**Sample Document**

**Bond Conditions**

This sample document has been prepared by King & Wood Mallesons at the request of, and in consultation with, the Office of Social Impact Investment and its advisers. It forms part of a suite of sample transaction documents that have been developed by the Office of Social Impact Investment for use in connection with a social benefit bond (SBB) arrangement involving private investors in the Australian wholesale capital market.

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This sample document is intended to provide a guide for, and to streamline the development of, the documentation (and specific provisions) that is used for an SBB arrangement. This sample document can be freely used for such a purpose in accordance with the Creative Commons licence mentioned above. Use of this sample document may help to make the legal process more efficient and reduce costs.

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This sample document contains general provisions and other information only and does not take into account the objectives, needs or financial arrangements of any particular transaction. Before using this sample document, you should perform your own independent investigation and analysis of the suitability and appropriateness of this sample document for any SBB arrangement or other transaction that you are considering. You should consult your own legal, tax and other professional advisers as part of your assessment of this sample document and its suitability for your transaction.

You should satisfy yourself that cross references in the sample document to other provisions of the sample document, or to any provisions or the names of other documents, are correct.

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If you have any questions in relation to this sample document, or any specific provision or other related information, queries can be directed to socialimpactinvestment@dpc.nsw.gov.au.

**Instructions for use**

This sample document includes “**Standard Provisions**” that are intended to apply generally. The Standard Provisions may be supplemented by, or replaced with, optional provisions connected with certain features that may be included by an SBB arrangement.

Where you are considering an SBB arrangement that involves:

* a funding model which will require that the NSW Government takes security, or commercially agreed terms for bonds which provide for security to be given, over particular assets, certain “**Secured Transaction**” provisions may need to be included; and/or
* a special purpose entity acting as the issuer of any bonds, certain “**SPE Issuer Transaction**” provisions may need to be included,

and additional optional provisions have been included in this sample document for consideration.

There are drafting instructions included in the sample document to assist in drafting for the inclusion (or removal) of these and other optional features.

Conditions of the Bonds

*The following are the terms and conditions of the Bonds, as may be amended, supplemented, modified, completed or varied by an applicable Bond Issue Confirmation. The SBB Deed Poll also includes standard provisions that are incorporated by reference into these Conditions.*

1. **The Bonds**
	1. **Form**
		1. The Bonds are debt obligations of the Issuer constituted by, and owing under, the SBB Deed Poll.
		2. The Bonds are issued as a single class in registered form by entry in the Register.
	2. **Currency and denomination**

The Bonds are issued in Australian dollars in a single denomination of A$[*insert face value per Bond*] per Bond.

[***Standard Provision.*** *Insert:*

* 1. **Status and ranking**
		1. The Bonds are direct, unsubordinated and unsecured obligations of the Issuer.
		2. The Bondsrank for payment:
			1. equally among themselves; and
			2. at least equally with all other unsubordinated and unsecured obligations of the Issuer, except for liabilities mandatorily preferred by law.

*End of Standard Provision (delete if Option 1 Provisions below are to be inserted)*]

[***Option 1 Provisions (Secured Transactions).*** *Where security is given by the Issuer in favour of the Bondholders:*

1. *Replace Condition 1.3 (“Status and ranking”) above in full with the following:*
	1. **Status and ranking**
		1. The Bonds are direct, unsubordinated and (in accordance with Condition 1.4 (“Security”)) secured obligations of the Issuer.
		2. The Bondsrank for payment:
			1. equally among themselves; and
			2. at least equally with all other unsubordinated and unsecured obligations of the Issuer, except for liabilities mandatorily preferred by law.
2. *Insert the following additional Condition 1.4:*
	1. **Security**

The Bonds are secured under the provisions of the Security Documents and are subject to the terms of, and the ranking for payments set out under, the Security Documents and these Conditions. Each Bondholder is entitled to the benefit of, is deemed to have notice of and is bound by, the provisions of the Security Documents.

*The Issuer has granted a first ranking security over the Secured Assets in favour of the Department for such amounts as may be payable by the Issuer to the Department under the Implementation Deed.*

*End of Option 1 Provisions (delete where no security is given by the Issuer in favour of the Bondholders)*]

[***Option 2 Provision (SPE Issuer Transactions).*** *Where the transaction structure involves a special purpose entity as issuer of the Bonds and its’ constituent documents include a limitation on recourse to the entity, include the following additional Condition (with the limitation provisions to be recognised in clause 3.5 of the SBB Deed Poll):*

* 1. **Limited recourse**

The recourse of the Bondholders in respect of the assets of the Issuer, and the obligations of the Issuer (including payment obligations) under these Conditions and the SBB Deed Poll, are limited as set out in the SBB Deed Poll.

*End of Option 2 Provision (delete if transaction structure does not involve a special purpose entity as issuer of the Bonds)*]

1. **Interest**

[*The following sample interest rate provisions are based upon the reference rate for interest payments on the Bonds relying upon a Performance Level assessment under the Implementation Deed. These provisions need to be carefully considered and should be adapted to match the commercial terms under the SBB Arrangement*.]

* 1. **Interest**

Each Bond bears interest on its outstanding principal amount:

* + 1. from (and including) the Issue Date;
		2. to (but excluding) the Maturity Date or, if an Early Termination Event has occurred, the Calculation Period End Date,

at the Interest Rate.

* 1. **Interest Rate**

[The “**Interest Rate**” shall be the per annum rate of interest derived by reference to the relevant Performance Level as follows:

| **Performance Level**(*Performance Percentage*) | **Interest Rate** (*as a per annum rate*) |
| --- | --- |
| [Fail] (*<*[●]*%*) | [●]% |
| [Baseline] (*≥*[●]*% <*[●]*%*) | [●]% |
| [Good 1] (*≥*[●]*% <*[●]*%*) | [●]% |
| [Good 2] (*≥*[●]*% <*[●]*%*) | [●]% |
| [Good 3] (*≥*[●]*% <*[●]*%*) | [●]% |
| [Good 4] (≥[●]% <[●]%) | [●]% |
| [Out-Performance] (*≥*[●]*%*) | [●]% |

where:

“**Performance Level**” refers to the “Performance Level” as determined by the Independent Certifier for the purposes of, and in accordance with, the Implementation Deed, subject (in the case of any legitimate dispute of that determination) to the outcome of any applicable dispute resolution process under the Implementation Deed in respect of that determination.]

* 1. **Interest payments**

[*Where simple periodic interest is payable (based on a 365 day year), insert the following (otherwise delete the formula and related defined terms)*:

* + 1. The aggregate amount of interest payable on each Bond on each Interest Payment Date shall be calculated by the Calculation Agent on the relevant Interest Determination Date in accordance with the following formula:

|  |  |
| --- | --- |
| Interest amount = | FV x Interest Rate x N |
| 365 |

where:

“**FV**” is the outstanding principal amount of the Bond at the preceding Interest Payment Date;

“**N**” is the number of days elapsed in the Interest Period to which the interest payment relates;

“**Interest Period**” means each period beginning on (and including) an Interest Payment Date and ending on (but excluding) the next Interest Payment Date. However:

#### the first Interest Period commences on (and includes) the applicable Interest Commencement Date; and

#### the final Interest Period ends on (but excludes) the Maturity Date or, if an Early Termination Event has occurred, the Calculation Period End Date; and

“**Interest Payment Date**” means each date so specified in, or determined in accordance with the Bond Issue Confirmation, with the final Interest Payment Date occurring on the Redemption Date.

* + 1. Interest is payable in arrear on each Interest Payment Date.

*End simple periodic interest option*]

[*Where interest is payable at maturity by reference to a compound interest rate (based on a 365 day year), insert the following (otherwise delete the formula and related defined terms):*

* + 1. The aggregate amount of interest payable on each Bond on the Redemption Date shall be calculated by the Calculation Agent on the Interest Determination Date in accordance with the following formula:

Interest payable = (FV x (1 + Interest Rate)N) - FV

where:

“**FV**” is the outstanding principal amount of the Bond at the Maturity Date or Calculation Period End Date (as applicable); and

“**N**” is [*insert number of years from the Issue Date to the Maturity Date*] or, if an Early Termination Event (other than a Termination for Convenience) has occurred, the number of days elapsed from (and including) the Issue Date to (but excluding) the applicable Calculation Period End Date, divided by 365.

* + 1. Interest is payable in arrear on the Redemption Date.

*End ‘bullet’ compound interest option*]

1. **Redemption and purchase**
	1. **Scheduled Redemption**

The Issuer shall redeem each Bond on the Redemption Date at its Redemption Amount unless:

* + 1. the Bond has been previously redeemed; or
		2. the Bond has been purchased and cancelled.
	1. **Redemption upon an Early Termination Event**
		1. An “**Early Termination Event**” shall occur in respect of the Bonds if the Implementation Deed is terminated prior to its scheduled maturity.
		2. If an Early Termination Event occurs:
			1. the Issuer must promptly (and in any event within 5 Business Days) after becoming aware of it notify the Agents and the Bondholders of the occurrence of the Early Termination Event (specifying details of it); and
			2. each Bond is to be redeemed by the Issuer paying to the Bondholder the applicable Redemption Amount for the Bond on the Redemption Date.
	2. **Purchase**

The Issuer, and any person associated with or related to the Issuer,may at any time purchase Bonds at any price. Bonds purchased under this Condition 3.3 may be held, resold or cancelled at the discretion of the purchaser and (if the Bonds are to be cancelled) the Issuer, subject to compliance with any applicable law or directive.

1. **Issue of the Bonds**
	1. **Issue restrictions**
		1. The Bonds may only be offered (directly or indirectly) for issue, or applications invited for the issue of Bonds, if the offer or invitation (including any resulting issue):

#### does not require disclosure to investors under Parts 6D.2 or 7.9 of the Corporations Act;

#### does not constitute an offer or invitation to a “retail client” as defined for the purposes of section 761G of the Corporations Act;

#### does not require any document to be lodged with the Australian Securities and Investments Commission or any other regulatory body in Australia; and

#### complies with all other applicable laws and directives in the jurisdiction in which the offer, invitation or issue takes place.

* + 1. The Bonds may only be issued to Australian residents who are not acquiring the Bonds through a permanent establishment outside Australia.
	1. **Issue and registration of the Bonds**
		1. The Bonds are issued as a single class in registered form by entry in the Register.
		2. The aggregate principal amount of Bonds issued and outstanding may not, at any time, exceed the Class Limit (if applicable).
		3. Each entry in the Register in respect of a Bond constitutes:

#### an unconditional and irrevocable undertaking by the Issuer to the Bondholder to:

##### pay principal, any interest and any other amount in accordance with these Conditions and the SBB Deed Poll; and

##### comply with all other terms of these Conditions and the SBB Deed Poll; and

#### an entitlement to the other benefits given to the Bondholder in respect of the Bond under these Conditions and the SBB Deed Poll.

* + 1. Entries in the Register in relation to a Bond constitute conclusive evidence that the person so entered is the absolute owner of the Bond subject to correction for fraud or manifest or proven error.
		2. Each Bondholder is entitled to the benefit of, is deemed to have notice of and is bound by, the provisions of the SBB Deed Poll.
		3. No certificates will be issued to Bondholders unless the Issuer determines that certificates should be available or if certificates are required by an applicable law or directive.
1. **Payments**
	1. **Payments to Bondholders**
		1. Payments of any amounts in respect of a Bond will be made to each person registered in the Register as at 10.00 am on the applicable Record Date as the holder of the Bond.
		2. All payments in respect of any Bond are subject to applicable law but without prejudice to the provisions of Conditions 4.2 (“No set-off, counterclaim or deductions”) and 4.3 (“Withholding tax”).
	2. **No set-off, counterclaim or deductions**

All payments in respect of the Bonds must be made in full without set-off or counterclaim, and without any withholding or deduction in respect of Taxes, unless required or prohibited by law.

* 1. **Withholding tax**

If a law requires the Issuer to withhold or deduct an amount in respect of Taxes from a payment in respect of a Bond such that the Bondholder would not actually receive on the due date the full amount provided for under the Bonds, then:

* + 1. the Issuer must deduct the amount for the Taxes; and
		2. no additional amounts are payable under these Conditions.
	1. **Disputed amounts**

Pursuant to the Implementation Deed, the Department is entitled to dispute any amount payable to the Issuer under the Implementation Deed. If the Department disputes any part of an amount (a “**Disputed Amount**”) that constitutes all or part of any amount payable under these Conditions:

* + 1. that Disputed Amount is not an amount that is due under these Conditions and does not form part of the relevant amount payable unless that Disputed Amount is found to be payable in accordance with the dispute resolution processes under the Implementation Deed (an “**Overdue Amount**”); and
		2. interest (calculated on a daily basis) will accrue on that Overdue Amount at the Prescribed Rate from (but excluding) the original due date for the payment of that amount to (and including) the date on which it is paid to the relevant Bondholders.
	1. **Additional provisions**

Additional provisions relating to payments in connection with the Bonds are set out in clause 6 (“Payments”) of the SBB Deed Poll.

1. **General provisions**
	1. **Clearing**

Bonds may, but need not, be held in the Austraclear System, in which case the rights of a person holding an interest in the Bonds lodged in the Austraclear System are subject to the Austraclear Regulations.

* 1. **Time limit for claims**

A claim against the Issuer for a payment under a Bond is void unless made within 5 years from the date on which payment first became due.

* 1. **Title and transfer**

The provisions relating to title and transfer of the Bonds are set out in clause 4 (“Title and transfer of the Bonds”) of the SBB Deed Poll.

* 1. **Calculations**

The provisions relating to calculations of rates and amounts in connection with the Bonds and the SBB Deed Poll are set out in clause 5 (“Calculations”) of the SBB Deed Poll.

* 1. **Meetings of Bondholders**

The Meetings Provisions contain provisions for convening meetings of the Bondholders to consider matters affecting their interests, including certain variations of these Conditions.

* 1. **Variation**

The provisions relating to the variation of these Conditions and the SBB Deed Poll (as it relates to the Bonds) are set out in clause 8 (“Variation”) of the SBB Deed Poll.

* 1. **Notices**

The provisions relating to the giving and receipt of notices in connection with the Bonds are set out in clause 9 (“Notices”) of the SBB Deed Poll.

* 1. **Governing law and jurisdiction**
		1. These Conditions are governed by the laws of New South Wales, Australia.
		2. The Issuer irrevocably and unconditionally submits and each Bondholder is taken to have submitted, to the non-exclusive jurisdiction of the courts of New South Wales, Australia and courts of appeal from them.
		3. Without preventing any other method of service, any document in any suit, action or proceedings brought in a relevant court (including, without limitation any writ of summons or other originating process or any third or other party notice) may be served on the Issuer by being delivered or left at the Issuer’s Specified Office.
1. **Interpretation**
	1. **Definitions**

In these Conditions, the following meanings apply unless the contrary intention appears:

**Agency Agreement** means:

* + 1. [*insert details of any Agency Agreement entered into between the Issuer and a Registrar or another Agent under which registry and/or issuing, payment or calculation agency services will be provided in connection with the Bonds*];
		2. any [other] agreement between the Issuer and a Registrar in relation to the establishment and maintenance of a Register (and/or the performance of any payment or other duties) for the Bonds; and/or
		3. any other agency agreement entered into between the Issuer and an Agent in connection with the Bonds.

**Agent** means each of the Registrar, the Issuing and Paying Agent, the Calculation Agent and any other agent appointed under an Agency Agreement, or any of them as the context requires.

**Austraclear** means Austraclear Ltd (ABN 94 002 060 773).

**Austraclear Regulations** means the regulations known as “Austraclear Regulations” (together with any instructions or directions) established by Austraclear to govern the use of the Austraclear System and binding on the participants in that system.

**Austraclear System** means the clearing and settlement system operated by Austraclear in Australia for holding securities and electronic recording and settling of transactions in those securities between participants of that system.

**Bond** means adebt obligation issued or to be issued by the Issuer on these Conditions.

**Bond Issue Confirmation** means each confirmation of the final terms for the Bonds, substantially in the form set out in the SBB Deed Poll issued in connection with the issue of the Bonds and which has been confirmed by the Issuer.

**Bondholder** means, in respect of a Bond, each person whose name is entered in the Register as the holder of that Bond.

**Business Day** means a day (not being a Saturday, Sunday or public holiday in the relevant place) on which banks are open for general banking business in Sydney and, if a Bond held in the Austraclear System is to be issued or payment made in respect of a Bond held in the Austraclear System on that day, a day on which the Austraclear System is operating.

**Class Limit**, if specified in the Bond Issue Confirmation, means the maximum aggregate principal amount of the Bonds of the Class to be issued.

**Calculation Agent** means, initially, [the Issuer][*OR*][*insert name and ABN*] or such other person as the Issuer may appoint from time to time to perform calculation functions in respect of the Bonds.

**Calculation Period End Date** means, in respect of a Bond and where an Early Termination Event (other than a Termination for Convenience) occurs:

if the Early Termination Event occurs by reference to the termination of the Implementation Deed in accordance with clause [26.1] thereof, the date on which such termination of the Implementation Deed occurs; or

if the Early Termination Event occurs other than by reference to the circumstances set out under paragraph (b) of this definition, the date on which the Department makes the applicable [“Outcome Payment”] under the Implementation Deed in respect of that Early Termination Event.

*A termination of the Implementation Deed in accordance with clause* [*26.1*] *thereof relates to a ‘Termination for Cause’ by the Department*.

**Conditions** means, in relation to the Bonds, these terms and conditions as amended, supplemented, modified, completed or varied by a Bond Issue Confirmation, and references to a particular numbered Condition shall be construed accordingly.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Department** means [*Relevant Minister (Portfolio) and Department*].

**Early Termination Event** has the meaning given in Condition 3.2 (“Redemption upon an Early Termination Event”).

**Implementation Deed** means the deed entitled “Deed of Implementation Agreement for Social Benefit Bonds Transaction” dated [*insert date*] between the Issuer and the Department.

**Independent Certifier** means the person appointed as the “Independent Certifier” pursuant to, and for the purposes of, the Implementation Deed.

**Information Memorandum** means the information memorandum dated [*insert date*] prepared on behalf of, and approved by, the Issuer in connection with the issue of the Bonds.

**Interest Determination Date** means, in respect of any interest payment for the Bonds, the date that is not later than the Business Day immediately preceding to the relevant Payment Date for that interest payment.

**Interest Rate** has the meaning given in Condition 2.2 (“Interest Rate”).

**Issue Date** means the date so specified in the Bond Issue Confirmation.

**Issuing & Paying Agent** means, initially, [*insert name and ABN*] or such other person as the Issuer may appoint from time to time to perform issuing and payment functions in respect of the Bonds.

**Issuer** means [*insert legal name and ABN*].

**Maturity Date** means the date so specified in the Bond Issue Confirmation.

**Meetings Provisions** means the provisions and procedures relating to meetings of Bondholders set out in the SBB Deed Poll.

**Payment Date** means, in respect of a payment on a Bond, the date on which that payment is due to be made in accordance with these Conditions.

**Record Date** means the close of business in the place where the Register is maintained on the eighth day before the related Payment Date.

**Redemption Amount** means, in respect of a Bond, the aggregate of:

the outstanding principal amount of that Bond on the Redemption Date; plus

any other amount payable on that Bond in accordance with these Conditions, but which has not been paid.

**Redemption Date** means:

the Maturity Date; or

if an Early Termination Event occurs, [the date that is three months after the date on which the Early Termination Event occurs].

**Register** means the register of holders of Bonds established and maintained by the Registrar.

**Registrar** means, initially, [the Issuer][*OR*][*insert legal name and ABN*] or such other person as the Issuer may appoint from time to time under an Agency Agreement to maintain the Register.

**SBB Deed Poll** means the document entitled “SBB Deed Poll (NSW Social Benefit Bonds)” dated [*insert date*] and executed by the Issuer.

**Specified Office** means, for a person, that person’s office specified in the Information Memorandum or the Bond Issue Confirmation or any other address notified to Bondholders from time to time.

**Tax Authority** means any government, state, municipal, local, federal or other fiscal, revenue, customs or excise authority, body or official, having power to tax to which the Issuer becomes subject in respect of payments made by it of principal or interest in respect of the Bonds.

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any Tax Authority together with any related interest, penalties, fines and expenses in connection with them except if imposed on, or calculated having regard to, the net income of a Bondholder.

**Termination for Convenience** means the termination of the Implementation Deed by the Department in accordance with clause [25] thereof.

*A termination of the Implementation Deed in accordance with clause* [*25*] *thereof relates to a ‘Termination for Convenience’ by the Department*.

[***Option 1 Provisions (Secured Transactions).*** *Where security is given by the Issuer in favour of the Bondholders, the following new definitions are to be included above (in alphabetical order) and modified as necessary:*

**Collateral** has the meaning given in the Bond Issue Confirmation.

**Second Security Deed** means the document entitled “Second Security Deed (NSW Social Benefit Bonds)” dated [*insert date*] between the Issuer and the Security Trustee.

**Security Documents** means:

the Second Security Deed; and

the Document entitled “Priority and Co-ordination Deed (NSW Social Benefit Bonds)” dated [*insert date*] between the Issuer, the Department and the Security Trustee.

*End of Option 1 Provisions (delete where no security is given by the Issuer in favour of the Bondholders)*]

* 1. **General interpretation**

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears in this document, to the following applies:

* + 1. the singular includes the plural and vice versa;
		2. a reference to a document or an agreement (including these Conditions) includes the document or agreement as varied, novated, supplemented, extended, replaced or restated;
		3. the meaning of general words is not limited by specific examples introduced by “including”, “**for example**” or “**such as**” or similar expressions;
		4. a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
		5. the word “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
		6. a reference to a time of day is a reference to Sydney time;
		7. a reference to “**dollars**”, “**$**” or “**A$**” is a reference to the currency of Australia;
		8. a reference to the word “**law**” includes common law, principles of equity and legislation (including regulations);
		9. a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
		10. a reference to the word "**regulations**" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
		11. a “**directive**” includes a treaty, official directive, request, regulation, guideline or policy (whether or not in any case having the force of law) with which responsible participants in the relevant market generally comply;
		12. an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
		13. a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
		14. a reference to any thing (including an amount) is a reference to the whole and each part of it;
		15. a reference to accounting standards is a reference to accounting standards, principles and practices generally accepted in the relevant place, consistently applied; and
		16. a reference to an accounting term in an accounting context is a reference to that term as it is used in relevant accounting standards.