



SUMMARY

Date:	9 th Sept 2022
Title:	Construction and Demolition Programme – Porirua, Kāpiti and Hutt Cities
Reference:	
MfE Contract Owner:	Sam Buckle
MfE Contract Manager:	Joanne McGregor (Acting Manager)
MfE Contact Email:	nan.yang@mfe.govt.nz
MfE Contact Phone number:	9(2)(a)

Organisation (Supplier) details

Legal Name:	Porirua City Council
Trading Name (if different):	
NZBN:	9429041913024
Key Contact:	Mr Nigel Clarke
Address:	Po Box 50218, Porirua, 5240, New Zealand
Key Contact Email:	nigel.clarke@poriruacity.govt.nz
Key Contact Phone number:	9(2)(a)

Commitment

Budget (Departmental or Crown):					
Programme code:	467	Project code:	20105	Account code:	0256
Fund (if applicable):	\$2,053,838.00				
Total Budget (NZ\$ excl. GST):	\$3,155,282.00				
Commencement (Start) Date:	30 th August 2022				
Completion (End) Date:	30 th August 2025				

Legal Review

Reviewed by:	Matthew Rush
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Comments

None.



Ministry for the
Environment
Mauatū Mō Te Taiao

Classification

Waste Minimisation Fund Deed of Funding

**Waste Minimisation Fund Deed of Funding
Between Ministry for the Environment
and
Porirua City Council**

New Zealand Government

Classification

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Execution

Parties	
Ministry	THE SOVEREIGN in right of New Zealand, acting by and through the Secretary for the Environment
Recipient	Full legal name: Porirua City Council
	Trading name (if different): Porirua City Council
	New Zealand Business Number: 9429041913024
Project title	Construction and Demolition Programme – Porirua, Kāpiti and Hutt Cities
Deed number	[To be confirmed post-execution]

Agreement

The Recipient will complete the Project in accordance with the terms and conditions set out in the following Schedules:

Schedule 1: Specific Terms

Schedule 2: Funding

Schedule 3: Reporting

Schedule 4: Charge Out Rates

General Terms

Annexure 1: Project plan

Annexure 2: Publications and Media


Annexure 3: Travel Expenses

SIGNED as a Deed on: Wendy Walker 30/8/22 2022

[The date that the Deed is signed is the date at which both parties have signed the Deed, that is, the date the final party signed the Deed. This date must be added on both original copies of the Deed by the party who signs the Deed last.]

Signed and delivered as a deed by Sam Buckle,
Deputy Secretary, Waste and Resource Efficiency,
Water and Land Use Policy on behalf of the
Ministry for the Environment

On (date): 20 August 2022



Signature

In the presence of:



Witness Signature

Davinia Gazzard-Steele

Witness Name

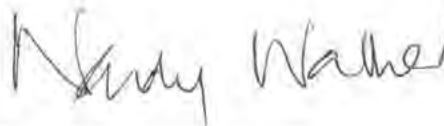
Personal Assistant

Witness Occupation

8 Willis Street, Wellington

Witness Address

Signed and delivered as a deed on behalf of
Porirua City Council
in the presence of:



Signature



Print Full Name

Chief Executive

Print Authorised Signatory's job title

Signature

Print Full Name



Print Authorised Signatory's job title

[Under the Local Government Act 2002, a Local Authority is a "body corporate" (section 12). Section 9 of the Property Law Act 2007 sets out the requirements for a body corporate to sign a Deed. Local authorities must execute a deed by at least two elected members of the local authority or authorised representatives.]

Schedule 1: Specific Terms

1. Project details		
Term	Commencement Date:	15 August 2022 or the date this Deed is executed; whichever is later.
	Expiry Date:	The date that is three calendar years after the Commencement Date.
Project purpose	The purpose of this Grant is to provide funding to Porirua City Council for their delivery of a specialist Construction and Demolition (C&D) diversion facility at Spicer Landfill and two materials collection hubs Hutt City and Kāpiti Coast, as more particularly described below.	
Summary of key project requirements	The Project Plan for the Project is attached as Annexure 1. The summary of key requirements: the Project Milestones, Activities and Deliverables are set out in the Milestone Table of the Project Plan.	
Project objectives <i>Copied from the project plan</i>	#	Objective
	1	Construct a facility to divert C&D waste from landfill and have open for customers by June 2024 at the Spicer Landfill.
	2	Establish markets, handling, and processing requirements for the successful operation of the facility to deliver 25-35% waste diversion, or 18,000-26,000 tonnes of C&D waste, within 12 months of the Porirua C&D facility opening.
	3	Host at least 3 C&D sector events and engage with at least 15 C&D businesses in 2023 in conjunction with the opening of the facility to enhance awareness and understanding of C&D waste minimisation practices

2. Contact details	
Party	Main contact person
Ministry	Name: Nan Yang PO Box 10362, Wellington Phone: 027 215 6369 Email: nan.yang@mfe.govt.nz
Recipient	Name: Mr Nigel Clarke Title: Manager, Porirua Harbour, Catchments and Resource Recovery Postal address: Po Box 50218, Porirua, 5240, New Zealand



Phone: 021524385

Email: nigel.clarke@porirua.govt.nz

3. Recipient key personnel

Name	Title	Role or Specialisation	Email
Nigel Clarke	Manager, Porirua Harbour, Catchments and Resource Recovery	Project Manager	nigel.clarke@porirua.govt.nz
Cloe Vining	Waste Minimisation Commercial Coordinator	Secondary project contact	cloe.vining@porirua.govt.nz

4. Special Terms

None.

Schedule 2: Funding

1. Waste Management Fund Funding

- 1.1 **Grant amount:** The Ministry approves the Grant for the Project of the lesser of:
- \$ 2,053,838.00; or
 - the maximum percentage of the actual total cost of the Project, assessed over the duration of the Project, approved by the Ministry and specified in a Milestone table (if any); or
 - an amount equal to the difference between the actual total cost of the Project and the total value (assessed by the Ministry) of any type of contribution to the Project by the Recipient and/or from any other source.
- 1.2 **Maximum:** Under no circumstances shall the funding payable to the Recipient exceed the amount specified in paragraph 1.1(a) of this Schedule 2.

2. Co-funding

- 2.1 In addition to the Recipient's contribution to the Project, the Recipient has obtained the following Co-funding:

Co-funding Entity	Amount (\$)	Total project costs (%)
9(2)(b)(ii)		

- 2.2 The Recipient must provide the Ministry with written evidence by the timeframe specified in the Milestone table in the Project Plan:
- that the Recipient has secured the Co-funding; and
 - of the terms of the Co-funding arrangement, including:
 - the amounts to be provided;
 - the due date for payment of the amounts; and
 - any other terms and conditions of the provision of the Co-funding,
 all of which must be satisfactory to the Ministry, acting reasonably.
- 2.3 The Recipient must notify the Ministry in writing within 14 days:
- after entering into any arrangement under which it is entitled to receive any financial contributions toward the cost of undertaking the Activities, which are not specified in Schedule 2 (Funding); and
 - of the Recipient becoming aware of any circumstance that may result in any Co-funding not being provided as stated in the Co-funding table at paragraph 2.1 of this Schedule 2.



3. Capital Asset Register

3.1 Further to clause 5.3 (Capital Assets) of the General Terms, the following table provides a register of Capital Assets to be funded by the Grant.

Capital Asset	Capital Cost	Portion of Grant applied to capital assets (65.09%)	Restriction Period	Estimated date of possession
1 Screen, Edge TRT622	\$657,800.00	\$428,162.02	The date that is 5 years from first payment of any portion of the Grant applied to Capital Costs.	June 2024
2 Density Separator, MC1400	\$482,900.00	\$314,319.61		June 2024
3 Picking Station, MPS48	\$437,800.00	\$284,964.02		June 2024
TOTAL	\$1,578,500.00	\$1,027,445.65		

3.2 Further to clause 5.3 of the General Terms (and clause 5.3(h) in particular), the Recipient must immediately notify the Ministry following (and no later than two Working Days) the Recipient taking possession (or a person taking possession on the Recipient's behalf) of a Capital Asset. The Recipient must provide all necessary information for the Ministry to effect a Personal Property Securities Register registration to perfect a Security Interest within 10 Working Days of the Recipient taking possession (or a person taking possession on the Recipient's behalf) of the Capital Asset.

3.3 The Recipient must promptly notify the Ministry (in writing) of any changes to this register.

Schedule 3: Reporting

1. Reports

- 1.1 Further to clauses 6.3, 6.4, 6.6 and 6.10 of the General Terms, the Recipient will report to the Ministry as set out in the table below. Subject to the specifications below, each report will be consistent with the report templates provided by the Ministry via the Funds Management System.

Report Specification

MILESTONE REPORT

A report must be submitted to the Ministry on completion of each Milestone and must include:

- a description of the Milestone(s) to which the report relates;
- evidence that the Milestone(s) has/have been completed;
- a copy of any Deliverable(s) required for the completion of the Milestone(s);
- any other information reasonably requested by the Ministry concerning the Milestone(s) or the Activities; and
- the tax invoice for the applicable portion of the Grant for completion of the Milestone(s).

PROGRESS REPORT

The Ministry may require from time to time that the Recipient submit a brief report, regarding its overall progress in relation to the Activities and Deliverables, this Deed, and any other matters advised by the Ministry. The frequency of this report will be set in the Funds Management System.

FINAL MILESTONE REPORT *includes Project completion report*

On completion of the Project, the Recipient must submit a Milestone Report as one of the final Milestone Deliverables that also includes:

- to the extent not already delivered to the Ministry, copies of any reports, promotional material, media publicity, pamphlets or other documentation relevant to the stated Activities and Deliverables described in the Milestone table
- a completed Financial Summary of the Project
- a completed Project Completion report that includes any other information reasonably requested by the Ministry concerning the completion of the Project (including the final Milestone) and the achievement of the Objectives.

POST-PROJECT ANNUAL REPORT

Following project closure, on the first three annual anniversaries of the Project's closure date, the Recipient must submit a brief report (Post-Project Annual Report) focused on reporting on the Recipient's realisation of the Project's benefits and the tracking of WMF funded Capital Assets.



- 1.2 Further to clause 6.17 (Representations and Warranties) of the General Terms, the Recipient warrants and represents that in respect of any report (including Milestone Reports) or other document (including a Change Request or an Annual Project Plan Update) submitted to the Ministry:
- (a) to the best of the Recipient's knowledge, the information contained in all sections of the report or document is true, accurate and complete;
 - (b) the report or document has been peer reviewed prior to submission; and
 - (c) the Recipient personnel who signs (as required) and submits the report or document has authority to do so on behalf of the Recipient.
- 1.3 Further to paragraph 1.2 above:
- (a) The Recipient acknowledges and agrees that by submitting any report or other document via the Client Portal, or via email to the Ministry:
 - i. the Recipient's authorised personnel is deemed to have made the declarations set out in (a), (b) and (c) of paragraph 1.2 above on behalf of the Recipient in respect of the report or other document; and
 - ii. in respect of any Fund payment request (Milestone claim form) submitted with a Milestone report, the Recipient's authorised personnel is deemed to have verified on behalf of the Recipient that:
 - costs making up the amount of the request are part of the eligible Project Costs;
 - the Recipient has paid, or will pay, all invoices with the payment request in full; and
 - no money has been returned to the Recipient by way of donation(s) or credit note(s).
 - (b) The Recipient understands that information presented to the Minister for the Environment and Ministry for the Environment is subject to disclosure under the Official Information Act 1982.

Schedule 4: Charge Out Rates

The purpose of Schedule 4 is to provide the Recipient with guidance on what the Ministry considers to be reasonable charge out (personnel) rates and travel-related expenses.

Charge out rates

	Type	Standard hourly rate (excl GST)	Special hourly rate
These personnel costs include allowance for overheads, administrative costs and local travel expenses, which form part of the work done by an individual. These expenses cannot be claimed separately.	Consultants	\$190 per hour	
	Scientists	\$190 per hour	
	Lawyers	\$190 per hour	
	Accountants	\$190 per hour	
	Expert advice	\$190 per hour	
	Technical, scientific expertise or professional advice (council officers, engineers)	\$110 per hour	
	General labour, administration and others not covered above	\$40 per hour	

General terms

1. Definitions

In this Deed, unless the context requires otherwise, the following definitions shall apply:

“Activities” means the activities performed or to be performed by the Recipient as described in the Milestone table in the Project Plan and this Deed;

“Annual Project Plan Update” means the annual plan prepared by the Recipient updating the Project Plan (and approved in accordance with this Deed), detailing work programmes, budgets and funding sources, Project activities and Deliverables for a particular Project Year (or part thereof) of the Project;

“Capital Assets” means those assets used in the production of goods or the rendering of services by the Recipient (individually valued at \$5,000 (excluding GST) or more) that are acquired, enhanced or brought to working order, by the Recipient using an amount of the Grant;

“Capital Costs” means costs incurred by the Recipient in acquiring an asset, enhancing an asset or in bringing an asset to working order or to a state in which it can produce the goods or render the services as required for the Project;

“Change” means any amendment, deletion or addition to the Project Plan or this Deed;

“Change Control Register” means a document maintained by the Recipient’s Project Manager for the duration of the Deed recording any and all Changes documented in a Change Request in accordance with clauses 4.2 of the General Terms with all authorised Changes recorded in the Funds Management System;

“Change Request” means a verbal or written request for a Change;

“Clawback Amount” means an amount calculated as follows:

$$\text{Clawback Amount} = G - (G \times (x/y)),$$

Where, for the relevant Capital Asset:

G = that amount of the Grant applied to Capital Costs

x = the number of whole calendar months since the first payment of that part of the Grant applied to Capital Costs

y = the number of months of the Restriction Period set out in Schedule 2 (Funding);

“Client Portal” means the Recipient’s access point to the Funds Management System;

“Co-Funding” means the funding secured from a third party by the Recipient in accordance with paragraph 2 (Co-Funding) of Schedule 2 (Funding);

“Commencement Date” means the date specified in Schedule 1 (Specific Terms) of this Deed;

“Confidential Information” means information in relation to this Deed and the Project whether providing before, during or after the term of the Deed that:

- (a) is by its nature confidential;
- (b) is marked by either Party as ‘confidential’, ‘in confidence’, ‘restricted’, ‘commercial in confidence’ or with a similar designation;

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- (c) is provided by either Party or a third party 'in confidence';
- (d) either Party knows or ought to know is confidential; or
- (e) is of a sensitive nature or commercially sensitive to either Party;

"Conflict of Interest" A conflict of interest arises if a Party or its personnel's personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under this Deed. It means that its independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:

- (a) actual: where the conflict currently exists;
- (b) potential: where the conflict is about to happen or could happen; or
- (c) perceived: where other people may reasonably think that a person is compromised.

"Deed" means the legal agreement between the Ministry and the Recipient that comprises Schedules 1 to 4, the General Terms, Annexures 1 to 3, and any other documents attached or incorporated by reference;

"Deliverable" means any deliverable the Recipient shall complete as part of the Project as set out in this Deed;

"Delivery Issue" means the issue identified by the Ministry or the Recipient and notified in accordance with clause 6.5 (Remediation Plan) of the General Terms;

"Expiry Date" means the date specified in Schedule 1 (Specific Terms) of this Deed;

"Force Majeure Event" means:

- (a) fire, explosion, lightning, storm, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquakes, riot and civil commotion;
- (b) failure by any utility company or other like body to carry out works or provide services;
- (c) any failure or shortage of fuel or transport;
- (d) war, civil war, armed conflict or terrorism;
- (e) any official or unofficial strike, lockout or other labour dispute;
- (f) governmental action; or
- (g) such other substantially similar circumstances which prevents either or both Parties from performing its obligations under this Deed;

"Fund" or **"WMF"** means the Waste Minimisation Fund as administered by the Ministry under the Waste Minimisation Act 2008 and all associated Regulations;

"Funds Management System" means the Ministry's electronic fund management system for the WMF via which the Recipient's delivery of the Project (specifically the Milestones, Activities and Objectives) and compliance with the terms of this Deed (including reporting requirements) will be managed by the Ministry; this system will be made available by the Ministry to the Recipient via its Client Portal;

"General Terms" means the terms and conditions set out in the General Terms section in this Deed;

"Grant" means the sum of funding provided by the Ministry from the Fund pursuant to this Deed;

"Insolvency Event" means:

- (a) the Recipient is unable or is deemed to be unable to pay its debts when they fall due;



- (b) a receiver, liquidator or other encumbrancer is appointed to the Recipient or to any part of its assets or undertakings;
- (c) a compromise or arrangement is proposed or made between the Recipient and its creditors or any class of them;
- (d) any indebtedness of the Recipient is not paid when due or shall become due and payable or steps are taken to enforce any charge, mortgage or Security Interest for such indebtedness; and/or
- (e) any present or future charge, mortgage or Security Interest over or in respect of any of the assets of the Recipient becomes enforceable or is enforced;

"Intellectual Property" means all manner of intellectual property rights including (without limitation) patents, trademarks and service marks, logos, copyright, design rights and know-how whether registrable or not in any country;

"Major Change" means any Change which:

- (a) affects or will likely affect the total Grant amount per paragraph 1.1 of Schedule 2 (Funding);
- (b) affects or will likely affect the Expiry Date;
- (c) replaces or amends any of the Objectives;
- (d) amends the terms of the Deed (other than the Project Plan);

"Milestone" means any milestone the Recipient shall complete as part of the Project as set out in this Deed;

"Minister" means the Minister for the Environment;

"Objectives" means the Project objectives listed in Schedule 1 (Specific Terms);

"Parties" means the Ministry and the Recipient;

"Post-Project Annual Report" means a report the Recipient shall complete and submit to the Ministry after the Project's expiry date (or earlier termination date) in accordance with paragraph 1 of Schedule 3 (Reporting) and clause 6.4(c) of the General Terms;

"Progress Report" means a report to inform the Ministry of the Recipient's Project progress against the Objectives that the Recipient shall complete where required in accordance with paragraph 1 of Schedule 3 (Reporting) and clause 6.4(a) of the General Terms;

"Project" means the project to be completed by the Recipient in accordance with the Project Plan;

"Project Completion Report" means the report the Recipient shall prepare and submit in accordance with paragraph 1 of Schedule 3 (Reporting) and clause 6.4(b) of the General Terms;

"Project Costs" means those costs that are reasonable and either;

- (a) directly attributable to the Deliverables; or
- (b) if they cannot be directly attributed to the Deliverables, can be allocated to the Project in accordance with a standard cost allocation system and cost drivers,

measured in standard accrual accounting terms and excluding:

- (c) any mark up or profit margin by the Recipient (or a Sub-Recipient); and
- (d) any costs based on theoretical or perceived market rates;

"Project Plan" means the project plan agreed between the Parties as part of the funding process and appended to this Deed and incorporates any and all Project Milestone tables and Project budgets;

"Project Year" means any 12-calendar month period, or part period thereof, commencing on the Commencement Date;

"Recipient's authorised personnel" means the person in the Recipient's Project team who is a duly authorised representative of the Recipient appointed to be an authorised user of the Client Portal on the Recipient's behalf to manage and submit documentation relating to the Recipient's delivery of this Project in accordance with this Deed;

"Remediation Plan" means a written plan outlining the full details of a Delivery Issue and the steps the Recipient will take to eliminate and mitigate the effect of the Delivery Issue and prevent the Delivery Issue from recurring, as applicable in accordance with clause 6.5 (Remediation Plan) of the General Terms;

"Restriction Period" means in respect of each Capital Asset, a period of 60 months from the date of first payment of any portion of the Grant applied to relevant Capital Costs;

"Security Interest" has the meaning given to that term in the Personal Property Securities Act 1999;

"Special Terms" means any terms specific to the Project and Deed (if any) as specified in paragraph 4 of Schedule 1 (Specific Terms) to this Deed;

"Sub-Recipient" means any person or body which the Recipient funds in whole or in part from the Grant whether as a supplier, contractor or otherwise and whether by payment or grant; and

"Working Day" means any day other than Saturdays, Sundays or statutory public holiday in Wellington, New Zealand.

2. Interpretation

In the interpretation of this Deed, unless otherwise stated:

- (a) no executive or prerogative power or right, or any immunity, of the Crown is affected by this Deed;
- (b) "including" and similar words do not imply any limitation;
- (c) reference to the singular includes the plural and vice versa and references to any gender includes all genders;
- (d) headings are included for ease of reference only and shall not affect the interpretation of this Deed;
- (e) references to paragraphs, clauses, schedules and annexures are references to paragraphs, clauses, schedules and annexures to this Deed;
- (f) amounts are in NZ\$ and exclude GST (if any);
- (g) if the Recipient comprises more than one person, each of those person's liability to the Ministry is joint and several;
- (h) references to a party or a person include any form of entity and their respective successors, assigns and representatives; and
- (i) any statutory reference includes any statutory extension, amendment, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.



3. Precedence

In the event of a conflict between:

- (a) the terms of Schedules 1–4 and the General Terms of this Deed, Schedules 1–4 shall take precedence;
- (b) Schedules 1–4 and the General Terms of this Deed, and any Annexure or attachment (including the Project Plan), Schedules 1–4 and the General Terms of this Deed shall take precedence, except to the extent the Parties expressly agree in writing otherwise with reference to this clause 3.

4. Standard Terms and Conditions

- 4.1 **Entire Agreement:** This Deed (including the Project Plan and attachments) contains everything the Parties have agreed on in relation to the Grant. In the event of any conflict, clause 3 (Precedence) of the General Terms will apply. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, save as permitted by law.
- 4.2 **Changes:** Any Change to this Deed (including to the Project Plan but excluding an Annual Project Plan Update) must be in accordance with the following terms.
 - (a) The Recipient or the Ministry may submit to the other a Change Request at any time for that other Party's prior approval in accordance with this clause.
 - (b) At the Ministry's discretion, the Recipient may need to complete and submit its Change Request in writing in a form provided by the Ministry. The Change Request form may include an impact assessment (being an analysis of the effect of the proposed Change, including on costs and timelines).
 - (c) If the Ministry reasonably considers that it requires further information regarding a proposed Change, the Ministry shall notify the Recipient and detail the further information required. The Recipient shall then re-issue the relevant impact assessment to the Ministry as soon as reasonably practicable and in any event within 10 Working Days of receiving such a request. The Parties may repeat this process until the Ministry is satisfied that it has sufficient information to properly evaluate the proposed Change, which may result in the Ministry entering into a Remediation Plan process in accordance with clause 6.5 below.
 - (d) Within 10 Working Days of receiving a Change Request or within 5 Working Days of receiving information under clause 4.2(c) above, the Ministry shall, at its sole discretion:
 - i. approve the proposed Change, in which case the Change may come into effect in accordance with clause 4.2(e) below; or
 - ii. reject the proposed Change, in which case the Ministry shall notify the Recipient in writing. The Ministry shall explain its reasons for rejection in writing, as soon as reasonably practicable following such rejection.
 - (e) Any Change proposed will not be authorised, and the Recipient shall not implement any proposed Change, until:

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- i. the Change is agreed in accordance with the Ministry's Change authorisation and sign-off procedure, which may include the Ministry signing a Change Request form (if required by the Ministry); and
 - ii. if the Change is a Major Change, or the Ministry otherwise requires (at its sole discretion), it is signed and delivered as a deed of variation by the duly authorised representatives of the Parties.
 - (f) The Recipient shall bear its own costs in relation to the preparation and agreement of each Change Request. For the avoidance of doubt, the Grant may not be used to fund such costs unless expressly agreed in writing by the Ministry.
 - (g) The Recipient's Project Manager shall for the term of this Deed maintain a Change Control Register documenting any and all Changes documented in a Change Request form. The Funds Management System will record any and all Changes authorised in accordance with clause 4.2(e) above.
- 4.3 **Severability:** If any term of this Deed becomes or is declared by any court to be invalid or unenforceable in any way:
- (a) such invalidity or unenforceability shall in no way impair or affect the remainder of the Deed which will remain in full force and effect; and
 - (b) the invalid or unenforceable term will be replaced with a provision which as far as possible accomplishes the original purpose of the term.
- 4.4 **Waiver:** Any delay or failure by either Party at any time to exercise (in whole or in part) any right or remedy under this Deed shall not be construed as a waiver of any such right or remedy and shall not affect the validity of the Deed (in whole or in part). No waiver shall be effective unless it is expressly stated in writing to be a waiver and communicated to the other Party in writing. Any waiver will not constitute a waiver of any subsequent exercise of the same right or remedy in the future.
- 4.5 **Governing Law and Jurisdiction:** This Deed is governed by the law of New Zealand and the Parties submit to the exclusive jurisdiction of New Zealand's courts.
- 4.6 **Dispute Resolution Procedure:**
- (a) If any dispute arises out of or in connection with this Deed, the main contact persons of each Party shall use all reasonable endeavours to resolve it as promptly as possible within 15 Working Days of a Party notifying the other Party of the dispute ("Date of Notification"). Subject to such persons having met at least twice, either Party may at any time formally refer such a dispute to their respective Chief Executives (or equivalent) for resolution within 10 Working Days of the date of referral.
 - (b) If a dispute is not settled in accordance with clause 4.6(a), either Party may refer the dispute to:
 - i. mediation or some other form of alternative dispute resolution ("Mediation") conducted in New Zealand and governed by New Zealand law; or
 - ii. the jurisdiction of the New Zealand courts.
 - (c) If the Parties do not agree within 5 Working Days of reference of the dispute to Mediation (or such other period as agreed by the Parties in writing):
 - i. the resolution of the dispute;
 - ii. the mediation procedures to be adopted;



- iii. the timetable for all steps in those procedures; and
- iv. the selection and compensation of the independent person required for the Mediation, then the Parties shall mediate the dispute per the mediation rules of the Resolution Institute, and the Chair of the Resolution Institute (or his or her nominee) shall select the mediator and determine the mediator's remuneration. The Parties shall make all reasonable efforts to resolve the dispute by Mediation within 3 months (or such other period as agreed by the Parties in writing) from the Date of Notification. If the dispute is not resolved by Mediation within such period, the Parties may seek any other remedies available to them.
- (d) Nothing contained in this clause 4.6 shall prevent either Party, in an emergency, seeking any interim or interlocutory relief from the court.
- (e) Except in respect of Mediation (the costs of which shall be paid as set out above), each Party shall pay their own costs for resolving any dispute.

4.7 Intellectual Property Rights:

- (a) **Pre-existing Intellectual Property:** Intellectual Property owned by a Party or its licensors prior to the commencement of this Deed, and Intellectual Property developed by a Party independently from this Deed, remains the property of that Party or its licensors as the case may be.
- (b) **New Intellectual Property:** Subject to clause 4.7(a) and the Recipient complying with the terms of this Deed, any Intellectual Property created or developed in the course of the Project shall become the property of the Recipient or its licensors.
- (c) **Recipient Intellectual Property:** The Recipient grants to the Ministry a non-exclusive, sublicensable, royalty free, perpetual and irrevocable licence to use, modify, develop, sublicense and disseminate for any purpose all Intellectual Property owned by the Recipient or its licensors that forms part of the Deliverables.
- (d) The Recipient warrants and represents that it is legally entitled to grant the licence stated in clause 4.7(c).

4.8 **Third Party Rights:** Unless expressly stated, no part of this Deed shall create rights in favour of any third party pursuant to Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017 (contractual privity).

4.9 **Term:** This Deed shall commence on the Commencement Date and shall, subject to a Party's rights of termination under this Deed, continue in force until the Recipient has completed the Deliverables to the reasonable satisfaction of the Ministry.

4.10 **Consequences of Expiry / Termination:** Termination or expiry of this Deed shall be without prejudice to any rights or liabilities accrued at the date of termination or expiry, provided that the Ministry shall cease to have any obligation to pay the Grant to the Recipient (which may, at the Ministry's sole discretion, include payment of any overdue or outstanding invoices).

4.11 **Notices:** Any notice given under or pursuant to this Deed shall be in writing and signed by an authorised person and may be delivered personally by hand, post or email to the other Party at the address stated in this Deed. Notices shall be deemed delivered as follows:

- (a) if delivered personally by hand, at the time of delivery;
- (b) if posted, on the third Working Day after posting;

- (c) if emailed, on the day of successful transmission as confirmed by the email system; and
- (d) if delivered after 5.00 pm, at 9.00 am the next Working Day.

4.12 **Counterparts:** This Deed may be executed by the Parties in two or more counterparts (including emailed copies), each of which shall be deemed an original but when taken together will constitute a binding and enforceable agreement between the Parties.

4.13 **Force Majeure:** A Party (“the affected party”) shall not be liable to the other Party for any delay or failure to perform any of their obligations under this Deed if such delay or failure results from a Force Majeure Event, provided that where a Party seeks to rely upon this clause:

- (a) As soon as the affected party becomes aware of the Force Majeure Event, it shall immediately notify the other Party and confirm the estimated period that the delay or failure shall continue.
- (b) The affected party shall use its best endeavours to continue to perform its obligations under this Deed and minimise the effect of the event for the duration of any Force Majeure Event.
- (c) If any Force Majeure Event prevents the affected party from performing all of its obligations under the Deed for a period in excess of 30 calendar days, either Party may terminate the Deed by notice in writing with immediate effect.

The affected party will not be entitled to relief under this clause in any circumstances to the extent that it has directly or indirectly caused or substantially contributed to any delay or failure in the performance of its obligations.

4.14 **Survival:** The following clauses shall remain in full force and effect after expiry or termination: clauses 4.5 (Governing Law and Jurisdiction), 4.6 (Dispute Resolution Procedure), 4.7 (Intellectual Property Rights), 4.11 (Notices), 5.1 (Multi-year Projects), 5.3 (Capital Assets), 5.8 (No Retrospective Costs), 6.4(b) (Project Completion Report), 6.4(c) (Post-Project Annual Report), 6.7 (Endorsement), 6.8 (Publications), 6.9 (Project Information), 6.11 (Allow Access), 6.12 (Confidentiality), 6.13 (Recordkeeping), 6.14 (Official Information Requests), 6.15 (Reputations), 6.16 (Third Party Intellectual Property Rights), 6.21 (Insurance), 6.24 (Default Interest), 6.25 (Indemnity), 7.3 (Project Review), 7.4 (Project Audit), 7.5 (Ministry Publicity and Confidentiality), 7.6 (Recovery of Grant), 7.9 (Ministry Not Liable), Annexure 2 (Publications), this clause and any other clauses of this Deed which by their nature are intended to survive expiry or termination of this Deed.

5. Grant

5.1 **Multi-year Projects:** If the Project spans or shall span over multiple Project Years, the following terms shall apply.

- (a) The Ministry shall, subject to clauses 5.1(c) and 5.1(d), pay Grant funding to the Recipient for each Project Year for the amount that is the lesser of:
 - i. the total amount set out in the Milestone table in the Project Plan for that Project Year; or
 - ii. the percentage of the actual total cost of the Project payable from the Fund assessed over the duration of that Project Year, as specified in the relevant Milestone table (if any); or



- iii. an amount equal to the difference between the actual total cost of the Project for that Project Year and the total value (assessed by the Ministry) of any type of contribution to the Project by the Recipient and/or from any other source.
- (b) If this Deed provides for a multi-year Project then any funding under this Deed in respect of each subsequent Project Year shall be subject to:
 - i. the Ministry being satisfied in all respects with the Recipient's use of the Grant funding for the previous Project Year;
 - ii. the Recipient not having been in breach of this Deed;
 - iii. the agreement of Deliverables for the relevant Project Year which are acceptable to the Ministry; and
 - iv. the availability of funds, or reductions, in the Fund due to changes in the levy prescribed under, or other relevant amendments of, the Waste Minimisation Act 2008 and associated Regulations, changes in waste disposal patterns, or directives of the New Zealand Government.
- (c) In the event that any of the above conditions have not been satisfied then the Ministry may immediately terminate this Deed by notice in writing to the Recipient and will be under no obligation to pay any further funding in relation to the Project.
- (d) Where the Milestones and Deliverables for an upcoming Project Year are yet to be agreed then, subject to the above conditions being satisfied and prior to the commencement of the relevant Project Year, the Parties shall agree the Milestones, Deliverables in accordance with the process detailed in clause 5.2 below (Annual Project Plan Update).

5.2 Annual Project Plan Update:

- (a) The Recipient must submit a final draft Annual Project Plan Update (detailing proposed Milestones and Deliverables) for the upcoming Project Year at least four weeks before the end of the current Project year for the Ministry's feedback and agreement.
- (b) The Annual Project Plan Update must be approved by the Recipient's authorised representative before being submitted to the Ministry for final approval.
- (c) The Ministry will consider any draft Annual Project Plan Update submitted to it under this clause 5.2 and notify the Recipient in writing within four weeks of receipt whether the Ministry:
 - i. approves the draft Annual Project Plan Update; or
 - ii. requests reasonable modifications to the draft Annual Project Plan Update.
- (d) The Ministry's approval of a draft Annual Project Plan Update will be confirmed by the signature of a duly authorised representative of the Ministry. If the Ministry provides such approval, the Annual Project Plan Update will be deemed to be incorporated into and form part of the Project Plan and this Deed from the date the Annual Project Plan Update is signed by the Ministry's representative. For the avoidance of doubt, approval of a draft Annual Project Plan Update is not subject to clause 4.2 (Changes).
- (e) Where the Ministry requests reasonable modifications to the draft Annual Project Plan Update, the Recipient will promptly (and within 20 Working Days) update the draft Annual Project Plan Update accordingly and resubmit to the Ministry for its subsequent review.

- (f) The Recipient must not begin delivering Project activities and Deliverables for a particular Project Year until the Ministry has notified its approval of the relevant Annual Project Plan Update in accordance with clause 5.2(d).
- (g) **Conflict:** In the event of any conflict or difference between an approved Annual Project Plan Update and the Project Plan, the Annual Project Plan Update shall take priority.

5.3 **Capital Assets:** The following terms shall apply to Capital Assets listed in Schedule 2 (Funding) (if any):

- (a) All Capital Assets will be and remain the property of the Recipient and will at all times be at the risk of the Recipient. The Recipient will bear the risk of any loss, theft, damage or destruction of any Capital Assets and if Capital Assets require repair or replacement, the Recipient will bear the cost of such repair or replacement.
- (b) The Recipient will maintain an up-to-date register of Capital Assets in the form set out in Schedule 2 (Funding). Any changes to the register shall be made in accordance with this Deed and promptly notified to the Ministry in writing.
- (c) In consideration of the Ministry consenting to the application of all or part of the Grant to pay for Capital Costs, the Recipient agrees that, during the Restriction Period, the Recipient's ability to deal with Capital Assets shall be restricted, as set out in clauses 5.3(d) to 5.3(i) below.
- (d) During the Restriction Period, the Recipient shall not, without the prior written consent of the Ministry:
 - i. sell, assign or pledge any Capital Asset; or
 - ii. underlet, lend or otherwise part with possession of any Capital Asset; or
 - iii. create, agree to create, allow to come into existence or permit to subsist any Security Interest, mortgage, charge (fixed or floating), encumbrance, hypothecation, lien, pledge, trust, finance lease, deferred purchase, sale and lease back, sale and repurchase, flawed asset arrangement, title retention or any other arrangement which has the practical effect of securing payment or performance of an obligation over or affecting all or any part of any Capital Asset.
- (e) During the Restriction Period, the Recipient shall:
 - i. protect all Capital Assets against distress, execution and seizure;
 - ii. maintain all Capital Assets in a good state of repair and in good working order and condition; and
 - iii. upon request by the Ministry, notify the Ministry of the present location of any Capital Asset.
- (f) During the Restriction Period, the Recipient shall maintain, at its cost, insurance for all Capital Assets against all such risks as it is prudent in accordance with best commercial practice to insure against and any other risks which the Ministry may from time to time reasonably require for their full replacement value or on such other basis as the Ministry may agree in writing, and shall provide evidence of such insurance as and when reasonably requested by the Ministry.
- (g) If any of the following events occur (whether or not within the control of any party) at any time prior to the expiry of the Restriction Period:
 - i. the Recipient fails to perform or observe any obligation under this Deed regarded by the Ministry as material, including the obligations in clauses 5.3(d) to 5.3(f),



and, in the case of a failure which is capable of remedy, that failure is not remedied within 10 calendar days after written notice thereof has been given to the Recipient by the Ministry;

- ii. any representations or warranty made under or in connection with this Deed by the Recipient is false or misleading in any respect regarded by the Ministry as material; or
- iii. the Recipient suffers an Insolvency Event,

then the Recipient must notify the Ministry, immediately on becoming aware of it, of the occurrence of such event and at any time (and notwithstanding the previous waiver of any default) the Ministry may by notice to the Recipient declare any or all of the Clawback Amount to be immediately due and payable.

- (h) In order to secure the Recipient's obligations under this Deed in respect of the Clawback Amount, the Recipient hereby grants to the Ministry a Purchase Money Security Interest (as that term is defined in the Personal Property Securities Act 1999) in each Capital Asset. The Recipient will take all necessary steps (including as required by the Ministry from time to time) to ensure that the Security Interest becomes a "Perfected Security Interest" (as that term is defined in the Personal Property Securities Act 1999) including:
 - i. giving the Ministry written notice immediately following (and in any case, within two Working Days) the Recipient taking possession, or a person taking possession on the Recipient's behalf, of a Capital Asset;
 - ii. giving the Ministry all necessary information for the Ministry to effect a registration to perfect a Security Interest (within 10 Working Days of the Recipient taking possession, or a person taking possession on the Recipient's behalf of a Capital Asset); and
 - iii. signing and delivering any necessary documentation.
- (i) The Recipient waives its right to receive a copy of any verification statement in relation to any Security Interest created by this Deed.
- (j) The Ministry will, at the expiry of the Restriction Period, register a release of any relevant financing statement on the Personal Property Securities Register.

5.4 **Full funding obtained:** The Recipient warrants and represents that it has obtained full funding for the Project and in any event will not require any further funding from the Ministry in order to complete the Project.

5.5 **Use of Grant:** The Recipient must only use the Grant for proper purposes and within the scope of the Project. The Ministry may recover any Grant monies which are misappropriated or not spent in accordance with this Deed. In particular, the Recipient shall:

- (a) ensure that the Grant is only used for costs that are Project Costs and, to the extent the costs allocated to the Project also relate to other purposes of the Recipient, are allocated in a proportional manner;
- (b) ensure that expenses incurred in carrying out the Project are reasonable and in accordance with Annexure 3 (Travel Expense Policy);
- (c) not use any part of the Grant for Capital Costs, except with the prior written agreement of the Ministry;

Classification

- (d) account for the Grant received under this Deed in accordance with generally accepted accounting practices, with appropriate internal controls to ensure that the Grant is applied for the purposes of this Deed;
- (e) establish, and maintain for the period of the Project, cost codes that relate specifically to all costs incurred for the purposes of this Project so that the Project Costs can be categorised and reported by their nature;
- (f) comply with any cost policies provided by the Ministry from time to time in relation to the accounting treatment of Project Costs and use of the Grant;
- (g) ensure that the Grant is used to fund the Project Costs of a Sub-Recipient or subcontractor as notified to the Ministry in accordance with Clause 6.19(e) of this Deed, when those costs are properly due and payable;
- (h) follow appropriate procurement processes when buying goods or services for the Project so that only reasonable, open market costs are incurred on an arm's length basis avoiding any conflict of interest. If a conflict of interest is unavoidable the conflict must be declared to the Ministry and managed appropriately by the Recipient;
- (i) not claim for costs or expenses that have been, or will be, claimed from other sources, except as expressly provided for in this Deed; and
- (j) not claim or use any part of the Grant to support or assist activities which are political (eg, supporting a political party or movement, running a political campaign, or lobbying against the Government).

5.6 **Eligibility:** Without prejudice to any other rights to which the Ministry may be entitled, the Recipient accepts that eligibility for payment of the Grant may, at the Ministry's sole discretion, be lost if:

- (a) claims for payment and related information are not given to the Ministry by the day thirty calendar days following the due date of the final Deliverable; or
- (b) the Project is not completed by the Expiry Date; or
- (c) the Project is not completed by and claims for payment (and any required supporting documentation) are not given to the Ministry by the end of the Project Year in which the Expiry Date falls.

5.7 **Public statements:** The Recipient shall ensure no public statement is made by or on behalf of the Recipient (or any Sub-Recipient) relating to the commencement of this Deed, the Grant or the Project before the earlier of:

- (a) such a statement being made by the Ministry or Minister; or
- (b) the date 6 months after the Commencement Date.

Prior to the release of any information relating to the Deed, the Grant or the Project to the public or media:

- (c) all Parties shall consult with the other Parties allowing sufficient time for comment to be received and incorporated as appropriate; and
- (d) in respect of any proposed release of information to the public or media by the Recipient, the Recipient must notify the Ministry in advance and obtain the Ministry's prior written approval of such release (such approval not to be unreasonably withheld or delayed).



- 5.8 **No Retrospective Costs:** The Ministry will not be liable for any costs or liabilities incurred by the Recipient prior to the Commencement Date.

6. Recipient's Rights and Obligations

- 6.1 **Project Delivery:** The Recipient must carry out the Project and complete the Deliverables in accordance with the Project Plan, the terms and conditions of the Deed and to the Ministry's reasonable satisfaction. In particular, the Recipient shall:
- (a) promptly and efficiently carry out the Project with due skill, care and diligence in accordance with generally accepted standards of the Recipient's profession(s) or industry;
 - (b) achieve successful, timely completion of the Milestones and Deliverables on or before their due date;
 - (c) give the Project appropriate priority over other activities and not divert resources away from the Project which may cause delays in its completion;
 - (d) efficiently and economically source and provide everything the Recipient needs to undertake the Project at the Recipient's risk and cost;
 - (e) comply with all New Zealand, and each relevant jurisdiction's, laws, codes and standards and all applicable international conventions;
 - (f) without limiting the generality of clause 6.1(e), comply at all times with the requirements and provisions of the Hazardous Substances and New Organisms Act 1996 (HSNO Act), Resource Management Act 1991 (RMA), the Health and Safety at Work Act 2015 (HSWA) and the Privacy Act 2020 (and any amendments or replacements to those Acts) and any related regulations, codes of practice and industry best practice guidelines as applicable to the Project;
 - (g) obtain every necessary and prudent authorisation in order to carry out the Project before any actions requiring the authorisations are commenced and comply with such consent or authorisation; and
 - (h) maintain an appropriate governance structure, including compliance with any relevant legislative requirements.
- 6.2 **Personnel:** The Recipient shall:
- (a) carry out the Project only using appropriately trained, qualified, experienced and supervised personnel;
 - (b) ensure that all of its employees and personnel (including Sub-Recipients and sub-contractors) are trained in the relevant health and safety requirements applicable to the Project (confirmation of relevant training is to be provided to the Ministry if requested);
 - (c) ensure that all of its employees and personnel and any other parties associated with the Project, including Sub-Recipients, sub-contractors, service providers, the public, and any visitors, undergo appropriate safety briefings and health and safety inductions;
 - (d) ensure that all of its employees and personnel (including Sub-Recipients and sub-contractors) are aware of potential liabilities and obligations under the environmental laws and regulations relevant to the Project;

- (e) end the involvement with the delivery of the Project of any of the Recipient's personnel to the extent reasonably requested by the Ministry; and
- (f) ensure that any specified key personnel carry out the Project.

6.3 **Keep the Ministry Informed:** The Recipient shall keep the Ministry properly informed primarily via the Client Portal or occasionally reports submitted via email using Ministry templates about:

- (a) progress and important issues in relation to the Project including notifying the Ministry immediately if it becomes aware of any issues that may affect delivery of the Project in accordance with the Project Plan or that may require any material changes to be made in relation to the Project, or that might give rise to liability or enforcement action under any laws and obligations;
- (b) any enforcement action commenced against the Recipient under the HSNO Act, RMA or HSWA, or any other laws, regulations, codes, standards or applicable international convention, in any capacity; and
- (c) material health and safety information in relation to the Project including, but not limited to:
 - i. reports of occurrences of safety incidents, details of damaged property, unsafe or hazardous acts or conditions (as soon as practicable);
 - ii. details of non-compliances or any details of any new hazards or significant amendments to the Recipient's safety management plan; and
 - iii. evidence, if requested, that regular health and safety meetings are held and that scheduled audits have been completed. The Recipient agrees that a representative of the Ministry may be present at such meetings or audits or inspections from time to time.
- (d) **Conflicts of interest:** The Recipient must notify the Ministry immediately in writing if any Conflict of Interest arises at any time during the term of this Deed in relation to the Project or this Deed. If a Conflict of Interest does arise the Parties must discuss, agree and record in writing whether it can be managed and, if so, how it will be managed. Each Party must pay its own costs in relation to managing a Conflict of Interest.

6.4 **Reporting:** Further to Schedule 3 (Reporting) of this Deed:

- (a) **Progress Report:** When required by the Ministry (no more than once per month), and in a form specified by the Ministry, the Recipient shall provide a progress update (Progress Report) that covers a set period of time that includes:
 - i. a completed key project indicator status rating;
 - ii. supporting comments to inform on Amber/Red status against key project indicators and how to rectify;
 - iii. any anticipated or expected issues that may impact the progress of the Project against the Activities, Deliverables and Objectives, significant anticipated financial changes;
 - iv. material decisions and Project achievements; and
 - v. if the Recipient considers that it is or is likely to be prevented or delayed from successfully achieving a Milestone by the corresponding Milestone date, it will set out the cause of the delay, the expected duration of the delay, the effect of the



delay on its ability to perform its obligations under this Deed and what steps, if any, the Recipient will take to mitigate the effect of the delay.

- (b) **Project Completion Report:** At the completion of the Project, in addition to the Final Milestone Report, the Recipient will provide a Project completion report that includes the information set out in the section of Schedule 3 titled "Final Milestone Report".
- (c) **Post-Project Annual Report:** On each of the first three annual anniversaries of the Project's closure the Recipient will provide a brief report (Post-Project Annual Report) providing information on further progress against the Objectives and any further benefits that are a result of the Project, with an updated Capital Assets Register. The Recipient must provide the Post-Project Annual Report in the form specified and provided by the Ministry at project closure.

6.5 Remediation Plan:

- (a) If at any time:
 - i. the Ministry considers that the Recipient has breached, or will imminently breach, any of its obligations under this Deed; or
 - ii. the Recipient has given the Ministry notice of a breach or likely breach of any of its obligations under this Deed

(a "Delivery Issue") the Ministry may give notice to the Recipient setting out the Delivery Issue ("Delivery Notice").
- (b) As soon as possible after the receipt of a Delivery Notice (and in any event within 10 Working Days of receipt), in consultation with the Ministry, the Recipient will prepare and provide to the Ministry a proposed plan ("Remediation Plan") setting out:
 - i. full details of the Delivery Issue (including its causes, expected duration and impact on the Project and the Recipient's obligations under this Deed);
 - ii. a plan (which may include proposed changes to the Project Plan) setting out the steps it will take to eliminate and mitigate the effect of the Delivery Issue and prevent the Delivery Issue from recurring, as applicable; and
 - iii. success criteria to determine whether the Delivery Issue has been rectified ("Success Criteria").
- (c) The Recipient will promptly (and, in any event, within five Working Days of a request by the Ministry) make such amendments to the proposed Remediation Plan as the Ministry may reasonably require and deliver the amended Remediation Plan to the Ministry for review.
- (d) The Ministry will review the amended Remediation Plan and will promptly at its sole discretion either:
 - i. approve the Remediation Plan by written notice to the Recipient and confirm whether a deed of variation is required to reflect the approved Remediation Plan;
 - ii. notify the Recipient of any further required amendments, to be made in accordance with clause 6.5(c); or
 - iii. issue the Recipient a further notice which specifies that the relevant Delivery Issue has not been remedied.

- 6.6 **Reports and meetings:** The Recipient shall provide the Ministry with reports, and attend meetings, as required by the Ministry from time to time.
- 6.7 **Endorsement:** The Recipient acknowledges and agrees that the Minister does not necessarily endorse the Project and accordingly the Recipient shall not represent that the Minister endorses the Project. However, the Recipient will appropriately acknowledge the Grant in all publications and publicity about the Project, and the form and content of such acknowledgement shall comply with Annexure 2 (Publications) and/or with any requirements that the Ministry may specify.
- 6.8 **Publications:** The Recipient shall comply with the requirements detailed in Annexure 2 (Publications) in respect of any publication (in any form) arising from this Deed or the Grant. The Recipient must notify the Ministry in advance of any proposed publication and promptly at the Ministry's request provide a copy of the publication for the Ministry to confirm the Recipient's compliance with the requirements of Annexure 2.
- 6.9 **Project Information:** The Recipient shall make information about the Project (particularly outcomes) freely available to any person who wishes to use it for any non-profit purpose. In each publication (in any form) which results from the Project, the Recipient shall comply with the copyright statement requirements in Annexure 2 (Publications) and shall state that the use and copying of the information for non-profit purposes is welcomed and allowed.
- 6.10 **Invoices:** Upon completion of each Milestone the Recipient will promptly provide the Ministry with a correct tax invoice for the successful provision of that Milestone (including all relevant Deliverables), priced in accordance with the Project Plan and this Deed. All invoices must quote this Deed's deed number.
- 6.11 **Allow Access:** The Recipient agrees that upon the Ministry's request (whether during the term of the Deed or following the expiry or termination of the Deed), it shall provide, at all reasonable times and upon reasonable notice, access to their premises, personnel and records (physical files and electronic) for the purpose of audit and verification of work undertaken, use of the Grant and other reasonable purposes in connection with this Deed, in accordance with clause 7.4 (Project Audit). The Recipient shall ensure that the Ministry has the same rights of access in respect of any Sub-Recipient.
- 6.12 **Confidentiality:** The Recipient must keep confidential and secure all information disclosed by the Ministry in connection with the negotiation or performance of this Deed, including the terms of this Deed (collectively "Confidential Information"). The Recipient must not disclose any Confidential Information except:
- (a) with the Ministry's prior written consent;
 - (b) as necessary to fulfil the Recipient's obligations in this Deed;
 - (c) to the extent the Confidential Information is in the public domain (other than through a breach by the Recipient of its obligations in this clause); or
 - (d) as otherwise required by law.
- 6.13 **Recordkeeping:** The Recipient shall keep accounts (to Generally Accepted Accounting Practice standards) and other records, and have a system acceptable to the Ministry, which enables prompt and accurate verification of any matter in relation to the Project, particularly about how the Grant has been or will be used, and what expenditure by item has been incurred. Records must be retained and available for review, audit, copying and use by the Ministry's representatives at any time during the Project, and for at least 7 years after the Expiry Date.



- 6.14 **Official Information Requests:** The Recipient shall immediately inform the Ministry of any request received by it for information under the Official Information Act 1982 (OIA) or the Local Government Official Information and Meetings Act 1987 (LGOIMA). The Recipient shall immediately transfer to the Ministry any request received by it for information under the Official Information Act 1982 in relation to this Deed and shall advise the person requesting the information of such transfer. If the information to which a request for information under the LGOIMA relates to is more closely connected with the functions of the Ministry than the functions of the Recipient, the Recipient shall immediately transfer to the Ministry the request and shall advise the person requesting the information. The Ministry and the Minister may be required to disclose information that either hold in accordance with the Official Information Act. One category of information that may not be required to be disclosed is commercially sensitive information. To assist the Ministry to assess information it holds for the purposes of the OIA, the Recipient shall mark clearly all commercially sensitive information as commercially sensitive when the Recipient provides that information to the Ministry. The Ministry will use reasonable endeavours to advise the Recipient of any request received by it under the OIA that relates to the Recipient's commercially sensitive information.
- 6.15 **Reputations:** The Recipient shall not knowingly or recklessly, do permit or omit, to do anything that may attract adverse publicity or damage the reputation of the Fund, the Minister, the Ministry or the New Zealand Government.
- 6.16 **Third Party Intellectual Property Rights:** The Recipient:
- (a) warrants that it has a legal entitlement to use the Intellectual Property provided as part of the Deliverables and that providing the Deliverables does not infringe the Intellectual Property of any third party; and
 - (b) indemnifies the Ministry against any claim arising from the Recipient's infringement or alleged infringement of any third party's Intellectual Property or the Ministry's use or possession of Intellectual Property in the Deliverables.
- 6.17 **Representations and Warranties:** The Recipient represents and warrants to the Ministry that:
- (a) it has full power and authority to enter into and perform this Deed and this Deed has been executed by a duly authorised representative of the Recipient;
 - (b) all information, documents and accounts of the Recipient submitted to the Ministry for its appraisal of the Project for the purposes of this Deed are true and accurate and no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any respect and that there has been no material adverse change in the business, assets, operations or prospects of the Recipient since such information was provided; and
 - (c) the Recipient has disclosed to the Ministry all information which would or might reasonably be thought to influence the Ministry in awarding the Grant to the Recipient or the amount thereof.
- 6.18 **Assignment:**
- (a) The Recipient's rights to the Grant pursuant to this Deed are exclusive to the Recipient and the Recipient must not assign or otherwise transfer any benefit or burden of this Deed. Any transfer of shares, or any other arrangement affecting the Recipient which results in a change in the effective control of the Recipient, through whatever means,

will be deemed to be an assignment of this Deed, requiring the prior approval in writing of the Ministry. No assignment releases or discharges the assignor from any obligation under this Deed.

- (b) The assignment by the Recipient of any of its rights or obligations under this Deed in whole or in part will not relieve the Recipient in any form whatsoever from its responsibility for due performance of this Deed in accordance with its terms.

6.19 Subcontracting: The Recipient may sub-contract any of its obligations or make any sub-grant under this Deed subject to the following conditions:

- (a) even if aspects of the Project are sub-contracted, the Recipient continues to be responsible for delivery of the Project and performance of this Deed and will remain wholly responsible for the work, acts and/or omissions of all Sub-Recipients;
- (b) the Recipient is responsible for ensuring the suitability of any Sub-Recipient and the Sub-Recipient's capability and capacity to deliver the aspect of the Project being sub-contracted;
- (c) the Recipient must ensure each Sub-Recipient is fully aware of the Recipient's obligations under the Deed and any sub-contract or sub-grant arrangement it enters into is on terms consistent with this Deed;
- (d) the Recipient shall be responsible for any fees or expenses claimable by the Sub-Recipients and for any costs incurred by the Recipient in employing the Sub-Recipients;
- (e) the Recipient must inform the Ministry of the involvement of any Sub-Recipients and disclose in writing to the Ministry all material interests (including all direct or indirect financial interests) in any Sub-Recipient; and
- (f) the Recipient must promptly end the involvement of any Sub-Recipient (or any of their personnel) or any sub-grant as may be reasonably requested by the Ministry.

6.20 Relationship and Authority:

- (a) Nothing in this Deed shall constitute a partnership (being a relationship between persons carrying on a business in common with a view to profit), joint venture, principal/agent or employer/employee relationship between the Parties for any purposes. The relationship between the Parties is a relationship only for the supply of funding on the terms set out in this Deed.
- (b) The Recipient does not have the Ministry's (or the Minister's) authority to say or do anything on behalf of the Ministry (or the Minister).

6.21 Insurance:

- (a) Notwithstanding clause 5.3(f) (Capital Assets), the Recipient must, at the Recipient's cost, have and maintain appropriate insurance cover with a reputable insurance company to cover all of its liabilities arising out of the Project for the term, and for a period of 36 months following the termination or expiry, of this Deed. The Recipient shall provide the Ministry with evidence to the Ministry's reasonable satisfaction of such cover upon demand.
- (b) If the Ministry suffers any loss or damage as a result of any act or omission of the Recipient its employees, agents or contractors, the Recipient shall fully indemnify the Ministry.

6.22 Health and safety systems:



- (a) At all times the Recipient will have in place, implement and operate safety management systems which comply with the HSWA (and any amendments or its replacements) and any applicable regulations, codes of practice and industry best practice guidelines. The Recipient is required to ensure that all safe work procedures and practices developed for the Project meet all statutory and regulatory requirements.
 - (b) Where Sub-Recipients deliver any part of the Project, the Recipient will consult, co-operate and co-ordinate activities with relevant Sub-Recipients in relation to their respective health and safety obligations in carrying out the Project.
- 6.23 **Financing Statements:** The Recipient agrees to not register a financing statement against the Ministry, the Minister or the New Zealand Government on the Personal Property Securities Register in respect of the arrangements under this Deed.
- 6.24 **Default Interest:** If the Recipient fails to pay, when due, an amount payable by it under this Deed then, without prejudice to its other obligations, the Recipient will pay default interest on that overdue amount (including interest payable under this clause) calculated from its due date to the date of its receipt by the Ministry (after as well as before judgment) payable daily and to the extent not paid in any calendar month compounded on the first day of the next calendar month. This obligation to pay default interest will arise without the need for notice or demand. The rate of default interest in a calendar month will be 5 per cent per annum above the Ministry's cost of funds (expressed as an annual percentage rate) from whatever sources the Ministry may select, calculated on a daily basis.
- 6.25 **Indemnity:** The Recipient will, on demand, indemnify the Ministry against any cost, loss, expense or liability (including all reasonable legal expenses on a full indemnity basis) incurred by the Ministry as a result of or in connection with any amount payable by the Recipient to the Ministry not being paid when due.
- 6.26 **Consents and permits:** The Recipient shall obtain, maintain for the period of the Project, and comply with, every necessary consent and permit (including as required in the Project Plan) compliant with, and required by, the Resource Management Act 1991 and all applicable laws, regulations and Environmental Protection Authority requirements to enable the Recipient to undertake the Project, perform its other obligations and to manage the risks assumed by it under and pursuant to the terms of this Deed. The Recipient shall promptly provide the Ministry with evidence to the Ministry's satisfaction of such consent(s) and/or permit(s) upon demand. For the avoidance of doubt, a material breach of this clause shall be considered a material breach of this Deed for the purposes of clause 7.7(a) (Termination).

7. Ministry's Rights and Obligations

- 7.1 **Payment:** The Ministry shall pay the relevant portion of the Grant from the Fund in arrears to the Recipient upon the Recipient's successful completion of each Milestone (including all relevant Activities and Deliverables), as set out in the Project Plan, subject to:
- (a) the Recipient's compliance with the terms of this Deed; and
 - (b) the availability of funds, or reductions, in the Fund due to changes in the levy prescribed under, or other relevant amendments of, the Waste Minimisation Act 2008 and associated Regulations, changes in waste disposal patterns, or directives of the New Zealand Government.

- 7.2 **Invoice:** Payment of any Grant monies is not due until the Ministry has received a detailed tax invoice (along with all supporting documentation required by the Ministry) from the Recipient and the Milestone (including all relevant Deliverables) to which the tax invoice relates has been completed to the Ministry's reasonable satisfaction. Sufficient evidence of the costs incurred by the Recipient in undertaking the Project, requested by the Ministry from time to time, shall be provided promptly upon the Ministry's request.
- 7.3 **Project Review:** The Ministry may, in accordance with clause 6.11 (Allow Access), observe and inspect anything at any time in relation to the Project and for the purposes of audit in accordance with clause 7.4 (Project Audit) below.
- 7.4 **Project Audit**
- (a) At any time during or after the term of the Deed, WMF funded projects may be randomly selected for an audit, or at the Ministry's sole discretion, the Ministry may direct that an audit of the Project be undertaken. The audit may take the form of a full technical, financial, compliance and/or health and safety audit, or a more informal assessment, of the Recipient and/or Sub-Recipient(s). The purpose of an audit is to check compliance with the terms and schedules of this Deed, the appropriate use of the Grant and/or review the Recipient's ability to perform any obligations under or in connection with this Deed.
 - (b) The Ministry will inform the Recipient of an audit; and
 - i. Audits will usually be carried out either by a fully qualified accountant or technical specialist who is independent of the Ministry or by Ministry staff.
 - ii. The Recipient must promptly provide any records the Ministry may request as part of the audit prior to the agreed date and time of the on-site audit. Such records may include records held by Sub-Recipients in respect of their delivery of Project activities.
 - (c) At the end of the audit, the Recipient will receive a formal written document advising of the outcome
 - (d) In the event that the audit reveals any misappropriation of the Grant or material discrepancies (particularly those related to Deliverables), the Recipient will be liable for the costs of an audit, as well as the repayment of any misappropriated or incorrectly claimed Grant monies.
- 7.5 **Ministry Publicity and Confidentiality:** The Ministry may disclose (including via the Ministry's website on the Internet) any information in relation to the Project to anyone at any time. However, the Ministry shall not publicly disclose information that is deemed by the Ministry to be commercially sensitive except:
- (a) with the Recipient's prior written consent;
 - (b) as necessary to fulfil the Ministry's obligations in this Deed or to use the Deliverables;
 - (c) to the extent the information is in the public domain (other than through a breach by the Ministry of its obligations in this clause);
 - (d) as otherwise required by law, including the Ministry's obligations under the Official Information Act 1982, the Privacy Act 1993 and any other legislation or regulations relevant to its operations and nothing in this agreement applies to any disclosure required under any such legislation or regulations; or



- (e) as required by a Select Committee or a Minister of the Crown, parliamentary convention or by procedures in relation to the appropriation of public money.

7.6 Recovery of Grant:

- (a) The Ministry may reduce, suspend, or withhold the Grant or require all or part of the Grant to be repaid, if:
 - (i) the Ministry judges the performance of the Project to be unsatisfactory;
 - (ii) the Recipient breaches clause 5.5 (Use of Grant) of this Deed or fails to comply with any other term or condition of this Deed that the Ministry considers to be material;
 - (iii) by the midpoint of the Project's duration, the Recipient is unable to secure a satisfactory percentage of the total amount of Co-Funding that the Ministry reasonably considers to be material;
 - (iv) any enforcement action is commenced against the Recipient under laws, regulations, codes, standards or any applicable conventions in relation to the Project or in any other capacity;
 - (v) this Deed is terminated in accordance with clause 7.7 (Termination);
 - (vi) there is a substantial change to the Project which the Ministry has not approved;
 - (vii) any information provided in the application for funding, in a claim for payment, or in subsequent or supporting correspondence is found to be incorrect or incomplete to an extent which the Ministry considers to be material;
 - (viii) the Ministry judges the performance of the Recipient regarding health and safety in relation to the Project to be unsatisfactory;
 - (ix) the Ministry has consented to a change in the Project which in its opinion reduces the amount of Grant needed;
 - (x) an Insolvency Event occurs in relation to the Recipient; or
 - (xi) any other circumstances or events that in the reasonable opinion of the Ministry are likely to adversely affect the Recipient's ability to deliver the Project in accordance with the requirements for the delivery of the Project or result in a risk that the Project as approved will not be completed.
- (b) The Recipient agrees that on receipt of notice requiring repayment of the Grant, (or a portion thereof), it shall make such repayment within 20 Working Days of the date of the notice.

7.7 Termination: Without prejudice to any other rights to which the Ministry may be entitled, if:

- (a) the Recipient breaches, or fails to properly or promptly perform, any of the Recipient's obligations in a way that the Ministry considers to be material;
- (b) the Recipient fails to achieve any Milestone in a way that the Ministry considers to be material;
- (c) any direct or indirect change of ownership or control of the Recipient occurs which is contrary to clause 6.18 (Assignment) and in the reasonable opinion of the Ministry reduces the Recipient's ability to perform its obligations under this Deed;

- (d) an Insolvency Event occurs in relation to the Recipient;
- (e) the Ministry believes that the Recipient is generally in financial difficulty which, in the reasonable opinion of the Ministry, reduces the Recipient's ability to perform its obligations under this Deed; and/or
- (f) the Ministry reasonably considers that the Recipient and/or any acts or omissions of the Recipient (whether or not related to the Project):
 - (i) is bringing the Fund, the Ministry, the Minister or the New Zealand Government into disrepute; and/or
 - (ii) has become undesirable in light of the Fund's objectives or those of the Minister;
- (g) any enforcement action against the Recipient is successful under laws, regulations, codes, standards or any applicable conventions in relation to the Project;
- (h) if the Ministry judges the performance of the Recipient regarding health and safety in relation to the Project to be unsatisfactory,

then the Ministry may:

- (i) withhold any payment otherwise due to the Recipient until the matter is resolved to the Ministry's reasonable satisfaction; and/or
- (j) suspend or terminate (in whole or in part) this Deed by written notice to the Recipient with immediate effect.

- 7.8 **Termination by Notice:** The Ministry may terminate this Deed at any time by giving the Recipient at least one month's written notice.
- 7.9 **Termination on Expiry:** Notwithstanding clause 5.6 (Eligibility), if the Recipient has not completed the Milestones to the Ministry's reasonable satisfaction by the Expiry Date, the Ministry may terminate this Deed at any time by written notice to the Recipient with immediate effect.
- 7.10 **Ministry Not Liable:** The Ministry will not be liable in contract, tort (including negligence) or otherwise to the Recipient or any other person for any direct or indirect damage, loss or cost whatsoever in relation to this Deed and the Recipient carrying out the Project.



Annexure 1: Project Plan