

Drive electric NSW EV fleets incentive

Funding Deed - Competitive bid funding

Template

Department	Department of Climate Change, Energy, the Environment and Water TRE Energy Division
Agency/Division	
Grantee	«Legal_Entity»

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Details

Department	Name	The Crown in right of the State of New South Wales, acting through the Department of Climate Change, Energy, the Environment and Water (ABN 55 437 667 728).
	Agency/ Division	TRE Energy Division
	Address	Level 10, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
Department Authorised Officer <i>(refer to clause 17- Notices)</i>	Name	Anna Martinis
	Position	Manager
	Address	Level 10, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
	Telephone	(02) 9995 6313
	E-mail	anna.martinis@environment.nsw.gov.au
Grantee ('You')	Name	«Legal_Entity»
	Address	<input type="text"/>
	ABN	«ABN»
Your Authorised Officer <i>(refer to clause 17 - Notices)</i>	Name	<input type="text"/>
	Position	<input type="text"/>

EV fleets incentive

Funding Deed - Competitive bid funding



	Address	<input type="text"/>
	Telephone	<input type="text"/>
	E-mail	<input type="text"/>
Project	Procurement of BEVss, Smart Chargers and CaaS arrangements as described in Schedule A.	
Funding	A maximum total amount of \$«Total_incentive_incl_GST» (inclusive of GST) [\$«Total_incentiveex_GST» ex GST]	
Commencement Date <i>(refer to clause 2- Term)</i>	The date this Deed is executed.	

Additional Insurance Policies

Types of Insurances	Minimum Sum Insured
Motor Vehicle	<p>in respect of all motor vehicles in respect of which a payment is made by the Department under this Deed:</p> <ul style="list-style-type: none">(a) compulsory third-party insurance as required by law; and(b) Comprehensive Motor Vehicle Insurance.

EV fleets incentive

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Terms

Definitions and Term

Definitions and Interpretation

1. Interpretation

1.1 Unless the context requires otherwise, in this Deed:

- (a) the terms set out in the left hand column of the Details have the meaning ascribed to them in the right hand column of the Details;
- (b) where any time limit pursuant to this Deed falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;
- (c) a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time;
- (d) the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
- (e) references to persons include bodies corporate, government agencies and vice versa;
- (f) references to the parties include references to respective directors, officers, employees and agents of the parties;
- (g) nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or any part of it; and
- (h) where an expression is defined, any other grammatical form of that expression has a corresponding meaning.

1.2 Definitions

Activity means the activity(s) described in **Schedule A – Project Plan**, which aim to fulfil one or more of the Objectives of the Project.

Activity Due Date means the period specified in **Schedule A – Project Plan** by which time the Activity must be completed.

Aggregator means an organisation that provides leasing arrangements to their Customers for EVs and which bids on behalf of its Customers to secure funding from the Incentive.

ARENA Funding means funding received from the Australian Renewable Energy Agency.

BEV means a battery electric vehicle.

Bid refers to the request for funding submitted by you via the EV fleets incentive bidding platform, including information on the total amount of Incentive requested, the EVs to be incentivised, the total number of Smart Chargers to be incentivised, the estimated emissions abatement and the \$ Incentive requested per tonne of CO₂e abated (\$/tCO₂e).

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

Charge-as-a-Service (CaaS) means the subscription-based charging model described in the Incentive Guidelines, where you have entered and continue to receive the benefit of an agreement with an unrelated entity in which:

- (a) charging services, with a market value exceeding \$400 for each matched Incentivised BEV, are provided;
- (b) the fees for charging services and any other costs associated with the charging services for each matched Incentivised BEV exceeds \$400;
- (c) any chargers used to provide the charging services are on the Electric Vehicle Council hardware approved list, unless you are procuring a DC charger;
- (d) the charger is located where the matched BEV is usually garaged overnight; and
- (e) the CaaS arrangement does not include a fuel or charge card to access a public charging network.

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

Comprehensive Motor Vehicle Insurance includes comprehensive motor vehicle insurance and other insurance approaches which equally ensure any loss or damage can be appropriately remedied throughout a vehicle's life cycle of investment including self-insurance by a sufficiently solvent Grantee.

Confidential Information of a party means all trade secrets, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) which:

- (a) is by its nature confidential;
- (b) has been designated as confidential by a party;
- (c) is capable of protection at common law or equity as confidential information; or
- (d) is derived or produced partly from the information in paragraphs (a), (b) or (c) above

but does not include information that:

- (e) is in the public domain; or
- (f) is independently known or developed by the party receiving the information other than as a result of a breach of this Deed or any other obligation of confidentiality owed by or to any other person.

Correctly Rendered Invoice means an invoice rendered in accordance with the [Department's Fact Sheet](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0003/88158/fact-sheet-supplier-invoice-submission.pdf) https://www.industry.nsw.gov.au/_data/assets/pdf_file/0003/88158/fact-sheet-supplier-invoice-submission.pdf.

Customer(s) means the fleet managers to whom an Aggregator will lease EVs and provide their services.

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

Electric Vehicle Council means the organisation whose website is accessed through: <https://electricvehiclecouncil.com.au/>.

Energy Saver means the website accessed through: <http://energy.nsw.gov.au/electric-vehicle-fleets>.

EVs means battery electric vehicles.

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

Incentive means the EV fleets incentive which is a payment to support the procurement of EVs and BEV Smart Chargers, provided in accordance with the Incentive Guidelines.

Incentive Guidelines means the guidelines for the Incentive attached to this Deed as **Annexure**

Incentivised EVs means EVs for which Funding has been provided under this Deed.

Incentivised BEVs means BEVs for which Funding has been provided under this Deed.

Incentivised Smart Chargers means Smart Chargers for which Funding has been provided under this Deed.

Individual Fleet means an organisation with at least 21 vehicles registered and used for business purposes in New South Wales.

Intellectual Property or IP includes:

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

but does not include Moral Rights.

Moral Rights has the same meaning as in the *Copyright Act 1968 (Cth)*.

Notice means any approvals, consents, instructions, orders, directions, statements, requests and certificates, or other communication one party gives to another party in writing under this Deed.

Objectives means the objectives of the Activities described in **Schedule A – Project Plan**.

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

Report means a report provided by you, or that you arrange to be provided by your Customers (if you are an Aggregator), to the Department, that provides evidence of the Activities having been completed and other details as specified in **Schedule B – Reporting Requirements**.

Project Material means material created as part of or in performance of the Project including any documents or data and including any documents and data included with the application for the Funding.

Subscription Offer means details of the subscription cost per period of the CaaS.

Smart Chargers mean BEV chargers, installed where the BEV is usually garaged, and that share data connections with the BEV being charged and a charging operator. A Smart Charger may include more than one charging point, with each charging point eligible as an *Incentivised Smart Charger* only if it is matched to an Incentivised BEV.

Written-Off means a damaged EV which has been assessed as a 'total loss', being when its damaged value plus its cost of repairs is greater than its undamaged market value.

2. Term

2.1 This Deed will commence on the Commencement Date.

2.2 Unless terminated earlier, this Deed will end after you have completed the Project to the Department's satisfaction and the Department has paid all Funding due.

What you must do

3. Your Obligations

3.1 You must:

- (a) ensure the Funding is used only for the approved Project;
 - (b) ensure each Activity is completed no later than the Activity Due Date in accordance with this Deed;
 - (c) comply with the reporting requirements set out in **Schedule B – Reporting Requirements**;
 - (d) comply with all Commonwealth, State and Local government laws that are relevant to the Project, this Deed, or your registration as an entity;
 - (e) not provide misleading, false or inaccurate information in or related to your Bid, the Project, the Incentive or this Deed and notify the Department immediately on
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becoming aware that any information provided to the Department in your Bid or otherwise related to this Deed is misleading, false or inaccurate;

- (f) comply with all policies, guidelines and reasonable directions the Department provides to you;
 - (g) ensure the Incentivised EVs are purchased by you from third parties unrelated to you, in an arm's length market transaction; and
 - (h) ensure the Incentivised EVs are purchased, received, registered and used primarily in New South Wales as a fleet vehicle designated to predominately support your business operations as more specifically described in Schedule A and in accordance with this Deed, including in accordance with your fleet policies, usual industry practices and standards.
 - (i) ensure the Incentivised Smart Chargers (if any) are purchased, installed, and used to charge the Incentivised EVs at their garaging location(s) and in accordance with this Deed, including in accordance with usual industry practices and standards;
 - (j) ensure all Smart Chargers procured and any chargers used in CaaS arrangements under this Incentive are either:
 - i. on the Electric Vehicle Council hardwareapproved list, unless procuring a DC charger; or
 - ii. have been approved in writing by the Department;
 - (k) ensure no ARENA Funding is used in payment, in part or in full, of any EVs, Smart Chargers or CaaS arrangements procured under this Incentive, and notify the Department within 5 Business Days of becoming aware that there has been a breach of this obligation; and
 - (l) ensure that a new BEV has only be Incentivised once, either via this Competitive Bid Funding option, via or the Kick-Start Funding option (a separate EV fleets incentive). A new BEV cannot be included across multiple DCCEEW funding options. You must notify the Department within 5 Business Days of becoming aware that there has been a breach of this obligation;
 - (m) ensure that, if you are an Aggregator and choose for your Customer(s) to directly purchase the Incentivised Smart Chargers (if any) from third parties and not from
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yourself, you provide:

- i. receipts evidencing that your Customers have purchased the Incentivised Smart Chargers (if any) from a third party;
- ii. evidence showing that you are required to pay to your Customer the Funding as to the Incentivised Smart Chargers (set out in Schedule A) when your Customers purchase an Incentivised Smart Charger; and
- iii. within 10 days of a request by the Department, evidence of such payment having been made to your Customer.

About the Funding

4. Paying the Funding

4.1 The Department will make payment in accordance with Schedule A – Project Plan. Payment is made on condition that:

- (a) the Activities in respect of which payments are claimed have been performed to the satisfaction of the Department by the respective Activity Due Date; and
- (b) the Department receives a Correctly Rendered Invoice from you that clearly identifies the payment you are claiming; and
- (c) you are not in breach of any term of the Incentive Guidelines of this Deed.

5. Withholding, Suspension and Repayment

5.1 The Department's obligation to make a payment will reduce where you have:

- (a) performed only part of the Activities by the Activity Due Date in respect of which payments are claimable in accordance with Schedule A; or
 - (b) failed to provide sufficient evidence of performance, such that the Department is not satisfied (acting reasonably) that all Activities have been performed in full by the Activity Due Date.
 - (c) provided any information or made any representations to the Department in your Bid, or as part of an audit carried out by the Department, that the Department considers may be inaccurate, misleading, deceptive, deceitful, or fraudulent and where further information is needed to resolve discrepancies and apparent inconsistencies.
 - (d) been identified as not having complied with this Deed whether as a result
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of an audit or otherwise, such as but not limited to:

- i. the Incentivised EVs not being purchased, received, registered and/or used primarily in New South Wales as a fleet vehicle designated to predominately support your business operations;
- ii. the Incentivised Smart Chargers (if any) not being purchased, installed and/or used to charge the Incentivised EVs at their garaging location(s);
- iii. not providing evidence to the Department as required by clause 3.1
- iv. the Funding for Incentivised Smart Chargers (set out in Schedule A) not being paid by Aggregators to their Customers where the Aggregator has chosen for the Customer to purchase the Incentivised Smart Chargers (if any) from a third party; or
- v. inappropriate use of the Incentivised EVs and/or Smart Chargers.

5.2 Without prejudice to any other right the Department may have, if you are not complying with this Deed or the Incentive Guidelines, the Department may withhold or suspend payment until you comply with your obligations to the Department's satisfaction.

5.3 If the Department withholds or suspends any payment in accordance with **clause 5.2**, you must continue to perform your obligations under this Deed.

5.4 If you provided misleading, false or inaccurate information resulting in you receiving the Funding or part of the Funding to which you were not entitled under the terms of this Deed, you must repay to the Department the amount of the Funding to which you were not entitled.

5.5 You must repay within 20 Business Days of a demand being sent:

- (a) any overpayment, including any payment which the Department subsequently determines (acting reasonably) you were not entitled to receive in accordance with the terms of this Deed.

5.6 The Department may set off the amount of any overpayment or Claim for repayment against:

- (a) any future payment due under this Deed;
- (b) any future payment under the Incentive;
- (c) any amount owed to you or to which you are entitled to receive in future

for any other reason or purpose from the Department or other NSW Government agency.

- 5.7 Any repayment the Department claims from you under this **clause 5** will be a debt due and owing by you to the Department.
- 5.8 Failure to repay in accordance with this Deed may result in the Department excluding you from future funding rounds and future grants.

6. GST

- 6.1 All consideration for any supply under this Deed is inclusive of any GST imposed in relation to the supply, subject to **clause 6.2**.
- 6.2 If:
 - (a) despite any other provision of this Deed, GST is imposed on a supply; and
 - (b) you will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply, the amount of the Funding is not to include any amount for GST for which you are entitled to an input tax credit.
- 6.3 If you are not registered under the GST Law you will not be entitled to receive any additional amount for GST as provided under this **clause 6**.
- 6.4 If for any reason the Department pays you an amount under this **clause 6** which is more than the GST imposed on the supply, you must repay the excess to the Department on demand or the Department may set off the excess as specified in **clause 5.6**.

Material and Information

7. Reporting Requirements

- 7.1 You agree to provide the Department with written Reports at the times and containing the information specified in **Schedule B – Reporting Requirements**.
- 7.2 You must also provide any other information the Department reasonably requires from time to time concerning the Project.
- 7.3 If any Report contains information confidential to you, you should mark the relevant parts of the Report accordingly.

8. Intellectual Property

8.1 Intellectual Property in all Project Material vests in you, unless otherwise stated in the Special Conditions.

8.2 You grant the Department a perpetual, irrevocable, transferable, sub-licensable and royalty free licence to use the IP in the Project Material and Reports.

9. Confidential Information

9.1 Each party must maintain the confidentiality of all commercially sensitive information it receives from the other party, including the amount of the Funding, except in accordance with **clause 11** (Public Announcements and Acknowledgement) and **clause 12** (Disclosure of Information), as required by law or as otherwise agreed in writing.

10. Privacy

10.1 You will:

- (a) ensure that Personal Information that is provided by the Department or collected by you under or in connection with this Deed is used only for the purposes of this Deed and is protected against loss, unauthorised access, use, modification and disclosure, or against other misuse;
 - (b) not disclose any Personal Information without the written consent of:
 - i. the individual to whom the Personal Information relates; or
 - ii. the Department,unless otherwise required or authorised by law;
 - (c) comply with the Information Protection Principles applying to NSW public sector agencies under the *Privacy and Personal Information Protection Act 1998 (NSW)* when doing any act or engaging in any practice in relation to Personal Information as if you were an agency directly subject to that Act; and
 - (d) include equivalent requirements regarding Personal Information (including this **clause 10**) in any subcontract entered into for the provision of any of the Activities under this Deed.
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11. Public Announcements and Acknowledgement

11.1 You must:

- (a) promote and share via media and communications the Project and benefits of procured BEVs and Smart Chargers which includes estimated carbon emissions abated;
- (b) provide advance Notice to the Department of any public statements made by you related to the Project;
- (c) immediately correct any incorrect statements made by you referring to the Department and/or the Project; and
- (d) remove any public webpages, posts, statements or disclosures as to the Project as reasonably requested by the Department.

11.2 The Department may publish the title and brief description, including outcomes, of the Project and the amount of the Funding including but not limited to your name and the name of your business, the number and models of BEVs and Smart Chargers acquired.

12. Disclosure of Information

12.1 You acknowledge that, under the *Government Information (Public Access) Act 2009*, the Department may be required to publicly disclose information about this Deed at <https://tenders.nsw.gov.au>. None of the disclosure obligations require the disclosure of:

- (a) the commercial-in-confidence provisions of a contract;
- (b) any matter that could reasonably be expected to affect public safety or security;
or
- (c) information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009*.

12.2 In the event of a request made under the *Government Information (Public Access) Act 2009*, you may nominate any items you consider are confidential and why, to assist the Department in determining what items to disclose.

Dealing with Risk

13. Insurance

13.1 You must maintain, at your own cost:

- (a) a broadform public liability policy of insurance to the value of at least \$5 million in respect of each claim and not limited in the aggregate;
- (b) workers' compensation insurance as required by all relevant laws of Australia relating to workers compensation;
- (c) the Additional Insurance Policies listed in the Details for the minimum sum provided.

13.2 You must not do, permit or suffer any act, matter or thing or omission whereby any of the policies required under this clause lapse or may be vitiated, rendered void or voidable.

13.3 On request by the Department, you must provide a copy of valid and current certificates of currency for each or any of the policies required under **clause 13.1** and **13.5**.

13.4 Where you elect to self-insure under the Comprehensive Motor Vehicle Insurance requirement, you agree to ensure EVs which are damaged are promptly and adequately repaired. This requirement does not apply to EVs which have been Written-Off.

13.5 Without limitation to **clause 13.1**, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.

14. Indemnities

14.1 You must indemnify and keep indemnified the Department, the Crown in right of the State of New South Wales and their officers, employees and agents from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:

- (a) your breach of this Deed;
 - (b) any unlawful or negligent act or omission by you, your employees or your subcontractors in connection with this Deed;
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- (c) any illness, injury or death of any person you, your employees or your subcontractors cause or contribute to, in connection with this Deed;
 - (d) any loss or damage to real or personal property you, your employees or your subcontractors cause or contribute to, in connection with this Deed; or
 - (e) any act or omission by you, your employees or your subcontractors in connection with this Deed that is in infringement of any Intellectual Property, or privacy rights of the Department or any third party.
- 14.2 Your liability to indemnify the Department under this clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Department, its officers, employees or agents contributed to the relevant loss or liability.
- 14.3 Your liability to indemnify the Department under this clause does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Deed.

Terminating the Deed

15. Termination

- 15.1 Where a party has breached this Deed:
- (a) the other party may give a Notice to that party requiring it to rectify that breach within 10 Business Days of receiving that Notice; and
 - (b) if the party which received the Notice fails to rectify that breach in time, the other party may terminate this Deed immediately by giving a further Notice.
- 15.2 The Department may terminate this Deed by Notice, with effect on the date stated in the Notice, if:
- (a) you breach any of the following provisions: clause 3 (Your Obligations), clause 7 (Reporting Requirements), or clause 18.8 (Assignment);
 - (b) the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity; or
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- (c) you become insolvent, are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966*, resolve to go into administration or liquidation, or if a summons for your winding up is presented to a court or you enter into any scheme of arrangement with your creditors.

15.3 This **clause 15** does not exclude or reduce the rights of a party to terminate this Deed arising by operation of the common law or statute or the other terms of this Deed.

15.4 On termination or expiry of this Deed:

- (a) accrued rights and obligations are not affected; and
- (b) the Department will make any payments due and payable (after taking into account any payments already made prior to that date and the Activities completed in accordance with this Deed).

Other Legal Matters

16. Dispute Resolution

16.1 If a dispute arises in relation to this Deed (“a Dispute”), a party must comply with this **clause 16** before starting court proceedings except proceedings for urgent interlocutory relief.

16.2 A party claiming that a Dispute has arisen must notify the other party in writing giving details of the Dispute (a “Dispute Notice”) in accordance with the requirements of **clause 17** (Notices).

16.3 Following receipt of a Dispute Notice, each party must immediately refer the Dispute to a senior representative, who:

- (a) does not have prior direct involvement in the Dispute; and
- (b) has authority to negotiate and settle the Dispute.

16.4 If the Dispute is not resolved within 10 Business Days, from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice under **clause 16.2** must immediately refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.

16.5 If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.

16.6 Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.

17. Notices

17.1 Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered, posted or emailed to the Authorised Officer specified in the Details or as otherwise notified in writing.

17.2 The receiving party will be deemed to have received the Notice as follows:

- (a) if hand delivered, on the day on which it is delivered or left at the relevant address;
 - (b) if sent by post within Australia:
 - i. if posted using Express Post, the priority letter service option of regular post, or the priority service option for Registered Mail, on the fourth Business Day after the day on which it is posted;
 - ii. if posted using the regular post option, on the tenth Business Day after the day on which it is posted;
 - (c) if sent by email before 5.00pm on a Business Day, the first of the following occurring:
 - i. when the sender receives an automated message confirming delivery; or
 - ii. four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not be delivered.
 - (d) if sent by email after 5.00pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
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17.3 Any such mode of service will be in all respects valid notwithstanding that the party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.

18. General

18.1 **Survival:** The following clauses survive termination or expiry of this Deed: **clause 7** (Reporting Requirements), **clause 8** (Intellectual Property), **clause 9** (Confidential Information), **clause 10** (Privacy), **clause 11** (Public Announcements and Acknowledgements), **clause 12** (Disclosure of Information), **clause 13** (Insurance), **clause 14** (Indemnities), **clause 15** (Termination), **clause 18.2** (Keeping of records), this **clause 18.1** and any other clause which by its nature is intended to survive this Deed.

18.2 **Keeping of records, audit and rights of access to such records:**

You:

- (a) must keep complete and accurate records and books of account with respect to:
 - i. your performance of the Project (the “Project Records”) and must retain such Project Records for a minimum of 7 years after expiry or termination of this Deed;
 - ii. any sale of the Incentivised EVs and Incentivised Smart Chargers (“Sale Records”) and must retain such Sale Records for a minimum of 7 years after the sale; and
 - iii. the usual garage of the Incentivised EVs and Incentivised Smart Chargers for a period of 5 years or until sold, if earlier, (“Location Records”) and must retain such Location Records from the date of acquisition for a minimum of 7 years.
- (b) authorise the Department and any State or Commonwealth Government department or agency (the “Auditors”) that has provided moneys to the Department for the purposes of the Project, to undertake audits, to examine and inspect, at reasonable times and on reasonable notice:

- i. any Project Records, Sale Records and Location Records held by you, and allow any such records to be copied;
- ii. the usual garage of the Incentivised EVs and Incentivised Smart Chargers; and
- iii. the Incentivised EVs and Incentivised Smart Chargers.

(c) must provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.

18.3 Conflict of Interest: You must not carry on or be involved in any capacity in an activity or business, which may conflict with, or adversely affect, your ability to carry out your obligations under this Deed, and you will immediately notify the Department in writing if such a conflict or risk of such a conflict arises.

18.4 Entire Deed: This Deed states all the express terms agreed by the parties as to the matters referred to in this Deed. It supersedes all prior contracts, obligations, representations, conduct and understandings between the parties relating to the subject matter of this Deed.

18.5 Inconsistency: If there is any inconsistency between provisions of this Deed then the order of precedence will be:

- (a) the **Details**; then
- (b) any Special Conditions; then
- (c) these **Terms**; then
- (d) any Schedules.

18.6 Negation of employment, partnership or agency

- (a) This Deed does not create a relationship of agency, partnership, and/or employment between the parties.
- (b) You must not represent yourself as being an employee or agent of the Department or as otherwise able to bind or represent the Department.

18.7 Waiver

- (a) If a party fails to exercise any of its rights under this Deed, or delays exercising those rights, that failure or delay will not operate as a waiver of
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those rights or any future rights or in any respect estop a party from relying on the terms of this Deed to their full force and effect.

- (b) Any waiver by a party of a breach of this Deed by the other party must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

- 18.8 **Assignment:** You must not assign or novate your obligations or interests under this Deed, without the prior written consent of the Department.
- 18.9 **Counterparts:** This Deed may be signed in any number of counterparts which taken together will constitute one instrument.
- 18.10 **Electronic Execution:** Subject to applicable laws, the parties may execute this Deed, and any document entered under it, electronically (including through an electronic platform). Notwithstanding the way a document under this Deed is submitted or accepted, the terms of this Deed will apply and any click-wrap, “pop-up” or other like terms and conditions of the Grantee appearing in the course of such submittal or acceptance will have no force or effect.
- 18.11 **Governing Law:** The laws of New South Wales govern this Deed and the parties submit to the non-exclusive jurisdiction of the courts in that State.
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Executed as a deed

Department

Signed, sealed and delivered for and on behalf of the Crown in right of the State of New South Wales acting through the **Department** by its authorised signatory but not so as to incur personal liability:

Signature of Authorised Signatory

Signature of Witness

Name of Authorised Signatory

Name of Witness

Position of Authorised Signatory

Address of Witness

Date

EV fleets incentive

Funding Deed - Competitive bid funding



[Use this if signing on behalf of a company with more than one director or a director and secretary]

You (Company/Organisation)

Signed, Sealed and delivered for on and on behalf of «**Legal_Entity**» in accordance with section 127 of the *Corporations Act 2001* by:

Signature of Director(1)

Signature of Director(2)/Company
Secretary

Name of Director (1)

Name of Director(2)/Company Secretary

Date

Date

EV fleets incentive

Funding Deed - Competitive bid funding



[Use this if signing as an authorised representative]

You (Authorised Signatory)

By entering into this Deed the signatory warrants that the signatory is duly authorised to execute this Deed on behalf of [Click here to enter University/Council name](#).

Signed, sealed and delivered for and on behalf of [Click here to enter University/Council name](#). by its authorised signatory:

Signature of Authorised Signatory

Signature of Witness

Name of Authorised Signatory

Name of Witness

Position of Authorised Signatory

Address of Witness

Date

Schedule A – Project Plan – Individual Fleet stream

BEV Model	Number of vehicles	Average incentive per vehicle (excl. GST)	Number of smart charging ports	Incentive per smart charging port	Total incentive (excl. GST)
Total					Excl. and incl. GST (if applicable)
Total CO₂e emissions abatement					
Total vehicle incentive per tonne of CO₂e emissions abated					

Changes to the Incentivised EV mix outlined above will be considered by the Department and are acceptable as long as:

- Each vehicle model has a positive total cost of ownership (TCO) gap.
- Each TCO gap is larger than the incentive requested for that model. If the TCO gap is smaller than the incentive requested, the Department will pay 95% of the identified new smaller gap. If the gap is less than \$3,000, the full amount will be paid by the Department.

- The total vehicle incentive per tonne of emissions abated (\$/t CO_{2e}) in the final vehicle mix is equal to or less than that of your Bid. The total and average vehicle incentive will be adjusted proportionally if the \$/t CO_{2e} increases (for example, a 10% reduction in emissions abatement will result in a 10% reduction in the total vehicle incentive, assuming the same number of vehicles).

Changes to the Incentivised EVs mix must be communicated to the Department in writing and the rules above will be applied to final payments.

Extension to the delivery of Activities

Extensions to the delivery of Activities may be granted at the Department's discretion if required for reasons outside of the control of the Grantee (e.g., delays in the delivery of vehicles by an OEM or dealer). Requests for extensions must be made in writing.

Activities are due relative to the following dates:

Bidding round opening: 24 July 2024

Notification of Bid results: XX/XX/20XX

180 business day evidence due: XX/XX/20XX

Item	Description of Activities – Individual Fleet Stream	Activity Due Date
01	If buying or leasing the BEVs, you must provide the date on which each of the BEVs in your Bid was ordered. You may be subject to an audit conducted by the Department in which copies of relevant documents (such as purchase orders, invoices and/or leasing agreements) will be requested to verify the dates provided.	Dates for the orders must be provided as soon as available. This activity must be completed before you complete any other of the activities listed below.
02	For all the EVs and Smart Chargers included in your Bid, you must provide: <ul style="list-style-type: none"> proof of EVs registration in NSW, which must include: <ul style="list-style-type: none"> Certificate of Registration, showing registration number, registration history, registered owner, vehicle use, Vehicle Identification Number – VIN, and the duty paid amount; 	Within 180 Business Days from notification of Bid results (as per the Incentive Guidelines)

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Item	Description of Activities – Individual Fleet Stream	Activity Due Date
	<ul style="list-style-type: none"> ○ Completed Registration Template. • proof of purchase of the Smart Chargers, in the form of a valid tax invoice(s) that must: <ul style="list-style-type: none"> ○ be issued against your organisation’s name and ABN; ○ include all the Smart Chargers included in your Bid; and ○ be dated on or after the date of the bidding round opening <p>You must submit the proof of EV registration and the proof of purchase of the Smart Chargers within 180 Business Days from the notification of Bid results. Failure to do so may result in forfeiting of incentive funding.</p> <p>You must submit the evidence above in accordance with the following batch requirements:</p> <ol style="list-style-type: none"> a. all evidence in one batch if this agreement is for less than 30 EVs; or b. evidence for a minimum of 30 EVs (or the remainder of the agreement) if this agreement is for greater than 30 EVs. 	
03	<p>You must participate in any due diligence activity/audit initiated by the Department to verify:</p> <ul style="list-style-type: none"> • the legitimacy/integrity of the information provided in your Bid. • the purchase, receipt and registration of the Incentivised EVs. • the acceptable use of Incentivised EVs, i.e. that the EVs must: <ul style="list-style-type: none"> ○ be designated and used to support your business operations and ○ be used in NSW (with only occasionally interstate trips allowed). • purchase, installation of the funded Smart Chargers and their use to charge the Incentivised EVs at their garaging location(s). <p>The participation in audit/due diligence activities will include:</p>	<p>Audits may happen at any time, from the Commencement Date of this Deed till the conclusion of the reporting activities. The Department will provide reasonable notice.</p>

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Item	Description of Activities – Individual Fleet Stream	Activity Due Date
	<ul style="list-style-type: none"> the provision of any information requested by the Department which is relevant to verification purposes. access to premises where the Incentivised EVs are garaged and where the Smart Chargers have been installed (if applicable). Access to on-site renewable energy systems that are used to recharge the Incentivised EVs (if applicable). 	
04	<p>Participate in the reporting requirements set out in Schedule B for a period of 2 years from the date all Incentivised EVs have been registered.</p> <p>You acknowledge that the objectives of such reporting is to:</p> <ul style="list-style-type: none"> ensure all Incentivised EVs and Smart Chargers are being used according to the terms of this Deed and the Incentive Guidelines; allow the Department to verify the emissions abatement from the Incentivised EVs' usage; and analyse the Incentive's impact. <p>You undertake to provide such additional information and reporting as is required by the Department to enable the above objectives to be achieved.</p> <p>If you do not provide a complete annual Report, the Department may exclude you from future funding rounds and/or future grants funding.</p>	Refer to Schedule B

Schedule A – Project Plan – Aggregator stream

Final vehicle mix in TCO report	
Number of vehicles	
Average incentive per vehicle (\$)	
Total vehicle incentive (\$)	
Number of smart charging ports	
Total charger incentive (\$)	
Total incentive	
Total CO_{2e} abatement	
Total vehicle incentive per tonne of CO_{2e} emissions abated	
<p>The final mix of incentivised vehicles – as included in the TCO gap report – will be reviewed by the Department and accepted as long as:</p> <ul style="list-style-type: none"> • Each vehicle model has a positive total cost of ownership (TCO) gap. • Each TCO gap is larger than the incentive requested for that model. If the TCO gap is smaller than the incentive requested, the Department will pay 95% of the identified new smaller gap. If the gap is less than \$3,000, the full amount will be paid by the Department. • The total vehicle incentive per tonne of emissions abated (\$/t CO_{2e}) in the final vehicle mix is equal to or less than that of your Bid. The total and average vehicle incentive will be adjusted proportionally if the \$/t CO_{2e} increases (for example, a 10% reduction in emissions abatement will result in a 10% reduction in the total vehicle incentive, assuming the same number of vehicles). <p>Changes to the Incentivised EVs mix must be communicated to the Department in writing and the rules above will be applied to final payments.</p>	

Activities

Extensions to the delivery of Activities may be granted at the Department’s discretion if required for reasons outside of the control of the Grantee (e.g., delays in the delivery of vehicles by an OEM or dealer). Requests for extensions must be made in writing.

Activities are due relative to the following dates:

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Bidding round opening: 24 July 2024

Notification of Bid results: XX/XX/XXXX

120 business day evidence due: XX/XX/XXXX

180 business day evidence due: XX/XX/XXXX

Item	Description of Activities – Aggregator Stream	Activity Due Date
01	You must provide the date on which each of the BEVs in your Bid was ordered. You may be subject to an audit conducted by the Department in which copies of relevant documents (such as purchase orders, invoices and/or leasing agreements) will be requested to verify the dates provided.	Dates for the orders must be provided as soon as available. This activity must be completed before you complete any other of the activities listed below.

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Item	Description of Activities – Aggregator Stream	Activity Due Date
02	<p>Confirmation that all customers have been secured (e.g., signed leasing or subscription agreements) or potential customers have been identified (e.g., correspondence with potential customers). Funds may be reallocated if this evidence is not provided.</p>	<p>Within 120 Business Days from the notification of Bid results (as per the Incentive Guidelines)</p>
03	<p>You must provide:</p> <ul style="list-style-type: none"> • a total cost of ownership (TCO) gap report for the ordered EVs, with assumptions and supporting evidence, and including the estimated emissions abated based on the final mix of vehicles. • a declaration signed by each Customer, or an equivalent section in a signed Customer leasing agreement, confirming the number of EVs to be leased, the number of Smart Chargers procured and the value of the Funding included in the leasing package and including information about their fleet structure. <p>The TCO gap report, the fleet structure information and the declaration must be completed using the templates provided.</p> <p>If you do not register the number of EVs and purchase the number of Smart Chargers included in your Bid, you will be paid Funding only for the EVs and Smart Chargers for which you have registered/purchased.</p>	<p>Within 180 Business Days from the notification of Bid results (as per the Incentive Guidelines)</p>

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Item	Description of Activities – Aggregator Stream	Activity Due Date
	<p>The Funding will be calculated by decreasing proportionally the total Funding requested in the Bid on a per vehicle basis.</p> <p>If your final payment from the Incentive requested per tonne of CO₂e abated (as shown in the TCO gap report) is higher than the amount requested in the Bid, the payment per EV will be decreased proportionally to compensate for the difference.</p> <p>If your final payment from the Incentive requested per tonne of CO₂e abated is lower (as shown in the TCO gap report) or equal to the amount requested in the Bid, no further adjustments will be required, and the payment per EV as initially requested will be the same.</p>	
04	<p>For all the EVs included in your Bid, you must provide proof of EVs' registration in NSW which must include:</p> <ul style="list-style-type: none"> - Certificate of Registration, showing registration number, registration history, registered owner, vehicle use, Vehicle Identification Number – VIN and the duty paid amount) - Completed Registration Template <p>For all the Smart Chargers included in your Bid you must provide:</p> <ul style="list-style-type: none"> • For Smart Chargers purchased by yourself included in your Bid you must provide: <ul style="list-style-type: none"> i. proof of purchase of the Smart Chargers, in the form of a valid tax invoice that must: <ul style="list-style-type: none"> A. be issued against your organisation's name and ABN; and B. be dated on or after the date of the bidding round opening; a. For all the Smart Chargers purchased by your Customers included in your Bid, you must provide: 	<p>Within 180 Business Days from notification of Bid results (as per the Incentive Guidelines)</p>

EV fleets incentive

Funding Deed



Item	Description of Activities – Aggregator Stream	Activity Due Date
	<ul style="list-style-type: none"> i. copies of your leasing agreements with those Customers; ii. evidence of your obligation to pay the Funding for the Smart Charger to the Customer; and iii. proof of purchase of the Smart Chargers, in the form of a valid tax invoice that must: <ul style="list-style-type: none"> A. be issued against your Customer’s name; and B. be dated on or after the date of the bidding round opening. <p>You must submit the proof of EV registration, lease agreements, evidence of obligation to pay Customer(s) and the proof of purchase of the Smart Chargers within 180 Business Days from notification of Bid results. Failure to do so may result in forfeiting of funds.</p> <p>You must submit the evidence above in accordance with the following batch requirements:</p> <ul style="list-style-type: none"> a. all evidence in one batch if this agreement is for less than 30 EVs; or b. evidence for a minimum of 30 EVs (or the remainder of the agreement) if this agreement is for greater than 30 EVs. 	
05	<p>You must participate and ensure the participation of your Customers in any due diligence activity/audit initiated by the Department to verify:</p> <ul style="list-style-type: none"> • the legitimacy/integrity of information provided in your Bid • the purchase, receipt and registration of EVs being incentivised • the acceptable use of Incentivised EVs, i.e. the EVs must: <ul style="list-style-type: none"> ○ be designated and used to support your Customers’ business operations and ○ be used in NSW (with only occasional interstate trips allowed). 	<p>Audits may happen at any time, from the Deed execution till the conclusion of the reporting activities. The Department will provide reasonable notice.</p>

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Item	Description of Activities – Aggregator Stream	Activity Due Date
	<ul style="list-style-type: none"> • purchase and installation of funded Smart Chargers and their use to charge the Incentivised EVs at their garaging locations. <p>The participation in audit/due diligence activities will include:</p> <ul style="list-style-type: none"> • the provision of any information requested by the Department which is relevant to the verification purposes. • access to premises where the Incentivised EVs are garaged and where the Smart Charger have been installed (if applicable) • access to on-site renewable energy systems that are used to recharge the Incentivised EVs (if applicable) 	
06	<p>You must participate in the reporting requirements set out in Schedule B for a period of 2 years from the date all Incentivised EVs have been registered.</p> <p>You acknowledge that the objectives of such reporting is to:</p> <ul style="list-style-type: none"> • ensure all Incentivised EVs and Smart Chargers are being used according to the terms of this Deed and the Incentive Guidelines; • allow the Department to verify the emissions abatement from the Incentivised EVs’ usage; and • analyse the Incentive’s impact. <p>You undertake to provide such additional information and reporting as is required by the Department to enable the above objectives to be achieved.</p> <p>If you do not provide a complete annual Report, the Department may exclude you from future funding rounds and/or future grants funding.</p>	Refer to Schedule B

Schedule B – Reporting Requirements (refer to clause 7)

Reporting requirements:

1. You must provide to the Department, annually for the first 2 years following registration of the EVs and within 15 Business Days of a written request from the Department, in the form and using any template specified by the Department, Reports on the Incentivised EVs including:
 - i. copies of servicing and maintenance logbooks for each EV;
 - ii. details of annual mileage for each EV;
 - iii. details of energy usage and the percentage of energy sourced from renewable resources for each EV;
 - iv. usage reports for Smart Charger and Smart Chargers under CaaS arrangements associated with Incentivised EVs;
 - v. information on when fleet managers plan to resell the Incentivised EVs on the second-hand market; and
2. Aggregators must collate this information from their Customers and provide in an aggregated format to the Department. Both Individual fleets and Aggregators (or Customers of Aggregators), must participate in surveys the Department may set up to analyse the Incentive's impact. For example, surveys may collect information about:
 - i. driver/staff sentiment towards EVs;
 - ii. levels of utilisation compared to internal combustion engine vehicles, hybrid electric vehicles and plug-in hybrid electric vehicles;
 - iii. the suitability of EV models chosen;
 - iv. staff charging behaviour (e.g. usage of public or private charging, state of charge vehicles are required to be charged to);
 - v. future EV procurement plans; and
 - vi. other items that may help to assess the Incentive's impact.

3. You are to meet with the Department, if requested on reasonable notice by the Department at the Department's discretion, to discuss progress on the Project.

4. The Department may undertake audits from time to time to ascertain compliance of the Activities. The Department will provide reasonable notice to you.

Annexure 1 – Scheme Guidelines

[insert]