|  | Collaboration and Innovation  Funding Deed | |
| --- | --- | --- |
|  | | |
| Department | | Department of Education |
| Division | | Skills and Higher Education |
| Grantee | | Click here to enter name of recipient |
|  | |  |

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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 | Skills and Higher Education |
|  | Address | Click here to enter text. |
| **Department Authorised Officer**  *(refer to clause 18- 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. |
| **Grantee** (‘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 18 - 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. |
| **Project** | Click here to enter title of Project | |
| **Grant** | A maximum total amount of Click here to enter total amount of Grant (GST exclusive) payable in accordance with **Schedule A – Project Details**. | |
| **Commencement Date**  *(refer to clause 2- Term)* | The date the last party signs this Deed | |

## Additional Insurance Policies

| **Types of Insurances** | ***Minimum Sum Insured*** | ***Tick if Required*** |
| --- | --- | --- |
| Professional Indemnity | $1million in respect of any one claim |  |

|  |  |
| --- | --- |
| **Special Conditions** |  |

1. The Grant must be used on Activity(s) within New South Wales unless otherwise approved in writing by the Department.
2. You must provide the in-kind and/or cash contribution (Your contribution) in accordance with **Schedule A – Project Details**.
3. You warrant that you have complied with the NSW Higher Education Strategy – Collaboration and Innovation Fund Guidelines for Applicants attached at **Annexure B,** including obtaining any required approvals.

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Terms

# Introduction

# Definitions and Term

## Definitions and Interpretation

1. Interpretation
   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.
   2. Definitions

**Activity** means the activity(s) described in **Schedule A – Project Details** and sections 1.2 and 5 of the Grantee’s application at **Annexure A – Application**, which aim to fulfil one or more of the Objectives of the Project.

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

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

**Capital Equipment** means any item of tangible property, purchased, leased, created or otherwise brought into existence wholly, or in part, with the use of the Grant, which has at that time a value of over $5,000 inclusive of GST, but does not include Project Material.

**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.

**Correctly Rendered Invoice** means an invoice rendered in accordance with the [Department’s](https://www.industry.nsw.gov.au/__data/assets/pdf_file/0003/88158/fact-sheet-supplier-invoice-submission.pdf) requirements as advised to you by the Department.

**Deed** means this funding deed document and includes the Details, Terms, **Schedule A – Project Details** 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.*

**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** mean the objectives as described in sections 1.2 and 1.3 of the Grantee’s application at **Annexure A - Application**, 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 Material** means material created as part of or in performance of the Project including any documents or data.

1. Term
   1. This Deed will commence on the Commencement Date.
   2. Unless terminated earlier, this Deed will end once you have completed the Project to the Department’s satisfaction or <insert> years from the Commencement Date, whichever occurs first.

# What you must do

1. Your obligations
   1. You must:
      1. ensure the Grant is used only for the approved Project;
      2. provide Your Contribution in accordance with **Schedule A – Project Details**;
      3. achieve the Objectives within the Term**;**
      4. ensure each Activity is completed within the Activity Period and in accordance with this Deed;
      5. comply with the Project Plan approved by the Department, with amendments only to be made by agreement in writing by the Department;
      6. comply with the reporting requirements set out in **Schedule B – Reporting** ;
      7. comply with all Commonwealth, State and Local government laws that are relevant to the Project, this Deed, or your registration as an entity;
      8. comply with all policies, guidelines and reasonable directions the Department provides to you; and
      9. notify the Department in writing within 10 Business Days if the Project Lead is no longer employed by You.

# About the Grant

1. Paying the Grant
   1. The Department will pay you the Grant on the condition that:
      1. the Department receives a Correctly Rendered Invoice from you;
      2. you have provided the Department with the Project Plan required under **Schedule** **A – Project Details**;
      3. the Project Plan has been approved by the Department;
   2. Notwithstanding **clause 4.1**, if the Department pays you the Grant, 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. Repayment
   1. You must repay within 28 days of a demand being sent:
      1. any Grant monies spent in breach of this Deed;
      2. all unspent Grant monies;
      3. all Grant monies calculated in accordance with clause 5.2;
      4. any overpayment; and
      5. any interest earned on any Grant monies required to be repaid.
   2. 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.
   3. Any repayment the Department claims from you under this **clause 5** will be a debt due and owing by you to the Department.
3. Holding of Grant
   1. The Grant 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.
   2. You must not expend any part of the Grant until the Department has notified you that you may release the specified amount of the Grant for the Project.
4. 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,
      3. 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.
   3. You must be registered under the GST Law at the time of making any supply under this Deed on which GST is imposed.
   4. If you are not registered under the GST Law as required under **clause 7.3**, you will not be entitled to receive any additional amount as provided under this **clause 7**.
   5. If for any reason the Department pays you an amount under this **clause 7** 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.

# Material and Information

1. Reporting Requirements
   1. You agree to provide the Department with a Final Report at the time and containing the information specified in **Schedule B – Reporting Requirements**.
   2. You must also provide any other information the Department reasonably requires from time to time concerning the Project.
   3. If the Final Report contains information confidential to you, you should mark the relevant parts of the Report accordingly.
   4. You must provide financial statements of income and expenditure in respect of the Grant (‘the Statements’) to the Department within 60 Business Days after:
      1. completion of the Project or any termination of this Deed, whichever is the earliest; and
      2. the completion of each Financial Year in which a Grant is made.
   5. The Statements must include a definitive statement as to whether:
      1. the financial information for the Project represents the financial transactions fairly and is based on proper accounts and records; and
      2. the Grant was expended for the Project and in accordance with this Deed.
   6. You must keep financial accounts and records relating to the Project so as to enable:
      1. all receipts and payments related to the Project to be identified in your accounts and reported in accordance with this Deed;
      2. unless notified by the Department, the preparation of financial statements in accordance with Australian Accounting Standards; and
      3. generation of an income and expenditure statement for each financial year of the Project with the Budget, including:
2. a schedule of the Capital Equipment acquired, sold, written-off or otherwise disposed of during each financial year; and
3. a comparison of the income and expenditure in each financial year against the budget outlined at **Annexure A - Application**; and
4. the audit of those records in accordance with Australian Auditing Standards.
5. Intellectual Property
   1. Intellectual Property in all Project Material vests in you, unless otherwise stated in the Special Conditions.
6. 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 12** (Public Announcements) or as otherwise agreed in writing.
7. 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:
8. the individual to whom the Personal Information relates; or
9. 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 11) 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;
      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. You must use the Department’s logo when acknowledging the Department’s support of the Project in compliance with the [NSW Government Brand Guidelines](https://communications.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/files/Communications-and-Engagement/0c7b202631/NSW-Government-Brand-Guidelines.pdf).
   1. The Department may publish the title and brief description, including outcomes, of the Project and the amount of the Grant.

# Dealing with Risk

1. 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.
2. 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 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;
      3. the Additional Insurance Policies listed in the Details for the minimum sum provided.
   2. If specified as being required in the Details, a professional indemnity insurance policy must be maintained for a period of 7 years from the end of the Deed.
   3. 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.
   4. 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.
   5. Without limitation to **clause 14.1**, each party warrants that it has and will maintain appropriate insurance to cover any liability it may incur in relation to this Deed.
3. 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.

# Terminating the Deed

1. 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 by Notice, with effect on the date stated in the Notice, if:
      1. you breach any of the following provisions: **clause 3** (Your Obligations), **clause 6** (Holding of Grant), **clause 8** (Reporting Requirements), **clause 14** (Insurance) or **clause 19.10** (Assignment);
      2. the Department considers the Project no longer viable; or
      3. the Department considers that there has been a material change in circumstances in your financial position, your structure or your identity; or
   3. This **clause 16** 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.
   4. On termination or expiry of this Deed accrued rights and obligations are not affected; and

# 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 17** 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 18** (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 17.2** 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, posted or emailed to the Authorised Officer specified in the Details or as otherwise notified in writing.
   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 post within Australia:
3. 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;
4. if posted using the regular post option, on the tenth Business Day after the day on which it is posted;
   * 1. if sent by email before 5.00pm on a Business Day, the first of the following occurring:
5. when the sender receives an automated message confirming delivery; or
6. 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 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.
   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.
7. General
   1. **Survival**: The following clauses survive termination or expiry of this Deed: **clause 5** (Repayment), **clause 8** (Reporting Requirements), **clause 10** (Confidential Information), **clause 11** (Privacy), **clause 14** (Insurance), **clause 15** (Indemnities), **clause 16** (Termination), **clause 19.3** (Keeping of records), this **clause 19.1** 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 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, any records held by you and Records, 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. **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.
   5. **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.
   6. **Variation**: This Deed may only be varied by agreement in writing including by an exchange of emails confirming the agreed variation.
   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 stop 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, 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 | |

| **You (Company/Organisation)** |  | |
| --- | --- | --- |
| Signed, Sealed and delivered for on and on behalf of Click here to enter Company/Organisation name Ltd 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 |

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| **You (Authorised Signatory eg University, Council)** | | |
| --- | --- | --- |
| 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 |

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Schedule A – Project Details

| Description of Activities (as per section 5 of Application) | Grant amount  (excluding GST) | Your Contribution (excluding GST)  (If applicable) | Activity Period | Objective (as per section 1.3 of Application) |
| --- | --- | --- | --- | --- |
| Execution of Funding Deed and approval of **Project Plan** | <insert amount> | N/A | On or after the Commencement Date |  |
| **Your Contribution** *[Insert description/specification of in-kind support, or if you need more room, cross reference Annexure A]* |  | <insert amount> | <insert timeframe> |  |
| Submission of **Final Report** |  |  | On or before <insert date> |  |
|  | Total | Total |  |  |

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Schedule B – Reporting Requirements (refer to clause 8)

You must provide to the Department a Final Report at the conclusion of the Project.

A template for the Final Report will be provided by the Department, and will include the following information:

* verification of expenditure of the Grant including:
  + evidence that the financial information for the Project represents the financial transactions fairly and is based on proper accounts and records;
  + that the Grant was expended in accordance with this Deed; and
  + the amount of any interest earned on the investment of the Grant.
* a summary of:
  + outcomes achieved against the Objectives of the Project;
  + the performance or completion of Activities included in the Project Plan; and
  + any additional outcomes achieved by the Project.
* significant findings and any difficulties encountered; and
* any additional information requested by the Department.

The Department may meet with you each quarter, at the Department’s discretion, to discuss progress on the Activity(s) or the Project.

The Department may undertake site visits from time to time to ascertain progress of the Activity(s) or the Project on providing reasonable notice to you.

Annexure A – Application

[Insert final approved application form]

Annexure B – NSW Higher Education Strategy – Collaboration and Innovation Fund Guidelines for Applicants