Ministry for Cities, Environment, Regions & Transport

Waste Investments

Deed of Funding

Between

Ministry of Cities, Environment, Regions and Transport

and

[Recipient's name]

Project ID: [Funds Management System ID]

Deed number: [Procurement to insert Deed number]

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Part 1: Key Details

1. Parties	**THE SOVEREIGN** in right of New Zealand, acting by and through the **Secretary for the Environment (Ministry)** **AND** [Recipient full legal name, company number], having its registered offices at [address] **(Recipient)**
2. Start Date	The date this Deed is executed
3. End date	The date that is [#months/years] after the Start Date.
4. Background	The Waste Minimisation Fund - Te Pūtea Whakamauru Para supports projects that increase the reuse, recovery, and recycling of materials to reduce waste to landfill and promote a circular economy. In accordance with the Waste Minimisation Act 2008 and the Ministry for the Environment's Waste Strategy, the Waste Minimisation Fund invests in a wide range of projects that achieve the following outcomes: 1. Accelerate system level change 2. Shift attitudes and behaviours higher up the waste hierarchy 3. Protect the environment from harm, including greenhouse gas emissions 4. Increase reuse, recycling, and recovery of resources.] [The Plastics Innovation Fund - Te Tahua Pūtea mō te Kirihou Auaha supports projects that will minimise plastic waste and its harm on the environment. In accordance with the Waste Minimisation Act 2008 and the Ministry for the Environment's Waste Strategy, the Plastics Innovation Fund invests in a wide range of projects that achieve the following outcomes: 1. Minimise plastic waste 2. Support circular solutions 3. Protect the environment from harm 4. Support the reduction of imported plastic 5. Improve the behaviour of people and businesses (up the waste hierarchy)
5. Project name	[Insert project name]
6. Project purpose	[Insert project description]
7. Project objectives	[Copied from the project plan]
8. Grant	$[X], subject to clause 2.1 of the General Terms (Grant)
9. Funding information table	

Funding information	Amount (GST excl.)	Percentage
A. Recipient Co-Funding	$[Insert amount]	[Insert percentage %]
B. Third-party Co-Funding	$[Insert amount]	[Insert percentage %]

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	C. MCERT contribution	$[Insert amount]	[Insert percentage %]
	Total cost of project (A+B+C)	$[Insert amount]	100%
10. Reporting	In accordance with clause 4.2 the Recipient will provide the Ministry the following reports in the form directed by the Ministry: • Milestone Reports in accordance with the Project Plan; • Progress Reports, if requested by the Ministry; • Post-Project Annual Reports; and Any other information that is notified by the Ministry in writing to the Recipient.		
11. Special Terms	This Deed includes the following Special Terms: [Insert any special terms]		

12. Contact details

	Ministry	Recipient
Name:		
Title:	Lead Contact	
Address:		
Phone:		
Email:		

13. Recipient Key Personnel

Name	Role	Project responsibilities	Email	Phone

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Agreement: The Recipient will complete the Project in accordance with this Deed (including the attached Project Plan).

Signed and delivered as a Deed on: [Insert the date the final party signed the deed]

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 the Deed by the Party who signs the Deed last.

Signed and delivered as a Deed by [name], [role], [team] on behalf of the **Ministry of Cities, Environment, Regions and Transport**	
On (date): [insert date signed]	Signature: [insert DFA signature]
In the presence of:	
Witness Name:	Witness Signature:
Witness Occupation:	Witness Address:

Signed and delivered as a Deed by [Recipient] Limited On (date): [insert date signed]	
Signature: [insert signature]	Signature: [insert signature]
Print Full Name: [Insert name] (For a Company specify Description Director/Attorney/Authorised Signatory)	Print Full Name: [Insert name] (For a Company specify Description Director/Attorney/Authorised Signatory)
In the presence of:	
Witness Name:	Witness Signature:
Witness Occupation:	Witness Address:
In accordance with s180 of the Companies Act 1993, this document must be executed by a company according to its constitution. If two or more directors sign, no witnessing is necessary. If only one director or a director and secretary or authorised signatory(ies) or attorney sign, signatures must be witnessed.	

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Part 2: General Terms

1. Interpretation and Precedence

1.1. **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 appendices are references to paragraphs, clauses, schedules and appendices 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 of regulation made under any statute for the time being in force.

1.2. **Precedence**: In the event of a conflict between:

(a) The Special Terms and the General Terms of this Deed, the Special Terms shall take precedence;

(b) Appendices to this Deed (including the Project Plan) and the General Terms of this Deed, the appendices shall take precedence, except to the extent the Parties expressly agree in writing otherwise with reference to this clause 1.2.

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2. Funding

2.1. **Grant:** The Ministry approves the Grant for the Project, subject to reduction at the Ministry's sole discretion, such that the Grant will not exceed [X]% of the total Project Costs. The Ministry will not be liable under any circumstances to pay funding in excess of the Grant.

2.2. **Multi-year Projects:** If the Project spans or shall span over multiple Project Years, the Ministry shall pay Grant funding to the Recipient for each Project Year as set out in the Project Plan; subject to:

(a) the Ministry being satisfied in all respects with the Recipient's use of the Grant funding for the previous Project Year;

(b) the Recipient not having breached this Deed;

(c) the agreement of an Annual Project Plan Update pursuant to clause 2.3 below for the relevant Project Year which is acceptable to the Ministry; and

(d) the availability of funds, or reductions, in the Fund due to changes in the levy prescribed under, or other relevant amendments to, the Waste Minimisation Act 2008 and associated Regulations, changes in waste disposal patterns, or directives of the New Zealand Government.

2.3. **Annual Project Plan Update**:

(a) The Recipient must, if requested from the Ministry, submit a 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 Ministry will consider any draft Annual Project Plan Update submitted and notify the Recipient in writing whether the Ministry:

i. approves the draft Annual Project Plan Update; or

ii. requests modifications to the draft Annual Project Plan Update.

(c) If the Ministry approves the draft Annual Project Plan Update and communicates this approval in writing (including via the FMS), the Annual Project Plan Update will be deemed to be incorporated into and form part of the Project Plan (taking precedence over the former Project Plan) and this Deed from the date the Annual Project Plan Update approval is communicated to the Recipient. For the avoidance of doubt, approval of a draft Annual Project Plan Update is not subject to clause 6 (Changes).

(d) Where the Ministry requests 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.

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(e) The Recipient must not begin delivering Activities and / or Deliverables for a particular Project Year until the Ministry has notified its approval of the relevant Annual Project Plan Update.

2.4. **Use of Grant:** The Recipient shall:

(a) ensure that the Grant is only used for Project Costs;

(b) not use any part of the Grant for Capital Costs, except with the prior written agreement of the Ministry (including as set out in a Project Plan);

(c) account for the Grant in accordance with generally accepted accounting practices, with appropriate internal controls and, cost codes (or equivalent) that relate specifically to all costs incurred for the Project so that the Project Costs can be categorised and reported by their nature;

(d) 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;

(e) 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;

(f) 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

(g) 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 for or against the Government).

2.5. **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 within 30 calendar days following the due date of the relevant Deliverable; or

(b) the Project is not completed by the End 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 End Date falls.

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

2.7. **Capital Assets:**

(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.

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(b) 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 2.7(c) to 2.7(i) below.

(c) 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. let, lend, lease or otherwise part with possession of any Capital Asset; nor

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 securing payment or performance of an obligation over or affecting all or any part of any Capital Asset.

(d) 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.

(e) During the Restriction Period, the Recipient shall maintain for their full replacement value, at its cost, insurance for all Capital Assets against all such risks as it is prudent in accordance with best commercial practice. The Recipient shall also insure against any other risks which the Ministry may from time to time require.

(f) The Recipient shall provide evidence of such insurances when requested by the Ministry.

(g) If any of the following events occur (whether or not within the control of any Party) at any time during the Restriction Period:

i. the Recipient fails to perform or observe any obligation under this Deed 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 representation or warranty made under or in connection with this Deed by the Recipient is false or misleading; or

iii. the Recipient suffers an Insolvency Event,

then the Recipient must notify the Ministry, immediately on becoming aware of such (and notwithstanding the previous waiver of any default) and the Ministry may by notice

to the Recipient declare any or all of the Clawback Amount to be immediately due and payable.

(h) The Recipient 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 affect 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) over the relevant Capital Asset; and 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) Where appropriate the Ministry will, at the expiry of the Restriction Period, register a release of any relevant financing statement on the Personal Property Securities Register over any Capital Asset.

3. Co-Funding

3.1. The Recipient warrants that it has secured the Co-Funding (as outlined in Part 1 (Key Details) of this Deed and in the Project Plan) and that such Co-Funding will be spent on the Project.

3.2. Upon request from the Ministry, the Recipient must provide the Ministry with written evidence;

(a) that the Recipient has secured the Co-Funding; and

(b) of the terms of the Co-Funding arrangement, including:

i. the amounts to be provided;

ii. the due date for payment of the amounts; and

iii. any other terms and conditions of the provision of the Co-Funding, all of which must be satisfactory to the Ministry.

3.3. The Recipient must notify the Ministry in writing within 10 Working Days of the Recipient becoming aware of any circumstance that may result in any change to or cancellation of any Co- Funding.

4. Recipient's Rights and Responsibilities

4.1. **Project Delivery:** The Recipient must carry out the Project and complete the Deliverables in accordance with the Project Plan, this Deed and to the Ministry's 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) efficiently and economically source and provide everything the Recipient needs to undertake the Project at the Recipient's risk and cost including ensuring that all personal are appropriately trained and qualified;

(d) comply with all New Zealand, and each relevant jurisdiction's, laws, codes and standards and all applicable international conventions including; 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.

4.2. **Reporting**: The Recipient must submit reports in a form specified by the Ministry. In particular, the Recipient must provide:

(a) Milestone Reports in accordance with the Project Plan and Progress Reports when requested by the Ministry;

(b) Final Project Completion Report;

(c) Post-Project Annual Report: For three years following project closure, the Recipient will submit a brief report providing a project update.

4.3. **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 4.3(c) and the Recipient complying with this Deed, any Intellectual Property created or developed Including improvements or enhancements to its pre-existing Intellectual Property) by the Recipient in the course of the Project shall become the property of the Recipient.

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(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 all Intellectual Property in the Deliverables;

i. For monitoring compliance with this Deed;

ii. For the development of Ministry policy;

iii. To advance the purposes of the Waste Minimisation Act; and

iv. For other reasonable non-commercial Ministry purposes.

(d) The Recipient warrants and represents that it is legally entitled to grant this licence.

4.4. **Third Party Intellectual Property Rights:** The Recipient:

(a) warrants 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.

4.5. **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 two months after the Start Date; and

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

i. all Parties shall consult with the other Parties allowing sufficient time for comment to be received and incorporated as appropriate; and

ii. 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).

4.6. **Endorsement:** The Recipient acknowledges and agrees that the Minister does not necessarily endorse the Project and the Recipient shall not represent that the Minister endorses the Project.

4.7. **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.

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4.8. **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 and if so how, it will be managed.

4.9. **Remediation Plan:**

(a) If at any time:

i. the Ministry considers that the Recipient has breached, or will breach this Deed; or

ii. the Recipient has given the Ministry notice of a breach or likely breach of any of 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.

(c) The Ministry will review the Remediation Plan and 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; or

ii. notify the Recipient of any required amendments, to the Remediation Plan and require it be resubmitted.

(d) Following approval of the Remediation Plan the Recipient will immediately take all reasonable and appropriate steps to give effect to that Remediation Plan. If a Remediation Plan cannot be agreed following a re-submission pursuant to (c)ii above the Ministry may elect to terminate this Deed or refer the matter to Dispute Resolution via clause 7.7.

4.10. **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, access to its 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 5.5 (Project Audit). The Recipient shall ensure that the Ministry has the same rights of access in respect of any Sub-Recipient.

4.11. **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.

4.12. **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 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.

4.13. **Health and safety systems:**

(a) At all times the Recipient will have, maintain, and follow safety management systems which comply with the Health and Safety at Work Act 2015 (HSWA) (and any amendments or its replacements) and applicable regulations, codes of practice and industry best practice guidelines.

(b) The Recipient will notify the Ministry of any health and safety incidents connected to the Project that require notification to Work Safe New Zealand at the same time it notifies Work Safe New Zealand.

4.14. **Assignment**:

(a) The Recipient's rights under this Deed are exclusive to the Recipient and the Recipient must not, without the prior written consent of the Ministry (in its sole and absolute discretion) 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 will be deemed to be an assignment of 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 of any of its obligations under this Deed.

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4.15. **Financing Statements:** The Recipient will 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.

4.16. **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.

4.17. **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.

4.18. **Insurance**:

(a) 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 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.

4.19. **Relationship and Authority:**

(a) Nothing in this Deed shall constitute a partnership, 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).

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

(a) 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 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;

(c) the Recipient shall be responsible for any costs incurred by the Recipient in engaging any Sub-Recipients;

(d) 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.

4.21. **Invoices:** The Recipient will promptly provide the Ministry with a correct tax invoice in accordance with relevant Milestones (including all relevant Deliverables). All invoices must quote this Deed's deed number.

4.22. **Recordkeeping:** The Recipient shall keep accounts (to Generally Accepted Accounting Practice standards) and other records which enables prompt and accurate verification of any matter in relation to the Project. Records must be retained and available for review, audit, copying and use by the Ministry at any time during the Project, and for at least seven years after the End Date.

4.23. **Reputations:** The Recipient shall not 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.

4.24. **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 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

(c) the Recipient has disclosed to the Ministry all information which would or might reasonably influence the Ministry in awarding the Grant to the Recipient.

5. Ministry's Rights and Responsibilities

5.1. **Ministry Publicity and Confidentiality:** The Ministry may disclose 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 sensitive (e.g. Commercial information, certain mātauranga Māori) 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;

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(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 Official Information Act 1982, the Privacy Act 2020; 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.

5.2. **Invoice**: Payment of any Grant monies is not due until the Ministry has received a correct 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 satisfaction. Sufficient evidence of the costs incurred by the Recipient in undertaking the Project shall be provided promptly upon the Ministry's request.

5.3. **Payment**: The Ministry shall pay the relevant portion of the Grant 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 this Deed; and

(b) the availability of funds in the Fund.

5.4. **Project Review:** The Ministry may, in accordance with clause 4.10 (Allow Access), observe and inspect anything at any time in relation to the Project and for the purposes of audit in accordance with clause 5.5 (Project Audit) below.

5.5. **Project Audit:**

(a) At any time during or after the term of the Deed, 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) to check, compliance with this Deed, 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;

i. Audits will be carried out either by an accountant or technical specialist independent of the Ministry, or by Ministry staff.

ii. The Recipient must promptly provide any records the Ministry requests as part of the audit including 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 written document advising of the outcome.

(d) In the event that the audit reveals any misappropriation of the Grant or material non compliances with this Deed (particularly those related to Deliverables), the Recipient will

be liable for the costs of the audit, as well as the repayment of any misappropriated or incorrectly claimed Grant monies.

5.6. **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 fails to comply with this Deed;

iii. the Recipient is unable to secure a satisfactory percentage of the total amount of Co-Funding;

iv. any legal or regulatory enforcement action is commenced against the Recipient in relation to the Project or in any other capacity;

v. this Deed is terminated in accordance with clause 5.7 (Termination);

vi. there is a change to the Project which the Ministry has not approved;

vii. any information provided in the application for funding, a claim for payment, or in subsequent or supporting correspondence is incorrect or incomplete;

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 opinion of the Ministry are likely to adversely affect the Recipient's ability to deliver the Project or result in a risk that the Project 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.

5.7. **Termination:** Without prejudice to any other rights of the Ministry, if:

(a) the Recipient breaches this Deed, or fails to properly or promptly perform any of the Recipient's obligations under this Deed;

(b) the Recipient fails to achieve any Milestone;

(c) any direct or indirect change of ownership or control of the Recipient occurs which is contrary to clause 4.14 (Assignment);

(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 opinion of the Ministry, reduces the Recipient's ability to perform its obligations under this Deed; and/or

the Ministry considers that the Recipient and/or any acts or omissions of the Recipient (whether or not related to the Project):

(f) is bringing the Fund, the Ministry, the Minister, or the New Zealand Government into disrepute; and/or

(g) has become undesirable in light of the Fund's objectives or those of the Minister;

(h) any legal or regulatory enforcement action against the Recipient is successful;

(i) 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:

(j) withhold any payment otherwise due to the Recipient until the matter is resolved to the Ministry's satisfaction; and/or

(k) suspend or terminate (in whole or in part) this Deed (including Grant payments) by written notice to the Recipient with immediate effect.

5.8. **Termination by Notice:** The Ministry may terminate this Deed at any time by giving the Recipient at least one month's written notice.

5.9. **Termination on Expiry**: Notwithstanding clause 2.5 (Eligibility), if the Recipient has not completed the Milestones to the Ministry's satisfaction by the End Date, the Ministry may terminate this Deed by written notice to the Recipient with immediate effect.

5.10. **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 / or the Recipient carrying out the Project.

6. Changes

6.1. Any Change to this Deed must be in accordance with the following:

(a) The Recipient may submit a Change Request to the Ministry at any time.

(b) The Ministry, at its sole discretion, will consider the Recipient's Change Request within a reasonable timeframe and may request further information, including via completion of the Ministry's nominated form (Change Request Form).

(c) If the Ministry agrees to the proposed Change, it will, at its sole discretion, require the Recipient to execute appropriate documentation to give effect to the Change. A Change may be implemented by recording it, via an exchange of correspondence or lodgement of a Change Request Form recorded in any Ministry online 'file management system' or similar or by execution of a deed of variation.

(d) The Recipient will not act on any proposed Change, until it receives the Ministry's written approval to the Change and it is recorded pursuant to (c) above.

(e) Each Party shall bear its own costs in relation to the seeking of, consideration and agreement of a proposed Change.

7. General

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

7.2. **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).

7.3. **Entire Agreement**: This Deed (including the Project Plan and attachments) contains everything the Parties have agreed on in relation to the Grant. 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.

7.4. **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.

7.5. **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 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.

7.6. **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.

7.7. **Dispute resolution procedure**:

(a) If any dispute arises out of or in connection with this Deed, 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 7.7(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; or

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 nominee) shall select the mediator and determine the mediator's remuneration.

(d) 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.

(e) Nothing contained in this clause 7.7 shall prevent either Party seeking any interim or interlocutory relief from the court.

(f) 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.

7.8. **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).

7.9. **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 Part 1 (Key Details) of this Deed. Notices shall be deemed delivered as follows:

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(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.

7.10. **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 and constitute a binding and enforceable agreement between the Parties.

7.11. **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 any Force Majeure Event.

(c) If any Force Majeure Event prevents the Affected Party from performing its obligations under the Deed for a period in excess of 60 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 contributed to any delay or failure in the performance of its obligations.

7.12. **Survival:** The following clauses shall remain in full force and effect after expiry or termination: clauses 7.6 (Governing Law and Jurisdiction), 7.7 (Dispute Resolution Procedure), 4.3 and 4.4 (Intellectual Property Rights), 7.9 (Notices), 2.2 (Multi-year Projects), 7.1 (Capital Assets), 2.6 (No Retrospective Costs), 4.2 (Reporting) 4.6 (Endorsement), 4.5 (Public Statements) 4.7 (Project Information), 4.10 (Allow Access), 4.11 (Confidentiality), , 4.12 (Official Information Requests), , 4.16 (Default Interest), 4.17 (Indemnity), 4.18 (Insurance), 4.22 (Reputations) 5.1 (Ministry Publicity and Confidentiality) 5.4 (Project Review), 5.5 (Project Audit), 5.6 (Recovery of Grant), 5.10 (Ministry Not Liable), this clause and any other clauses of this Deed which by their nature are intended to survive expiry or termination of this Deed.

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Part 3: Definitions

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 a Capital Asset, enhancing a Capital Asset or in bringing a Capital 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 this Deed (including the Project Plan but not including any Annual Plan Update);

"**Change Request**" means a written request for a Change;

"**Clawback Amount**" means the greater of either;

The proportion of the sale price of the relevant Capital Asset that reflects the Ministry's contribution to the overall Project Cost; or

An amount calculated as follows:

Clawback Amount = G – (G x (A/Y)),

Where, for the relevant Capital Asset:

G = that amount of the Grant applied to Capital Costs

A = 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;

"**Co-Funding**" means funding secured by the Recipient (either from a third-party or from the Recipient itself) set out in clause 9 Part 1 (Key Details) and the Project Plan;

"**Confidential Information**" means information in relation to this Deed or the Project whether provided before, during or after the term of the Deed that:

(a) is by its nature sensitive or confidential;

(b) is marked by either Party as 'confidential', 'in confidence', 'restricted', 'commercial in confidence' or with a similar designation;

(c) is provided by either Party or a third party 'in confidence';

(d) either Party knows or ought to know is confidential.

"**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. 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 this legal agreement between the Ministry and the Recipient that comprises Parts 1 to 3, Appendix 1 (Project Plan), 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 4.9 (Remediation Plan);

"**End Date**" means the date specified in Part 1 (Key Details) 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**" means the Waste Minimisation Fund ("WMF") or as the case requires the Plastics Innovation Fund ("PIF") as administered by the Ministry under the Waste Minimisation Act 2008 and all associated Regulations;

"**General Terms**" means the terms and conditions set out in the General Terms section (Part 2) in this Deed;

"**Grant**" means the sum of funding provided by the Ministry from the Fund pursuant to this Deed, as set out in clause 8 of Part 1 (Key Details);

"**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, know-how and mātauranga Māori, whether registrable or not in any country;

"**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 Part 1 (Key Details);

"**Parties**" means the Ministry and the Recipient and "**Party**" means either one of them as the case requires;

"**Post-Project Annual Report**" means a report the Recipient shall complete and submit in accordance with clause 4.2(c);

"**Progress Report**" means a report to inform the Ministry of the Recipient's Project progress against the Objectives that the Recipient shall complete and submit in accordance with d clause 4.2(a);

"**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 clause 4.2(b);

"**Project Costs**" means those costs that are reasonable and correctly incurred in furthering the Project in accordance with this Deed.

"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;

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

"**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 4.9 (Remediation Plan);

"**Restriction Period**" means in respect of each Capital Asset, a depreciation period for the relevant asset type determined by the Ministry and recorded in the Project Plan (acting reasonably) based upon the current guidance published by the Inland Revenue Department of New Zealand commencing 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 specified in Part 1 (Key Details) to this Deed;

"Start Date" means the date specified in Part 1 of this Deed;

"**Sub-Recipient**" means any person or body which the Recipient pays 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.

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Appendix 1: Project Plan