

# Contaminated Sites Remediation Fund DEED OF FUNDING



*Ministry for the*  
**Environment**  
*Manatū Mō Te Taiao*

PART A: PARTIES AND PROJECT	
<b>DEED OF FUNDING</b>	The Recipient has applied and been approved for a funding grant from the Contaminated Sites Remediation Fund, administered by the Ministry. The grant is subject to the terms of this Deed of funding. This Deed is made up of the following parts: <ol style="list-style-type: none"> <li>1. Part A: Project and Parties</li> <li>2. Part B: Special Terms</li> <li>3. Part C: General Terms</li> <li>4. Any Schedules and Annexures attached to this Deed or incorporated by reference.</li> </ol>
<b>DEED NUMBER</b>	[generated by MfE]
PARTIES	
<b>MINISTRY</b>	HER MAJESTY THE QUEEN in right of New Zealand, acting by and through the Secretary for the Environment
<b>RECIPIENT</b>	<b>Full legal name:</b>
	<b>Trading name</b> (if different):
<b>LAND OWNER(s) (if any)</b>	<b>Full legal name:</b>
	<b>Trading name</b> (if different):
<b>GUARANTOR(s) (if any)</b>	<b>Full legal name:</b>

	Trading name (if different):	
<b>PROJECT</b>		
<b>PROJECT NAME</b>		
<b>COMMENCEMENT DATE</b>	On the later of the date that this Deed is signed by the Parties or the date on which the conditions in special term 1 are met.	
<b>PROJECT PURPOSE</b>	<p>The purpose for which the Grant is provided is:</p> <p><i>[Insert concise description of the remediation project – e.g. ‘The purpose of this grant is to provide funding to [the Recipient] for their delivery of [insert concise description of the remediation] as more particularly described below’].</i></p> <p>Note that:</p> <p>a. in assessing an application and approving funding there is no assessment of liability</p> <p>b. the Crown is not liable for any Project or site by reason only of Grant from CSRF being made.</p>	
<b>SUMMARY OF KEY PROJECT REQUIREMENTS</b>	The Deliverables for the Project are set out in the Project Management Plan.	
<b>CONTACT DETAILS</b>		
<b>RECIPIENT CONTACT DETAILS</b>	<b>Postal address:</b>	
	<b>Physical address:</b>	
	<b>MAIN CONTACT PERSON</b>	<b>BACKUP CONTACT PERSON</b>
	<b>Name:</b>	<b>Name:</b>
	<b>Title:</b>	<b>Title:</b>
	<b>Phone:</b>	<b>Phone:</b>
	<b>Mobile:</b>	<b>Mobile:</b>
	<b>Email:</b>	<b>Email:</b>
<b>MINISTRY DETAILS</b>	<b>Postal Address:</b>	
	Ministry for the Environment, PO Box 10362, Wellington 6143	
	<b>Physical Address:</b>	
	Environment House, 23 Kate Sheppard Place, Wellington 6012	
	<b>MAIN CONTACT PERSON</b>	<b>BACKUP CONTACT PERSON</b>
	<b>Name:</b>	<b>Name:</b>
	<b>Title:</b>	<b>Title:</b>

	<b>Phone: +64</b>	<b>Phone: +64</b>
	<b>Email:</b>	<b>Email:</b>
<b>LAND OWNER DETAILS</b>	<b>Postal address:</b>	
	<b>Physical address:</b>	
	<b>MAIN CONTACT PERSON</b>	<b>BACKUP CONTACT PERSON</b>
	<b>Name:</b>	<b>Name:</b>
	<b>Title:</b>	<b>Title:</b>
	<b>Phone:</b>	<b>Phone:</b>
	<b>Mobile:</b>	<b>Mobile:</b>
	<b>Email:</b>	<b>Email:</b>
<b>GUARANTOR DETAILS</b>	<b>Postal address:</b>	
	<b>Physical address:</b>	
	<b>MAIN CONTACT PERSON</b>	<b>BACKUP CONTACT PERSON</b>
	<b>Name:</b>	<b>Name:</b>
	<b>Title:</b>	<b>Title:</b>
	<b>Phone: +64</b>	<b>Phone: +64</b>
	<b>Email:</b>	<b>Email:</b>

## PART B SPECIAL TERMS

### 1. Condition precedent:

- (a) The commencement of this Deed is conditional upon:
  - (i) the Ministry approving the initial Project Management Plan in all respects, provided that such approval must not be taken as acceptance of liability for, nor acceptance or endorsement of, the Deliverables to be undertaken on or at the Property; and
  - (ii) the parties to this Deed signing Terms of Reference in a form that is acceptable to the Ministry in all respects in order to establish the [Governance Group and Project Board].
- (b) The conditions in special term 1(a) are for the benefit of the Ministry and may only be waived by the Ministry on express notice in writing to the Recipient.
- (c) If the conditions in special term 1(a) have not been satisfied (or waived by the Ministry) on or before 20 Working Days after this Deed is signed or such later date agreed by the Ministry, then this Deed is voidable at the election of the Ministry by notice in writing to the other parties to this Deed.
- (d) Upon this Deed becoming void, no Party to it will have any right or obligation to any other Party.

### Betterment Return

- 2. **Pre Remediation Valuation:** Within 10 Working Days of the Commencement Date, the Recipient must obtain an independent registered valuation by a registered valuer of the current market value of the Property taking into account the extent and nature of the contamination on the Property ("Pre Remediation Valuation"). The Recipient must supply the Ministry with a copy of that valuation promptly (and in any case within 10 Working Days of the Recipient's receipt of the Pre Remediation Valuation).
- 3. **Post Remediation Valuation:** Within 10 Working Days of completion of the Deliverables to the satisfaction of the Ministry, the Recipient must obtain a further registered valuation by a registered valuer of the current market value of the Property ("Post Remediation Valuation"). The Recipient must supply the Ministry with a copy of that further valuation promptly (and in any case within 10 Working Days of the Recipient's receipt of the Post Remediation Valuation).
- 4. **Return:** Following the completion of Phase 4, in the event that:
  - (a) the Recipient:
    - (i) is the registered proprietor of the Property, or the Recipient acquires the Property within 1 year of the date of the Post Remediation Valuation; and
    - (ii) sells or transfers the Property or part of the Property at any time before the 5th anniversary of the date of the Post Remediation Valuation,  
  
the Recipient will immediately notify the Ministry in writing of the sale date and price, and pay a sum to the Ministry which reflects any increase in the market value of the Property or part of the Property (as the case may be) proportionate to the Ministry's Contribution Percentage ("Recipient Betterment Return"), or
  - (b) the Owner is the registered proprietor of the Property and the Owner sells or transfers the Property or part of the Property at any time before the 5th anniversary of the date of the Post Remediation Valuation, the Owner will immediately notify the Ministry in writing of the sale date and price, and pay a sum to the Ministry which reflects any increase in the market value of the Property or part of the Property (as the case may be) proportionate to the Ministry's Contribution Percentage ("Owner's Betterment Return").

The Recipient's Betterment Return and Owner's Betterment Return ("Betterment Return") will be determined as follows:

$A - B = C$ ; and

$C \times D = E$

Where: A = Post Remediation Valuation or actual gross sale price (whichever is the higher);  
B = Pre Remediation Valuation;  
C = Betterment Value of the Property;  
D = Ministry's Contribution Percentage; and  
E = Betterment Return payable to the Ministry.

For example:

If:

the Post Remediation Valuation of the Property is \$100,000;  
the Pre Remediation Value totals \$80,000; and  
the Ministry's Contribution Percentage is 50%.

Then the Betterment Return payable to the Ministry is calculated as follows:

$\$100,000 - \$80,000 = \$20,000$ ; and  
 $\$20,000 \times .50 = \$10,000$

Betterment Return = \$10,000

5. **Payment:** The Recipient and Owner (if any) agree that any Betterment Return payable to the Ministry is a debt payable to the Ministry on demand. Where demand has been made by the Ministry, the Betterment Return will accrue interest at the official cash rate set by the reserve bank plus 2% (as at the date of demand) from the date of 30 days from the date of the demand being made to the date of payment by the Recipient.

#### Terms of Reference

6. **Terms of Reference:**

- (a) If the Ministry requires the establishment of a Governance Group and/or a Project Board, the Parties must comply with the Terms of Reference.
- (b) The Terms of Reference for the Governance Group must include the functions, make-up and procedure of the Governance Group, including:
- (i) the following functions of the Governance Group:
    - (A) providing overall guidance and direction to the Project;
    - (B) making recommendations to [Project Manager/Project Executive/Project Board] to support any decision that will have a material impact on the Project;
    - (C) providing assistance or information to the Parties in relation to Ministerial and Parliamentary questions and requests under the Official Information Act 1982 and Local Government Official Information and Meetings Act 1987 as required;
    - (D) acting as a key professional forum to communicate appropriate Project information back to key stakeholders within or relevant to their own organisation; and
    - (F) managing high level risks;
  - (ii) how the Parties will interact with the Governance Group; and
  - (iii) how the Governance Group will be supplied sufficient information by the Recipient for it to fulfil its functions.
- (c) The Terms of Reference for a Project Board must include the functions, make-up and procedure of the Project Board, including:
- (i) the following functions of the Project Board:
    - (A) receiving and reviewing the Project Management Plan, including its component plans, and providing to the [Project Manager and/or Project Executive] recommended changes to those plans;
    - (B) receiving and reviewing regular Project reports from the Project Manager and providing recommendations to assist to deliver the Project successfully according to the objectives, scope, time, quality and cost in accordance with the Project Management Plan;
    - (C) providing expert opinion and advice on specific technical areas of the Project;
    - (D) making recommendations to [the Governance Group, Project Manager and/or Project Executive] to support any decision that will have a material impact on the Project;

- (E) providing assistance or information to the Parties in relation to Ministerial and Parliamentary questions and requests under the Official Information Act 1982 and Local Government Official Information and Meetings Act 1987;
- (F) acting as a key professional forum to communicate appropriate Project information back to key stakeholders within or relevant to their own organisation; and
- (G) providing guidance and direction to the Project;
- (H) ensuring that appropriate Project assurance activities occur for the most critical aspect of the Project's performance and Deliverables;
- (I) providing advice on decisions that will have a material impact on the Project, and on key documents and issues;
- (J) agreeing management arrangements and milestones;
- (K) approving the Project Management Plan, other key documents and Estimated Costs;
- (L) performing such other functions as the Governance Group (if any) agrees should be performed by the Governance Group; and
- (L) managing high level risks;
- (xiv) how the Parties will interact with the Project Board;
- (xv) how the Project Board will interact with the Governance Group (if any); and
- (xvi) how the Project Board will be supplied sufficient information by the Recipient for it to fulfil its functions.

## PART C: GENERAL TERMS

### Section 1: Definitions and Interpretation

- 1.1 **Definitions:** In this Deed, unless the context requires otherwise, the following definitions shall apply:
- “**Application**” means the Recipient's application for the Grant;
- “**Betterment Return**” means an amount calculated in accordance with special term 4;
- “**Budget**” means the Project budget set out in the Project Management Plan;
- “**Commencement Date**” has the meaning given to it in Part A of this Deed;
- “**Completion Date**” means the Milestone Date of the final Milestone for the Project, as set out in the Project Management Plan;
- “**Contaminated Land**” means that part of the Property that is contaminated as detailed in the site map detailed in Schedule 1 to this Deed;
- “**CSRF**” means the Contaminated Sites Remediation Fund;
- “**Deed**” means the legal agreement between the Ministry and the Recipient that comprises Parts A-C of this deed, and any and all Schedules, Annexures and Project Management Plans attached or incorporated by reference;
- “**Deliverable**” means any deliverable the Recipient shall complete as part of the Project as set out in this Deed;
- “**Estimated Cost**” means the estimated cost for a particular Deliverable as detailed in the Project Management Plan;
- “**Financial Year**” means any 12 calendar month period, or part period thereof, commencing on the Commencement Date;
- “**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 any of the Parties from performing its obligations under this Deed;
- “**Governance Group**” means the governance group (if any) established under Terms of Reference to oversee the governance and direction of the Project;
- “**Grant**” means the sum of funding provided by the Ministry from the CSRF pursuant to this Deed;
- “**Intellectual Property**” means all manner of intellectual property rights including (without limitation) patents, trade marks and service marks, logos, copyright, design rights and know-how whether registrable or not in any country;
- “**Milestone**” means any milestone the Recipient shall complete as part of the Project as set out in the Project Management Plan;
- “**Milestone Date**” means the due date for successful completion of the relevant Milestone, as specified in the Project Management Plan;
- “**Milestone Payment**” means the amount of Grant payable upon successful completion of the relevant Milestone, as specified in the Project Management Plan;
- “**Minister**” means the Minister for the Environment;
- “**Parties**” means the Ministry, the Recipient, the Land Owner (if any) and the Guarantor (if any);

**"Phase 2"** means the site investigation phase of the Contaminated Land more particularly described in the Project Management Plan;

**"Phase 3"** means remediation planning in relation to the Contaminated Land more particularly described in the Project Management Plan;

**"Phase 4"** means the site remediation of the Contaminated Land more particularly described in the Project Management Plan;

**"Project"** means the remediation project to be completed by the Recipient under and in accordance with this Deed, as specified in the Project Management Plan;

**"Project Board"** means the project board or steering group (if any) established under Terms of Reference to oversee the delivery of the Project;

**"Project Costs"** means those costs that are reasonable and either:

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

measured in standard accrual accounting terms and excluding:

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

**"Project Executive"** means the project executive appointed by the Recipient in accordance with clause 4.5 in Part C of this Deed;

**"Project Management Plan"** means the plan prepared by the Recipient outlining how the Recipient will manage the Project, including its project management structure and the best practice methodologies, systems and tools that the Recipient will use. The Plan should include the following information, where applicable:

- (a) background, including identifying the benefits of undertaking the Project;
- (b) purpose and objectives;
- (c) general overview of the Phases, stages of work, and scope;
- (d) the Budget;
- (e) the Milestones, Milestone Dates, Milestone Payments and Deliverables (including the Estimated Costs and Estimated Deliverable Cap);
- (f) personnel;
- (g) subcontractors and restrictions on their use;
- (h) timescales;
- (i) communications plan;
- (j) stakeholder engagement plan;
- (k) quality control procedures (including the appointment of a project auditor);
- (l) health and safety management plan;
- (m) Project Status Report template;
- (n) risk register;
- (o) issue register; and
- (p) project evaluation;

**"Project Manager"** means the project manager appointed by the Recipient in accordance with clause 4.4 in Part C of this Deed;

**"Property"** means the property detailed in Part A of this Deed;

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

**"Terms of Reference"** means the terms of reference establishing, and describing the functions, make-up and procedure of, any Governance Group and/or Project Board; and

**“Working Day”** means any day on which banks are generally open for business in Wellington (other than Saturday, Sunday or a public holiday).

1.2 **Interpretation:** In the interpretation of this Deed, unless otherwise stated:

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

1.3 **Precedence:** In the event of a conflict between:

- (a) the terms of Part B and Part C of this Deed, Part B (Special Terms) shall take precedence;
- (b) Parts A-C of this Deed, and any plan (including the Project Management Plan), Parts A-C of this Deed shall take precedence; and
- (c) this Deed and the Terms of Reference (if any), this Deed shall take precedence except to the extent that the Terms of Reference amend a clause of this Deed by express reference to that clause.

## Section 2: The Grant

2.1 **Grant amount:** Subject to clause 2.2, the Ministry approves the Grant for each Phase of the Project as follows:

Phase 2	The lesser of: \$[ ] or [x]% of the actual cost of the Phase*
Phase 3	The lesser of: \$[ ] or [x]% of the actual cost of the Phase*
Phase 4	The lesser of: \$[ ] or [x]% of the actual cost of the Phase*
*Assessed over the duration of the Project, approved by the Ministry and specified in the Project Management Plan.	

2.2 **Maximum:** Under no circumstances shall the funding payable to the Recipient exceed \$[insert total maximum funding].

2.3 **Full funding obtained:** The Recipient warrants and represents that it has obtained the full funding required to complete the Project.

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

- (a) ensure that the Grant is only used for costs that are Project Costs and, to the extent the costs allocated to the Project also relate to other purposes of the Recipient, are allocated in a proportional manner;
- (b) ensure that expenses incurred in carrying out the Project are reasonable and in accordance with Schedule 5 (Expense Policy);
- (c) not use any part of the Grant for costs incurred by the Recipient in acquiring an asset, enhancing an asset or in bringing an asset to working order or to a state, to produce the goods or render the services as required for the Project;
- (d) account for the Grant received under this Deed in accordance with generally accepted accounting practices, with appropriate internal controls to ensure that the Grant is applied for the purposes of this Deed;
- (e) establish, and maintain for the period of the Project, cost codes that relate specifically to all costs incurred for the purposes of this Project so that the Project Costs can be categorised and reported by their nature;
- (f) comply with any cost policies provided by the Ministry from time to time in relation to the accounting treatment of Project Costs and use of the Grant;
- (g) 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;
- (h) 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
- (i) not claim or use any part of the Grant to support or assist activities which are political (e.g. supporting a political party or movement, running a political campaign, or lobbying 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 by the day thirty days following the due date of the final Deliverable; or
  - (b) the Project is not completed by the Completion 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 Financial Year in which the Completion Date falls.
- 2.6 **Public statements:**
- (a) The Recipient, Owner (if any) and Guarantor (if any) shall ensure no public statement is made by or on their behalf (or by any Sub-Recipient) relating to the commencement of this Deed, the Grant or the Project before the earlier of:
    - (i) such a statement is made by the Ministry or Minister; or
    - (ii) the date 60 days after the Commencement Date.
  - (b) Prior to the release of any information to the public or media, all Parties shall consult with the other Parties allowing sufficient time for comment to be received and incorporated as appropriate.
- 2.7 **Ministry termination:** Without limiting its rights under clause 5.6 (Termination) or clause 6.6 (Termination of Project), the Ministry reserves the right to terminate this Deed by providing to the Recipient or the Owner (if any) 30 days' written notice if:
- (a) in the reasonable opinion of the Ministry the remediation of the Contaminated Land is not feasible in all the circumstances; or
  - (b) the completion of either Phase 2 or Phase 3 demonstrates to the Ministry in its absolute discretion that the subsequent Phase(s) will not result in the remediation of the Contaminated Land.
- 2.8 **Independent Assessor:**
- (a) The Ministry may from time to time appoint an independent assessor (after consultation with the Recipient) to assess and/or audit the Deliverables, any reports prepared by the Recipient and the Recipient's performance of its obligations under this Deed. The following provisions apply in respect of the assessor:
    - (i) the Recipient must cooperate with the assessor in all respects, including by providing access to the Property, personnel (including, to avoid doubt, the Project Manager) and all relevant information and documentation as soon as it is created (to avoid doubt, the assessor may take copies of such information and documentation); and
    - (ii) the Ministry must pay the costs of the assessor except where the result of the assessment and/or audit shows material non-compliance with this Deed, in which case, the Recipient must pay those costs.
  - (b) Completion of an assessment and/or audit that is to the Ministry's satisfaction does not include an assessment of liability and is not acceptance of liability for, nor acceptance or endorsement of, the completion of the Deliverables undertaken on and at the Property.
- 2.9 **No Retrospective Costs:** The Ministry will not be liable for any costs or liabilities incurred by the Recipient prior to the Commencement Date. Each Party will bear its own costs in respect of the preparation and entry into this Deed.

### Section 3: General Terms and Conditions

- 3.1 **Relationship and Authority:**
- (a) Nothing in this Deed shall constitute a partnership (being a relationship between persons carrying on a business in common with a view to profit), joint venture, principal/agent or employer/employee relationship between the Ministry and the Recipient for any purposes. The relationship between the Ministry and the Recipient 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) except to the extent authorised in writing by the Ministry in each case.

- 3.2 **Entire Agreement:** This Deed contains everything the Parties have agreed on in relation to the CSRF and the Contaminated Land. 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.
- 3.3 **Changes:** Any variation to this Deed (including the Project Management Plan) must be in accordance with Schedule 4 (Change Control Process).
- 3.4 **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.
- 3.5 **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 in writing to be a waiver and communicated to the other Party in writing. Any waiver will not constitute a waiver of any subsequent exercise of the same right or remedy in the future.
- 3.6 **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.
- 3.7 **Dispute Resolution Procedure:**
- (a) If any dispute arises out of or in connection with this Deed:
    - (i) the Project Executive and a representative of the Ministry shall use all reasonable endeavours to resolve it as promptly as possible within 10 Working Days of a Party notifying the other Parties of the dispute ("Date of Notification").
    - (iii) subject to such persons having met at least twice, any Party may at any time formally refer such dispute to the Recipient's Governance group representative and the Ministry's Manager, Remediation Projects (or his or her delegate) for resolution within 10 Working Days of the date of referral;
    - (iii) subject to such persons having met at least twice, any Party may at any time formally refer such 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 3.7(a), any Party may refer the dispute to:
    - (i) mediation or some other form of alternative dispute resolution ("Mediation") conducted in New Zealand and governed by New Zealand law; or
    - (ii) the jurisdiction of the New Zealand courts.
  - (c) If the Parties do not agree within 5 Working Days of reference of the dispute to Mediation (or such other period as agreed by the Parties in writing):
    - (i) the resolution of the dispute;
    - (ii) the mediation procedures to be adopted;
    - (iii) the timetable for all steps in those procedures; and
    - (iv) the selection and compensation of the independent person required for the Mediation,

then the Parties shall mediate the dispute per the mediation rules of the Arbitrators' and Mediators' Institute of New Zealand Inc ("AMINZ") and the Chair of AMINZ (or his or her nominee) shall select the mediator and determine the mediator's remuneration. The Parties shall make all reasonable efforts to resolve the dispute by Mediation within 3 months (or such other period as agreed by the Parties in writing) from the Date of Notification. If the dispute is not resolved by Mediation within such period, the Parties may seek any other remedies available to them.
  - (d) Nothing contained in this clause 3.7 shall prevent any Party, in an emergency, seeking any interim or interlocutory relief from the court.
  - (e) Each Party shall pay their own costs for resolving any dispute.
- 3.8 **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:** Any Intellectual Property created, developed, commissioned or contracted for in the course of the Project shall become the property of the Ministry.
  - (c) **Recipient Intellectual Property:** The Recipient grants to the Ministry a non-exclusive, sublicensable, royalty free, perpetual and irrevocable licence to use, modify, develop, sublicense and disseminate for any purpose all Intellectual Property owned by the Recipient or its licensors that forms part of the Deliverables.
  - (d) The Recipient warrants and represents that it is legally entitled to grant the licence stated in clause 3.8(c).
- 3.9 **Third Party Rights:** Unless expressly stated no part of this Deed shall create rights in favour of any third party pursuant to the Contracts Privity Act 1982.
- 3.10 **Term:** This Deed shall commence on the Commencement Date and, subject to clauses 2.8, 5.6 and 6.6, shall continue in force until the final Milestone is achieved to the Ministry's reasonable satisfaction.
- 3.11 **Consequences of Expiry / Termination:** Termination of this Deed shall be without prejudice to any rights or liabilities accrued at the date of termination, 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).
- 3.12 **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, email or by facsimile to the other Party at the address stated in this Deed. Notices shall be deemed delivered as follows:
- (a) if delivered personally by hand, at the time of delivery;
  - (b) if posted, on the third Working Day after posting;
  - (c) if emailed, on the day of successful transmission as confirmed by the email system;
  - (d) if sent by facsimile, at the time of transmission specified in a successful transmission report from which the machine it was sent from indicating the facsimile was sent in its entirety to the recipient's facsimile number; and
  - (e) if delivered after 5pm, at 9am the next Working Day.
- 3.13 **Counterparts:** This Deed may be executed by the Parties in two or more counterparts (including facsimile copies), each of which shall be deemed an original but when taken together will constitute a binding and enforceable agreement between the Parties.
- 3.14 **Force Majeure:** A Party ("the affected party") shall not be liable to another 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 Parties and confirm the estimated period that the delay or failure shall continue.
  - (b) The affected Party shall use its best endeavours to continue to perform its obligations under this Deed and minimise the effect of the event for the duration of any Force Majeure Event.
  - (c) If any Force Majeure Event prevents the affected Party from performing all of its obligations under the Deed for a period in excess of 30 days, any 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 where it has directly or indirectly caused or substantially contributed to any delay or failure in the performance of its obligations.
- 3.15 **Confidentiality:** Each Party must keep confidential and secure all information disclosed by another Party in connection with the negotiation or performance of this Deed, including the terms of this Deed (collectively "Confidential Information"). Each Party will not disclose any Confidential Information of another Party except:
- (a) with that other Party's prior written consent;
  - (b) as necessary to fulfil the its obligations in this Deed;
  - (c) to its advisors, employees or contractors (in each case on a need to know and confidential basis);
  - (d) to the extent the Confidential Information is in the public domain (other than through a breach by the Party of its obligations in this clause); or

(e) as otherwise required by law.

- 3.16 **Survival:** The following clauses shall remain in full force and effect after expiry or termination: clauses 3.6 (Governing Law and Jurisdiction), 3.7 (Dispute Resolution Procedure), 3.8 (Intellectual Property Rights) 3.12 (Notices), 3.15 (Confidentiality), 4.9 (Endorsement), 4.10 (Publications), 4.11 (Project Information), 4.12 (Allow Access), 4.13 (Recordkeeping), 4.14 (Official Information Requests), 4.15 (Reputations), 4.16 (Third Party Intellectual Property Rights), 4.19 (Insurance), 4.20 (Ministry Not Liable), 5.3 (Project Review), 5.4 (Ministry Publicity), 5.5 (Recovery of Grant), Schedule 3 (Audit), Schedule 6 (Printed Publications), this clause and any other clauses of this Deed which by their nature are intended to survive expiry or termination of this Deed.

#### Section 4: Recipient's Rights and Obligations

- 4.1 **Project Delivery:** The Recipient must carry out the Project and complete the Deliverables in accordance with the Project Management Plan, the terms and conditions of the Deed and to the Ministry's reasonable satisfaction. In particular the Recipient shall:
- (a) promptly and efficiently carry out the Project with due skill, care and diligence in accordance with normal standards expected for from a skilled and experienced person engaged in the same type of activity, under the same or similar circumstances;
  - (b) achieve successful, timely completion of the Milestones and Deliverables on or before their due date;
  - (c) give the Project appropriate priority over other activities and not divert resources away from the Project which may cause delays in its completion;
  - (d) efficiently and economically source and provide everything the Recipient needs to undertake the Project at the Recipient's risk and cost;
  - (e) comply with all New Zealand, and each relevant jurisdiction's, laws, codes and standards and all applicable international conventions;
  - (f) without limiting the generality of clause 4.1(e), comply at all times with the requirements and provisions of the Hazardous Substances New Organisms Act 1996 (HSNO Act), Resource Management Act 1991 (RMA) and the Health and Safety in Employment Act 1992 (HSEA), the Stockholm Convention, Basel Convention, Minimata Convention and any related regulations, codes of practice and industry best practice guidelines;
  - (g) obtain every necessary and prudent authorisation in order to carry out the Project before any actions requiring the authorisations are commenced and comply with any such consent or authorisation; and
  - (h) maintain an appropriate governance structure, including compliance with any relevant legislative requirements.
- For the avoidance of doubt, the Recipient shall be responsible for the procurement and overall day-to-day management of the works and the Project. In particular the Recipient shall supervise and coordinate the appointment of any Sub-Recipient or sub-contractor.
- 4.2 **Invoices:** Upon completion of each Milestone the Recipient will promptly provide the Ministry with a correct tax invoice for the successful provision of that Milestone (including all relevant Deliverables), priced in accordance with the Project Management Plan and this Deed. All invoices must quote this Deed's deed number.
- 4.3 **Personnel:** The Recipient shall:
- (a) carry out the Project only using appropriately trained, qualified, experienced and supervised personnel;
  - (b) ensure that all of its employees and personnel (including Sub-Recipients and sub-contractors) are trained in the relevant health and safety requirements applicable to the Project (confirmation of relevant training is to be provided to the Ministry if requested);
  - (c) ensure that all of its employees and personnel and any other parties associated with the Project, including Sub-Recipients, sub-contractors, service providers, the public, and any visitors, undergo appropriate safety briefings and health and safety inductions;
  - (d) ensure that all of its employees and personnel (including Sub-Recipients and sub-contractors) are aware of potential liabilities and obligations under the environmental laws and regulations relevant to the Project;
  - (e) end the involvement with the delivery of the Project of any of the Recipient's personnel to the extent reasonably requested by the Ministry; and

- (f) ensure that any specified key personnel carry out the Project.
- 4.4 **Project Manager:** The Recipient will appoint for the duration of the Project an appropriately trained, qualified, and experienced project manager, to manage and supervise the Project and completion of the Deliverables. The project manager will:
- (a) be physically located near the Property (i.e. within the region of the Property);
  - (b) have the authority (including appropriate financial delegations) to run the Project on a day to day basis on behalf of the Recipient within the constraints set out in this Deed and in accordance with the Project Management Plan; and
  - (c) ensure that the project management practices set out in the Project Management Plan are followed.
- 4.5 **Project Executive:** will appoint an appropriately trained, qualified, and experienced project executive who is authorised to represent the Recipient in communications under this Deed and to act for the Recipient under this Deed. The Recipient may appoint an alternative or replacement project executive by written notice to the Ministry.
- 4.6 **Operational requirements:** The Recipient will
- (a) comply with reasonable security, operational and documentation requirements (particularly in relation to access to and use of property and information, hazardous substances, health and safety, environmental protection and appearance and conduct of personnel and property);
  - (b) have and comply with the Recipient's own appropriate health and safety plan that is specific to the site, and immediately notify the Ministry in writing (and, to avoid doubt, in addition to updating the risk register forming part of the Project Management Plan):
    - (i) if any hazard exists at the Property due to the Recipient's acts or omissions; and
    - (ii) of any accident or serious harm that occurs to, or is caused by, the Recipient at the Property;
  - (c) manage and supervise the Project in accordance with the Project Management Plan;
  - (d) ensure facilities and equipment used by the Recipient at the Property and to perform the Deliverables are obtained and maintained;
  - (e) not allow any unauthorised discharge of any contaminant, or making of excessive noise, by the Recipient at the Property;
  - (f) not supply any ozone depleting substance without having the necessary exemption in each case;
  - (g) comply with all Ministry guidance and standards for management of the Property on the following website: <http://www.mfe.govt.nz/issues/managing-environmental-risks/contaminated-land/managing/index.html> or as otherwise advised by the Ministry in writing from time to time;
  - (h) properly label and package every dangerous good and other hazardous substance the Recipient supplies; and
  - (i) use a waste tracking system (WasteTRACK or similar) to ensure safe disposal of contaminants.
- 4.7 **Keep the Ministry Informed:** The Recipient shall keep the Ministry properly informed in writing (and in electronic form if requested) about:
- (a) progress any important issues in relation to the Project including notifying the Ministry immediately if it becomes aware of any issues that may affect delivery of the Project in accordance with the Project Management Plan or that may require any material changes to be made in relation to the Project, or that might give rise to liability or enforcement action under any laws and obligations;
  - (b) any enforcement action commenced against the Recipient under the HSNO Act, RMA or HSEA, or any other laws, regulations, codes, standards or applicable International Convention, in any capacity; and
  - (c) material health and safety information in relation to the Project including, but not limited to:
    - (i) reports of occurrences of safety incidents, details of damaged property, unsafe or hazardous acts or conditions (as soon as practicable);
    - (ii) details of non-compliances or any details of any new hazards or significant amendments to the Recipient's safety management plan; and
    - (iii) evidence if requested, that regular health and safety meetings are held and that scheduled audits have been completed. (The Recipient agrees that a representative of the Ministry may be present at such meetings or audits or inspections from time to time.)
- 4.8 **Reports and meetings:** The Recipient shall provide the Ministry with reports as set out in Schedule 2 (Reporting), and attend meetings as set out in the Project Management Plan, and as required by the Ministry from time to time.

- 4.9 **Endorsement:** The Recipient acknowledges and agrees that the Minister does not necessarily endorse the Project and accordingly the Recipient shall not represent that the Minister endorses the Project. However, the Recipient will appropriately acknowledge the Grant in all publications and publicity about the Project (the form and content of which acknowledgement and/or with any requirements that the Ministry may specify).
- 4.10 **Publications:** The Recipient shall comply with the requirements detailed in Schedule 6 (Printed Publications) in respect of any publication arising from this Deed or the Grant.
- 4.11 **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. The Recipient shall state in each publication (in any form) which results from the Project that the use and copying of the information for non-profit purposes is welcomed and allowed.
- 4.12 **Allow Access:** The Recipient agrees that upon the Ministry's request it shall provide, at all reasonable times and upon reasonable notice, access to the Property and the Recipient's premises, personnel and records (physical files and electronic) for the purpose of audit and verification of work undertaken in accordance with clause 5.3 and Schedule 3 (Audit) and other reasonable purposes in connection with this Deed. The Recipient shall ensure that the Ministry has the same rights of access in respect of any Sub-Recipient.
- 4.13 **Recordkeeping:** The Recipient shall keep accounts (to Generally Accepted Accounting Practice standards) and other records, and have a system acceptable to the Ministry, which enables prompt and accurate verification of any matter in relation to the Project, particularly about how the Grant has been or will be used, and what expenditure by item has been incurred. Records must be retained and available for review, audit, copying and use by the Ministry's representatives at any time during, and for at least 7 years after Completion Date.
- 4.14 **Official Information Requests:** The Recipient shall immediately inform the Ministry of any request received by it for information under the Local Government Official Information and Meetings Act 1987 or Official Information Act 1982. The Recipient shall immediately transfer to the Ministry any request received by it for information under the Official Information Act in relation to this Deed and shall advise the person requesting the information of such transfer. The Ministry and the Minister may be required to disclose information that either hold in accordance with the Official Information Act. One category of information that may not be required to be disclosed is commercially sensitive information. To assist the Ministry to assess information it holds for the purposes of the Official Information Act, the Recipient shall mark clearly all commercially sensitive information as commercially sensitive when the Recipient provides that information to the Ministry.
- 4.15 **Reputations:** The Recipient shall not, and use its best endeavours to ensure that its advisers, employees, contractors or any other persons do not, do anything that may attract adverse publicity or damage the reputation of or otherwise bring into disrepute, the CSRF, the Minister, the Ministry or the New Zealand Government.
- 4.16 **Third Party Intellectual Property Rights:** The Recipient:
- (a) warrants that it has a legal entitlement to use the Intellectual Property provided as part of the Deliverables and that providing the Deliverables does not infringe the Intellectual Property of any third party; and
  - (b) indemnifies the Ministry against any claim arising from the Recipient's infringement or alleged infringement of any third party's Intellectual Property or the Ministry's claim of Intellectual Property developed under or in connection with this Deed.
- 4.17 **Representations and Warranties:** The Recipient represents and warrants to the Ministry that:
- (a) it has full power and authority to enter into and perform this Deed and this Deed has been executed by a duly authorised representative of the Recipient;
  - (b) all information, documents and accounts of the Recipient submitted to the Ministry for its appraisal of the Project for the purposes of this Deed are true and accurate and no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any respect and that there has been no material adverse change in the business, assets, operations or prospects of the Recipient since such information was provided; and
  - (c) the Recipient has disclosed to the Ministry all information which would or might reasonably be thought to influence the Ministry in awarding the Grant to the Recipient or the amount thereof.
- 4.18 **Assignment and Sub-Contracting:**
- (a) The Recipient's rights to the Grant pursuant to this Deed are exclusive to the Recipient and the Recipient must not assign or otherwise transfer any benefit or burden of this Deed.

- (b) The Recipient shall not sub-contract any of its obligations under this Deed, or make any sub-grant under this Deed, except in accordance with the Project Management Plan or otherwise without the prior written consent of the Ministry (such consent to be given or withheld at the absolute discretion of the Ministry), and such consent (if given) may be made subject to any conditions which the Ministry considers necessary. In seeking consent to sub-contract any part of the Project or make any sub-grant, the Recipient shall disclose in writing to the Ministry all material interests, including all direct or indirect financial interests, in the proposed Sub-Recipient. The Ministry may withdraw its consent to any Sub-Recipient where it has reasonable grounds to no longer approve of the Sub-Recipient or the sub-contracting or sub-grant arrangement and such grounds will be notified in writing to the Recipient.
- (c) The Recipient will remain wholly responsible for the acts and omissions of all Sub-Recipients and/or the work and acts of all of all Sub-Recipients.
- 4.19 **Insurance:** The Recipient must, at the Recipient's cost, have and maintain appropriate insurance cover with a reputable insurance company to cover its liabilities and the liabilities of any contractors or sub-contractors arising out of the Project (including public liability and professional indemnity cover for single events of the greater of \$5,000,000 or 5 times the estimated aggregate Project cost) during, and for a period of 36 months following the termination or expiry of this Deed. The Recipient will carry sufficient insurances to cover costs in the event of non-compliance with consent conditions, or discharge of contaminants from the Property. The Recipient shall provide the Ministry with evidence to the Ministry's reasonable satisfaction of such cover upon demand.
- 4.20 **Ministry not liable:** The Ministry will not be liable (in contract or tort, including negligence), equity of otherwise to the Recipient or any other person for any indirect damage, loss or cost whatsoever including any loss of income, profits, savings or goodwill or for any indirect or inconsequential loss or special or exemplary damages in relation to this Deed, and for the avoidance of doubt the Recipient acknowledges that the Property is not a Crown liability and nothing in this Deed binds the Crown to pay any money for any purposes in relation to that Property, except for the purposes in this Deed. Accordingly, the Recipient acknowledges and agrees that it will indemnify the Ministry for any loss, damage or liability incurred by the Ministry as a result of any claim or action arising from this Deed.
- 4.21 **Health and safety systems:** At all times the Recipient will have in place, implement and operate safety management systems which comply with the HSEA and any applicable regulations, codes of practice and industry best practice guidelines. The Recipient is required to ensure that all safe work procedures and practices developed for the Project meet all statutory and regulatory requirements.

## Section 5: Ministry's Rights and Obligations

- 5.1 **Payment:** The Ministry shall pay the relevant portion of the Grant from the CSRF in arrears to the Recipient upon the Recipient's successful completion of each Milestone (including all relevant Deliverables), as set out in the Project Management Plan, subject to:
- (a) the Recipient's compliance with the terms of this Deed; and
- (b) the availability of funds, or reductions, in the CSRF due to Parliamentary appropriation reasons or directives of the New Zealand Government.
- 5.2 **Invoice:** Payment of any Grant monies is not due until the Ministry has received a detailed tax invoice (with supporting documentation, if required) from the Recipient and the Milestone (including all relevant Deliverables) to which the tax invoice relates has been completed to the Ministry's reasonable satisfaction. Sufficient evidence of the costs incurred by the Recipient in undertaking the Project shall be provided promptly upon the Ministry's request.
- 5.3 **Project Review:** The Ministry may, in accordance with clause 4.12 (Allow Access), observe and inspect anything at any time in relation to the Project and for the purposes of audit in accordance with Schedule 3 (Audit).
- 5.4 **Ministry Publicity:** The Ministry may disclose (including via the Ministry's website on the Internet) any information in relation to the Project to anyone at any time, provided that the Ministry shall not disclose information that is deemed by the Ministry to be commercially sensitive.
- 5.5 **Recovery of Grant:**
- (a) The Ministry may reduce, suspend, or withhold, the Grant if:
- (i) the Ministry judges the performance of the Project to be unsatisfactory;
- (ii) the Recipient breaches clause 2.4 (Use of Grant) of this Deed or fails to comply with any other term or condition of this Deed that the Ministry considers to be material;

- (iii) any enforcement action is commenced against the Recipient under laws, regulations, codes, standards or any applicable conventions in relation to the Project or in any other capacity;
  - (iv) the Deed is terminated in accordance with clause 5.6 (Termination);
  - (v) there is a substantial change to the Project which the Ministry has not approved;
  - (vi) any information provided in the application for funding, in a claim for payment, or in subsequent or supporting correspondence is found to be incorrect or incomplete to an extent which the Ministry considers to be material;
  - (vii) if the Ministry judges the performance of the Recipient regarding health and safety in relation to the Project to be unsatisfactory;
  - (viii) the Ministry has consented to a change in the Project which in its opinion reduces the amount of Grant needed; or
  - (ix) any other circumstances or events that in the reasonable opinion of the Ministry are likely to adversely affect the Recipient's ability to deliver the Project in accordance with the requirements for the delivery of the Project or result in a risk that the Project as approved will not be completed.
- (b) The Ministry may require all or part of the Grant to be repaid if the Recipient breaches clause 2.4 (Use of Grant) of this Deed or fails to comply with any other term or condition of this Deed that the Ministry considers to be material.
- (c) The Recipient agrees that on receipt of notice requiring repayment of Grant under clause 5.5(b) it shall make such repayment within 20 Working Days of the date of the notice.

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

- (a) the Recipient breaches, threatens to breach, or fails to properly or promptly perform, any of the Recipient's obligations in a way that the Ministry considers to be material;
- (b) any direct or indirect change of ownership or control of the Recipient occurs which is contrary to clause 4.18 (Assignment & Sub-Contracting) and in the reasonable opinion of the Ministry reduces the Recipient's ability to perform its obligations under this Deed;
- (c) the Recipient is or becomes insolvent or bankrupt, is in or goes into voluntary or compulsory administration, receivership or liquidation;
- (d) the Ministry believes that the Recipient is generally in financial difficulty which, in the reasonable opinion of the Ministry, reduces the Recipient's ability to perform its obligations under this Deed;
- (e) the Ministry reasonably considers that the Recipient:
  - (i) is bringing the CSRF, the Ministry, the Minister or the New Zealand Government into disrepute; and/or
  - (ii) has become undesirable in light of the CSRF's objectives or those of the Minister;
- (f) any enforcement action against the Recipient is successful under laws, regulations, codes, standards or any applicable conventions in relation to the Project; and/or
- (g) the Ministry judges the performance of the Recipient regarding health and safety in relation to the Project to be unsatisfactory,

then the Ministry may:

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

5.7 **Termination by Notice:** The Ministry may terminate this Deed at any time by giving the Recipient at least one month's written notice being under no obligation to provide further funding.

**Section 6: Owner's Obligations**  
**(If no Owner is specified in Part A of this Deed, the Owner's Obligations do not apply)**

The Owner:

6.1 **Owner Contributions:** will make those owner funding contributions to the Project to the amounts, and at the times, specified in the Project Management Plan.

- 6.2 **Reasonable access:** will provide the Recipient and/or the Ministry with reasonable access to the Property as required in order to comply with the terms of this Deed.
- 6.3 **Betterment Return:** will pay to the Ministry the Betterment Return in accordance with Part B (Special Terms).
- 6.4 **Reasonable assistance:** will provide all reasonable assistance to the Recipient in order to carry out the Project.
- 6.5 **No liability:** acknowledges and agrees that the Ministry will not be liable under any circumstances for any loss or damage that arises as a result of the Deliverables performed in connection with this Deed as the Ministry is merely facilitating the Grant to allow the Recipient and the Owner to carry out the Project.
- 6.6 **Termination of Project:** acknowledges that the Recipient will be under no obligation to complete the remediation of the Property and/or the Ministry will be under no obligation to contribute funding in respect of the Property if:
- (a) reasonable access to the Contaminated Land is denied by the Owner;
  - (b) the Owner is in material breach of this Deed and the breach remains unremedied for a period in excess of 10 days following notification by either the Recipient or the Ministry of such a material breach; or
  - (c) the Ministry provides to the Owner or the Recipient notice in accordance with clause 5.6 (Termination) or clause 5.7 (Termination by Notice).
- 6.7 **Reputations:** The Owner shall not, and use its best endeavours to ensure that its advisers, employees, contractors or any other persons do not, do anything that may attract adverse publicity or damage the reputation of or otherwise bring into disrepute, the CSRF, the Minister, the Ministry or the New Zealand Government.

### **Section 7: Guarantor's Obligations**

**(If no Guarantor is specified in Part A of this Deed, the Guarantor's Obligations do not apply)**

- 7.1 The Guarantor guarantees the performance of the Owner's obligations under this Deed.
- 7.2 If there is more than one Guarantor, their liability under this guarantee shall be joint and several.
- 7.3 As a separate obligation, the Guarantor must continually indemnify the Ministry, on demand, against any liability, loss, damage or expense the Ministry incurs as a result of the Owner failing to perform or observe any its obligations under this Deed.

**SCHEDULE 1: CONTAMINATED LAND**

## SCHEDULE 2: REPORTING

The Recipient must provide the following reports to the Ministry:

1. **Milestone Payment Form:** to be completed and given to the Ministry at the times, and with the information, required by the Ministry so that Grant payments can be properly processed.
2. **Project Status Reports:** using the template set out in the Project Management Plan, at the frequency specified in the Project Management Plan and, if no period is specified, within 5 working days of the end of each month, that include:
  - (a) a description of the Deliverables carried out in relation to each Phase since the previous report;
  - (b) the names of the subcontractors who carried out the Deliverables in relation to each Phase;
  - (c) an assessment as to progress against the Project Management Plan;
  - (d) information on any Project tender process conducted in the previous month and how the Recipient has complied with clause 2.4(g) of Part C of this Deed;
  - (e) a review of the Project risk register and issues register, including amendments to risk identification, assessment, treatment and status;
  - (f) assessment of health and safety incidents and processes implemented and monitored;
  - (g) an outline of any issue arising during the month, the impact (if any) of those issues on the timing of the completion of each Phase, an explanation of significant variances, and any proposed corrective actions required;
  - (h) in relation to expenditure:
    - (i) the amount spent on each Deliverable and a reasonable breakdown of the expenditure;
    - (ii) the cumulative amount spent on each Deliverable against the Estimated Cost for that Deliverable including forecasts for future months; and
    - (iii) if requested by the Ministry, forecasts certified by a quantity surveyor approved by the Ministry confirming that a Deliverable can be completed within the relevant Estimated Cost;
  - (i) the latest version of the Project Management Plan as an attachment;
  - (j) any other information that the Recipient considers the Ministry should be informed about; and
  - (k) any other information reasonably requested by the Ministry.

The Recipient shall make each Project Status Report available on its website within 5 Working Days of completing that Project Status Report to the Ministry's reasonable satisfaction.

3. **Phase Final Reports:** to be given to the Ministry as the final Milestone of the relevant Phase. The Recipient shall make the Phase Final Report available on its website within 5 Working Days of completing the Phase Final Report to the Ministry's reasonable satisfaction.
4. **Ad hoc reports:** specific reports, to be promptly given to the Ministry on written request about any specific aspect of the Project.
5. **Project Closure Report:** to be given to the Ministry as the final Milestone of the Project.
6. **Financial Reports:** The Recipient shall:
  - (a) within three months of the end of each year commencing 1 July and ending on 30 June (a "**Financial Year**"), either separately or within a Project Status Report; and
  - (b) as a part of the Project Closure Report,  
submit to the Ministry a financial report that relates to the Financial Year or full period of the Project (as applicable), each of which must include:
    - (c) the total amount of Grant received during the reporting period;
    - (d) the Estimated Cost for each applicable Deliverable in the reporting period, and the actual amount spent on each Deliverable and variance for the reporting period; and
    - (e) any other information reasonably requested by the Ministry.

On request by the Ministry, the Recipient must provide any report described in this Schedule 2 to the Ministry in draft form for the Ministry's approval (not to be unreasonably withheld or delayed). If the Ministry does not approve the report, the Recipient must make such modifications as are reasonably required by the Ministry and resubmit the report to the Ministry to be approved (with this paragraph applying to any resubmitted report).

## SCHEDULE 3: AUDIT

### **Scope of audit**

Contaminated Sites Remediation Fund projects may be selected for an audit by the Ministry at the Ministry's sole discretion. An audit may take the form of a full technical, financial, compliance and/or health & safety audit, or a more informal assessment, of the Recipient and/or Sub-Recipient(s). The purpose of an audit is to check compliance with the terms and schedules of this Deed, the appropriate use of the Grant and/or reviewing the Recipient's ability to perform any obligations under or in connection with this Deed.

### **Audit requirements**

The Ministry will inform the Recipient if an audit is to be carried out (**Notification of Audit**) and will seek an appropriate date and time for all Parties. The Recipient and Owner must within three Working Days of the Notification of Audit agree a date and time. The date of the audit must be within 10 Working Days of the Notification of Audit. Audits will be carried out either by a fully qualified accountant or technical specialist who is independent of the Ministry or by Ministry staff. The Recipient must promptly provide or ensure the provision of adequate access, assistance and facilities for audit personnel as required by the Ministry during the hours of 8:00am and 5:00pm on Working Days.

### **Audit report**

A report of the outcome of any audit may be available upon request.

### **Cost of audit**

In the event that the audit reveals any misappropriation of the Grant or material discrepancies (particularly those related to Deliverables), the Recipient will be liable for the costs of an audit and any corrective action required as a direct result of the misappropriation or discrepancy, as well as the repayment of any misappropriated Grant monies.

<b>SCHEDULE 4: CHANGE CONTROL PROCESS</b>
-------------------------------------------

1. **Definitions:** For the purposes of this Schedule, the following words shall have these definitions unless the context requires otherwise:
  - “**Change**” means any amendment, deletion or addition to this Deed;
  - “**Change Control Register**” has the meaning given to it in paragraph 11 of this Schedule;
  - “**Change Request**” means a written request for a Change which shall be substantially in the form of Appendix 1 to this Schedule;
  - “**Further Information**” has the meaning given to it in paragraph 7;
  - “**Minor Budget Change**” has the meaning given to it in paragraph 3 of this Schedule;
  - “**Minor Delivery Change**” has the meaning given to it in paragraph 4 of this Schedule; and
  - “**Itemised Cost**” means an item of expenditure listed in the Budget that is, or is intended to be, paid for in whole or in part by the Grant.
  
2. **Changes:** All Changes must be made in accordance with paragraphs 5-10 of this Schedule, except where the Change is a Minor Budget Change or a Minor Delivery Change. Paragraph 11 of this Schedule applies to any Change (including a Minor Budget Change or a Minor Delivery Change).
 

**Minor Changes**
  
3. **Minor Budget Change:** Where a Change is solely in relation to the re-allocation of Grant from one Itemised Cost to another, and:
  - (a) the Change does not result in an aggregate increase or decrease of 10% or greater to the relevant Project Costs as originally set out in the Budget at the Commencement Date (or when the Project Costs were otherwise first agreed and added to the Deed); and
  - (b) the total Grant is not affected or likely to be affected; and
  - (c) the Project Completion Date is not affected or likely to be affected,

(a “**Minor Budget Change**”), the Recipient may make the change at the discretion of the Project Manager provided that the Recipient notifies the Ministry of the Change in the next applicable Project Status Report in accordance with Schedule 2 (Reporting) of the Deed.
  
4. **Minor Delivery Change:** Where a Change is solely in relation to the re-scheduling of a Milestone Date specified in the Project Management Plan and:
  - (a) the Change does not bring forward or delay the Milestone Date by more than 1 calendar month from the relevant Milestone Date as originally set out in the Project Management Plan at the Commencement Date (or when the Milestone Date was otherwise first agreed and added to the Deed);
  - (b) the total Grant is not affected or likely to be affected; and
  - (c) the Project Completion Date is not affected or likely to be affected,

(a “**Minor Delivery Change**”), the Recipient may make the Change at the discretion of the Project Manager provided that the Recipient notifies the Ministry of the Change in the next applicable Project Status Report in accordance with clause 4.7 (Keep Ministry informed) of Part C of the Deed and Schedule 2 (Reporting).

*Change Control*
  
5. **Change Request:** The Recipient or the Ministry may issue a Change Request Form at any time. The Change Request shall:
  - (a) be substantially in the form of Appendix 1 to this Schedule;
  - (b) if issued by the Recipient, include an impact assessment;
  - (c) if issued by the Ministry, Project Board or Governance Group, require the Recipient to complete the impact assessment in the Change Request and return to the Ministry, Project Board or Governance Group (as applicable) as soon as reasonably practicable and in any event within 10 working days of receiving the relevant Change Request.

6. **Impact assessment:** Each impact assessment shall be completed in good faith, be substantially in the form of Part 2 of Appendix 1 to this Schedule and include:
- (a) details of the proposed Change;
  - (b) details of the impact of the proposed Change on the Project, specifically:
    - (i) to the Deliverables and Milestones;
    - (ii) to the Project timeframes;
    - (iii) to the Recipient's ability to meet its obligations under the Deed;
    - (iv) to the costs being paid for by the Grant; and
    - (v) include the costs of implementing the Change; and
    - (vi) any other information the Ministry, Project Board or Governance Group may reasonably request.
7. **Further information:** If the Ministry, Project Board or Governance Group reasonably considers that it requires further information regarding a proposed Change, then within 5 Working Days of receiving an impact assessment in a Change Request the Ministry, Project Board or Governance Group shall notify the Recipient and detail the further information required. The Recipient shall then re-issue the relevant impact assessment to the Ministry, Project Board or Governance Group (as applicable) as soon as reasonably practicable and in any event within 10 Working Days of receiving such a request. The Parties may repeat the process described in this paragraph until the Ministry, Project Board or Governance Group (as applicable) is satisfied that it has sufficient information to properly evaluate the proposed Change ("**Further Information**").
8. **Right of approval:** Within 10 Working Days of receiving an impact assessment in a Change Request or within 5 Working Days of receiving Further Information under paragraph 7, the Ministry shall do one of the following:
- (a) approve the proposed Change, in which case the Change may come into effect in accordance with paragraph 9 of this Schedule; or
  - (b) reject the proposed Change, in which case the Ministry shall notify the Recipient in writing. The Ministry shall explain its reasons for rejection in writing, as soon as reasonably practicable following such rejection.
9. **Change authorisation:** Any Change proposed in a Change Request will not be authorised and the Recipient shall not implement any proposed Change until:
- (a) the Change Request is signed in accordance with the Ministry's Change authorisation and sign off procedure, as notified by the Ministry to the Recipient in writing from time to time; and
  - (b) if the Change:
    - (i) affects the total Grant;
    - (ii) affects the Project Completion Date;
    - (iii) amends the terms of the Deed (including to any Schedule); or
    - (iv) the Ministry otherwise requires (at its sole discretion),
 it must be signed and delivered as a deed by the duly authorised representatives of the Parties.
- For the avoidance of doubt, unless paragraph 9(b) applies, a Change Request for any Change(s) that solely relate to the Project Management Plan is authorised, and may be implemented, once the relevant Change Request is signed in accordance with paragraph 9(a).
10. **Costs:** The Recipient shall bear its own costs in relation to the preparation and agreement of each Change Request and Impact Assessment. For the avoidance of doubt, the Grant may not be used to fund such costs unless expressly agreed in writing by the Ministry.
11. **Change Control Register:** The Project Manager shall for the period of this Deed maintain a change control register, substantially in the form of Appendix 2 to this Schedule, documenting any and all Changes (the "**Change Control Register**"). The Change Control Register shall be attached to the Project Management Plan.

## Appendix 1 – Change Request form template

<b>[Insert Project name] Change Request form</b>				
<b>PART 1: CHANGE REQUEST</b>				
<b>Project:</b>		<b>Deed #:</b>		
<b>Change Request #:</b>		<b>Requested By:</b>		
<b>Change Title:</b>		<b>Date:</b>		
<b>Full description of proposed Change (including reasons for the change):</b>				
<b>Details of any proposed alternative scenarios:</b>				
<b>Supporting Documents:</b>	DOC # (Title and version) DOC # (Title and version)			
<b>Change Request prepared By:</b>	<b>Name:</b>			
	<b>Role:</b>			
	<b>Signature:</b>			
<b>PART 2: IMPACT ASSESSMENT</b>				
<b>COSTS</b>				
<b>Total Costs Impact:</b>	\$			
<b>Project Budget Cost</b>	<b>Current Budget</b>		<b>Revised Budget</b>	<b>Net change</b>
<b>Total Resource Cost</b>	\$		<b>Total Other Costs:</b>	\$
<b>Resources</b>	<b>Hours</b>	<b>Costs</b>	<b>Item</b>	<b>Costs</b>
<b>TIMELINE</b>				
<b>Total Timeline Impact:</b>				
<b>Project Task</b>	<b>Milestone</b>		<b>Current timeline</b>	<b>Revised timeline</b>
<b>OTHER IMPACTS</b>				

<b>Details of any other impacts to the Project:</b>	
<b>RISK ASSESSMENT</b>	
<b>Detailed Risk Assessment:</b>	
<b>Recommendation:</b>	
<b>Impact statement prepared By:</b>	Name:
	Role:
	Signature:
<b>PART 3: CHANGE AUTHORISATION</b>	
<b>Decision:</b> (circle one)	<b>Approve      Approve with changes*    Defer      Decline</b>
<b>Comments:</b> (must be completed if deferred (with deferral date) or declined)	
<b>*Description of Change authorised (if different from above):</b>	
<b>Details of any related Changes required to Project Management Plan:</b>	
<b>Details of any related Changes required to other parts of Deed (subject to a formal Deed variation):</b>	
<b>Signed for and on behalf of the Secretary for the Environment by:</b>	
<b>Name:</b>	
<b>Role:</b>	
<b>Signature:</b>	
<b>Date:</b>	
<b>Signed for and on behalf of the Recipient by:</b>	
<b>Name:</b>	
<b>Role:</b>	<b>Project executive</b>
<b>Signature:</b>	
<b>Date:</b>	

### Appendix 2 – Change Control Register template

<b>[Insert Project name]</b>										
<b>Change Control Register</b>										
Minor Budget Changes					Minor Delivery Changes					
No	Date of Change	Title of Change	Itemised Cost(s) affected	Updated PMP version	No	Date of Change	Title of Change	Milestone Date(s) affected	Updated PMP version	
1.					1.					
2.					2.					
3.					3.					
4.					4.					
All Other Changes										
No	Request Date	Requestor	Title of Request	Tasks and Milestones affected			Total Costs of change		Status	
1.										
2.										
3.										
4.										
5.										

## SCHEDULE 5: EXPENSE POLICY

The purpose of this expense policy is to provide the Recipient with guidance on what the Ministry considers to be reasonable travel-related expenses.

If the Recipient is eligible to claim travel-related expenses as indicated in this Deed, this policy applies unless the Deed expressly provides an exception to this policy. No travel-related expenses are payable by the Ministry if this Deed does not expressly provide for them.

### **Air Travel**

The Ministry encourages non-flexible fares as often there is little or no difference between buying two non-flexible fares and paying for a fully flexible fare, hence making the risk of cancellation worthwhile. The Ministry encourages the purchase of the cheapest fares (unless there are valid reasons for not buying these). **International air travel is not covered by the Grant unless the Deed expressly states otherwise.** Where alternatives to travel are available, such as video conferencing or teleconferencing, please use these.

### **Travel expenses**

Actual and reasonable expenses (on receipt) for meals and other incidental expenses while on out-of-town business for the purpose of the Project may be claimed.

We have indicated actual and reasonable (meals) as follows:

- Breakfast \$20
- Lunch \$20
- Dinner \$40

Alcohol purchases are a personal expense and therefore cannot be charged back to the Ministry as part of Travel expenses.

### **Accommodation**

The Ministry will contribute up to \$140 per night (GST exclusive) for accommodation in New Zealand.

### **Taxis/parking**

Taxi costs may be reimbursed if used as part of the Project. The Recipient must provide receipts for taxi fares and/or parking costs. If supporting documentation cannot be provided, the charge will not be reimbursed.

### **Phone calls**

The Recipient should ensure the cheapest option is used for making calls. Personal calls are not covered by the Grant. Project related calls are reimbursed upon receipt of supporting documentation. Calls charged to hotel bills are often extremely expensive and should be avoided where possible.

### **Mini-bar**

Mini-bar charges are a personal expense and therefore cannot be charged back to the Ministry as part of the Recipient's accommodation bill.

### **Use of private motor vehicle**

The Recipient may use a private vehicle for business relating to the Project. Mileage may be claimed at 77 cents per km, as per the 'Mileage rates for employee reimbursement and self-employed people' on the Inland Revenue website. Where travel is undertaken in a personal vehicle, the assumption is that the individual travelling is principally responsible for insurance coverage. The Ministry will not be liable for any costs incurred in the event of an accident under these circumstances.

## SCHEDULE 6: PRINTED PUBLICATIONS

### **Acknowledgments**

All publications must acknowledge that financial support has been received from **“the Contaminated Sites Remediation Fund, which is administered by the Ministry for the Environment.”**

### **Disclaimer Clause**

The following disclaimer must appear on the inside front cover of all publications supported by the Contaminated Sites Remediation Fund.

*“The Ministry for the Environment does not necessarily endorse or support the content of the publication in any way.”*

### **Copyright Clause**

All publications supported by the Contaminated Sites Remediation Fund must include the following clause relating to copyright:

*“This work is copyright. The copying, adaptation, or issuing of this work to the public on a non-profit basis is welcomed. No other use of this work is permitted without the prior consent of the copyright holder(s).”*

Or an alternate version is:

*“Reproduction, adaptation, or issuing of this publication for educational or other non-commercial purposes is authorised without prior permission of the copyright holder(s). Reproduction, adaptation, or issuing of this publication for resale or other commercial purposes is prohibited without the prior permission of the copyright holder(s).”*

### **Paper and Ink**

You should consider using environmentally sound paper and inks when producing publications. Preferably use paper with a recycled content that is either elemental chlorine free or totally chlorine free. Specify vegetable inks or mineral-free inks wherever possible. For more information on environmentally sound printing see the Ministry’s guide to sustainable printing, *FutureProof: A guide to sustainable publishing*, on our website at: [www.mfe.govt.nz/publications/sus-dev/publishing-nov04/index.html](http://www.mfe.govt.nz/publications/sus-dev/publishing-nov04/index.html)

### **Electronic Copies of Written Material**

On completion of the Project all written results must be provided in an electronic Word Format plus two printed copies. Where possible, please also publish electronic copies of written material to your website and provide us with the URL. We will link to these from our website.

### **Websites**

It is recommended that any website, or content published on a website, developed using the Grant is developed in accordance with the NZ Government Web Guidelines to ensure it is accessible to a wide audience.

Some elements of the Guidelines are not applicable to non-government agency websites, but particular attention should be paid to section 6 “Delivering content” and section 7.4 “Forms” of the New Zealand Government Web Guidelines version 2.1 (see [www.e-government.govt.nz/web-guidelines/](http://www.e-government.govt.nz/web-guidelines/)).

Other aspects of the New Zealand Government Web Guidelines should be considered and followed where applicable and practical.

### **Information systems**

It is recommended that any information system, including databases, developed using funds from this Deed observes the standards in the E-government Interoperability Framework (e-GIF) (see <http://www.egovernment.govt.nz/interoperability/index.asp>). Following the e-GIF will allow the information system to more easily work together with systems in government agencies and other organisations that are following the e-GIF.

Any programmes, databases or spreadsheets must have instructions for their use, including the versions of software needed to run databases or spreadsheets, and the platforms on which the software will run. These instructions should be in the form of a short word file.

**ANNEXURE 1: PROJECT MANAGEMENT PLAN**

## EXECUTION

**SIGNED** as a deed on: \_\_\_\_\_ 201\_

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

**Signed and delivered** as a deed by **[Insert signatory name and Role]**

for and on behalf of the **Ministry for the Environment**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

In the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Witness Occupation

\_\_\_\_\_  
Witness Address

**Signed and delivered** as a deed on behalf of the **Recipient** by:

\_\_\_\_\_  
Signature

In the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Full Name  
(For a Local Authority specify Description  
Director/Authorised Signatory)

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness Occupation

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness Address

\_\_\_\_\_  
Print Full Name  
(For a Local Authority specify Description  
Director/ Authorised Signatory)

\_\_\_\_\_  
Date

*[Under the Local Government Act 2002, a Local Authority is a "body corporate" (section 12). The Property Law Act 2002 section 9(3)-(4) sets out the requirements for a body corporate to sign a Deed: This document must be executed in accordance with the enactment forming the Regional Council, District Council or any Constitution for that entity, or otherwise by two directors.]*

**Signed and delivered** as a deed by the **Owner**  
in the presence of:

_____	_____
Witness Signature	Signature
_____	_____
Witness Name	Print Full Name (For a Company specify Description Director/Attorney/Authorised Signatory)
_____	_____
Witness Occupation	Signature
_____	_____
Witness Address	Print Full Name (For a Company specify Description Director/Attorney/Authorised Signatory)

*[This document must be executed by a company according to its Constitution. If two 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.]*

**Signed and delivered** as a deed by the **Guarantor**  
in the presence of:

_____	_____
Witness Signature	Signature
_____	_____
Witness Name	Print Full Name (For a Company specify Description Director/Attorney/Authorised Signatory)
_____	_____
Witness Occupation	Signature
_____	_____
Witness Address	Print Full Name (For a Company specify Description Director/Attorney/Authorised Signatory)

*[This document must be executed by a company according to its Constitution. If two 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.]*