Funding Deed

Critical Minerals and High-Tech Metals Exploration Program

|  |  |
| --- | --- |
| **Grantee** | **Click here to enter text.** |
| **Project** | **Click here to enter text.** |

Table of Contents

[Table of Contents 2](#_Toc194065663)

[Background 3](#_Toc194065664)

[Special conditions 5](#_Toc194065665)

[Terms and conditions 7](#_Toc194065666)

[Definitions and Term 7](#_Toc194065667)

[What you must do 9](#_Toc194065668)

[About the Grant 10](#_Toc194065669)

[Reporting and monitoring 13](#_Toc194065670)

[Material and Information 14](#_Toc194065671)

[Terminating the Deed 17](#_Toc194065672)

[Other Legal Matters 18](#_Toc194065673)

[Executed as a deed 22](#_Toc194065674)

[Alternative Signature Blocks 23](#_Toc194065675)

[Schedule A – Project Plan 24](#_Toc194065676)

[Schedule B – Reporting Requirements 25](#_Toc194065677)

[Attachments 27](#_Toc194065678)

# Background

1. The Critical Minerals and High-Tech Metals Exploration Program aims to promote investment in NSW minerals through co-investment in underexplored areas to search for deposits of metallic minerals and critical minerals and high-tech metals.
2. You have applied for the Grant under the Program for your Project.
3. The Grant is a reimbursement of 50% of certain third party costs of exploration drilling, geophysical or geochemical surveys you have paid to a contractor in relation to the Project. The other 50% of those third party costs will be your co-contribution to the Project.
4. The Department will pay the Grant to you, and you agree to comply with your obligations, as set out in this Deed.

Details

|  |  |  |
| --- | --- | --- |
| Department | Name | The Crown in right of the State of New South Wales acting through the Department of Primary Industries and Regional Development |
| ABN | 19 948 325 463 |
| Agency/Division | NSW Resources |
| Address | 516 High St Maitland NSW 2320 |
| Department authorised officer | Name | Click here to enter text. |
| Position | Click here to enter text. |
| Address | Click here to enter text. |
| Telephone | Click here to enter text. |
| Mobile | Click here to enter text. |
| E-mail | Click here to enter text. |
| Grantee (‘You’) (The Grantee must be a legal entity, and that legal entity must be an eligible applicant under the Program Guidelines). | Name | Click here to enter text. |
| ABN | Click here to enter text. |
| Address | Click here to enter text. |
| Your authorised officer | Name | Click here to enter text. |
| Position | Click here to enter text. |
| Address | Click here to enter text. |
| Telephone | Click here to enter text. |
| Mobile | Click here to enter text. |
| E-mail | Click here to enter text. |
| Program | Critical Minerals and High-Tech Metals Exploration Program | |
| Program guidelines | The published guidelines for the Program as at the Commencement Date. | |
| Project | Click here to enter title of Project  Details of the Project under the Program are set out in Schedule A and documents attached to or cross-referenced in this Deed. | |
| Project type | Choose an item. | |
| Exploration licence | Click here to enter text. | |
| Site (Where the project will be carried out) | Click here to enter text. | |
| Grant | A reimbursement of Eligible Costs up to a maximum total amount of $ Click here to enter total amount of Grant (GST exclusive) payable in Instalments. | |
| Commencement date (of this Deed) | The date on which this Deed is executed by the last party. | |
| Completion date (of the project) | 30 September 2027 | |
| Invoice requirements | Download invoice in Smartygrants.  Any invoice must be submitted to the Department at the same time as your quarterly progress reports (see **Schedule B**). | |

# Special conditions

### SC1. Warranties as to timing and competence

1. You warrant that, to the best of your knowledge, there are no serious Exploration Licence, exploration lease, planning, construction, zoning or other impediments that exist which may impede your delivery of the Project on time.
2. You warrant that you have the necessary technical capacity and expertise (or can subcontract experienced and qualified personnel) to deliver the Project on time.

### SC2. Prior Eligible Costs

1. The Department acknowledges that you may have incurred certain Eligible Costs after you received your letter of offer but prior to executing the Deed, at your own risk ("Prior Eligible Costs").
2. The Department agrees that the Prior Eligible Costs are eligible to be funded by the Grant in respect of the Project, provided that the Project is not yet completed.

### SC3. Consent of land owner

1. If you are not the owner of all or part of the Site, you agree and warrant that you:
   1. have obtained the written approval and agreement of the land owner to deliver the Project at the Site; and
   2. have obtained the written agreement of the land owner to notify you during the term of this Deed of any proposal to sell or lease the Site.
2. You indemnify and agree to keep indemnified the State from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by the land owner as a result of or in connection with the Project.

### SC4. Reporting to the ASX

You must notify the Department within 5 business days of you submitting any information or reporting to the Australian Stock Exchange (ASX) in relation to the Project.

# Terms and conditions

## Definitions and Term

1. Interpretation and Definitions
   1. Interpretation

Unless the context requires otherwise, in this Deed:

1. the terms defined in the Details have the meaning ascribed to them there;
2. where any time limit pursuant to this Deed falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;
3. a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;
4. specific examples do not limit the meaning of general words introduced by “including” or “for example” or similar expressions;
5. monetary amounts are expressed in Australian dollars;
6. references to persons include bodies corporate, government agencies and vice versa;
7. references to the parties include references to respective directors, officers, employees and agents of the parties;
8. nothing in this Deed is to be interpreted against a party solely on the grounds that the party put forward this Deed or any part of it; and
9. where an expression is defined, any other grammatical form of that expression has a corresponding meaning.
   1. Definitions

Unless the context requires otherwise, in this Deed:

**Activity** means the activities and/or agreed results which you will achieve, as described in **Schedule A – Project Plan**, which are elements of the Project.

**Activity Period** means the period specified in **Schedule A – Project Plan** during which you will complete the Activity.

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

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

**Confidential Information** means any written or oral information of a party that:

1. is by its nature confidential;
2. is designated as confidential; or
3. the receiving party knows or ought to know is confidential,

but does not include information which is or becomes public knowledge other than by breach of this Deed.

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

1. sets out your contact details including ABN;
2. specifies the amount to be paid, and whether or not this includes GST;
3. identifies this Deed and any Activities and Eligible Costs to which the payment applies; and
4. is sent in accordance with the Invoice Requirements specified in the Details or otherwise notified by the Department.

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

1. that the Department provided to you; or
2. that you have obtained in the course of carrying out the Activities;

unless such access or disclosure complies with this Deed.

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

**Eligible Cost** meansa cost of the Project that is described as an eligible cost, but is not described as an ineligible cost, in the Program Guidelines.

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

**Instalment** means a payment of part of the Grant which the Department will pay to you as set out in clause 8 of this Deed.

**Intellectual Property** or **IP** includes:

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

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

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

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

**Privacy Legislation** means the *Privacy and Personal Information Protection Act 1998* (NSW), *Health Records and Information Privacy Act 2002 (NSW*) and the *Privacy Act 1988* (Cth) and includes any directions, regulations, codes of practice and principles made under those Acts.

**Project Material** means any data, reports, images, online content or other material created as part of or in performance of the Project.

**Reporting Period** means the reporting periods set out in the table in **Schedule B**.

**Security Interest** has the meaning given in the *Personal Property Securities Act 2009* (Cth).

**SmartyGrants** means the online platform used by the Department for the administration of this Deed.

1. Term
   1. This Deed will commence on the Commencement Date.
   2. This Deed will end once the Department has paid you the Grant, or once the Department has paid all due Instalments that you have claimed from the Department by the final Report due date in **Schedule B**, whichever occurs first.

## What you must do

1. Your general obligations and warranties
   1. You must:
2. ensure the Grant is used only for the approved Project;
3. comply with all Commonwealth, State and local government laws that are relevant to the Project, this Deed, or your registration as an entity;
4. comply with the *Mining Act 1992* and any applicable Exploration Licence conditions;
5. comply with the reporting requirements set out in **Schedule B**;
6. comply with all policies, guidelines and reasonable directions the Department provides to you;
7. comply with the Program Guidelines; and
8. not do anything that may cause damage to the reputation of the Department or the Program.
   1. You represent and warrant that at the date you execute this Deed:
9. all information which you have provided to the Department is true and correct;
10. you have full power and authority to enter into this Deed and to perform your obligations;
11. you have the expertise, skills and resources to perform your obligations under this Deed;
12. you have obtained all necessary project, activity and planning approvals necessary for your Project; and
13. you are not aware of any circumstances, including any financial circumstances or litigation or other proceeding that are taking place, pending or threatened, which might affect your ability to perform the Deed or which may cause damage to the reputation of the Department or the Program.
    1. You must promptly notify the Department as soon as you become aware of:
14. any material change to your legal status or to any representation and warranty given under this Deed, including if your financial circumstances change or you become subject to legal proceedings;
15. any significant delay or suspension of the Project;
16. if the Project has been inactive for a period of 90 Business Days or more;
17. your inability to proceed with the Project;
18. if there are any changes to your Exploration Licence granted in accordance with the *Mining Act 1992*;
19. any other matter that is reasonably likely to adversely affect your conduct of the Activities or your performance of this Deed;
20. (where you own or lease the Site) your intention to sell or lease any part of the Site; or
21. (where you do not own or lease the Site) a proposal to sell or lease any part of the Site,

and, in consultation with the Department, you must take available steps to lessen the impact of any such adverse event.

1. No overlap with other funding
   1. You agree that there must be no overlap between the Eligible Costs for which you are claiming reimbursement under this Deed and costs covered by any other funding arrangements you have entered into, or that you may enter subsequently.
   2. You must:
2. notify the Department immediately of any existing or proposed funding arrangement that concerns the Project, the Activities or any related matters (**Related Funding**); and
3. cooperate with the Department and the provider of the Related Funding to ensure that there is a clear distinction between the Activities funded by this Deed and the activities you are required to carry out under the Related Funding deed.
4. [Not used]
5. Variations to the Project
   1. If you wish to vary the Project, including any Activity or other matter set out in **Schedule A** such as:
6. changes to the scope of the Project or the Site or revised priorities for the Project; or
7. changes to the timeframe for delivery of the Project, including extensions to completion of Activities,

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

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

## About the Grant

1. Project costs
   1. The Grant is the maximum amount the Department will pay you in respect of the Project and you:
2. warrant that you have prepared or approved the scope of works and costs estimate for the Project before signing this Deed;
3. agree that you are responsible for any costs for the Project that exceed the Grant, whether or not you expected to incur such costs before signing this Deed.
4. Paying Instalments
   1. The Department will pay you an Instalment for a Reporting Period on condition that:
5. you have provided the Department with a Correctly Rendered Invoice claiming an Instalment in the amount of up to 50% of your Eligible Costs spent in that Reporting Period, to a maximum of the amount of the Grant that has not yet been paid to you;
6. you have provided the Department with evidence that you have paid for 100% of the Eligible Costs referred to in clause 8.1(a);
7. you have not used funding from any other NSW Government source to pay the Eligible Costs referred to in clause 8.1(a);
8. you have provided the Department with any additional information which the Department requires to satisfy itself that you are complying with all of your obligations under this Deed; and
9. the Department is satisfied that you have paid the Eligible Costs for which you are claiming reimbursement.
   1. The Department will pay an Instalment within 30 days of all conditions under clause 8.1 being met.
   2. Notwithstanding clauses 8.1 and 8.2, if the Department pays you an Instalment, it may require you to repay all or part of the amount under clause 10 (Repaying and deducting amounts).
10. Withholding Instalments
    1. The Department may, on giving Notice, withhold payment of any Instalment if, and for so long as, the Department reasonably believes that:
11. you have not complied with this Deed; or
12. circumstances exist which might affect your ability to perform the Deed or which may cause damage to the reputation of the Department or the Program.
    1. If the Department withholds an Instalment under this clause 9, you must continue to perform your obligations under this Deed.
13. Repaying and deducting amounts
    1. If:
14. you incorrectly claim an amount of the Grant;
15. you spend an amount not in accordance with this Deed; or
16. an amount has been overpaid,

you must immediately notify the Department and repay that amount.

* 1. If you:

1. fail to comply with clause 10.1; or
2. otherwise fail to comply with this Deed,

the Department may, by Notice:

1. require you to repay all, or part of, the Grant to the Department within 20 Business Days or to otherwise deal with that amount as directed by the Department;
2. deduct an amount from any future Instalments; or
3. set off an amount against any payment which the Department is due to pay to you on a different funding program.
   1. An amount to which clause 10.1 applies, or which the Department has claimed under clause 10.2, is a debt due and owing by you to the Department without the need for further proof.
   2. This clause 10 does not limit the Department’s rights under this Deed or at law.
4. Reducing the Grant
   1. Without limiting other rights under this Deed, the Department may reduce the amount of the Grant by giving you at least 20 Business Days’ notice if:
5. the Department does not receive sufficient funds from the Commonwealth Government, or other relevant source, to provide the Grant for the Project; or
6. there is a change in NSW Government policy which affects the Program, the Project or allocation of funds for the Grant.
   1. If the Department reduces the Grant under this clause 11, the Department will:
7. agree with you any necessary consequent variation to this Deed, for example, by reducing the scope of the Activities; and
8. pay your reasonable, substantiated costs (other than loss of profit or income) which you necessarily and directly incur from the reduction in the Grant and any consequent variation to the Deed, provided that:
9. you use your best efforts to minimise those costs; and
10. those costs do not exceed the amount by which the Grant has been reduced under this clause.
11. GST
    1. Unless otherwise indicated, all consideration for any supply under this Deed is exclusive of any GST imposed in relation to the supply.
    2. If:
    3. despite any other provision of this Deed, GST is imposed on a supply you make to the Department under this Deed; and
    4. the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply;

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

* 1. If you are not registered under the GST Law you will not be entitled to receive any additional amount as provided under thisclause 12.
  2. If for any reason the Department pays you an amount under this clause 12 which is more than the GST imposed on the supply, you must repay the excess to the Department on demand or the Department may set off the excess against any other amounts due to you.

## Reporting and monitoring

1. Progress Reports
   1. You must provide the Department with written progress reports at the times and containing the information specified in **Schedule B** – Reporting Requirements (“**Progress Reports**”).
   2. If any Progress Report contains information confidential to you, you must mark the relevant parts of the Progress Report accordingly.
   3. If the Department does not accept a Progress Report as satisfactory, you must submit a revised Progress Report within ten Business Days of your receipt of the Department’s request.
2. Financial information
   1. You must keep financial accounts and records relating to the Project so as to enable:
3. all receipts and payments related to the Project to be identified in your accounts and reported in accordance with this Deed;
4. unless notified by the Department, the preparation of financial statements in accordance with Australian Accounting Standards; and
5. generation of an income and expenditure statement for each financial year of the Project with the budget, including:
   1. a comparison of the income and expenditure in each financial year against the budget; and
   2. the audit of those records in accordance with Australian Auditing Standards.
6. Evaluation
   1. To assist the Department to monitor and evaluate the Project, the Program and your performance, you must, on reasonable notice and in a timely manner:
7. provide the data and reports specified in **Schedule B**;
8. make appropriate personnel available to meet with the Department;
9. make reliable and adequate records available to the Department;
10. allow the Department and its authorised representative reasonable access to the Site to inspect the conduct of Activities;
11. provide other information which the Department requires concerning the Project, your structure, your finances or your financial viability; and
12. participate in any survey, interview or feedback regarding the Project or Program.

## Material and Information

1. Intellectual Property
   1. Intellectual Property in all Project Material vests in you.
   2. You grant the Department a non-exclusive, irrevocable, royalty-free licence (including the right to sub-license) to use the Project Material for any purposes.
   3. You warrant that the use of Project Material in accordance with this Deed will not infringe any third party’s IP rights.
   4. If the Department requests copies of the Project Material you must provide them to the Department within ten Business Days.
2. Confidential Information
   1. Neither party may disclose the other’s Confidential Information without its prior consent unless the disclosure:
3. is required or authorised by law or by this Deed;
4. is reasonably required by a person, including a contracted auditor of the Department, for purposes of this Deed;
5. is to that party’s own professional advisers for the purpose of obtaining advice; or
6. in the case of the Department, is required:
7. by Parliament or the Department’s responsible Minister; or
8. for the Department to perform a governmental function including research and analysis in respect of the Program, monitoring performance of this Deed, evaluating the outcomes of this Deed or the Program, and reporting on the Program.
   1. Each party will ensure that any third party to which it discloses Confidential Information under a permitted disclosure is made aware of the confidential nature of the information.
9. Privacy and data
   1. To the extent that you deal with Personal Information in conducting the Project, you must:
10. comply with applicable Privacy Legislation;
11. not cause the Department to breach any of its obligations under the *Privacy and Personal Information Protection Act 1998*;
12. immediately notify the Department if you become aware of a Data Breach or other actual or potential breach of privacy; and
13. include equivalent requirements regarding Personal Information (including this clause) in any subcontract you enter into for the provision of any of the Activities under this Deed.
14. Public Announcements and Acknowledgement
    1. You must:
15. seek the consent of the Department before making any public announcement about the Project and before using any branding or logos of the Department or the NSW Government;
16. acknowledge the support of the Department, as directed by the Department from time to time:
17. in any public statements about the Project;
18. on the home page of any web site established in connection with the Project; and
19. on any equipment or other facility funded wholly or in part by the Department;
20. comply with the applicable NSW Government guidelines for acknowledging funding; and
21. use your best efforts to ensure that the Department and its Minister are given a reasonable opportunity to participate in media coverage or other promotion of the Project.
    1. The Department may disclose information about the Project and the Grant in any media, such as media releases, social media, case studies, promotional material and in response to media enquiries.
22. Disclosure of Information
    1. You acknowledge that the Department is required to publish detailed information about the Grant on the NSW Government Grants and Funding Finder at nsw.gov.au/grants-and-funding, except to the extent such information would identify individuals or otherwise conflict with the law. You must provide any information which the Department needs to meet those publication requirements including, where relevant, any funding amounts which you transfer to indirect grantees as downstream recipients.
23. Insurance
    1. You must maintain, during the term of this Deed:
24. a broadform public liability policy of insurance to the value of at least $20 million in respect of each claim and unlimited in the aggregate as to the number of occurrences in the policy period;
25. workers’ compensation insurance as required by all relevant laws of Australia relating to workers compensation; and
26. any additional insurance policies the Department requires in writing.
    1. You must not do, permit or suffer any act or omission that could lead to any of the policies referred to in this clause 21 being vitiated or rendered void or voidable.
    2. If requested by the Department, you must provide a copy of valid and current certificates of currency for each or any of the policies described above.
    3. Without limiting clause 21.1, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.
27. Indemnities
    1. You must indemnify and keep indemnified the Department, the Crown in right of the State of New South Wales and their officers, employees and agents against any loss (paid or payable including legal costs and expenses on a solicitor/own client basis) or liability by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person in connection with:
28. the Grant or the use of any outcomes from the Project;
29. your breach of this Deed;
30. any unlawful or negligent act or omission by you, your employees or your subcontractors in connection with this Deed;
31. any illness, injury or death of any person you, your employees or your subcontractors cause or contribute to, in connection with this Deed;
32. any loss or damage to real or personal property you, your employees or your subcontractors cause or contribute to, in connection with this Deed; or
33. any act or omission by you, your employees or your subcontractors in connection with this Deed that is in infringement of any Intellectual Property, or privacy rights of the Department or any third party.
    1. Your liability to indemnify the Department under this clause 22:
34. will be reduced proportionately to the extent that the Department’s negligent or unlawful acts or omissions, or those of its officers, employees or agents contributed to the relevant loss or liability; and
35. does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Deed.

## Terminating the Deed

1. Termination by either party for breach
   1. Where a party has breached this Deed:
2. the other party may give a Notice to that party requiring it to rectify that breach within 30 days of receiving that Notice; and
3. if the party which received the Notice fails to rectify that breach in time, the other party may terminate this Deed immediately by giving a further Notice.
4. Termination by Department for cause
   1. The Department may terminate this Deed by Notice, with effect on the date stated in the Notice, if:
5. you breach this Deed and, in the Department’s reasonable opinion, the breach is incapable of remedy;
6. you have provided misleading or incorrect information in your application for funding or in reports, invoices or information you provide in connection with this Deed;
7. the Department considers that termination is necessary to avoid damage to the reputation of the Department or the Program;
8. the Department considers that the Project is no longer viable;
9. you breach any of the following clauses: clause 3 (Your general obligations and warranties); clause 13 (Progress Reports), clause 17 (Confidential Information), clause 21 (Insurance) or clause 29.10 (Assignment);
10. the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity; or
11. you become insolvent, if you are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966* (Cth), or if you resolve to go into administration or liquidation or have a summons for your winding up presented to a Court or enter into any scheme of arrangement with your creditors.
12. Termination by Department – without cause
    1. The Department may terminate this Deed without cause (and without the need to give reasons) by giving you at least 20 Business Days’ notice.
    2. The Department will pay your reasonable, substantiated costs (other than loss of profit or income) necessarily and directly incurred as a result of such termination provided that:
       1. you use your best efforts to minimise those costs; and
       2. the total amount of those costs will not exceed the total amount of unpaid Grant forfeited through termination under this clause 25.
13. Consequences of termination
    1. On termination or expiry of this Deed, accrued rights and obligations are not affected.
    2. You must, within 10 Business Days of termination:
14. repay to the Department any amount under clause 10 (Repaying);
15. provide to the Department:
16. any reports due or that the Department otherwise reasonably requests; and
17. any Project Material which the Department owns, or which is licensed to the Department under this Deed, in a format which permits the Department to exercise its IP rights in respect of that Project Material; and
18. destroy any Confidential Information the Department has provided to you other than: one copy to determine any continuing legal obligations; and copies created electronically by automated backup systems.
    1. Clauses 23 to 26(Termination)do not limit the rights of a party under this Deed or at law.

## Other Legal Matters

1. Dispute Resolution
   1. If a dispute arises in relation to this Deed (“a **Dispute**”), a party must comply with this clause 27 before starting court proceedings except proceedings for urgent interlocutory relief.
   2. A party claiming that a dispute has arisen must notify the other party giving details of the dispute (“**Dispute Notice”**) in accordance with the requirements of clause 28 (Notices).
   3. Following receipt of a Dispute Notice, each party must refer the Dispute to a senior representative, who:
2. does not have prior direct involvement in the Dispute; and
3. has authority to negotiate and settle the Dispute.
   1. If the Dispute is not resolved within 10 Business Days, from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice must refer the Dispute for mediation by the [Australian Disputes Centre](https://disputescentre.com.au/)  (ADC) for resolution in accordance with the mediation rules of the ADC.
   2. If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
   3. Each party must pay its own costs of complying with this clause 27 and split the costs of the mediator evenly.
4. Notices
   1. Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered or emailed to the Authorised Officer specified in the Details.
   2. The receiving party will be deemed to have received the Notice as follows:
5. if hand delivered, on the day on which it is delivered or left at the relevant address;
6. if sent by email before 5.00pm on a Business Day, the first of the following occurring:
7. when the sender receives an automated message confirming delivery; or
8. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered; or
9. if sent by email after 5pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
   1. Any such mode of service will be in all respects valid notwithstanding that the party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.
10. General
    1. **Survival**: Clauses concerning the following issues survive termination or expiry of this Deed: warranties, repaying and deducting amounts, financial information**,** evaluation, Intellectual Property, Confidential Information, privacy and data, disclosure of information, insurance, indemnities, consequences of termination, dispute resolution, keeping of records, governing law, plus this clause (Survival) and any other clause which by its nature is intended to survive this Deed.
    2. **Subcontractors**: You remain fully responsible for the performance of the Project if you subcontract the performance of any part of the Project.
    3. **Keeping of records and rights of access to such records**:You:
11. must keep complete and accurate records and books of account with respect to your performance of the Activities (“**Records**”), and must retain such Records for a minimum of seven (7) years after expiry or termination of this Deed;
12. authorise the Department and any State or Commonwealth Government department or agency (“**Auditors**”) that has provided moneys to the Department for the purposes of the Project to which the Activities relate, to examine and inspect, at reasonable times and on reasonable Notice, any Project Material you hold, and allow any such Records to be copied; and
13. must provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.
    1. **Conflict of Interest:** You must not carry on or be involved in any capacity in an activity or business, which may conflict with, or adversely affect, your ability to carry out your obligations under this Deed, and you will immediately notify the Department in writing if such a conflict or risk of such a conflict arises.
    2. **Entire agreement**: This Deed states all the express terms agreed by the parties as to the matters referred to in this Deed. It supersedes all prior contracts, obligations, representations, conduct and understandings between the parties relating to the subject matter of this Deed.
    3. **Inconsistency**: If there is any inconsistency between provisions in this Deed then the order of precedence will be:
14. the Details; then
15. the Special Conditions; then
16. these Terms and Conditions; then
17. the Schedules; then
18. any Annexures; then
19. the Program Guidelines.
    1. **Negation of employment, partnership or agency:** This Deed does not create a relationship of agency, partnership, and/or employment between the parties. You must not represent yourself as being an employee or agent of the Department or as otherwise able to bind or represent the Department.
    2. **Severance:** If any part of this Deed is held to be invalid or ineffective, that part is removed from this Deed. If that happens, it does not affect the validity of what remains.
    3. **Waiver:** If a party fails to exercise any of its rights under this Deed, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect estop a party from relying on the terms of this Deed to their full force and effect. Any waiver by a party of a breach of this Deed must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.
    4. **Assignment**: You must not assign or novate your obligations or interests under this Deed, without the prior written consent of the Department.
    5. **Counterparts**: This Deed may be signed in any number of counterparts which taken together will constitute one instrument.
    6. **Electronic execution:**  Each party agrees that the other may execute this Deed electronically as provided for in the *Electronic Transactions Act 2000*.
    7. **Governing Law:** The laws of New South Wales govern this Deed and the parties submit to the non-exclusive jurisdiction of the courts in that State.

# Executed as a deed

| **Department** | | |
| --- | --- | --- |
| Signed, sealed and delivered for and on behalf of the Crown in right of the State of New South Wales acting through the **Department of Primary Industries and Regional Development** by its authorised signatory but not so as to incur personal liability: | | |
|  | |  |  | |
| Signature of authorised signatory | |  | Signature of witness | |
|  | |  |  | |
| Name of authorised signatory | |  | Name of witness | |
| Position of authorised signatory | |  | Address of witness | |
|  | |  | Date  Include text if person is witnessing the signature remotely. Delete if witness is present in person (not remote.)  By signing this document, the witness states that they witnessed the signing of this document over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the *Electronic Transactions Act 2000 (NSW)*. | |

| **You (Company/Organisation)** | | |
| --- | --- | --- |
| Signed, sealed and delivered for on and on behalf of Click here to enter Company/Organisation name in accordance with section 127 of the *Corporations Act 2001* (Cth) by: | | |
|  |  |  |
| Signature of Director(1) |  | Signature of Director(2)/Company Secretary |
|  |  |  |
| Name of Director (1) |  | Name of Director(2)/Company Secretary |
|  |  |  |
| Date |  | Date |

# Alternative Signature Blocks

***[Internal drafting note for Department’s project manager. Please delete this heading and note before you release document externally:***  *This is an alternative signature block. If the grantee is another type of legal entity (eg. partnership, trustee), please contact Legal to provide appropriate signature block.]*

| **You (sole director company)** |
| --- |

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

I represent and warrant that I am the sole director and sole company secretary of Click here to enter Company/Organisation name:

|  |  |  |
| --- | --- | --- |
| Signature of sole director |  | Name of sole director |
| Date |  |  |

# Schedule A – Project Plan

**Program:** The Critical Minerals and High-Tech Metals Exploration Program aims to promote investment in NSW minerals through co-investment in underexplored areas to search for deposits of metallic minerals and critical minerals and high-tech metals.

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

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

**Activity Period:** From date of the Department’s letter of offer of this Grant to the Completion Date.

***[Internal drafting note for Department’s project manager. Please delete this note before you release document externally:*** *It is critical that you insert all relevant information (or cross-reference attachments) as the Deed is a standalone document. If there is a dispute later, you may not be able to rely on information which is not included or cross-referenced in the Deed to interpret the Deed].*

*Example points:*

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

*Budget*

**Attachments***:* The Project is more particularly described in these attachments:

* *Example attachments:*
* *Application*
* *Project Budget*
* *Project Management Plan*
* *Business Case*
* *Risk Management Plan*

**Acquittal requirements**: *Insert*

**Description of Activities:**

*eg. 1. complete [XX drilling activity] to the Department’s satisfaction*

*eg. 2. complete [XX drilling activity] to the Department’s satisfaction*

*eg. 3. complete [XX drilling activity] to the Department’s satisfaction*

# Schedule B – Reporting Requirements

1. Unless and until the Department has paid you all Grant funds, you must provide the Progress Reports to the Department via SmartyGrants by the following due dates:

|  |  |
| --- | --- |
| Reporting Period | Report due date |
| Project commencement to 31 December 2025 | 15 January 2026 |
| 1 January 2026 to 31 March 2026 | 15 April 2026 |
| 1 April 2026 to 30 June 2026 | 15 July 2026 |
| 1 July 2026 to 30 September 2026 | 15 October 2026 |
| 1 October 2026 to 31 December 2026 | 15 January 2027 |
| 1 January 2027 to 31 March 2027 | 15 April 2027 |
| 1 April 2027 to 30 June 2027 | 15 July 2027 |
| 1 July 2027 to 30 September 2027 | 15 October 2027 |

1. Each Progress Report must contain the information requested in the SmartyGrants Progress Report form, which may include the following information:

* A brief description of the Project
* Project delivery timeframes and any delays encountered or anticipated
* An overview of activities completed during the relevant Reporting Period
* Evidence of Project activities completed.

If you are claiming an Instalment for the Reporting Period, you will need to identify this in the form and provide the following additional information:

* Details of Project expenditure
* Evidence of expenditure (receipts and/or proof of payment)
* A Correctly Rendered Invoice for the Instalment amount

If it is your final Progress Report, you will need to identify this in the SmartyGrants form and complete the Project outcomes survey.

**Meetings and site visits**

1. The Department may meet with you, at the Department’s discretion, to discuss progress on the Project.
2. The Department may make site visits from time to time to ascertain progress of the Activities on providing reasonable notice to you.

**Photographs**

1. You must obtain permission and releases from individuals featured in any photographs which you provide to the Department to permit the Department to use and publish those photographs in connection with the Program.

**Evaluation**

1. The Department may contact you during the term of the Funding Deed with details of data which the Department requires to evaluate the Project or Program. You must provide that data within the timeframes which the Department requires.

# Attachments