|  | NSW Department of Education  Strategic Research Fund  Funding Deed | |
| --- | --- | --- |
|  | | |
| Department  Division | | Department of Education  Education & Skills Reform |
| Administering organisation | | Click here to enter name of recipient |

Details

|  |  |  |
| --- | --- | --- |
| **Department** | Name | The Crown in right of the State of New South Wales acting through the Department of Education  (ABN 40 300 173 822) |
|  | Division | Education and Skills Reform |
|  | Address | 105 Phillip Street Parramatta 2150 |
| **Department Authorised Officer**  *(refer to clause 21 - Notices)* | Name | Chloe Read |
| Position | Deputy Secretary, ESR |
| Address | 105 Phillip Street Parramatta 2150 |
| E-mail | higher.education@det.nsw.edu.au |
| **Administering organisation (You)** | Name | Click here to enter name of recipient |
| Address | Click here to enter text. |
| ABN | Click here to enter text. |
| **Your Authorised Officer**  *(refer to clause 21 - Notices)* | Name | Click here to enter text. |
| Position | Click here to enter text. |
| Address | Click here to enter text. |
| Telephone | Click here to enter text. |
| E-mail | Click here to enter text. |
| **Grant** | A maximum total amount of Click here to enter total amount of Grant (GST exclusive) payable in Instalments. | |
| **Commencement Date**  *(refer to clause 2- Commencement)* | The date the last party signs this Deed | |
| **Project title** | Click here to enter title of Project | |
| **Project** | Click here to enter text. | |
| **Project Description** | Click here to enter text. | |
| **Lead Researcher** | |  |  | | --- | --- | | Name | Click here to enter text. | | Position | Click here to enter text. | | Address | Click here to enter text. | | Telephone | Click here to enter text. | | E-mail | Click here to enter text. | | |

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Introduction

Education’s Strategic Research Fund aims to improve research collaboration and translation between universities and the government. The Department is seeking to fund research projects that support its priorities and lead to improvements in educational outcomes for people in NSW.

Terms

# Definitions and Commencement

## Definitions and Interpretation

1. Interpretation

1.1 Unless the context requires otherwise, in this Deed:

* + 1. 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;
    2. 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;
    3. 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;
    4. the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
    5. references to persons include bodies corporate, government agencies and vice versa;
    6. references to the parties include references to respective directors, officers, employees and agents of the parties;
    7. 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
    8. where an expression is defined, any other grammatical form of that expression has a corresponding meaning.
  1. Definitions

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

**Activity Period** means the period specified in **Schedule A – Project Plan** during which the Activity must be completed.

**Background IP** means Intellectual Property that a party makes available for the purpose of this Deed, whether upon commencement of this Deed or during the term of the Deed, and:

* + 1. is in existence prior to the Commencement Date; or
    2. is brought into existence independently of this Deed or the Project to which the Activities relate.

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

**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.

**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:

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

but does not include information that:

1. is in the public domain; or
2. 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.

**Contract Material** means all documents, data and other material first created or brought into existence under this Deed and includes reports, questionnaires, software, technical information, plans, maps, charts, photographs, drawings, calculations, tables, schedules and electronic data.

**Correctly Rendered Invoice** means an invoice rendered in accordance with the requirements as advised to you by the Department.

**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.

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

**Instalments** means that part of the Grant which the Department pays to you in the amounts and on the dates set out in **Schedule A – Project Plan**.

**Intellectual Property or IP** includes:

* + 1. all rights in relation to copyright, inventions, plant varieties, trademarks, designs, patents; and
    2. 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 the **Schedule A – Project Plan**, which are the agreed results you must achieve and ensure your subcontractors achieve.

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

**Project IP** means the Intellectual Property in respect of the Contract Material and any other Intellectual property arising in the course of or developed in carrying out the Project.

**WHS Law** means the *Work Health & Safety Act 2011*, regulations, codes of practice and other instruments under that Act.

1. Commencement
   1. This Deed will commence on the Commencement Date.
   2. Unless terminated earlier, this Deed will end once you have completed the Project, and the Activities, to the Department’s satisfaction and the Department has paid all Instalments due.

# What you must do

1. Your obligations
   1. You must:
      1. ensure the Grant or any part of it is used only for the approved Project;
      2. ensure each Activity is completed within the Activity Period in accordance with this Deed, unless you have otherwise obtained written consent from the Department’s Authorised Person;
      3. comply with the reporting requirements set out in **Schedule B – Reporting Requirements;**
      4. if a Lead Researcher is nominated in the Contract Details:
2. ensure the Lead Researcher is competent and has the necessary skills to perform and oversee the Activities outlined in the Project; and
3. immediately notify the Department in writing if the Lead Researcher is no longer employed by the Administrating Institution and/or moves to another organisation at any time during the Project.
   * 1. comply with all Commonwealth, State and Local government laws that are relevant to the Project, this Deed, or your registration as an entity;
     2. comply with all policies, guidelines and reasonable directions the Department provides to you.
4. WHS
   1. You warrant and represent that for the term of this Deed you will have, and will ensure that your subcontractors have:
      1. all appropriate policies and procedures in place to comply with the WHS Law; and
      2. taken all necessary measures to identify reasonably foreseeable hazards in relation to the Activities which could potentially give rise to health and safety, and have taken all necessary measures to assess and eliminate or control the risks arising from those hazards.

# About the Grant

1. Paying the Grant
   1. The Department will pay you the Instalments on the basis set out in **Schedule A – Project Plan**.
   2. Notwithstanding **clause 5.1**, if the Department pays you an Instalment, this does not constitute an admission that the performance of the Project is in conformity with this Deed and no payment will be deemed to release you from your obligations under this Deed.
2. Non-compliance
   1. In addition to any other rights the Department may have under the Deed, if you are not complying with this Deed the Department may by written notice require you to:
      1. spend the Grant funds on an alternative project determined by the Department in its absolute discretion; or
      2. transfer all remaining Grant funds to another entity nominated by the Department and novate all rights and obligations under this Deed to that new entity.
3. Withholding, Suspension, Changes to Instalments and Repayment
   1. The Department may change the amount of the Instalment by issuing you with a written Notice setting out the details of the changes.
   2. If you are not complying with this Deed the Department may withhold or suspend payment of an Instalment until you comply with your obligations to the Department’s satisfaction.
   3. If the Department withholds or suspends an Instalment you must continue to perform your obligations under this Deed.
   4. You must repay within 28 days of a demand being sent:
      1. any Instalment spent in breach of this Deed;
      2. any unspent part of the Grant;
      3. any overpayment;
      4. any interest earned on any Instalment required to be repaid.
   5. Where you have failed to comply with this Deed, the Department will calculate the amount of repayment you must make with regard to the extent you have failed to complete the Activities of the Project.
   6. The Department may set off the amount of any overpayment or claim for repayment against any future Instalment due.
   7. Any repayment the Department claims from you under this **clause 7** will be a debt due and owing by you to the Department.
4. Holding of Grant
   1. Each Instalment must be held in trust for the benefit of the Department from the date it is received either:
      1. in a separate bank account used solely in connection with the Grant; or
      2. into a general bank account provided that sufficient accounting controls are in place to track the expenditure of the Grant.
5. GST
   1. Unless otherwise indicated, all consideration for any supply under this Deed is exclusive of any GST imposed in relation to the supply.
   2. If:
      1. despite any other provision of this Deed, GST is imposed on a supply you make to the Department under this Deed; and
      2. the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply,

the Department will pay you an additional amount equal to the GST imposed on that supply, at the time and in the manner payment is otherwise payable under this Deed in relation to that supply.

* 1. You must be registered under the GST Law at the time of making any supply under this Deed on which GST is imposed.
  2. If you are not registered under the GST Law as required under **clause 9.3**, you will not be entitled to receive any additional amount as provided under this **clause 9**.
  3. If for any reason the Department pays you an amount under this **clause 9** 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 against any other amounts due to you.

# Contract Material and Information

1. Reporting Requirements
   1. You agree to provide the Department with written progress Reports at the times and containing the information specified in **Schedule B – Reporting Requirements** using the template at **Annexure A**, or a subsequent reporting template developed by the Department.
   2. You must provide the Department with copies of any publications resulting from the Activities undertaken by the Lead Researcher within 14 days of publication.
   3. If any Progress Report contains information confidential to you, you should mark the relevant parts of the Report accordingly.
2. Intellectual Property
   1. You must adhere to an IP policy, approved by your governing body, which has as one of its aims the maximisation of benefits to Australia arising from publicly funded research.
   2. Copyright in any Project application and in all reports provided under this Deed will vest in you at the time of creation but you grant the Department, or must procure for the Department, a permanent irrevocable, royalty free, non-exclusive licence to use and reproduce information contained in a Project application or a report and publish it on a non-profit basis for any purpose.
   3. If a Project application or report contains information belonging to a third party, you must ensure that it has in place all necessary consents sufficient to allow the Department to deal with the information or any report in accordance with this Deed.
   4. You must indemnify the Department and its Indemnitees, against all claims, demands, suits, liabilities, costs, expenses, damages and losses suffered or incurred by the Indemnitees arising out of or in connection with any actual or alleged infringement of a third party’s IP rights.
3. Confidential Information
   1. Each party must maintain the confidentiality of all commercially sensitive information it receives from the other party, including the amount of the Grant, except in accordance with **clause 14** (Public Announcements and Acknowledgements) or as otherwise agreed in writing.
4. Privacy
   1. You will:
      1. 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;
      2. not disclose any Personal Information without the written consent of:
5. the individual to whom the Personal Information relates; or
6. the Department,

unless otherwise required or authorised by law;

* + 1. 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
    2. include equivalent requirements regarding Personal Information (including this **clause 13**) in any subcontract entered into for the provision of any of the Activities under this Deed.

1. Public Announcements and Acknowledgement
   1. You must:
      1. seek the consent of the Department prior to any public announcement about the Project which mentions the Department other than as approved under this clause;
      2. acknowledge the support of the Department, as directed by the Department from time to time:
2. in any public statements about the Project;
3. on the home page of any web site established in connection with the Project;
4. on any equipment or other facility funded wholly or in part by the Department;
   1. Any use of the Department’s logo must be in compliance with the NSW Government Brand Guidelines.
   2. The Department may publish the title and brief description, including outcomes, of the Project and the amount of the Grant.
5. Disclosure of Information
   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](https://tenders.nsw.gov.au/). None of the disclosure obligations require the disclosure of:
      1. the commercial-in-confidence provisions of a contract;
      2. any matter that could reasonably be expected to affect public safety or security; or
      3. information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009*.
   2. You may nominate any items you consider are confidential and why, to assist the Department in determining what items to disclose.

# Dealing with Risk

1. Insurance
   1. You must maintain, during the term of this Deed:
      1. a broadform public liability policy of insurance to the value of at least $10 million in respect of each claim and unlimited in the aggregate as to the number of occurrences in the policy period;
      2. workers’ compensation insurance as required by all relevant laws of Australia relating to workers compensation; and
      3. professional indemnity insurance to the value of $1 million in respect of any one claim.
   2. You must not do, permit or suffer any act, matter or thing or omission whereby any of the policies referred to in this clause may be vitiated, rendered void or voidable.
   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 described above.
   4. Without limitation to **clause 16.1**, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.
2. Indemnities
   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:
      1. the Grant or the use of any outcomes from the Project;
      2. your breach of this Deed;
      3. any unlawful or negligent act or omission by you, your employees or your subcontractors in connection with this Deed;
      4. any illness, injury or death of any person you, your employees or your subcontractors cause or contribute to, in connection with this Deed;
      5. 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
      6. 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.
   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.
   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.

# Varying and Terminating the Deed

1. Variation
   1. This Deed may only be varied by agreement in writing including by an exchange of emails confirming the agreed variation.
   2. A request to vary the Deed must be sent to the other party’s nominated Authorised Officer detailing:
      1. the proposed variation;
      2. the reasons for the proposed variation; and
      3. how the proposed variation will affect the approved Project, the Activity Periods and/or the expenditure of the Grant.
   3. A party must advise the other party within seven (7) days of any changes to its contact details as set out in the Details.
2. Termination
   1. Where a party has breached this Deed:
      1. the other party may give a Notice to that party requiring it to rectify that breach within 30 days of receiving that Notice; and
      2. 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.
   2. The Department may terminate this Deed immediately by Notice if:
      1. You breach a provision of this Deed in a manner that, in the Department’s opinion, is not capable of remedy;
      2. you breach any of the following provisions: **clause 3** (Your Obligations), **clause 8** (Holding of Grant), **clause 10** (Reporting Requirements), **clause 11** (Intellectual Property) or **clause 16** (Insurance), or **clause 22.10** (Assignment); or
      3. the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity.
   3. The Department may terminate this Deed by giving you 30 days’ notice, if any one or more of the following occurs:
      1. in the Department’s opinion you are not carrying out the Project diligently and competently;
      2. you have not completed one or more of the Activities by the date they are due to be completed;
      3. the Department considers the Project no longer viable; or
      4. the Lead Researcher is no longer employed by the Administering Organisation, or is unable to complete the Project for any other reason.
   4. This **clause 19** does not exclude or reduce the rights of a party to terminate the Deed arising by operation of the common law or statute or the other terms of this Deed.
   5. On termination or expiry of this Deed accrued rights and obligations are not affected.

# Other Legal Matters

1. Dispute Resolution
   1. If a dispute arises in relation to this Deed (“a Dispute”), a party must comply with this **clause 20** before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.
   2. A party claiming that a dispute has arisen must notify the other party in writing giving details of the dispute (Dispute Notice) in accordance with the requirements of **clause 21** (Notices).
   3. Following receipt of a Dispute Notice, each party must refer the Dispute to a senior representative, who:
      1. does not have prior direct involvement in the Dispute; and
      2. has authority to negotiate and settle the Dispute.
   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 20.2** must refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.
   5. If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
   6. Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.
2. Notices
   1. Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered, express posted or emailed to the Authorised Officer specified in the Details.
   2. The receiving party will be deemed to have received the Notice as follows:
      1. if hand delivered, on the day on which it is delivered or left at the relevant address;
      2. if sent by Express Post within Australia, on the fourth Business Day after the day on which it is posted;
      3. if sent by email before 5.00pm on a Business Day, the first of the following occurring:
3. when the sender receives an automated message confirming delivery; or
4. 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.
   * 1. if sent by email after 5pm 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.
   1. 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.
5. General
   1. **Survival:** The following clauses survive termination or expiry of this Deed: **clause 10** (Reporting Requirements),  **clause 11** (Intellectual Property), **clause 12** (Confidential Information), **clause 13** (Privacy), **clause 16** (Insurance), **clause 7** (Indemnities), **clause 19** (Termination), **clause 22.3** (Keeping of records), this **clause 22.1** and any other clause which by its nature is intended to survive this Deed.
   2. **Subcontractors:** You remain fully responsible for the performance of the Project if you subcontract the performance of any part of the Project.
   3. **Keeping of records, audit and rights of access to such records:** You:
      1. must keep complete and accurate records and books of account with respect to your performance of the Project (the “Records”), and must retain such Records for a minimum of seven (7) years after expiry or termination of this Deed;
      2. authorise the Department to undertake audits, to examine and inspect, at reasonable times and on reasonable Notice, any Contract Material or Records held by you, and allow any such Records to be copied; and
      3. provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.
   4. **Independent evaluation**: You agree that, in the instance of the Department undertaking an independent evaluation of the Strategic Research Fund (under which this Project is funded), you will cooperate with an independent evaluation of the process by which the Project has been administered and conducted, as well as the outcomes of the Project Activities.
   5. **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.
   6. **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.
   7. **Inconsistency:** If there is any inconsistency between provisions of this Deed then the order of precedence will be:
      1. the Details; then
      2. any Special Conditions; then
      3. these Funding Terms; then
      4. any Schedules.
   8. **Negation of employment, partnership or agency**
      1. This Deed does not create a relationship of agency, partnership, and/or employment between the parties.
      2. You must not represent yourself as being an employee or agent of the Department or as otherwise able to bind or represent the Department.
   9. **Waiver**
      1. 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 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.
      2. Any waiver by a party of a breach of this Deed must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.
   10. **Assignment:** You must not assign or novate your obligations or interests under this Deed, without the prior written consent of the Department.
   11. **Counterparts:** This Deed may be signed in any number of counterparts which taken together will constitute one instrument.
   12. **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.

Executed as a deed

| **Department** |  | |
| --- | --- | --- |
| Signed 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 | |

| **You (Authorised Signatory of Administering organisation)** | | |
| --- | --- | --- |
| By entering into this Deed the signatory warrants that the signatory is duly authorised to execute this Deed on behalf of [NAME OF ADMINISTERING ORGANISATION] | | |
| Signed, sealed and delivered for and on behalf of [NAME OF ADMINISTERING ORGANISATION] 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 |

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Schedule A – Project timeline and deliverables

| Description of Deliverables | Grant instalment  (excluding GST) | Activity Period | When to send invoice |
| --- | --- | --- | --- |
| Execution of Funding Deed and submission of final **Project Plan** |  | On or before <insert date> | On or after the Commencement Date and following approval by the Department of submission of satisfactory Project Plan |
| Submission of **Final Report** |  | On or before <insert date> | Following written approval from the Department that the Final Report is satisfactory |
|  | **Total** |  |  |

|  |  |
| --- | --- |
| Objectives of Project (taken from Application) | <<Insert>><<insert>><<insert>><<insert>> |
|  |  |
|  |  |

Schedule B – Reporting Requirements (refer to clause 10)

1. During the term of the Deed, you must provide to the Department the deliverables outlined in **Schedule A – Project Plan**, on the dates specified.
2. Project Plan
3. Interim Report
4. Final Report.
5. Templates for Interim and Final reports will be provided by the Department, and will include the following information:
6. verification of expenditure of the Grant including:
   1. evidence that the financial information for the Project represents the financial transactions fairly and is based on proper accounts and records;
   2. that the Grant was expended in accordance with this Deed; and
   3. the amount of any interest earned on the investment of the Grant.
7. a summary of key outcomes of the Grant achieved against the intended outcomes of the research project, and relevant performance milestones and targets included in the Project Plan
8. significant findings and any difficulties encountered; and
9. any additional information requested by the Department.

Schedule C – Application Form

[Attach application form as submitted to the Department here.]PLEASE DO NOT DELETE SECTION BREAK. THIS TEXT WILL NOT PRINT