**Sample Document**

**Bond Conditions**

|  |  |
| --- | --- |
| **What is this sample document usually called?** | Bond Conditions or Conditions. |
| **What group of documents does it belong to?** | Bond Documents.  See *What other documents are closely related to it?* below. |
| **Whose document is it?** | Issuer of the Social Impact Bonds (**Bonds**), which is usually the Proponent. |
| **When is it used?** | All Social Impact Bond transactions. |
| **What does it do?** | Upon issue of the Bonds, the Bond Conditions are given legal effect by the promises under the SIB Deed Poll and the completion of a Bond Issue Confirmation).  Once finalised, the Bond Conditions are inserted in the Information Memorandum. |
| **What areas does it cover?** | * Standard (fundamental) terms relating to the creation of the Bonds. * Terms for payments of interest and principal on the Bonds (which need to be completed or adapted for the commercial terms of the SIB arrangement). |
| **What drafting options does it include?** | **Standard Provisions** that are to apply generally.  **Secured Transaction Provisions** for any funding model that requires the State to take security, or where it is agreed with Bond investors that security is to be given to them, over particular assets.  **SPE Proponent Transaction Provisions** where a special purpose entity is the counterparty for the Implementation Agreement.  Drafting instructions are included in the sample document to assist in drafting for the inclusion (or removal) of these and other optional features. |
| **What other documents are closely related to it?** | **All SIB transactions**   * SIB Deed Poll – sets out binding promises from the Issuer relating to the Bonds, as well as standard terms and rules applicable to them. * Bond Issue Confirmation (form included in the SIB Deed Poll) – will complete these Conditions by confirming the issue of the Bonds and certain variable details. * Information Memorandum – used for marketing the Bonds to investors in the Australian wholesale capital market. * SIB Purchase Agreement – relates to the issue and sale of Bonds to one or more initial purchasers.   Also related will be any agency services agreement that is agreed between the Issuer and a registrar or other agent. |
| **What should we do before we use this sample document?** | 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:   * carefully consider and make your own assessment of whether it is appropriate for the SIB arrangement or other transaction that you are considering; * perform your own independent investigation and analysis of the suitability and appropriateness of this sample document for any SIB arrangement or other transaction that you are considering; * consult your own legal, tax and other professional advisers as part of your assessment of this sample document and its suitability for your transaction; and * 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. |
| **Why is this sample document available?** | 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 SIB arrangement. This sample document can be freely used for such a purpose. Use of this sample document may help to make the legal process more efficient and reduce costs.  The State of Victoria (acting through a named Government Department) (the **State**) is not making the use of the sample document mandatory but the State would expect to take into account in any evaluation of a proposed SIB arrangement the non-use of the sample document and the reasons for the non-use, any material departures from the sample document and the reasons for the departures and the possible implications for time, cost and efficiency.  The acceptance of the final form of this document by the State will be a condition precedent to the terms of the SIB arrangement. However, it may not be suitable in all circumstances and the State reserves the right to require a departure from this sample document in order to address the specifics of a particular SIB arrangement, to address then current market practice and conditions and otherwise as necessary to protect the interests of the relevant department, agency or other State body and the State. |
| **Where can I get further information?** | If you have any questions in relation to this sample document, or any specific provision or other related information, queries can be directed to [socialimpactbonds@dtf.vic.gov.au](mailto:socialimpactbonds@dtf.vic.gov.au). |

**Legal matters**

This sample document has been prepared by King & Wood Mallesons at the request of, and in consultation with, the Victorian Department of Treasury and Finance (**DTF**) and its advisers. It forms part of a suite of sample transaction documents that has been developed by DTF for use in connection with SIB arrangements.

This sample document has been derived in part from the Bond Conditions prepared by the State of Queensland, in consultation with Trevor Danos AM and King & Wood Mallesons, the use of which for the purposes of preparing this document is gratefully acknowledged. Users of this sample document are directed to the copyright notices and acknowledgments on its cover page. Users of this sample document are directed to the copyright notices and acknowledgments on its cover page. No reliance may be placed for any purposes whatsoever on the provisions and other information contained in this sample document (or any other communications or materials separately provided or discussed verbally in connection with this sample document) or on its completeness, accuracy or fairness.

No representation or warranty, expressed or implied, is given by, or on behalf of, the State, King & Wood Mallesons or any other person as to the provisions and other information included in this sample document being acceptable to the State in all circumstances, that it is suitable for any particular SIB arrangement or as to the accuracy or completeness of the provisions or other information contained in this sample document and no liability whatsoever is accepted by the State or King & Wood Mallesons for any loss howsoever arising, directly or indirectly, from any use of such provisions or other information or otherwise arising in connection with it. The provisions and other information in this sample document are subject to negotiation, verification, completion and change.

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 SIB Deed Poll also includes standard provisions that are incorporated by reference into these Conditions.*

1. **The Bonds**
   1. **Form and issue**
      1. The Bonds are debt obligations of the Issuer constituted by, and owing under, the SIB Deed Poll.
      2. The Bonds are issued as a single class in registered form by entry in the Register.
      3. The aggregate principal amount of Bonds issued and outstanding may not, at any time, exceed the Class Limit (if applicable).
      4. Each Bondholder is entitled to the benefit of, is deemed to have notice of and is bound by, the provisions of the SIB Deed Poll.
      5. 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.
      6. Interests in the Bonds may only be held by Australian residents who are not acquiring the Bonds through a permanent establishment outside Australia.
   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 State for such amounts as may be payable by the Issuer to the State under the Implementation Agreement.*

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

[***Option 2 Provision (SPE Proponent 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 SIB 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 SIB Deed Poll, are limited as set out in the SIB 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 Agreement. These provisions need to be carefully considered and should be adapted to match the commercial terms under the SIB 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 determined 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 Agreement, subject (in the case of any legitimate dispute of that determination) to the outcome of any applicable dispute resolution process under the Implementation Agreement 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 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 Issue 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 Agreement 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. **Payments**
   1. **Payments to Bondholders**
      1. Payments of any amounts in respect of a Bond will be made to the 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 on a Bond such that the Bondholder would not actually receive the full amount provided for under the Bonds on the relevant due date, then:

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

Pursuant to the Implementation Agreement, the State is entitled to dispute any amount payable to the Issuer under the Implementation Agreement. If the State 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 Agreement (an “**Overdue Amount**”); and
    2. interest (calculated on a daily basis) will accrue on that Overdue Amount at the Prescribed Rate from (and including) the original due date for the payment of that amount to (but excluding) 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 SIB Deed Poll.

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

Bonds may, but need not, be held in the Austraclear System. The rights of a person holding an interest in any 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 SIB Deed Poll.

* 1. **Calculations**

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

* 1. **Meetings of Bondholders**

The Meeting 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 SIB Deed Poll (as it relates to the Bonds) are set out in clause 8 (“Variation”) of the SIB 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 SIB Deed Poll.

* 1. **Governing law and jurisdiction**
     1. These Conditions are governed by the laws of Victoria, 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 Victoria, 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:

**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 & 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 SIB 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 Melbourne 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 Agreement in accordance with clause [15.2] thereof, the date on which such termination of the Implementation Agreement 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 State makes the applicable [“Outcome Payment”] under the Implementation Agreement in respect of that Early Termination Event.

*A termination of the Implementation Agreement in accordance with clause* [*15.2*] *thereof relates to a ‘Termination for Cause’ by the State*.

**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.

**State** means the State of Victoria acting through [*insert* *Department’s name*].

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

**Implementation Agreement** means the deed entitled “Implementation Agreement” dated [*insert date*] between the Issuer and the State (including the Operations Manual that forms part of that document).

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

**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 Interest 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.

**Meeting Provisions** means the provisions and procedures relating to meetings of Bondholders set out in the SIB 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.

**Prescribed Rate** has the meaning given to it in the Implementation Agreement.

**Record Date** means 5.00 pm 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 3 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.

**SIB Deed Poll** means the document entitled “SIB Deed Poll (State of Victoria’s Social Impact Bond Pilot Project)” 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 Agreement by the State in accordance with clause [14.1] thereof.

*A termination of the Implementation Agreement in accordance with clause* [14.1] *thereof relates to a ‘Termination for Convenience’ by the State*.

[***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:*

**Second Security Deed** means the document entitled “Second Security Deed (State of Victoria’s Social Impact Bond Pilot Project)” dated [*insert date*] between the Issuer and the Security Trustee.

**Security Documents** means:

* + 1. the Second Security Deed; and
    2. the Document entitled “Priority and Co-ordination Deed (State of Victoria’s Social Impact Bond Pilot Project)” dated [insert date] between the Issuer, the State 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 “**day**” is to a calendar day;
    7. a reference to a time of day is a reference to Melbourne time;
    8. a reference to “**dollars**”, “**$**” or “**A$**” is a reference to the currency of Australia;
    9. a reference to the word “**law**” includes common law, principles of equity and legislation (including regulations);
    10. a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
    11. a reference to the word "**regulations**" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
    12. 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;
    13. an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
    14. a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
    15. a reference to any thing (including an amount) is a reference to the whole and each part of it;
    16. a reference to accounting standards is a reference to accounting standards, principles and practices generally accepted in the relevant place, consistently applied; and
    17. a reference to an accounting term in an accounting context is a reference to that term as it is used in relevant accounting standards.