



AUSTRALIAN CAPITAL TERRITORY

DEED OF GRANT

Dated

Parties

AUSTRALIAN CAPITAL TERRITORY

**[INSERT FULL NAME OF RECIPIENT
INCL. ACN IF COMPANY OR ABN]**

**TUNE UP CANBERRA PROGRAM
STAGE TWO – CAPITAL WORKS**

Prepared by

[Insert Agency]
[Insert Address 1]
[Insert Address 2]
[Insert Address 3]
Ph: [Insert]
Fax: [Insert]
Ref: ACTGS (RA): 618024

Version

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PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) (**Territory**) represented by the ACT Planning and Land Authority.

[INSERT FULL NAME, INCLUDING ACN FOR A COMPANY OR ABN FOR OTHER ORGANISATION AND CHECK IT IS A LEGAL ENTITY] of [Insert address (of registered office if for a company)] (**Recipient**).

RECITALS

The Territory has agreed to make and the Recipient has agreed to accept the Grant for the purpose of the Funded Activity on the terms and conditions of this Deed.

IT IS AGREED by the parties as follows.

1. Interpretation

1.1 Definitions

The following definitions apply in this Deed, unless the context otherwise requires.

Baseline	means a measurement of the Building's energy and/or water performance prior to the Capital Works being undertaken (NABERS or Green Star ratings, or energy and water bills demonstrating the Buildings performance over a continuous 12-month period, may be used for this measurement)
Budget	means the budget for the Capital Works approved by the Territory and set out in Annexure A to this Deed.
Building	means the Class 5 building owned by the Recipient and the subject of the Capital Works.
Capital Works	means the capital works in relation to the Building to improve its energy and/or water performance as approved by the Territory and specified in Annexure A to this Deed.
Completion Baseline	means a measurement of the Building's energy and/or water performance after completion of the Capital Works and using the same measurement method as used for the Baseline.
Contact Officer	means, in relation to each party, the representatives

whose names and contact details are specified in **Schedule 1, Item 5**, or as notified in writing from time to time by one party to the other.

Funded Activity	means the activity described in Schedule 2, Part A .
Grant	means the amount specified in Schedule 1, Item 2 and any interest accruing on that amount after it has been paid to the Recipient.
Grant Material	means all material created, written or otherwise brought into existence as part of, or for the purpose of carrying out the Funded Activity including all reports (whether in draft or final form), documents, equipment, information and data stored by any means.
Grant Period	means the period specified in Schedule 1, Item 1 .
GST	has the same meaning as it has in the GST Act.
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cwlth).
Invoice	means an invoice that: <ol style="list-style-type: none">(1) if GST is payable in respect of any taxable supply made under this Deed, is a valid tax invoice for the purposes of the GST Act;(2) clearly sets out the details of the Funded Activity undertaken or to be undertaken and the amount that is due for payment, is correctly calculated and is in respect of the Funded Activity;(3) sets out or is accompanied by any other details or reports required under this Deed; and(4) is rendered at the times specified in Schedule 1, Item 2 (if any) and addressed to the Territory's Contract Officer.
Items of Eligible Expenditure	means the items of expenditure as set out in Schedule 2, Part B .
Program	means the Tune Up Canberra program.
Program Guidelines	means the Tune Up Canberra program and application guidelines as published from time to time by the Territory.

Recipient's Contribution	means the amount of the Recipient's own funds which the Recipient is required to expend for the Funded Activity.
Special Condition	means any provision set out in Schedule 3 .
Stage Two Application	means all information provided by the Recipient to the Territory in relation to its application for Stage Two Program funding.
Territory	means: <ul style="list-style-type: none"> (1) when used in a geographical sense, the Australian Capital Territory; and (2) when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cwlth).
Tune Up Report	Means a Tune Up Report prepared as part of stage one of the Program for the Building or a similar report prepared by the Recipient before the Capital Works commence.

1.2 General

In this Deed, unless a contrary intention is expressed:

- (1) references to "Recipient" includes any employees, agents or subcontractors of the Recipient;
- (2) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;
- (3) words importing a gender include the others; words in the singular number include the plural and vice versa; and where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (4) "include" is not to be construed as a word of limitation;
- (5) headings have no effect on the interpretation of the provisions; and
- (6) an obligation imposed by this Deed on more than one person binds them jointly and severally.

2. Use of Grant and the Recipient's Contribution

2.1 Payment of Grant

The Territory must pay the Recipient the Grant following its receipt of an Invoice and otherwise in accordance with **Schedule 1, Item 2**.

2.2 Use of Grant

The Recipient must:

- (1) use the Grant only for the Funded Activity;
- (2) only spend the Grant on Items of Eligible Expenditure;
- (3) expend its own funds undertaking the Funded Activity on Items of Eligible Expenditure in an amount equal to the amount of the Grant;
- (4) expend the Grant and the Recipient's Contribution in accordance with the Budget;
- (5) undertake the Funded Activity diligently, in accordance with the timelines specified in, and otherwise in accordance with this Deed; and
- (6) complete the Funded Activity within timelines specified in this Deed.

2.3 Acknowledgements

The Recipient acknowledges that the Territory is providing the Grant to achieve the aims of the Program, which are to:

- (a) encourage owners of Class 5 office buildings with a gross floor area Exceeding 1500 square metres to improve the energy and water efficiency of those buildings;
- (b) increase knowledge about how the energy and water efficiency of commercial office buildings in the ACT can be improved; and
- (c) demonstrate that energy and water efficiency improvements are economically viable and will provide significant ongoing environmental and cost benefits.

3. Grant Period

This Deed is for the Grant Period unless extended or terminated under the provisions of this Deed.

4. Separate accounting for Grant

4.1 Separately account for Grant

The Recipient must, within its accounting system, account for the Grant separately from any other funds of the Recipient.

4.2 Bank account

If required by the Territory, the Recipient will deposit and hold in a separate bank account the Grant, and must:

- (1) promptly notify the Territory of:
 - (a) the details of that account, and
 - (b) any change to that account.
- (2) not cause or allow any funds other than the Grant to be deposited into that account.

5. GST

If the Recipient is registered or required to be registered under the GST Act for GST, the Territory will, on receipt of an Invoice, pay to the Recipient an amount equal to the GST under the GST Act lawfully payable by the Recipient in respect of supplies to the Territory that are taxable supplies under the GST Act.

6. Records

6.1 Obligation to keep records

The Recipient must:

- (1) keep all records necessary to substantiate expenditure of the Grant in compliance with applicable laws;
- (2) provide a complete and detailed record and explanation of:
 - (a) expenditure of the Grant and the Recipient's Contribution,
 - (b) other money received and spent on the Funded Activity,
 - (c) the progress of the Funded Activity, and

(d) any other records in respect of the Funded Activity,

that the Territory may reasonably require from time to time; and

(3) retain the records referred to in this clause for at least 7 years following the completion of the Funded Activity or the expiration or termination of this Deed, whichever occurs first.

6.2 Access

(1) To audit the Recipient's compliance with this Deed, the Territory may, at reasonable times and on reasonable notice, enter the Recipient's premises and inspect the records kept by the Recipient and the progress of the Funded Activity.

(2) The Recipient must:

(a) give the Territory access to those facilities and such assistance as may reasonably be necessary to enable the Territory to conduct an audit under **clause 6.2(1)**, and

(b) permit the Territory, at its own cost, to take copies of any records which it reasonably considers relevant to its audit.

6.3 Territory's Auditor-General

Any of the Territory's rights under this **clause 6** may be exercised by the Territory's Auditor-General, her delegate or any relevantly qualified person engaged to perform any functions of the Auditor-General.

7. Reporting of progress and expenditure

7.1 Progress reports

The Recipient must provide written reports to the Territory relating to the progress of the Funded Activity and expenditure of the Grant in the manner and at the times required in **Schedule 1, Item 3**.

7.2 Other notifications

The Recipient must keep the Territory reasonably informed about all matters which are likely to materially and adversely affect the timing, scope or cost of the Funded Activity or the Recipient's ability to carry on or complete the Funded Activity in accordance with this Deed.

8. Acknowledgement of Funding

8.1 Acknowledgement of Territory support

The Recipient must in relation to the Funded Activity:

- (1) acknowledge the support of the Territory in any public event, media release or media coverage; and
- (2) include an acknowledgement in the form set out in **Schedule 1, Item 6**, in all documents, brochures, books, articles, newsletters, other artistic works or literary works or advertising.

8.2 Other obligations

The Recipient must:

- (1) in relation to the material referred to in **clause 8.1(2)**, promptly provide to the Territory:
 - (a) if requested by the Territory, a draft of that material at least 10 days prior to publishing or printing, and
 - (b) a copy of that material; and
- (2) on reasonable notice, invite the Territory to participate in any public event, media release or media coverage related to the Funded Activity.

9. Intellectual Property Rights

9.1 Ownership of Grant Material

Ownership of all Grant Material, including any intellectual property rights, vests on its creation in the Recipient.

9.2 Licence to Territory

The Recipient grants to the Territory an irrevocable, non-exclusive, royalty-free licence to use the intellectual property in the Grant Material.

9.3 Meaning of “use”

For the purpose of **clause 9**, “use” includes supply, reproduce, publish, perform, communicate, broadcast, adapt and copy; for any purpose.

10. Insurance and Indemnity

10.1 Recipient’s insurance

The Recipient must effect and maintain for the Grant Period:

- (1) all insurance coverage required by it by law;

(2) public liability insurance with coverage in the amount of not less than the amount specified in **Schedule 1, Item 4(1)** in respect of each claim, including voluntary workers insurance cover if volunteers are engaged by the Recipient; and

(3) any other insurance specified in **Schedule 1, Item 4(2)**,

with an insurer having a Standard and Poor's or Best's Rating A- or better and must produce evidence of that insurance as required by the Territory.

10.2 Indemnity

The Recipient indemnifies the Territory, its employees and agents against liability in respect of all claims, costs and expenses in relation to all loss, damage, injury or death to persons or property caused by the Recipient, its employees, agents or contractors in connection with the use of the Grant or the conduct of the Funded Activity except to the extent that the Territory caused the relevant loss, damage or injury.

11. Termination of Grant

11.1 Breach

The Territory may terminate this Deed at any time by written notice to the Recipient, if the Recipient:

- (1) is or becomes bankrupt or insolvent, enters into voluntary administration or makes any arrangement with its creditors or takes advantage of any statute for the relief of insolvent debtors;
- (2) fails to:
 - (a) commence the Funded Activity in a timely manner,
 - (b) undertake the Funded Activity diligently, or
 - (c) meet any timeframes specified in this Deed; or
- (3) commits any other breach of a provision of this Deed, where that breach:
 - (a) if capable of being remedied, is not remedied within the period specified in a written notice by the Territory, or
 - (b) is not capable of being remedied.

11.2 Termination or reduction of funding for any reason

The Territory may, at any time by written notice to the Recipient, terminate this Deed or reduce the funding for the Funded Activity for any reason, and in that event the Recipient must:

- (1) in the event of termination, comply with the notice and **clause 12**; or
- (2) in the event of a reduction in funding, continue to undertake the Funded Activity in accordance with the notice.

11.3 No prejudice

Nothing in this **clause 11** prejudices any other rights or remedies of the Territory in respect of any breach of this Deed.

12. Refund of Grant

12.1 Eligibility for the Grant

The Territory has assessed the Recipient as eligible for the Grant on the basis of the Recipient's Stage Two Application and the criteria in the Program Guidelines. Where any information in the Stage Two Application relied upon by the Territory to assess the Recipient's eligibility is found to be misleading or incorrect, the Territory may, by written notice, require the Recipient to refund the Grant to the Territory immediately. Upon the giving of such notice, the amount of the Grant paid to the Recipient will be a debt due and payable to the Territory.

12.1 Repayment of unacquitted funds

At the end of the Grant Period, or earlier termination of this Deed, the Recipient must:

- (1) unless otherwise required under this Deed, within 30 days, provide the Territory with a statement of expenditure of the whole of the Grant; and
- (2) promptly repay any or all of the Grant that remains unacquitted.

12.2 Meaning of unacquitted funds

For the purposes of **clause 12.1**, the Grant remains unacquitted if it:

- (1) is not spent and is not contractually committed to be spent; or
- (2) has been spent in breach of this Deed.

13. Dispute Resolution

13.1 Negotiation and Mediation of Dispute

- (1) If a difference or dispute (**Dispute**) arises in relation to this Deed, then either party may give written notice to the other that a Dispute exists, which specifies details of the Dispute, and the parties agree that they will endeavour to resolve the Dispute by negotiations, or, if the Dispute

has not been resolved within 28 days of the issue of the notice, undertake a mediation process.

- (2) If a mediation process is undertaken in accordance with **clause 13.1(1)** the mediator will be an independent mediator agreed by the parties or, failing agreement, nominated by the chairperson of The Institute of Arbitrators and Mediators Australia, ACT Chapter. Unless otherwise agreed, the parties will equally share the costs of the engagement of the mediator.

13.2 No prejudice

Nothing in this **clause 13** will prejudice the rights of either party to institute proceedings to enforce the Deed or to seek injunctive or urgent declaratory relief in respect of any Dispute.

14. Variation

14.1 Variation to Funded Activity

The Recipient must obtain the Territory's prior written approval for any variation to the Funded Activity, including:

- (1) the Funded Activity or work programs;
- (2) the Funded Activity's objectives or outcomes;
- (3) variation of more than 10% in expenditure for a specified item of the approved Budget; and
- (4) the Grant Period.

14.2 Variation to Deed

This Deed may only be varied by the written agreement of the parties prior to the expiration of the Grant Period.

15. General

15.1 No assignment

The Recipient must not assign the whole or any part of this Deed without the prior written consent of the Territory. If the Territory gives its consent, the Territory may impose any conditions.

15.2 Conflict of interest

The Recipient warrants that at the start of the Grant Period no conflict of interest exists or is likely to arise in the performance of the Funded Activity and of its other obligations under this Deed and must, if a conflict or risk of conflict of interest arises during the Grant Period, notify the Territory immediately in writing and comply with any requirement of the Territory to

eliminate or otherwise deal with that conflict or risk.

15.3 No employment, partnership or agency relationship

Nothing in this Deed constitutes the Recipient, or its employees, agents or subcontractors as employees, partners or agents of the Territory or creates any employment, partnership or agency for any purpose and the Recipient must not represent itself, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the Territory.

15.4 Entire Agreement

This Deed comprises the entire agreement between the parties in relation to the Grant and the Funded Activity and supersedes any prior representations, negotiations, writings, memoranda and agreements.

15.5 Severability

Any provision of this Deed that is illegal, void or unenforceable will not form part of this Deed to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Deed will not be invalidated by an illegal, void or unenforceable provision.

15.6 No waiver

Failure or omission by the Territory at any time to enforce or require strict or timely compliance with any provision of this Deed will not affect or impair that provision in any way or the rights and remedies that the Territory may have in respect of that provision.

15.7 Compliance with laws and governing law

- (1) The Recipient must comply with the laws from time to time in force in the Territory in performing the Funded Activity.
- (2) This Deed is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.

15.8 Notices

Any notice, including any other communication, required to be given or sent to either party under this Deed must be in writing and given to the relevant Contact Officer. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two days after the date on which it was sent;

- (3) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
- (4) if sent by electronic mail, on the other party's acknowledgment of receipt by any means.

15.9 Forms and statements

The Territory may reasonably require any form, record or statement required under this Deed to be in a particular form.

15.10 Special Conditions

In the event of any inconsistency between any Special Condition and any other provision of this Deed then, to the extent of any inconsistency, the Special Condition will prevail.

15.11 Survival of clauses

Clauses 6, 7.1, 9.2, 10.2 and 12 will survive the expiration or earlier termination of this Deed.

SCHEDULE 1

GRANT DETAILS

Item 1. Grant Period

See clauses 1.1 and 3

From the date of this Deed until [INSERT END DATE].

Item 2. Grant

See clauses 1.1 and 2.1

(1) Grant: \$[ACTPLA TO INSERT DOLLAR AMOUNT] (GST inclusive)

(2) The Grant is payable by instalments. Invoices may only be rendered in accordance with the following.

Amount	When Invoice may be rendered
20%	Upon execution of this Deed.
60%	Sixty percent of the approved funding is paid in accordance with milestones agreed by the ACT Planning and Land Authority and the applicant.
20%	Upon: (1) completion by the Recipient of the Funded Activity, (2) compliance by the Recipient with the relevant Reporting and Acquittal requirements set out in Schedule 1 Item 3.

(3) Except if otherwise stated in this Deed, the Grant is:

- (a) payable within 30 days of receipt by the Territory of an Invoice; and
- (b) inclusive of GST and all other taxes, duties and charges.

Item 3. Reporting and Acquittal

See clause 7.1

(1) The Recipient must provide to the Territory copies of the licence and/or registration certification and certificates of currency of insurance for all trade and professional

service providers the Recipient engages to undertake the Capital Works, before any work is undertaken by that service provider.

(2) The Recipient must provide to the Territory within one month of the end of the Grant Period, copies of:

- (1) all invoices relating to the Capital Works;
- (2) a spreadsheet including details of all invoices relating to the Capital Works including details of their payment by the Recipient and the total amount of those invoices;
- (3) an itemised statement of expenditure of the Grant and the Recipient's own funds setting out payments made in respect of the Capital Works;
- (4) the Certificate of Occupancy and Use or the Building, where relevant works are undertaken;
- (5) the Certificate of Compliance for any plumbing work carried out on the Building;
- (6) the Certificate of Electrical Safety for any electrical work carried out on the Building; and
- (7) the ACT Gas Certificate of Compliance for any gas work carried out on the Building.

(3) By no later than **[INSERT DATE]** the Recipient must provide to the Territory a final report setting out:

- (1) the Completion Baseline;
- (2) the cost of the Capital Work for each square metre of the Building;
- (3) if known, any particular components of the Capital Works which have achieved the largest improvement and/or the most cost effective improvements, in the

Building's energy and/or water performance;

- (4) if known, whether the Capital Works have made the Building more comfortable for its occupants;
- (5) any unexpected positive or negative effects of the Capital Works on the Building;
- (6) whether any behaviours or change strategies have been implemented for the Building's occupants, either during or after completion of the Capital Works;
- (7) if the Recipient experienced difficulty in sourcing trades and professional service providers with the appropriate skills necessary to undertake the Capital Works; and
- (8) whether changes were made to the Building (other than the Capital Works) which may have affected the Completion Baseline.

Item 4. Other insurance requirements

See clause 10.1

- (1) Public Liability Insurance: \$20 million.
- (2) Professional Indemnity Insurance: \$10 million.

Item 5. Contact Officers

See clauses 1.1 and 15.8

For the Territory:

[Insert name of Contract Officer]
[Insert contact details – address and facsimile]

For the Recipient:

[Insert name of Contract Officer]
[Insert contact details – address and facsimile]

Item 6. Form of Acknowledgement

See clause 8.1

The applicant is to include the following acknowledgement in all documents, brochures, books, articles, newsletters, other artistic works or literary works or advertising “with assistance from the ACT Government under the Tune Up Canberra Program”.

The applicant is to give the ACT Planning and

Land Authority Contact Officer three (3) business days notice before any public event, media release or media coverage so that the Contact Officer can nominate an ACT Government representative to attend if deemed necessary.

SCHEDULE 2

THE FUNDED ACTIVITY

PART A THE FUNDED ACTIVITY

Item 1. The Capital Works

- (1) The Recipient must undertake the Capital Works as approved by the Territory and specified in **Annexure A**.
- (2) The Capital Works must be completed by **[INSERT FINAL DATE FOR COMPLETION OF CAPITAL WORKS]**

PART B ITEMS OF ELIGIBLE EXPENDITURE

Item 1. Eligible Expenditure

- (1) The Grant, and the Recipient's Contribution, must be paid to independent third party contractors for the purpose of those contractors performing the Capital Works and to independent third party suppliers for the purpose of obtaining plant and equipment which form part of the Capital Works. This includes the cost of freight of plant and equipment.
- (2) The Grant must not be used for activities or projects which:
 - (a) are not included in Annexure A to this Deed;
 - (b) commenced before the date of this Deed;
 - (c) do not occur in the Territory; or
 - (d) relate to obtaining the Baseline.
- (3) The Grant must not be used to pay for:
 - (a) work undertaken by the Recipient or its employees;
 - (b) salary or administration costs of the Recipient or its employees;
 - (c) any travel, or accommodation costs;
 - (d) the cost of preparing the Program application, or the Reporting and Acquittal requirements under this Deed;
 - (e) contracts, hire purchase, lease or rental agreements applying beyond the Grant Period;

- (f) the core business of the Recipient including any general business overheads;
- (g) upgrading office equipment of a minor transportable nature which is not a fixture or a fitting of the Building; and
- (h) rent or lease revenue foregone as a result of the Capital Works.

SCHEDULE 3

SPECIAL CONDITIONS

See clauses 1.1 and 15.10

Item 1 Trade and Professional Service Provider Insurances

- (1) The Recipient must ensure that all trade and professional service providers engaged to undertake the Capital Works effect and maintain during the undertaking of the Capital Works:
- (a) all insurance coverage required to be effected by the service provider by law;
 - (b) public liability insurance with coverage in the amount of not less than \$20 million in respect of each claim; and
 - (c) in respect of professional service providers, only, professional indemnity insurance with coverage in the amount of \$10 million in respect of each claim and in the annual aggregate,
- with an insurer having a Standard and Poor's or Best's Rating A- or better and must provide evidence of that insurance as required by the Territory.

Annexure A

Capital Works

[ACTPLA TO INSERT SPECIFIED CAPITAL WORKS APPROVED BY THE TERRITORY AND TIMELINES FOR COMPLETION]

Budget

[ACTPLA TO INSERT THE APPROVED BUDGET FOR THE ITEMISED CAPITAL WORKS INDICATING ITEMS OF GRANT EXPENDITURE, AND EXPENDITURE OF THE RECIPIENT'S OWN CONTRIBUTION. ONE COLUMN SHOULD BE HEADED "RECIPIENT'S CONTRIBUTION" SO AS TO ENSURE RECIPIENTS ARE REQUIRED TO SPEND THEIR OWN FUNDS IN PROPORTION TO EXPENDITURE OF THE GRANT]

SIGNED AS A DEED ON 20

SIGNED for and on behalf of the)
AUSTRALIAN CAPITAL TERRITORY)
in the presence of:) Signature of Territory delegate

.....
Signature of witness Print name

.....
Print name

SIGNED for and on behalf of)
[NAME & ACN OF RECIPIENT] in the)
presence of:) Signature of Recipient or authorised
officer*
*delete whichever is not applicable (see note below)

.....
Signature of witness
.....
Print name and position

.....
Print name
.....
Signature of second authorised officer*
*see note below

.....
Print name and position



- Note:**
- Date: Must be dated on the date the last party signs the Deed or, if signed counterparts of the Deed are exchanged, the date of exchange. Also date the cover page.
 - Individual: Must be signed by the individual Recipient and witnessed.
 - Incorporated Association: Must be signed in accordance with the Recipient's constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.
 - Company: Must be signed in accordance with section 127 of the *Corporations Act 2001* (Cwlth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Recipient's constitution.