial institution operating in Australia to process and record all Grant receipts and expenditure, unless the Recipient demonstrates to the satisfaction of the Trust that adequate internal controls are in place within an existing interest-bearing account operating in Australia to enable identification of Grant receipts and expenditure.
- 5.5.2 The Recipient must provide written notice to the Trust of the details of the bank account used to process and record all Grant receipts and expenditure at or before the time the Recipient provides the Trust with an initial Tax Invoice.

## **5.6 Interest**

- 5.6.1 Interest earned on the Grant becomes part of the Grant and must be used by the Recipient for the Project in accordance with the terms of this Deed, unless otherwise agreed by the Trust.

## 6. Performance of the project

### 6.1 General

- 6.1.1 The Recipient must carry out the Project in accordance with the Project Plan, the Milestones, the expenditure set out in the Budget, any Special Conditions, and any reasonable directions given by the Trust from time to time.

### 6.2 Sub-contractors

- 6.2.1 The Recipient may sub-contract all or part of the conduct of the Project to a sub-contractor subject to the prior written approval of the Trust.
- 6.2.2 The Recipient will be responsible for ensuring the suitability of any sub-contractor for the work proposed to be carried out by them and that all work carried out by them meets the requirements of this Deed. Any approval to sub-contract given by the Trust under clause 6.2.1 does not relieve the Recipient from any of the Recipient's obligations or liabilities under this Deed.

### 6.3 Monitoring and evaluation

- 6.3.1 the Trust will monitor and evaluate the Project against:
- a. the Milestones;
  - b. the Budget;
  - c. the Monitoring and Evaluation Report; and
  - d. the Recipient's compliance with this Deed
- 6.3.2 The Recipient:
- a. acknowledges that the Trust will maintain regular contact with the Recipient to monitor the implementation of the Project and the Deed; and
  - b. agrees to co-operate with the Trust in the performance of this role.

## 7. Milestones and reports

### 7.1 Compliance with Milestones

- 7.1.1 The Recipient must achieve each Milestone by the relevant Milestone Date.
- 7.1.2 The Recipient must complete the Project by the Completion Date.

### 7.2 Reports

- 7.2.1 The Recipient must prepare and submit to the Trust:
- a. a Milestone Report in relation to each Milestone at the frequency and times specified in Item 12 of Schedule 1;
  - b. the Final Evaluation Report within the time specified in Item 12 of Schedule 1;
  - c. the Monitoring and Evaluation Report prepared in accordance with Attachment C at the frequency and times specified in Item 12 of Schedule 1;
  - d. if delays are likely to be incurred in achieving Milestone Dates, a status report no later than five business days prior to the Milestone Date. The Report is to set out reasons for the proposed delay, any revision to Milestone Date(s) and proposed action to be taken by the Recipient that will minimise the impact of the delay;
  - e. a Statement of Expenditure at the frequency and times specified in Item 12 of Schedule 1; and



- f. any other written reports specified in Item 12 of Schedule 1 at the frequency and times specified in that item.

### **7.3 Form of Reports**

- 7.3.1 The Recipient must prepare the Reports in accordance with any format specified in Schedule 5.
- 7.3.2 The form of Reports and the manner of submission may be varied from time to time by the Trust by written notice to the Recipient.

### **7.4 Independent verification of Reports**

- 7.4.1 The Recipient must arrange for:
  - a. the annual Statement of Expenditure and the Statement of Expenditure to accompany the Final Evaluation Report to be audited by a qualified public or chartered accountant and for the person conducting the audit to complete the Independent Auditor's Report. Unless the Recipient obtains the prior written approval of the Trust, the qualified accountant should not be one of the Recipient's officers or employees;
  - b. an independent third person acceptable to the Trust to verify any information contained in a Report if the Trust considers that there is a significant error, omission or anomaly in the Report.
- 7.4.2 The Recipient must promptly provide all assistance and information required by the independent verifier for the purpose of verifying information in a Report.
- 7.4.3 Except where otherwise determined by the Trust, the Recipient is responsible for:
  - a. its own costs in providing assistance and information under clause 7.4.2; and
  - b. the costs of the independent auditor or verifier under clause 7.4.1and such costs are not to be paid out of the Grant.

## **8. Records**

- 8.1.1 The Recipient must ensure that adequate financial and operational records and registers, including those specified or referred to in Schedule 4, are kept and maintained while carrying out the Project.
- 8.1.2 The Recipient must retain the records referred to in this clause 8.1.1 throughout the Term and for seven (7) years after the expiry or termination, of this Deed.

## **9. Inspection**

- 9.1.1 The Recipient agrees that the Trust may visit the Project at any reasonable time, upon giving the Recipient reasonable notice.

## **10. Audit**

- 10.1.1 An audit of any aspect of the Project or the Recipient's compliance with this Deed may be conducted at any time by the Trust or any person authorised by the Trust.
- 10.1.2 The Recipient must co-operate fully with an audit, including:
  - a. granting the person conducting the audit reasonable access to the Recipient's premises, the Recipient's records and all materials relevant to the Project and the performance of this Deed;
  - b. permitting the person conducting the audit to inspect and make copies of the Recipient's records and materials relevant to the Project and the performance of this Deed; and
  - c. making available on request at no additional cost to the person conducting the audit reasonable facilities to enable a legible reproduction to be created of the Recipient's records and materials stored on a medium other than in writing.

- 10.1.3 The Trust must give the Recipient reasonable notice of its requirements in relation to an audit and use its reasonable endeavours to minimise disruption and interference to the Recipient's performance of its obligations under this Deed arising from an audit.
- 10.1.4 Except where otherwise determined by the Trust, the Recipient is responsible for its own costs of participating in an audit and such costs are not to be paid out of the Grant.
- 10.1.5 The Recipient must promptly take any reasonable action required by the Trust to rectify any error, non-compliance or inaccuracy identified in an audit in relation to the Project or the Recipient's performance of this Deed.
- 10.1.6 The Recipient is not entitled to any delay costs or other costs or expenses of whatever nature relating in any way to an audit.

## 11. Research and surveys

- 11.1.1 The Recipient is required to participate and contribute to requests for the provision of statistical and program information for the purpose of research and surveys conducted by the Trust or an authorised representative. No such request will require the breach of any duty of confidentiality owed by the Recipient to clients.

## 12. Compliance with the law

- 12.1.1 The Recipient must:
- obtain and hold all rights, licences and consents required to conduct the Project and otherwise fulfil the Recipient's obligations under the Deed;
  - comply with all applicable standards, laws, regulations and policies in relation to the Project, including any standards, laws, regulations or policies specified in Item 7 of Schedule 1; and
  - not do anything that would cause the Trust to breach its obligations under any law.

## 13. Publicity

### 13.1 Acknowledgement

- 13.1.1 The Recipient must acknowledge the financial support it has received or will receive from the *Waste Less Recycle More* initiative's *Resource Recovery Facility Expansion and Enhancement Grants Program* under this Deed in all Public Statements about the Project.

### 13.2 Form of acknowledgement

- 13.2.1 The form of the acknowledgement must comply with the terms set out in Item 8 of Schedule 1.

### 13.3 Publicity by the Trust

- 13.3.1 The Trust and/or the NSW Environment Protection Authority may publicise the awarding of the Grant at any time after it is awarded, including:
- the Recipient's name;
  - the amount of the Grant; and
  - the title and description of the Project and the results of the Project.

## 14. Intellectual property

### 14.1 Ownership of Intellectual Property

- 14.1.1 Any Intellectual Property in all Project Materials created by the Recipient in the performance of the Project will be retained by the Recipient, or relevant third parties, as the case may be.

## **14.2 Grant of licence**

- 14.2.1 The Recipient grants, and will ensure third parties grant, to the Trust, without cost, a non-exclusive, irrevocable, royalty free and transferable licence to use, reproduce, communicate to the public and adapt for the Trust's own purposes all Intellectual Property in the Project Materials.

## **14.3 Moral Rights**

- 14.3.1 The Recipient must hold, or obtain, consents from all authors of the Project Materials to the Recipient's and the Trust's use and adaptation, without restriction and without any requirement to attribute the Project Materials to its authors.

## **14.4 Copies of Project Materials**

- 14.4.1 If Project Materials are produced for publication as part of the Project then three (3) copies of these Project Materials shall be submitted to the Trust with the Final Evaluation Report as specified in Item 12 of Schedule 1.

# **15. Indemnity**

## **15.1 Recipient's Indemnity**

- 15.1.1 The Recipient must at all times indemnify, hold harmless and defend the Trust and its officers, employees and agents ("those indemnified") from and against liability or loss (including reasonable legal costs and expenses), which may be suffered or incurred by any of those indemnified by reason of or in connection with:
- a. any infringement or alleged infringement of any Intellectual Property (including Moral Rights) arising from the activities of the Project other than any Intellectual Property supplied by the Trust; and
  - b. any unlawful, wrongful, wilful or negligent act or omission of the Recipient or the Recipient's officers, employees, agents, contractors and volunteers.

## **15.2 Reduction of Indemnity**

- 15.2.1 The Recipient's liability to indemnify those indemnified under this Deed shall be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of those indemnified caused or contributed to the liability or loss.

## **15.3 Continuing Obligation**

- 15.3.1 The indemnity in this clause is a continuing obligation of the Recipient separate and independent of any of the Recipient's other responsibilities and will continue beyond the Term.

# **16. Insurance**

## **16.1 Obligation to insure**

- 16.1.1 The Recipient must ensure that insurance policies specified in Item 9 of Schedule 1 are taken out and maintained with a reputable insurance company throughout the Term.

## **16.2 Production of policies**

- 16.2.1 The Recipient must on request, produce satisfactory evidence to the Trust that any or all of the insurance policies required under this Deed are current.

## **16.3 Additional terms**

- 16.3.1 The Recipient must comply with the terms and conditions relating to insurance set out in Item 9 of Schedule 1.

## **17. Confidentiality**

### **17.1 Obligation to keep confidential**

- 17.1.1 The Trust and the Recipient must keep confidential and not allow, make or cause any disclosure of or in relation to Confidential Information without the prior written consent of the other Party.

### **17.2 Limited Disclosure**

- 17.2.1 The obligations on the Parties under clause 17.1.1 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by a Party to its legal and other professional advisers, auditors, contractors, consultants or employees in order to comply with obligations, or to exercise rights, under this Deed;
  - b. is disclosed to a Party's internal management personnel to enable effective management or auditing of contract-related activities;
  - c. is disclosed by the Trust to a Minister of the Crown in right of the State of New South Wales;
  - d. is disclosed by the Trust in response to a resolution of a House of the Parliament of New South Wales calling for the production of the Confidential information;
  - e. is shared by the Trust with an agency or instrumentality of the State of New South Wales, where reasonably necessary for the exercise of public official functions of that agency or instrumentality;
  - f. is authorised or required by law (including under this Deed) to be disclosed; or
  - g. is in the public domain otherwise than due to a breach of clause 17.1.1.

### **17.3 Obligations on disclosure**

- 17.3.1 Where a Party discloses Confidential Information to another person:
- a. pursuant to clauses 17.2.1 (a), (b) or (e), the disclosing Party must:
    - i. notify the receiving person that the information is Confidential Information; and
    - ii. not provide the information unless the receiving person agrees to keep the information confidential; or
  - b. pursuant to clauses 17.2.1 (c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information.

### **17.4 Additional confidential information**

- 17.4.1 The Parties may agree in writing after the date of this Deed that certain additional information is to constitute Confidential Information for the purposes of this Deed.
- 17.4.2 Where the Parties agree in writing after the date of this Deed that certain additional information is to constitute Confidential Information for the purposes of this Deed, this documentation is incorporated into, and becomes part of this Deed, on the date by which both Parties have signed this documentation.

### **17.5 Period of confidentiality**

- 17.5.1 The obligations under clause 17.3.1 continue, notwithstanding the expiry or termination of this Contract:

- a. in relation to an item of information described in Item 6 of Schedule 1, for the period set out in that schedule in respect of that item; and
- b. in relation to any information which the Parties agree in writing after the date of this Contract is to constitute Confidential Information for the purposes of this Contract, for the period agreed by the Parties in writing in respect of that information.

## 18. Security

- 18.1.1 The Trust may give notice to the Recipient requiring the Recipient to provide security in relation to and for an amount not more than the Grant, over the relevant assets of the Project or the Project itself, for the purpose of securing the Recipient's obligations to repay the Grant under clause 5.4.1 or clause 5.4.2.
- 18.1.2 The form of the security is to be agreed between the Parties after the Trust gives notice under clause 22. If agreement is not reached within 30 days after the Trust gives notice, the Recipient must grant security in the form required by the Trust.
- 18.1.3 The Parties acknowledge that any such security granted under this clause will rank second in priority to any security granted to any financial institution providing finance to the Recipient in relation to the Project.

## 19. Variation

- 19.1.1 Written agreement between the Recipient and the Trust must be obtained for any variation to this Deed, except for a change in the contact details specified in Item 1 of Schedule 1.
- 19.1.2 A Party must advise the other Party within seven (7) days of any changes to contact details set out in Item 1 of Schedule 1.
- 19.1.3 The Project, a Milestone, a Milestone Date, the Completion Date, the Project Plan or the Budget may only be amended by agreement of the Parties.
- 19.1.4 If a Party wishes to amend the Project, a Milestone, a Milestone Date, the Completion Date, the Project Plan or the Budget, that Party must make a written request to the other Party, setting out details of:
  - a. the proposed change;
  - b. the reasons for the proposed change; and
  - c. how the proposed change will affect the Project and to what extent, if any, the Milestone Dates, the Completion Date, the Project Plan or the Budget should change.

## 20. Termination

- 20.1.1 The Trust may immediately terminate this Deed by written notice served on the Recipient if any one or more of the following occurs:
  - a. The Recipient breaches a provision of this Deed; and
    - i. the Recipient fails to remedy that breach within the period specified in a notice from the Trust requesting the Recipient to remedy the breach; or
    - ii. the breach is not capable of being remedied;
  - b. The Recipient, if a natural person, is declared bankrupt or bankruptcy proceedings are commenced against it, dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs;
  - c. The Recipient resolves to go into liquidation or has a summons for the Recipient winding up presented to a Court or enters into any scheme or arrangement with the Recipient creditors under the *Corporations Act (Cth)* or any applicable insolvency law or an administrator, liquidator receiver or official manager is appointed under the *Corporations Act (Cth)* or any applicable insolvency law.
- 20.1.2 The following clauses of this Deed survive termination: clause 5 (Use of the Grant), clause 8 (Records), clause 13 (Publicity), clause 14 (Intellectual Property), clause 15 (Indemnity), clause 16 (Insurance), clause 17 (Confidentiality), and any other provision of this Deed which

by its nature should survive termination shall survive termination, expiry or repudiation of this Deed.

## **21. Dispute resolution**

### **21.1 Method of Dispute Resolution**

21.1.1 The Parties agree that any dispute arising under this Deed will be dealt with as follows:

- a. A Party claiming that a dispute has arisen must give written notice of the dispute to the other Party.
- b. The Parties will seek to resolve the dispute.
- c. If the dispute is not resolved within a fourteen (14) day period (or within such further period as the Parties agree in writing) then the dispute is to be referred to the Australian Commercial Dispute Centre (ACDC) for mediation.
- d. The mediation is to be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- e. If the dispute is not settled within 28 days (or such other period as agreed to in writing between the parties) after appointment of the mediator, or if no mediator is appointed within 28 days of the referral of the dispute to mediation, the parties may pursue any other procedure available at law for the resolution of the dispute.

### **21.2 Obligation to continue performance**

21.2.1 The Parties must continue performing their obligations under this Deed while the dispute is being resolved, to the extent practicable to do so.

### **21.3 No Court proceedings**

21.3.1 A Party must attempt to settle any dispute in relation to this Deed in accordance with this clause 21 (Dispute Resolution) before resorting to court proceedings or other dispute resolution process.

21.3.2 Nothing in this clause 21 (Dispute Resolution) will prevent either party from seeking urgent interlocutory relief.

## **22. Notices**

### **22.1 How to give notice**

22.1.1 A notice, consent or other communication under this Deed is only effective if it is:

- a. in writing, signed by or on behalf of the person giving it;
- b. directed to the representative of the other party as set out in Item 1 of Schedule 1; and
- c. forwarded to the address, facsimile number or the email address of that representative as set out in Item 1 of Schedule 1.

### **22.2 When a notice is given**

22.2.1 A notice, consent or other communication that complies with this clause is regarded as given and received:

- a. in the case of delivery in person – when delivered to the recipient's address for service and a signature received as evidence of delivery;
- b. in the case of delivery by post – within three (3) Business Days of posting;
- c. in the case of delivery by facsimile – at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient; or

- d. in the case of delivery by email – on receipt of confirmation by the sender that the recipient has received the email.

## **22.3 Delivery late in the day**

- 22.3.1 Notwithstanding the provisions of this clause 22 (Notices), if delivery or receipt of a communication is on a day which is not a Business Day in the place to which the communication is sent or is later than 5pm (local time in that place) it will be deemed to have been duly given or made at 9am (local time in that place) on the next Business Day in that place.

## **23. Assignment**

- 23.1.1 The Recipient must not assign, charge or otherwise deal with the benefit of this Deed, without the prior written consent of the Trust. For the purposes of this Deed, any change of control in the shareholding of the Recipient will be deemed to be an assignment by the Recipient.

## **24. GST**

- 24.1.1 Notwithstanding any other provision of this Deed, if any Supply by one Party to the other pursuant to this Deed is deemed to be a Taxable Supply for the purposes of the GST Law and that Party is or becomes liable to pay GST in respect of such Supply:
  - a. the Grant will, subject to clauses 24.1.1(b), 24.1.2, 24.1.3 and 24.1.4, be increased (if GST is payable by the Recipient) or decreased (if GST is payable by the Trust) by any such GST liability provided the Supply is deemed to be a Creditable Acquisition so that the party who is the recipient of the Supply is or will be entitled to receive an Input Tax Credit; and
  - b. the Party liable for payment of GST must issue to the party who is the recipient of the Supply a tax invoice in respect of such Taxable Supply.
- 24.1.2 Any invoice rendered in connection with a Taxable Supply under this Deed must conform to the requirements of a tax invoice under the GST law.
- 24.1.3 The Recipient warrants and undertakes that at the time any Supply on which GST is imposed is made by it to the Trust under this Deed, it is or will be registered under the GST Law. If the Trust requests written evidence of registration, the Recipient must promptly produce evidence satisfactory to the Trust.
- 24.1.4 The Recipient agrees and acknowledges that in the event it is not registered under the GST Law it will not in any circumstances be entitled to receive the increase in the Grant in accordance with clause 24.1.1 by any amount of GST liability.

## **25. General**

### **25.1 Governing law**

- 25.1.1 This Deed is governed by the law in force in the State of New South Wales.
- 25.1.2 Each Party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of New South Wales, and the courts of appeal therefrom.

### **25.2 Non-waiver**

- 25.2.1 No failure or delay by the Trust in exercising any right power or remedy under this Deed and no course of dealing or grant by the Trust to the Recipient of any time or other consideration, will operate as a waiver of the breach or a default by the Recipient. Any waiver by the Trust of a breach of this Deed will not be construed as a waiver of any further breach of the same or any other provision.

### **25.3 Entire Agreement**

- 25.3.1 This Deed contains the entire agreement between the Parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Deed and has no further effect.

- 25.3.2 Any right that a person may have under this Deed is in addition to, and does not replace or limit, any other right that the person may have.
- 25.3.3 Any provision of this Deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Deed enforceable, unless this would materially change the intended effect of this Deed.

## **25.4 Operation of indemnities**

- 25.4.1 Each indemnity in this Deed survives the expiry or termination of this Deed.
- 25.4.2 A Party may recover a payment under an indemnity in this Deed before it makes the payment.

## **25.5 Consents**

- 25.5.1 Where this Deed contemplates that the Trust may agree or consent to something (however it is described), the Trust may:
- a. agree or consent, or not agree or consent, in its absolute discretion; and
  - b. agree or consent subject to conditions,
  - c. unless this Deed expressly contemplates otherwise.

## **25.6 Inconsistency**

- 25.6.1 In the event of an inconsistency between the terms of this Deed, for the purpose only of resolving the inconsistency, the documents that comprise this Deed are to be considered in the following order of decreasing priority:
- a. the operative provisions of this Deed;
  - b. the Schedules; and
  - c. Attachment A

## **25.7 Conflict of interest**

- 25.7.1 The Recipient warrants that at the date of this Deed, no conflict of interest exists or is likely to arise in relation to execution of this Deed or its subject matter. The Recipient undertake to notify the Trust, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest and agrees to comply with any reasonable directions of the Trust to appropriately manage the conflict of interest, within the time frame stipulated by the Trust in writing.

## **25.8 Relationship**

- 25.8.1 Nothing in this Deed is intended to create a partnership, joint venture or agency relationship between the parties.
- 25.8.2 The Recipient shall not hold the Recipient itself out to be an employee, partner, agent or representative of the Trust.
- 25.8.3 All work performed by the Recipient and all contracts made by the Recipient to carry out the Project shall be performed and made by the Recipient as principal and not as agent for the Trust. In all dealings in relation to the Project the Recipient shall act solely on the Recipient own account.



EXECUTED AS A DEED on \_\_\_\_\_ 2014.

**Execution by the NSW Environmental Trust:**

Signed for and on behalf of the Trustees of the New South Wales Environmental Trust, but not so as to incur any personal liability

by

Manager, Grants Section  
NSW Environmental Trust  
Office of Environment and Heritage

.....  
signature

In the presence .....  
(insert name of witness)

.....  
signature of witness

**Execution by the Recipient:**

Signed for and on behalf of «Organisationname»  
ABN: «ABNAppOrg»

by .....  
(person authorised to entered into agreements)

.....  
(signature)

in the presence of .....  
(insert name of witness not a party to this Deed)

.....  
(signature of witness)

and by .....  
(second person authorised to entered into agreements)

.....  
(signature of second signatory)

in the presence of .....  
(insert name of witness not a party to this Deed)

.....  
(signature of witness)

## Schedule 1 - Deed Details

This Schedule forms part of the Deed between the Trust and the Grant Recipient.

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### Item 1 Contact Details

The Trust                      contact name:              Mark Dodds  
   contact address:          Level 6, 10 Valentine Avenue, PARRAMATTA NSW 2150  
   contact telephone:      (02) 8837 6093  
   contact email:            info@environmentaltrust.nsw.gov.au

Recipient                      contact name:              «ContactTitle» «ContactFirstName» «ContactLastName»  
   contact address:          «PostalAddress1», «PostalSuburb» «PostalState»  
   «PostalPostCode»  
   contact telephone:      «ContactTelephone»  
   contact email:            «ContactEmail»

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### Item 2 Term

**Commencement Date**      The date upon which the Parties sign this Deed.

**Duration**                      The Deed continues until the date on which the Recipient is notified that the Trust accepts the Final Evaluation Report.

**Milestones**                   The Recipient must meet each Milestone by the Milestone Date specified in Schedule 3.

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### Item 3 Project Title

«ProjectTitle»

The project is further described in the Project Plan.

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### Item 4 Funding

#### Grant

The total amount of the Grant will be up to \$«AmountApproved» payable in instalments as specified in Schedule 3.

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## Item 5      Supporting Documentation

The Recipient is required to provide to the Trust the following Supporting Documentation in support of a claim for payment of:

### First instalment:

- a. bank account details (BSB Number, Account Name & Account Number);
- b. completed Tax Invoice (as specified in Item 11);
- c. Milestone Report; and
- d. any other documentation requested by the Trust by notice in writing.

### Subsequent instalments:

- a. completed Tax Invoice;
- b. Milestone Report; and
- c. any other documentation requested by the Trust by notice in writing.

### Final instalment:

- a. completed Tax Invoice;
- b. Milestone Report;
- c. Statement of Expenditure;
- d. Jobs Monitoring and Verification Report;
- e. Independent Auditor's Report; and
- f. any other documentation requested by the Trust by notice in writing.

### Single lump sum payment (if applicable):

- a. bank account details;
- b. completed tax invoice; and
- c. any other documentation requested by the Trust by notice in writing.

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## Item 6      Confidential Information

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## Item 7      Specified laws and regulations, standards, policy and statements

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## Item 8      Publicity

### Additional terms:

1. The Recipient must ensure that the following wording appears on all Project Materials:
  - a. "Funded by the NSW Government's *Waste Less Recycle More* initiative through the NSW Waste and Environment Levy".
2. The Recipient must obtain prior approval from the Trust for the content of the first media release announcing this funding. The assistance of the NSW Government and the funding source will be acknowledged in this and all related media releases. The Trust and NSW Environment Protection Authority logos will be used on all promotional material and documentation relating to this project, including the website. Draft copies are to be provided to the Trust for final approval before printing/production.
2. A copy of all press releases and related media, promotional publications and printed material and documentation related to the project are to be provided to the Trust.

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**Item 9 Insurance****1 Insurance policies**

- a. adequate broad form public liability insurance to cover, as a minimum, all of the Recipient's obligations and liabilities under this Deed;
- b. workers' compensation insurance in accordance with applicable legislation in respect of all of the Recipient's employees; and
- c. where appropriate, professional indemnity insurance.

**2 Additional terms**

- a. The minimum cover for public liability insurance is \$20,000,000.
- b. The minimum cover for professional indemnity insurance (if applicable) is \$5,000,000.

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**Item 10 Special Conditions**

1. The Trust is unable to provide ongoing funds including through the Resource Recovery Facility Expansion and Enhancement Grants Program. The Recipient accepts that the Grant is non-recurrent.
2. «Special\_Cond1»

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**Item 11 Tax Invoice**

1. All Tax Invoices must:
  - a. be clearly addressed to the Grants Administrator – Contestable Grants, Waste and Recycling Programs, NSW Environmental Trust.
  - b. be sent to PO Box 644 Parramatta NSW 2124;
  - c. be fully completed;
  - d. be signed by a person authorised by the Recipient; and
  - e. display prominently the words "Tax Invoice".
2. All Tax Invoices must contain the following information:
  - a. the name of the Project;
  - b. the Recipient name;
  - c. the Recipient ABN;
  - d. the instalment number;
  - e. the amount requested;
  - f. the GST component (listed separately to the amount requested); and
  - g. the total amount requested.

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## Item 12 Reports

The Recipient must prepare and submit to the Trust the Reports meeting the description and requirements specified below.

Report Name	Description	Frequency and Date Required
<b>Milestone Report</b>	A report of the work performed by the Recipient to achieve a Milestone.  The report is to be prepared in the format set out in Schedule 5.	A Milestone Report is required in relation to each Milestone.  Each Milestone Report is to be submitted to the Trust within 5 Business Days of the applicable Milestone Date.
<b>Statement of Expenditure</b>	A Statement of the Expenditure of the Grant. The report is to be prepared in the format set out in Schedule 5.	A Statement of Expenditure is required to be submitted to the Trust:  a. within 60 Business Days of the end of each financial year to which the Grant relates; and b. with the Final Evaluation Report.
<b>Monitoring and Evaluation Report</b>	A report detailing the project outputs.  The report is to be prepared in accordance with Attachment C and is to include an explanation of any significant variation from projected outputs, where requested by the Trust.	A Monitoring and Evaluation Report is required to be submitted to the Trust:  a. with the Milestone Reports; b. with the Final Evaluation Report; and c. six -months after project completion.
<b>Final Evaluation Report</b>	A summary report documenting completion of the Project in the format set out in Schedule 5. The following documents must be attached to the Final Evaluation Report:  a. completed Statement of Expenditure prepared in the format set out in Schedule 5; b. independently completed Independent Auditor's Report prepared in the format set out in Schedule 5; c. completed Monitoring and Evaluation Report detailing the project outputs. d. three copies of the Project Materials (if applicable).	The Final Evaluation Report is to be submitted to the Trust within 14 days of the earlier of:  a. the completion of the Project; or b. the termination of this Deed.  All unspent Grant monies must be returned to the Trust with the Final Evaluation Report either by:  a. cheque submitted with the Final Evaluation Report; or b. electronic funds transfer directly to the Trust bank account on the same day as the Final Evaluation Report is submitted to the Trust.

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## Item 12 Applicable Objectives

The objective of the Project is to expand and enhance existing recycling facilities in order to increase recycling of waste materials from households and businesses in a cost effective manner.

“Applicable Objective” means:

- an increase in recovery of recyclables from sorted and unsorted waste from business and households;
- an increase in reuse, recycling and reprocessing of recyclable materials from business and households such as plastics, timber, paper, cardboard and consumer packaging; and/or
- an increase in processing and stabilisation of residual business and household waste.

## Schedule 2 - Budget

This Schedule forms part of the Deed between the Trust and the Grant Recipient.

	Total other sources funding \$	13/14	\$ 14/15	16/17	Total funds \$	Whole project budget \$
<b>1. Direct Project Costs</b>						
Salaries and related on-costs						
Consultancies/contracts costs						
Plant/equipment						
Other						
<b>Subtotal</b>						
<b>2. Administration</b>						
Project general administration						
Project publicity/communication						
<b>Subtotal</b>						
<b>TOTAL</b>						

### Schedule 3 - Milestones and Payments

This Schedule forms part of the Deed between the Trust and the Grant Recipient.

Milestone	Milestone date	Instalment amount	Estimated Payment date	Evidence of Milestone Achievement
				•
				•
				•
Project Completion Date		\$		
TOTAL FUNDING				

## Schedule 4 - Records

This Schedule forms part of the Deed between the Trust and the Grant Recipient.

- a. The Recipient must provide to the Trust a copy of the Recipient constitution or memorandum and Articles of Association, if requested.
- b. The Recipient is required to maintain minimum organisational records (including accounting and financial records) under the various forms of incorporation legislation in external scrutiny of the organisation's yearly activities.
- c. The Recipient is required to maintain a complete set of accounting records and financial records, including:

### Accounting Records

- Cash Book
- Bank Deposit Book
- Cheque Butts
- Petty Cash Book (kept on imprest system)
- Pre-numbered Official Receipt Book
- Monthly Bank Reconciliation of Cash Book
- Documentation of all Expenditure with evidence of approval (e.g. Management Committee of Officers as authorised under the organisation's approved constitution)
- Wages Records/Time Sheets (where staff are employed).

The above may be encompassed in an adequate computerised accounting system.

### Financial Records

- Balance Sheet
- Profit & Loss Statement or Receipts and Payments
- Cash Flow Statement
- Assets/Inventory Register



## Schedule 5 – Format of Reports

This Schedule forms part of the Deed between the Trust and the Grant Recipient.

### Notes:

1. The Recipient must prepare and submit to the Trust Milestone Reports and the Final Evaluation Report in the format set out below. The times and frequency for submitting the Reports are specified in Schedule 1. The Trust may from time to time vary the format of reports and manner of submission by written notice to the Recipient.
2. All reports must be sent to the: Grants Administrator – Contestable Grants, Waste & Recycling Programs, NSW Environmental Trust.

### A. Format of Milestone and Final Evaluation Reports

**Name of Grant Recipient:**

**Name of Project:**

**Milestone Report No. ## / Final Evaluation Report:**

**Summary of activities undertaken during the reporting period:**

**Actual Outcomes (must include details project outputs):**

**Monitoring and Evaluation Report**

**Comments:**

Note: The actual outcomes for the Final Evaluation Report is to include the Monitoring and Evaluation Report, prepared in accordance with Attachment C. This report will detail the project outputs attained during the reporting period and the projected project outputs for a period of 6 months after Project completion and, if required by the Trust, include an explanation of any significant variation from forecast project outputs as stated in Attachments B and C.

I, the undersigned, being a person duly authorised by the Grant recipient certify that:

- a. the information contained in this report is true and correct;
- b. the expenditure of the Grant received to date has been solely on the Project; and
- c. there is no matter or circumstances of which I am aware, that would constitute a breach by the Grant Recipient of any term of the Deed of Agreement between the Trust and the Grant Recipient dated [insert date] that has not been notified by the Grant Recipient.

Signature (authorised signatory)

Date

Printed name and title of authorised signatory

## B. Format of Statement of Expenditure and Certification

	Total other sources funding \$	\$ 11/12    2/13    13/14			Total Funds \$	Whole Project Budget
<b>1. Direct Project Costs</b>						
Salaries and related on-costs (e.g. Annual Leave Expense, Fringe Benefits Tax, Superannuation)						
Consultancies/contracts costs						
Plant/equipment						
Travel & Accommodation						
Other (please specify)						
<b>Subtotal</b>						
<b>2. Administration</b>						
Project general administration (e.g. Telephone & Fax Charges, Printing & Stationery)						
Project publicity/communication						
Accommodation (e.g. Rent)						
Other (please specify)						
<b>Subtotal</b>						
<b>Total Expenditure</b>						
<b>Total Budget</b>						
<b>Surplus/(Deficit)</b>						

I certify that:

- all the Project expenditure identified above has been expended solely on the Project and for the purposes stated in the Deed; and
- the amount unexpended above (Surplus) has been refunded to the Trust (only applies to Final Evaluation Report).
- 

Full Name

Signature

Position

Date

•

### Independent Auditor's Report

I have audited the Statement of Expenditure and contributions relating the Project set out above and in my opinion:

- i. the above Statement of Expenditure is accordance with relevant proper accounts and records; and
- ii. those conditions of the Deed of Agreement that impose limitations and restrictions on expenditure of money have been complied with and expenditure and contributions are in accordance with the Deed of Agreement and any approved variations to it.

Full Name


Signature


Position

Date

## **Attachment A – Application Form**

This Attachment forms part of the Deed of Agreement between the Trust and the Grant Recipient.

SAMPLE

## **Attachment B – Project Plan**

This Attachment forms part of the Deed of Agreement between the Trust and the Grant Recipient.

SAMPLE

## Attachment C – Monitoring and Evaluation Report

This Attachment forms part of the Deed of Agreement between the Trust and the Grant Recipient.

Project Measure	Total Projected	Total Actual	Comment
Total Additional Recycling Capacity			
Total tonnage of waste recovered by the facility			
Total additional FTE			
Individuals engaged			
Consultants/contractors involved			
Non-Trust funded staff involved			
Volunteers involved			
Organisations engaged			
Training sessions conducted			
Training sessions conducted by a Registered Training Organisation			
People trained			
Educational products developed			
Individuals potentially reached			

I, the undersigned, being a person duly authorised by the Grant recipient certify that:

- (a) the information contained in this report is true and correct;
- (b) there is no matter or circumstances of which I am aware, that would constitute a breach by the Recipient of any term of the Deed of Agreement between the Trust and the Grant Recipient dated [insert date] that has not been notified by the Recipient.

Signature (authorised signatory)

Date

Printed name and title of authorised signatory