



## Funding Deed

<insert funded Activity Title>

### Parties

Department of Enterprise, Investment and Trade (ABN 51 766 912 245), for and on behalf of the Crown in right of the State of NSW with its principal office at Level 9, 52 Martin Place Sydney NSW 2000;

and

<Recipient Name>

as detailed in the Activity Schedule.

### Background

The Agency has agreed to provide the Recipient with the Funding for the purpose of carrying out the Activity and furthering the Objectives.

The Recipient has agreed to accept and use the Funding to carry out the Activity in accordance with this Deed.

### Scope of Deed

This Deed is made up of the parts stated in the General Terms and Conditions.

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**Activity Schedule**

<b>Item 1</b>	<b>Agency</b>
Name:	Department of Enterprise, Investment and Trade
ABN:	51 766 912 245
Address for notices:	Level 9, 52 Martin Place Sydney NSW 2000
Email address for notices:	<insert>
Agency contact:	Name: Position Telephone Email

<b>Item 2</b>	<b>Recipient</b>
Name:	
Legal entity status:	<input type="checkbox"/> Company <input type="checkbox"/> Incorporated Association <input type="checkbox"/> Unincorporated Partnership <input type="checkbox"/> Individual <input type="checkbox"/> Other:
Business Name:	<insert>
ABN:	<insert>
Address for notices:	<insert>
Email address for notices:	<insert>
Recipient contact:	Name: Position Telephone Email

<b>Item 3</b>	<b>Deed Term</b>
<b>Clause 1.2</b>	<p>The Deed provides a Term, from the Deed Start Date to the Deed End Date. It is assumed that during the Term of the Deed:</p> <p>(1) The funding will be paid: and</p> <p>(2) The Activity will be completed i.e., the Activity Period must fall within the Term.</p> <p>The Deed can also be terminated prior to the Deed End Date, if the Agency takes steps to do so under Clause 15. Following</p>

<b>Item 3</b> <b>Clause 1.2</b>	<b>Deed Term</b>
	termination of expiry of the Deed, there remain some obligations which survive the ending of the Deed, which are specified in Clause 16.6.
Deed Start Date:	<insert>
Deed End Date:	<insert>
<b>Item 4</b> <b>Clauses 2 and 16.3</b>	<b>Activity Details</b>
Funding Program:	
Activity:	<insert>
Activity Objectives:	<insert>
Activity Start Date:	<insert>
Activity Period:	<insert>
Activity Plan:	Attached as Schedule A (Activity Schedule)
Activity Budget:	Attached as Schedule B (Activity Budget)
Activity Risk Assessment:	Attached as Schedule C (Activity Risk Assessment).
Approved Subcontractors:	<If Recipient may subcontract any part of the conduct of the Activity to a pre-approved subcontractor, identify the subcontractor/s here.>
Specified Personnel and Specified Personnel Hours:	The Recipient retains the right to substitute equivalent personnel as replacements, but these must be approved by the donor agency.
<b>Item 5</b> <b>Clauses 2 and 4</b>	<b>Funding and payment</b>
Funding:	The total amount of the Funding is \$ [insert] (GST excl.) Subject to this Deed, the Funding will be paid by direct transfer to the Recipient's Nominated Account in accordance with Schedule A.  Interest can be earned on the Funding.
Payment:	Recipient Created Tax Invoices will not be issued by the Agency in respect of the Funding.  Subject to this Deed, the Funding will be paid by direct transfer to the Recipient's Nominated Account in accordance with the below Payment Plan:
Nominated Account:	Account name:  Account number:  Financial institution:
Contribution:	<input type="checkbox"/> Yes <input type="checkbox"/> No

<b>Item 6 Clause 2</b>	<b>Notified Policies and Standards</b>		
	<p>You must comply with all policies, guidelines and reasonable directions the Agency provides to you.</p> <p>You must ensure that you and your subcontractors have all appropriate policies and procedures in place to comply with the WHS Law and the nanotechnology health and safety guidelines.</p>		
<b>Item 7 Clause 9</b>	<b>Reports</b>		
	<p>Reports must be submitted as outlined at Schedule D and submitted by email to specified Recipient email address.</p>		
<b>Item 8 Clause 11</b>	<b>IP</b>		
IP ownership	Subject to clause 11(b), unless otherwise stated in the Activity Schedule, the Recipient owns the IP in the Activity Material.		
Acknowledgement of creators	The Agency may acknowledge individual creators of some or all Activity Material in any future Agency use of the material.		
<b>Item 9 Clause 8</b>	<b>Funding Acknowledgement</b>		
	<p>Where Funding is provided for infrastructure or capital works, the Recipient will acknowledge the Funding in accordance with the funding acknowledgement guidelines at <a href="http://nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines">nsw.gov.au/branding/sponsorship-and-funding-acknowledgment-guidelines</a>.</p>		
<b>Item 10 Clause 13.3</b>	<b>Insurance</b>		
	Type of Insurance	Insured Amount (\$AUD)	Additional period after Deed termination or expiry
	Broad form public liability	\$10 million	
<b>Item 11 Clause 1.1</b>	<b>Additional conditions</b>		
AC1	<b>Covid-19</b>		
	<ol style="list-style-type: none"> <li>1. Both parties acknowledge the uncertainty arising from the current pandemic COVID-19, the measures taken by State and Commonwealth Governments in relation to the emergency, and the consequential effects on daily activities ("C-19 Emergency").</li> <li>2. If either party becomes aware that its ability to comply with any of its obligations on time will be affected by the C-19 Emergency, it must, as soon as possible, give the other party a written notice which sets out: <ol style="list-style-type: none"> <li>a. the nature and extent of the obligations affected by the C-19 Emergency;</li> <li>b. the ways in which the C-19 Emergency will affect its ability to perform those obligations; and</li> </ol> </li> </ol>		

**Item 11**  
**Clause 1.1**

**Additional conditions**

- c. a proposal that the parties either vary the Deed to mitigate the effects of the C-19 Emergency (for example, to change time frames and/or the scope of the Project), or terminate by agreement.
- 3. When a party receives a notice under this clause, it must respond to the notice as soon as practicable, and the parties will attempt in good faith to reach agreement promptly to vary or terminate the Deed.
- 4. Despite any other provisions in this Deed, if the Agency considers that, as a result of the C-19 Emergency:
  - a. there is likely to be significant delay before you will be able to complete your obligations; or
  - b. the Deed is no longer viable;

the Agency may terminate the Deed by notice, with effect on the date stated in the notice.

You release the Agency from any claims in respect of termination under this clause.

AC2

**Indemnities**

- (a) The Recipient must indemnify and keep indemnified the Agency and its officers, employees, and agents from and against any claim, loss or damage arising in connection with this Deed.
- (b) The Recipient’s obligation to indemnify the Agency under this Clause will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Agency, its officers, employees or agents contributed to the relevant loss or damage.

**Item 12**  
**Clause 1.1**

**Attachments**

Schedule A	Activity Plan
Schedule B	Activity Budget
Schedule C	Activity Reporting
Schedule D	Activity Risk Assessment
Schedule E	Statutory Declaration as to employees

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**Execution**

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**Executed as a Deed:**

**Signed, sealed and delivered** for and on behalf of <insert full legal name of agency> by its duly authorised officer, <insert authorised officer name and position>, but not so as to incur personal liability.

\_\_\_\_\_  
Signature

In the presence of:

Name of witness

\_\_\_\_\_  
Signature of witness

Date:

**[Alternatives 1A and 1B - where Recipient is a corporation]**

**Signed, sealed and delivered** by <Recipient name and ABN> in accordance with section 127 of the *Corporations Act 2001* (Cth).

By: <insert name and position of director 1>.

\_\_\_\_\_  
Signature

And by <insert name and position of director 2 or company secretary>.

\_\_\_\_\_  
Signature

Date:

**Signed, sealed and delivered** by <Recipient name and ABN> in accordance with section 127 of the *Corporations Act 2001* (Cth).

By: <insert name and position of sole director/secretary> who states that s/he is the sole director and sole secretary of <Company name>.

\_\_\_\_\_  
Signature

Date:

**[Alternative 2 - where Recipient is an individual]**

**Signed, sealed and delivered** by <insert name of individual>.

\_\_\_\_\_  
Signature

In the presence of:

Name of witness who is not a party to this Deed.

\_\_\_\_\_  
Signature of witness

Date:

**[Alternative 3 - where Recipient is a partnership]**

**Signed, sealed and delivered** by <insert name and position of partner authorised to sign on behalf of the partnership> for and on behalf of <insert partnership name> who is authorised to sign on behalf of the partnership.

By: <insert name and position>

On: <insert date>

In the presence of:

Name of witness who is not a party to this Deed.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of witness

**[Alternative 4 - where Recipient is an incorporated association]**

**Signed, sealed and delivered** by <insert name and ABN/other registration number of the incorporated association> in accordance with its constitution and any requirements for execution contained in the statute that establishes the incorporated association.

By:

Print name and position of authorised signatory

On: <insert date>

In the presence of:

Name of witness who is not a party to this Deed.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of witness

And by:

Print name and position of authorised signatory 2

At: <insert location>

On: <insert date>

In the presence of

Name of witness who is not a party to this Deed.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of witness



## General Terms and Conditions

### 1. Scope of this Deed

#### 1.1 Parts of this Deed and priority

- (a) This Deed consists of the following parts (in order of precedence):
  - (i) These General Terms and Conditions
  - (ii) The Activity Schedule (Schedule A);
  - (iii) The Schedules (if any); and
  - (iv) Any other documents incorporated by reference.
- (b) If there is any inconsistency between these parts, unless expressly stated otherwise it will be resolved by applying the above order of precedence, with (i) taking highest priority.

#### 1.2 Term

This Deed will be for the Term unless earlier terminated in accordance with its terms.

### 2. The Activity

The Recipient must, in accordance with this Deed:

- (a) if required, provide the Agency with a completed Activity Risk Assessment (Schedule D) before the Activity Start Date;
- (b) carry out the Activity:
  - (i) within the Activity Period, so as to promote the Objectives;
  - (ii) in accordance with the Activity Plan (schedule A) and any Activity Budget (Schedule B);
  - (iii) using any Specified Personnel for the Specified Personnel Hours (if any);
  - (iv) diligently, to a professional standard and ensuring that any personnel who are engaged on the Activity are appropriately qualified, trained and experienced and hold any required clearances; and
  - (v) in compliance with all applicable laws, Funding Program conditions and any Notified Policies and Standards;
- (c) ensure that the Recipient's Contribution (if applicable) is made within the Activity Period;
- (d) allow the Agency or its authorised representative access (accompanied by the Recipient's authorised representative) to the Recipient's premises to inspect the conduct of the Activity;
- (e) ensure the Activity provides open-access services to research, industry, university and government users;
- (f) not sub-contract the conduct of the Activity or any part of it, except to an Approved Subcontractor, without the Agency's prior consent; and
- (g) hold all necessary licences, consents and approvals that may be required to conduct the Activity

### 3. Capital Equipment

- (a) Any Capital Equipment acquired with the Funding for the purposes of the Activity will become the Recipient's property.

- (b) The Recipient must not acquire any Capital Equipment with the Funding unless the Capital Equipment is specified in the Deed or the Agency has provided the Recipient with prior written consent to acquiring that Capital Equipment.
- (c) The Recipient must for the term of this Deed:
  - (i) use any Capital Equipment the Recipient acquire with the Funding for the Activity and in accordance with this Deed.
  - (ii) not sell, encumber, cease to use or otherwise dispose of any Capital Equipment acquired with the Funding without first obtaining written consent from the Agency.
  - (iii) at the Recipient's own expense reinstate any Capital Equipment acquired with the Funding that is lost, damaged or destroyed.
  - (iv) hold any Capital Equipment securely and safeguard them against theft, loss, damage, or unauthorised use.
  - (v) Maintain all Capital Equipment in good working order.
  - (vi) If required by law, maintain registration and licensing of all Capital Equipment.
  - (vii) Be fully responsible for, and bear all risks relating to, the use or disposal of all Capital Equipment.
  - (viii) Ensure an asset register is maintained at all times and, when requested by the Agency, provide copies of the asset register to the Agency.

#### **4. Funding and payment**

- (a) The Recipient must:
  - (i) use the Funding only for the Activity and during the Activity Period;
  - (ii) if required, provide the Contribution;
- (b) Subject to this Deed, if the Recipient meets its obligations under this Deed to the Agency's reasonable satisfaction, the Agency will pay the Funding to the Recipient in accordance with the Activity Schedule.
- (c) Unless otherwise agreed, payment will be by direct transfer to the Recipient's Nominated Account.
- (d) Payment of any amount of the Funding is not an admission by the Agency that the Recipient has met its obligations under this Deed to the Agency's reasonable satisfaction.
- (e) Any interest earned on the Funding must be spent on the Activity unless otherwise approved.
- (f) The Recipient must immediately deposit and keep all Funding in its Nominated Account, which must be an account, with an Australian branch of an established bank, building society or credit union, which is solely controlled by the Recipient and allows for the Funding to be separately identified.

#### **5. GST**

- (a) The Agency considers the Recipient is not making a taxable supply to the Agency for GST purposes under this Deed.
- (b) Notwithstanding clause 5(a), clauses 5(c) to 5(g) apply in relation to GST under this Deed.

- (c) Unless otherwise indicated, all consideration for any supply under this Deed is exclusive of any GST imposed in relation to the supply.
- (d) If,
  - (i) despite any other provision of this Deed, GST is imposed on a supply made under this Deed; and
  - (ii) the recipient of the supply is or will be entitled to receive an input tax credit (as defined in the GST law) in relation to that supply,
 the recipient of the supply will pay an additional amount equal to the GST imposed on that supply, at the time and in the manner specified in this Deed, provided that the recipient of the supply receives a tax invoice that complies with GST law.
- (e) The Recipient must be registered under the GST Law at the time of making any supply under this Deed on which GST is imposed.
- (f) If the Recipient is not registered under the GST Law, the Recipient will not be entitled to receive any additional amount as provided under this clause 5 (GST). The Recipient must immediately notify the Agency if its GST registration status changes during the Term.
- (g) If, for any reason, the Agency pays to the Recipient an amount under this clause 5 (GST) which is more than the GST imposed on the supply, the Recipient must immediately repay to the Agency the excess, or the Agency may set off the excess against any other amounts due to the Recipient.

## **6. Withholding payment and repayment**

- (a) The Agency may, by notice, withhold payment of any amount of the Funding if and for so long as it reasonably believes that:
  - (i) the Recipient has not complied with this Deed;
  - (ii) the Recipient is unlikely to conduct the Activity or administer the Funding in accordance with this Deed; or
  - (iii) the Recipient's actions will cause damage to the reputation of the Agency or its Funding Program.
- (b) If any amount of the Funding:
  - (i) has been incorrectly claimed or overpaid;
  - (ii) has not been spent in accordance with this Deed;
  - (iii) has been spent upon a Significant Asset that is disposed of in breach of this Deed;
  - (iv) is surplus to the requirements of the Activity; or
  - (v) is unspent upon termination or expiry of this Deed,
 then the Agency may, by notice:
  - (vi) require the Recipient, within no less than twenty (20) Business Days, to repay that amount to, or to otherwise deal with that amount as directed by, the Agency; or
  - (vii) deduct that amount from any future payments of Funding, or other funding, payable by the Agency to the Recipient.
- (c) If the Recipient does not make any required repayment of Funding under this Deed by the due date for payment the Agency may recover the amount as a debt due to the Agency without the need for further proof.

## 7. Reduction in Funding

- (a) Without limiting other rights under this Deed, the Agency may reduce the Funding agreed but not yet paid to the Recipient under this Deed by giving at least 20 Business Days' notice to the Recipient:
- (i) **(Loss of Funding)** if the Agency does not receive sufficient funds from the NSW Parliament or the Commonwealth Government to provide the Funding for the Activity; or
  - (ii) **(Change of policy)** if there is a change in NSW Government policy which affects the Funding Program or the Activity.
- (b) If the Funding is reduced under this clause the Agency will:
- (i) agree with the Recipient any necessary consequent variation to this Deed, for example, by way of reduction in scope of the Activity; and
  - (ii) pay the Recipient's reasonable, substantiated costs (other than loss of profit or income) necessarily and directly incurred as a result of the reduction in the Funding and any consequent variation to the Deed ("Reduction in Funding Costs"), provided that:
    - A. the Recipient uses its best efforts to minimise its Reduction in Funding Costs; and
    - B. the total amount of Reduction in Funding Costs payable will not exceed the total amount of unpaid Funding forfeited through reduction in the Funding under this clause 7 (Reduction in Funding).

## 8. Acknowledgement of Funding and publicity

- (a) The Recipient must:
- (i) ensure that all public statements relating to the Activity or the Funding acknowledge the provision of the Funding by the Agency;
  - (ii) comply with any Agency requirements in respect of the form and content of any acknowledgement of Funding, as specified in the Activity Schedule; and
  - (iii) not use Agency or NSW Government branding or logos except with the Agency's prior consent and in accordance with the NSW Government's [Style Manual](#).
- (b) If requested, the Recipient must use best efforts to ensure the Agency and its Minister are given a reasonable opportunity to participate in media coverage or other promotion of the Activity.
- (c) The Agency may publicise and report on the provision of the Funding to the Recipient, including the amount and purpose of the Funding and the nature and outcomes of the Activity.
- (d) If requested, the Recipient must promptly remove its acknowledgement of the Funding and any Agency or NSW Government logo from any material relating to the Activity if the Agency reasonably requests it (for example, if the Agency determines that the Activity is not consistent with the Activity Objectives).

## 9. Reports and review

### 9.1 Reports

- (a) The Recipient must provide:

- (i) the required Reports in relation to its conduct of the Activity, as and when required by this Deed; and
  - (ii) any additional reports or information that may be reasonably requested by the Agency from time to time, for example to address specific issues of concern, as and when requested.
- (b) If the Agency does not accept a Report as satisfactory, the Recipient must submit a revised Report within ten (10) Business Days of the Agency's request.

## 9.2 Review

- (a) The Agency will regularly review (either directly or through a third party contractor acting as the Agency's authorised representative) the Recipient's implementation of this Deed, including:
- (i) its conduct of the Activity against the Objectives; and
  - (ii) its expenditure of the Funding and any required Contribution against the Activity Budget and the Activity Plan.
- (b) To facilitate the Agency's review the Recipient must, on reasonable notice:
- (i) make appropriate personnel available to meet with, and/or discuss, the implementation of the Deed with the Agency or its authorised representative;
  - (ii) make available to the Agency or its authorised representative, for inspection and the making of copies as appropriate, all relevant Records reasonably requested and assist the Agency in that inspection and the obtaining of any requested copies; and
  - (iii) allow the Agency or its authorised representative reasonable access to any site of the Activity to inspect the conduct of the Activity.

## 10. Records

The Recipient must:

- (a) keep and maintain adequate financial and operational Records in respect of its implementation of this Deed, including Records of:
- (i) its conduct of the Activity; and
  - (ii) its receipt and expenditure of the Funding and any required Contribution,
  - (iii) during the Term and for seven (7) years following termination or expiry of this Deed; and
- (b) provide copies of these Records to the Agency upon request.

## 11. IP

- (a) Subject to clause 11(b), unless otherwise stated in the Activity Schedule, the Recipient owns the IP in the Activity Material.
- (b) This Deed does not affect ownership of IP in Existing Material.
- (c) The Recipient grants (and will ensure any relevant third party IP owners grant) the Agency and the State a permanent, non-exclusive, irrevocable, royalty-free licence (including the right to sub-license) to use, reproduce, communicate, publish, adapt and modify the Activity Material for non-commercial, government purposes.

- (d) The Recipient must obtain, and, if requested, provide to the Agency in conjunction with the required final report or acquittal, signed Moral Rights consents from all creators of the Activity Material:
  - (i) if specified in the Activity Schedule that authorship will be acknowledged, to their use and adaptation by the Agency and the State without restriction, subject to acknowledgment of the authorship of the creator; or
  - (ii) otherwise, to their use and adaptation by the Agency and the State without restriction or any requirement to attribute authorship to the creators.
- (e) If requested by the Agency, the Recipient must provide the Agency with a copy of any Activity Material in the format reasonably requested.
- (f) The Recipient warrants that the use of Activity Material in accordance with this Deed will not infringe any third party's IP rights.

## **12. Confidentiality and privacy**

### **12.1 Disclosure of Confidential Information**

- (a) Neither Party may disclose the other's Confidential Information without its prior consent unless the disclosure:
  - (i) is required or authorised by law, Parliament, the Agency's responsible Minister or by this Deed;
  - (ii) is reasonably required by a person, including a contracted auditor of the Agency, for the purpose of performing this Deed;
  - (iii) is required for the Agency to perform a governmental function including research and analysis in respect of the Funding Program, monitoring performance of this Deed, evaluation of the outcomes of this Deed and/or the Funding Program and reporting on the Funding Program; or
  - (iv) is to that Party's own professional advisers for the purpose of obtaining advice, or to its insurer for the purpose of claim management.
- (b) Each Party will ensure that any third party to which it discloses Confidential Information under a permitted disclosure is made aware of the confidential nature of the information.

### **12.2 Compliance with Privacy Legislation**

To the extent that it deals with Personal Information in conducting the Activity, the Recipient must:

- (a) comply, and ensure that its Personnel comply, with applicable Privacy Legislation;
- (b) not cause the Agency to breach any obligations imposed by the Privacy and Personal Information Protection Act 1998; and
- (c) immediately notify the Agency if it becomes aware of an actual or potential breach of privacy.

## **13. Risk Management**

### **13.1 Recipient representations and warranties**

The Recipient represents and warrants that, as the date of its execution of this Deed:

- (a) **(information)** all information provided by it to the Agency is true and correct;

- (b) (**authority**) it has full power and authority to enter into this Deed and to perform its obligations;
- (c) (**validity**) the execution, delivery and performance of the Deed by it has been validly authorised;
- (d) (**skills, expertise**) it has the expertise, skills, qualifications and resources required to perform its obligations under the Deed;
- (e) (**no conflict of interest**) other than those (if any) disclosed in its Funding application, to the best of its knowledge, neither the Recipient nor its Personnel have any actual, perceived or potential conflicts of interest in relation to the Activity; and
- (f) (**no adverse proceedings**) it is not aware of any circumstances, including any financial circumstances or litigation or other proceedings that are taking place, pending or threatened, which might affect its ability to perform the Deed.
- (g) (**working with children**) it has ensured that its officers, agents, subcontractors and volunteers engaged in child-related work (if applicable), have working with children check clearance, as required under the *Child Protection (Working with Children) Act 2012*.

### 13.2 Notice of adverse events

- (a) The Recipient must promptly notify the Agency as soon as it becomes aware of:
  - (i) any material change to any representation and warranty given under this Deed;
  - (ii) any significant delay or suspension of the Activity, including if the Activity is inactive for more than forty (40) Business Days; or
  - (iii) any other matter that is reasonably likely to adversely affect its conduct of the Activity or its performance of this Deed;

and, in consultation with the Agency, take available steps to lessen the impact of any such adverse event.

### 13.3 Insurance

- (a) The Recipient must procure and maintain, with a reputable insurance company, each of the following policies:
  - (i) Broad form public liability insurance (incorporating products liability insurance) for the minimum amount specified in the Activity Schedule in respect of each and every occurrence and unlimited in the number of such occurrences over any one period of cover, during the Term and for any additional period post termination or expiry specified in the Activity Schedule.
  - (ii) Workers' compensation in accordance with applicable legislation in respect of all employees of the Recipient.
  - (iii) Any other policy specified in the Activity Schedule.
- (b) The Recipient must, on request, produce evidence satisfactory to the Agency that its required insurance policies are current.

## 14. Disputes

- (a) The Parties must attempt to settle any dispute in relation to this Deed in accordance with this clause 14 (Disputes) before resorting to court proceedings or other dispute resolution process.

- (b) A Party claiming that a dispute has arisen, must give written notice of the dispute to the other Party. On receipt of this notice the Parties must within ten (10) Business Days of receipt seek to resolve the dispute.
- (c) If the dispute is not resolved within this ten (10) Business Day period or within such further period as the Parties agree in writing then the dispute is to be referred to the Australian Commercial Dispute Centre ("ACDC") for mediation.
- (d) The mediation shall be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- (e) If the dispute is not settled within twenty (20) Business Days (or such other period as agreed in writing) after appointment of the mediator, or if no mediator is appointed within twenty (20) Business Days of the referral of the dispute to mediation, the Parties may pursue any other procedure available at law for the resolution of the dispute.
- (f) If the Agency requests it, the Recipient must continue performing this Deed while a dispute is being dealt with in accordance with this Clause 14 (Disputes), to the extent practicable to do so.
- (g) Nothing in this clause 14 (Disputes) will prevent either Party from seeking urgent interlocutory relief.

## 15. Termination

### 15.1 Termination by Agency for cause

Without limiting other rights under this Deed or at law, the Agency may terminate this Deed with immediate effect by giving notice to the Recipient, if:

- (a) **(Breach capable of remedy)** the Recipient breaches a provision of this Deed and fails to remedy the breach within twenty (20) Business Days following receipt of a notice requiring the Recipient to do so (or such longer period as determined by the Agency);
- (b) **(Breach not capable of remedy)** the Recipient breaches a provision of this Deed and, in the Agency's reasonable opinion, the breach is incapable of remedy;
- (c) **(Inappropriate conduct)** in the Agency's reasonable opinion, the Recipient's actions will cause damage to the reputation of the Agency or its Funding Program;
- (d) **(Change in Control)** there is a Change in Control of the Recipient that, in the Agency's reasonable opinion, renders the Recipient no longer eligible to receive the Funding.

### 15.2 Termination by Agency without cause

- (a) Without limiting other rights under this Deed or at law, but subject to the terms of this clause 15.2 (Termination by Agency without cause) the Agency may terminate this Deed without cause (and without the need to give reasons) by giving at least twenty (20) Business Days' notice to the Recipient.
- (b) If the Agency terminates this Deed without cause under this clause 15.2 (Termination by Agency without cause) the Agency will pay the Recipient's reasonable, substantiated costs (other than loss of profit or income) necessarily and directly incurred as a result of the termination ("Early Termination Costs"), provided that:
  - (i) the Recipient uses its best efforts to minimise its Early Termination Costs; and



- (ii) the total amount of Early Termination Costs payable will not exceed the total amount of unpaid Funding forfeited through termination under this clause 15.2 (Termination by Agency without cause).

### 15.3 On termination

Unless otherwise agreed, the Recipient must, within ten (10) Business Days of termination:

- (a) **(Return unspent Funding)** repay to the Agency, in accordance with its direction, any unspent Funding;
- (b) **(Provide Reports and other Material)** provide to the Agency:
  - (i) any Reports due to, or otherwise reasonably requested by, the Agency; and
  - (ii) any Activity Material which is owned by, or licensed to, the Agency under this Deed, in a format, and with associated explanatory material, which permit the Agency to exercise its IP rights in respect of that Activity Material;
- (c) **(Return Confidential Information)** return any Confidential Information provided by the Agency; and
- (d) **(Deliver-up Significant Assets)** if the Agency terminates this Deed under clause 15.1 (Termination by Agency for cause) and requires delivery-up of Significant Assets purchased wholly with the Funding, deliver-up to the Agency any such required Significant Assets.

## 16. General

### 16.1 Relationship

- (a) The Recipient acknowledges that neither the Recipient nor any of its Personnel are employees, partners or agents of the Agency.
- (b) The Recipient must not, and must ensure that its Personnel do not, represent that the Recipient or a member of its Personnel is an employee, partner or agent of the Agency.

### 16.2 Variations, consents and waivers

All variations to this Deed and all consents, approvals and waivers must be in writing and variations must be signed by both Parties.

### 16.3 Subcontracting and assignment

- (a) The Recipient must not:
  - (i) subcontract any part of the Activity other than to an Approved Subcontractor; or
  - (ii) assign its rights under all or any part of this Deed, without the prior written consent of the Agency.
- (b) Any consent given by the Agency in accordance with this clause 16.3 (Subcontracting and assignment) does not relieve the Recipient of its obligations under this Deed.

### 16.4 Notices

- (a) A notice under this Deed must be in writing and delivered to the address or email address of the recipient Party as specified in the Activity Schedule or as that Party otherwise directs. A notice under this Deed will be taken to be delivered:

- (i) if by hand or by registered post, on delivery to the Party's address for service and a signature is received as evidence of delivery;
  - (ii) if by post (other than registered post), on the sixth (6th) Business Day after posting;
  - (iii) if by email, upon receipt by the sender of confirmation of delivery notification from an email server or a written acknowledgement from the recipient).
- (b) Notwithstanding the immediately preceding subclause if a notice is delivered or received on a day that is not a Business Day, or is delivered or received later than 5.00 pm (Sydney, New South Wales time), it will be taken to have been given or made at 9.00 am on the next Business Day.

#### **16.5 Counterparts**

This Deed may be executed in any number of counterparts which taken together will form one agreement.

#### **16.6 Survival**

The following clauses survive termination or expiry of this Deed: clause 6 (Withholding payment and repayment); clause 9 (Reports and review), clause 10 (Records); clause 11 (IP); clause 12 (Confidential Information); clause 13.3 (Insurance); clause 14 (Disputes); clause 15.2 (Termination by Agency without cause); clause 15.3 (On termination); this clause 16.6 (Survival); clause 16.7 (Governing law and jurisdiction) and any other clause which by its nature is intended to survive this Deed.

#### **16.7 Governing law and jurisdiction**

The Deed is subject to and must be construed in accordance with the laws for the time being in force in New South Wales and the Parties submit to the non-exclusive jurisdiction of courts of New South Wales.

#### **16.8 Entire Deed**

This Deed constitutes the entire Deed and understanding between the Parties as to its subject matter. Any prior arrangements, representations or undertakings as to the subject matter of this Deed are superseded.

#### **16.9 Waiver and exercise of rights**

Failure or omission by the Agency at any time to enforce or require strict or timely compliance with any provision of the Deed will not in any way affect or impair that provision or the right of the Agency to avail itself of the remedies it may have in respect of any breach of a provision.

#### **16.10 Severability**

If any part of this Deed is prohibited, void, illegal or unenforceable, then that part is severed from this Deed but without affecting the continued operation of the remainder of the Deed.

#### **16.11 Electronic Signature and Exchange permitted**

- (a) In relation to the electronic exchange of documents:
  - (i) Each party consents to this document and any variations of this document being signed by electronic signature by the methods set out in this clause.
  - (ii) This clause applies regardless of the type of legal entity of the parties. If this document or any subsequent variations are signed on behalf of

- a legal entity, the persons signing warrant that they have the authority to sign.
- (iii) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this document and any variation of it:
- (1) insertion of an image (including a scanned image) of the person's own unique signature on to the document;
  - (2) insertion of the person's name on to the document; or
  - (3) use of a stylus or touch finger on a touch screen to sign the document; provided that in each of the above cases, words to the effect of 'Electronic signature of me, [NAME], affixed by me on [DATE]' are also included on the document;
  - (4) use of a reliable electronic signature and exchange platform (such as DocuSign or Adobe Sign) to sign the document; or
  - (5) as otherwise agreed in writing (including via email) between the parties.
- (iv) The parties agree that the above methods are reliable as appropriate for the purpose of signing this document and that electronic signing of this document by or on behalf of a party indicates that party's intention to be bound.
- (v) A signed copy of this document transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this document for all purposes.
- (b) Electronic signatures complying with a law applicable in New South Wales will be deemed original signatures for the purposes of this Deed and any such digital, scanned or electronically applied signature is to be treated in all respects as having the same effect as an original signature

## 17. Interpretation

### 17.1 Definitions

In this Deed, unless the context otherwise dictates, where appearing with a capital letter:

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

**Activity Material** means any Material (including the Reports) created or developed by the Recipient in conducting the Activity and/or performing this Deed and includes any Existing Material that is incorporated in or supplied with the Activity Material.

**Activity Period** means the period identified as such in the Activity Schedule.

**Agency** means the entity identified as such in the Activity Schedule.

**Deed** means this Deed as described in clause 1.1.

**Activity Schedule** means the Activity Schedule forming part of this Deed.

**Asset Register** means an asset register kept in accordance with Australian Accounting Standards.

**Attachment** means an attachment to this Deed.

**Business Day** means any day which is not a Saturday, Sunday or gazetted public holiday in the State of New South Wales.

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

**Change in Control** means any change during the Term in any person(s) who directly or indirectly exercise/s effective control over the Recipient (including the ability to determine the outcome of decisions about the financial and operating and other policies of the Recipient) by holding the majority of voting shares, units or other interests in the Recipient or by any other means, but does not include a change in respect of a local council if that change is due to an election.

**Claim** means all proceedings, applications, actions, claims, suits, demands, losses (including, except to the extent otherwise agreed in writing, costs, damages, expenses and liability, including consequential loss, indirect loss, loss of profit, loss of revenue, damages for loss of opportunity and legal costs), which may be brought against, made upon, or incurred by the Agency, the State or their Personnel.

**Confidential Information** means any written or oral information of a Party that:

- (a) is by its nature confidential;
- (b) is designated as confidential; or
- (c) the receiving Party knows or ought to know is confidential,

but does not include information which is or becomes public knowledge other than by breach of this Deed.

**Conflict of Interest** means a situation where the exercise of a person's duty or decision-making is influenced, potentially influenced, or may appear to be influenced, by a secondary interest, including (but not limited to) a private or business interest.

**Contribution** means the contribution toward the costs of the Activity, as specified in the Activity Schedule.

**Correctly Rendered Tax Invoice** means a tax invoice that:

- (a) complies with the requirements of the GST Law;
- (b) sets out details of the Activity undertaken for which the Funding or the relevant Instalment is claimed, applicable GST and the total amount payable; and
- (c) contains any other details and is accompanied by any other supporting information reasonably required by the Agency.

**Existing Material** means Material developed independently of this Deed by either Party and includes Existing Material that is incorporated in or supplied as part of the Activity Material.

**Funding Program** means the funding program identified as such in the Activity Schedule.

**GST** has the meaning given to this term in the GST Law.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), related legislation and any delegated legislation.

**Instalment** means an instalment of Funding.

**IP** means all industrial and intellectual property rights whether created now or in the future, whether recognised in Australia or overseas, whether or not they are registered

or capable of being registered and includes (without limitation), the rights in patents, knowhow, copyright, designs, semi-conductor or circuit layout rights, trade marks, trade secrets, plant breeder's rights, business or company names or other proprietary rights.

**Material** includes all forms of works and subject matter in which IP may subsist, created or stored by any means, including (without limitation) documents, equipment, designs, templates, computer programs, software and applications, products, processes, devices, technologies, information and data.

**Moral Rights** means those rights recognised as belonging to the author or creator of Intellectual Property and includes, without limitation, those rights recognised under Part IX of the *Copyright Act 1968*, including the right of attribution, the right against false attribution and the right of integrity of creatorship.

**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 Activity Schedule, which are the agreed results the Recipient must achieve and ensure the Recipient's subcontractors achieve.

**Parties** means the parties to this Deed and **Party** means either one of them.

**Party's Representative** means, in relation to each Party, the person named as such in the Activity Schedule or such other person as the Party may, from time to time, nominate in writing.

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

**Personnel** means any person employed or engaged by a Party.

**Agency** means the entity identified as such in the Activity Schedule.

**Privacy Legislation** means the *Privacy and Personal Information Protection Act 1998 (NSW)*, *Health Records and Information Privacy Act 2002 (NSW)* and the *Privacy Act 1988 (Cth)* and includes any directions, regulations, codes of practice and principles made under these Acts.

**RCTI** means recipient created tax invoice.

**Recipient** means the entity identified as such in the Activity Schedule.

**Records** includes documents, information and data stored by any means and all copies and extracts of the same.

**Reports** means the reports specified in the Schedule C.

**State** means the Crown in right of the State of New South Wales.

**Supply** has the meaning given to this term by the GST Law.

**Term** means the duration of this Deed as specified in the Activity Schedule or until the date on which this Deed is terminated, whichever occurs first.

## 17.2 Construction

Except where the context otherwise requires:

- (a) A reference to a statute, regulation, ordinance or by-law will be deemed to extend to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing that law from time to time.
- (b) A reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable

by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable.

- (c) Where a word or phrase is given a defined meaning in this Deed, any other part of speech or other grammatical form in respect of such word or phrase shall unless the context otherwise requires have a corresponding meaning.
- (d) No rule of construction operates to the detriment of a Party only because that Party was responsible for the preparation of this Deed or any part of it.
- (e) Where there occurs a reference to the doing of anything by the Agency including giving any notice, consent, direction or waiver, this may be done by any duly authorised officer of the Agency.
- (f) Where the Recipient is comprised of more than one person, each obligation of the Recipient will bind those persons jointly and severally and will be enforceable against them jointly and severally.
- (g) The headings and contents list in this Deed are for convenience only and do not affect the interpretation of this Deed.
- (h) Where the Agency is required to act reasonably in the performance of this Deed, that shall be read as a requirement to act as would a Party in the position of the Agency which is acting reasonably in its own best interests.
- (i) A reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually.
- (j) Persons will be taken to include any natural or legal person.

## SCHEDULE A – ACTIVITY SCHEDULE

Description of activities	Funding (excluding GST)	Your contribution	Activity period	When to send invoice
<b>Projected TOTAL</b>				

Objectives of project	<Add project objectives>
Specific deliverables	<Add project deliverables>
Payment of Funding	

Structure  
and  
Governance





## SCHEDULE B - ACTIVITY BUDGET

Activity income	Total \$ (GST excl.)
<b>Funding from agency</b>	\$<insert>
<b>Funds from Recipient</b>	\$<insert>
<b>Funds from other contributors</b>	
■ <b>Funding (Commonwealth):</b>	\$<insert>
■ <b>Funding (other NSW government agency):</b>	\$<insert>
■ <b>Funding (other):</b>	\$<insert>
<b>Total Activity income:</b>	<b>\$&lt;insert&gt;</b>

Activity expenditure			
Category	Item	Capital Asset	Estimated budget (GST excl.)
<b>Personnel</b>	<e.g. 1xProject Officer at \$35p/h for 35 hours/week for 6 months>	N/A	\$<insert>
<b>Consultant</b>		N/A	\$<insert>
<b>Equipment</b>		<input type="checkbox"/> Y <input type="checkbox"/> N	\$<insert>
<b>Software</b>		<input type="checkbox"/> Y <input type="checkbox"/> N	\$<insert>
<b>Travel</b>		N/A	\$<insert>
<b>Facilities and administration</b>		<input type="checkbox"/> Y <input type="checkbox"/> N	\$<insert>
<b>Other</b>		<input type="checkbox"/> Y <input type="checkbox"/> N	\$<insert>
<b>Total Activity Expenditure:</b>			<b>\$&lt;insert&gt;</b>
<b>Activity costs met by in-kind contribution</b>			\$<insert>

## SCHEDULE C - ACTIVITY REPORTING

Report Name	Required content	Reporting Period and date for submission	Form and method of delivery	Special requirements
Progress report	<p>Report on progress of the Activity to date with reference to the Objectives and including progress against Milestones, achievements, research outcomes, publications and academic outputs, and training and commercialisation information</p> <p>Copies of all the reporting provided by you to the Commonwealth Government under the Commonwealth Agreement (if applicable). These must include the progress reports, annual business plans, financial reports, the final Report and any other ad hoc reports.</p> <p>Two photos of your two main achievements, which the Agency may use for media and communications activities or provide to a third party as appropriate</p> <p>A statement of Instalments received to the end of the reporting period</p> <p>The amount of Instalments and Contribution (if applicable) spent on the Activity during the reporting period, with supporting evidence including receipts and invoices</p>	Every 12th month, to be submitted within 10 Business Days of expiry of the relevant reporting period.	Submitted by email to specified Recipient email address.	Report to be signed by Recipient's Managing Director/Chief Executive Officer or equivalent
Completion report	<p>Full report on the conduct of the Activity during the Activity Period including:</p> <p>- A summary of the progress achieved,</p>	Within 20 Business Days of expiry or termination of this Deed	Report to be submitted by email to specified Recipient	Report to be signed by Recipient's Managing Director/Chief Executive

Report Name	Required content	Reporting Period and date for submission	Form and method of delivery	Special requirements
	<p>measured against the Milestones, including achievements and any difficulties encountered</p> <ul style="list-style-type: none"> <li>- A summary of any steps taken to promote the Activity</li> <li>- An assessment of the Activity's contribution to any stated Objectives</li> <li>- Any publications referring to the conduct of the Activity</li> <li>- Any additional information which may be reasonably required by the Agency</li> </ul>		email address.	Officer or equivalent.
Financial Acquittal	<p>A detailed [and independently audited] financial statement containing:</p> <ul style="list-style-type: none"> <li>(a) receipts and application of the Funding including each Instalment;</li> <li>(b) a statement as to completeness and accuracy of financial accounts; and</li> <li>(c) the balance of any unspent Instalments/Funding</li> </ul>	Within 20 Business Days of termination or expiry of the Deed.	<p>No required format.</p> <p>Financial Acquittal to be submitted by email to specified Recipient email address.</p>	Financial Acquittal to be signed by Recipient's Chief Finance Officer or equivalent

## SCHEDULE D - ACTIVITY RISK ASSESSMENT

A risk is an uncertain event or condition that has a positive or negative effect on project objectives. Risks can affect anything: people, processes, technology, and resources.

**Step 1:** Identify potential risks.

**Step 2:** Determine probability. What are the odds a certain risk will occur? Rate each risk with high, medium, or low probability.

**Step 3:** Determine Impact. What would happen if each risk occurred? Would the final delivery date get pushed back? Would the project go over budget? Identify which risks have the biggest effect on the project's outcomes, and rate them as high impact. Rate the rest as medium or low impact risks. Refer to the Risk Rating Guide.

**Step 4:** Identify mitigation strategies. What actions can be taken to mitigate or prevent these risks?

Risk rating guide				
Low	Medium	High	Extreme	
very low to no risk	effects are felt but not critical to achieving milestones	serious impact on achieving milestones	could result in failure to achieve	
Risk <i>Please outline identified risks that could impact the delivery of Milestones</i>	Likelihood	Risk rating	Mitigation strategy <i>Please outline any actions to be taken to assist mitigation of the identified risk</i>	Comments
<insert>	<insert>	<insert>	<insert>	<insert>