|  | Physical Sciences Fund Funding Deed | |
| --- | --- | --- |
|  | | |
| Department | | Department of Enterprise, Investment and Trade |
| Division | | Office of the Chief Scientist and Engineer |
| Grantee | |  |

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Details

|  |  |  |
| --- | --- | --- |
| **Department** | Name | The Crown in right of the State of New South Wales acting through the Department of Enterprise, Investment and Trade  (ABN 51 766 912 245). |
|  | Division | Office of the Chief Scientist and Engineer |
|  | Address | 52 Martin Place, Sydney, NSW, 2000 |
| **Department Authorised Officer**  *(refer to clause 21 - Notices)* | Name |  |
| Position |  |
| Address |  |
| Telephone |  |
| E-mail |  |
| **Grantee** (‘You’) | Name |  |
| Address |  |
| ABN |  |
| **Your Authorised Officer**  *(refer to clause 21 - Notices)* | Name |  |
| Position |  |
| Address |  |
| Telephone |  |
| E-mail |  |
| **Grant** | Click here to enter total amount of Grant | |
| **Commencement Date**  *(refer to clause 2.1 - Commencement)* | Upon execution of this Funding Deed. | |
| **Project title** | Click here to enter text. | |
| **Project** | Click here to enter text. | |

**Special Conditions**

1. Covid-19
   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”).
   2. If either party becomes aware that it is, will be or has been materially affected in its ability to comply with any of its obligations on time under this Agreement because of the C-19 Emergency, it must, as soon as possible, give the other party a written notice which sets out:
      1. the nature and extent of the obligations affected by the C-19 Emergency;
      2. the ways in which the C-19 Emergency will affect its ability to perform those obligations; and
      3. a proposal that the parties either vary the Agreement to mitigate the effects of the C-19 Emergency (for example, to change time frames and/or the scope of Services) or terminate by agreement.
   3. When a party receives a notice under **clause 1.2**, 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 Agreement.
   4. You release the Department from any claims in respect of termination under this clause.
2. Location
   1. Your organisation must have its Headquarters in NSW for the Term.
3. Expenditure of funding
   1. You must obtain the Department’s prior written consent before any expenditure of the Grant other than expenditure which has previously been approved by the Department in Schedule A – Project Plan.

Recitals

1. The Department is providing you with a Physical Sciences Fund grant to promote new and innovative technologies and devices within NSW that may have a global benefit.
2. You will be required to repay the Grant to the Department if the project achieves a certain level of economic success.
3. Any repayment of the grant to the Department will assist the Physical Sciences Fund to maintain a sustainable Grant program to promote further innovative technologies.

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**, 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.

**Activity Progress Report** means the report you must provide to the Department containing the information set out under Schedule B.

**Activity Final Report** means the report you must provide to the Department containing the information set out in Schedule B.

**Amount Outstanding** means the amount which must be repaid to the Department consisting of the amount of the Grant together with compound increases as calculated in accordance with **clause 9.2** minus any Repayment Instalment or Voluntary Prepayment already paid under **clause 10.**

**Approved Project** means the Project as set out in **Schedule A – Project Plan** as approved from time to time in accordance with **clause 17**.

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

**Change in Control** means any one or more of the following:

* + 1. a sale of all, or substantially all, of the assets associated with the Approved Project;
    2. a sale of all, or substantially all, of the entity’s assets;
    3. any merger of the entity with another organisation;
    4. a transfer of more than 49% of the entity’s issued and outstanding shares.

**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.

**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.

**EBITDA** means Earnings Before Interest, Tax, Depreciation and Amortisation.

**Cumulative EBITDA** means the sum of the Grantee’s full year EBITDA measured for the period:

1. From the EBITDA for the full financial year in which the grant is made. The EBITDA for this year excludes the PSF Grant Income;
2. To the first full financial year in which the Grantee’s Cumulative EBITDA exceeds the repayment triggers set out in section 9 of this deed.
3. A worked example of the Cumulative EBITDA calculation is included in Schedule C.

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

**Headquarters** means:

1. the registered office of the Grantee company as defined in the *Corporations Act 2001* (Cth); and
2. the corporate headquarters, (where a company's management and key staff who operate and oversee overall business activities), are located.

**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 Agreement.

**Objectives** means the objectives of the Activities described in the Schedule A – Project Plan.

**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. Project Material excludes all background IP owned or controlled by you before execution of this agreement or subsequentially developed by you independently of this agreement. Project Material excludes all IP contained within your products and systems including but not limited to designs, software, systems and circuits.

**PSF** means Physical Sciences Fund**.**

**Repayment Dates** means the dates set out in the Repayment Schedule on which Repayment Instalments must be made.

**Repayment Instalments** means the amount due on each Repayment Date under the Repayment Schedule.

**Repayment Period** means the period from the date the Department sends you a Notice to Repay any Amount Outstanding in accordance with **clause 10** to the date for final payment as set out in the Repayment Schedule.

**Repayment Schedule** means the schedule of total Amount Outstanding, Repayment Instalments and Repayment Dates which the Department will issue to you with the Notice to repay under **clause 10.1**.

**Term** means the period starting on the Commencement Date and ending when you have repaid the Amount Outstanding or when the Deed is terminated earlier under **clauses 18.1**, **18.2** or **18.3**.

**Voluntary Prepayment** means an early payment made voluntarily under **clause 10.3**.

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

1. Term
   1. This Deed will commence on the Commencement Date and continue for the Term.

# 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. provide the contribution, as specified in Schedule A, if any, for the Approved Project;
      3. ensure each Activity is completed within the Activity Period in accordance with this Deed;
      4. provide an Activity Progress Report to the Department within 3 months of the end of the financial year as set out in Schedule B;
      5. provide an Activity Final Report within 60 Business Days of completion of the Project as set out in Schedule B;
      6. repay the Amount Outstanding, if any, within the Repayment Period;
      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.
2. WHS and Health and Safety Procedures
   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 any relevant health and safety guidelines for any activity taking place in Australia; 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 Grant on the dates set out in Schedule A within 30 days of receiving a tax invoice from you.
   2. Notwithstanding **clause 5.1** 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. Interest
   1. You must put any interest you earn on the Grant funds towards the Project, and you must report on its expenditure as if it were part of the Grant.
3. 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 7.3**, you will not be entitled to receive any additional amount as provided under this **clause 7**.
  3. 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.

# Performance Reviews and Repayment

1. Annual Performance Review Planning Meetings
   1. During the Term, within 5 months of the end of each financial year, the parties will meet to review the Activity Progress Report (the **Annual Performance Review**).
   2. At the conclusion of each Annual Performance Review the Department will assess whether **clause 9.1** applies.
2. Calculation of Amount Outstanding
   1. You will be required to begin repayments of the Amount Outstanding to the Department in the financial year your Cumulative EBITDA from the project is positive and greater than the minimum threshold determined at $500,000 based on independently audited or certified financial statements.
   2. The Amount Outstanding will be calculated by adding 2.5% as annual compound interest to the original Grant. Any Voluntary Repayments will be subtracted from the Amount Outstanding from the year in which it is paid.

*Schedule C contains a “Worked Non-Binding Example” indicating the potential Amount Outstanding. The timeframe for repayment will be based on the information you provide in the Activity Progress Report to determine base-, best- and worst-case scenarios, based on key principles as outlined in* ***clauses 9.1, 9.2,*** *and* ***9.4******.***

* 1. The Department will review the Amount Outstanding during the Annual Performance Review taking into account financial forecasts for the Project based on information you have provided in the Activity Progress Report.
  2. The annual repayment of the Amount Outstanding that is required by the Department to be paid to the Department in accordance with the Repayment Schedule will be no more than the lower of:
     1. 30% of the cumulative EBITDA; or
     2. the total Amount Outstanding.

1. Repayment of Grant
   1. You must repay the Amount Outstanding from the date the Department sends you a Notice to repay containing the Repayment Schedule, which will be issued when the conditions of **clause 9.1** have been met.
   2. You must pay the Repayment Instalments of the Amount Outstanding on each Repayment Date in accordance with the Repayment Schedule.
   3. You may make a voluntary prepayment of the Amount Outstanding or any part of it in on any Business Day provided you give the Department 30 Business Days’ prior notice (or such shorter period agreed by the Department) specifying the prepayment amount and the intended date of the prepayment (‘**Voluntary Prepayment’**).
   4. The Amount Outstanding that the Department claims from you under this **clause 10** will be a debt due and owing by you to the Department.
   5. If you have failed to comply with this Deed, the Department may immediately calculate the Amount Outstanding from the date of such failure and may send a Notice to repay immediately with a Repayment Schedule whether or not the Project has been completed or the threshold under **clause 9.1** has been met.

# Material and Information

1. Intellectual Property
   1. Intellectual Property in all Project Material vests in you.
   2. You grant the Department a perpetual, irrevocable, non-exclusive, royalty free licence, sub-licensable and assignable to other NSW Government agencies, to use the IP in all Project Material, reports and any other material provided to the Department under this Deed.
   3. Without limiting the scope of the licence under **clause 11.2**, you grant to the Department licence to use your trademarks, logos, photos, name, project description and information about your involvement in the Project.
2. 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), as required by law or as otherwise agreed in writing.
   2. If any Activity Progress Report or Activity Final Report contains information confidential to you, you should mark the relevant parts of the Report accordingly.
3. Privacy
   1. You will:
      1. ensure that Personal Information that is provided by the Departmentor 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:
4. the individual to whom the Personal Information relates; or
5. 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 website established in connection with the Project. The project website should include the following statement about the PSF: “The Physical Sciences Fund (PSF) is a NSW Government competitive development and commercialisation program run by the Office of the NSW Chief Scientist & Engineer. The PSF aims to deliver significant social, economic and environmental benefits to NSW by providing financial support for the development of new and innovative devices and systems across the branches of the physical sciences and engineering, including physics, chemistry, astronomy and the earth sciences”. The project website should also display the official logo of the NSW Government; and 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 Framework.
   2. The Department may publish the title and brief description, including outcomes, of the Project and the amount of the Grant.

# Dealing with Risk

1. Insurance
   1. You must maintain, at your own cost 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.
   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 15.1**, 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 Departmentor 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. To vary the Approved Project, you must send an email to the Department's Authorised Officer setting out details of:
      1. the proposed change;
      2. the reasons for the proposed change; and
      3. how the proposed change will affect the Approved Project, the Activity Dates, the Completion Date and/or the Budget.
   2. Any variation only takes effect from the date the Department replies by email accepting the details of the proposed change. You must not take any action to amend the Activities prior to receipt of such confirmation.
   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.
   4. The terms of this Deed may only be varied by agreement in writing by both parties including by an exchange of emails confirming the agreed variation.
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) or **clause 15** (Insurance), **clause 22.9** (Assignment);
      3. you are subject to a Change in Control which has not been agreed with the Department, such agreement not to be unreasonably withheld by the Department;
      4. you become insolvent, if you are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966*, or if you resolve to go into administration or liquidation or have a summons for your winding up presented to a Court or enter into any scheme of arrangement with your creditors.
   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 reasonable 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 Department considers that there has been a material change in circumstances in your financial position, your structure or your identity.
   4. If the Department intends to terminate this Deed in accordance with **clause 18.3**, the Department will communicate the intention to do so to you in writing a minimum of 30 days prior to issuing a notice, during which time you will have the opportunity to respond or rectify the matter.
3. Consequences of Termination
   1. On termination of this Deed:
      1. accrued rights and obligations of the parties are not affected;
      2. the Amount Outstanding will become a debt due to the Department and immediately payable without regard to **clause 9.1**.
   2. You will be required to repay the Department:
      1. any part of the Grant spent in breach of this Deed,
      2. any part of the Grant which has not yet been spent;
      3. any interest earned on any part of the Grant; and
      4. compound interest on the Grant calculated up until the date of payment.

# 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, 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 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.
7. General
   1. **Survival:** The following clauses survive termination or expiry of this Deed: **clause 11** (Intellectual Property), **clause 12** (Confidential Information), **clause 13** (Privacy), **clause 15** (Insurance), **clause 16** (Indemnities), **clause 19** (Consequences of 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 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. **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**.
   7. **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.
   8. **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.
   9. **Assignment:** You must not assign or novate your obligations or interests under this Deed, without the prior written consent of the Department.
   10. **Counterparts:** This Deed may be signed in any number of counterparts which taken together will constitute one instrument.
   11. **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 of Enterprise, Investment and Trade** 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 e.g. University, Council)** | | |
| --- | --- | --- |
| By entering into this Deed, the signatory warrants that the signatory is duly authorised to execute this Deed on behalf of <insert company name>. | | |
| Signed, sealed and delivered for and on behalf of <insert company name>: | | |
|  | | |
| Signature of authorised signatory |  | Signature of Witness |
|  |  |  |
| Name of authorised signatory |  | Name of Witness |
| Position of authorised signatory |  | Address of Witness |
|  |  | Date |

Schedule A – Project Plan

| Description of Activities | Grant ($)  (excluding GST) | Your Contribution ($) (excluding GST)  (If applicable) | Activity Period |
| --- | --- | --- | --- |
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| Objectives of Project |  |
| Specific deliverables |  |
| Payment of Grant | The Department will pay the Grant in a single tranche of $XXX,XXX (excluding GST) following the lodgement of an invoice. |
| When to send invoice | On receipt of invoice instructions from OCSE after the execution of the Funding Deed. |

Schedule B – Reporting Requirements (refer to clause 3.1(c) and 3.1(d))

1. Activity Progress Reporting
   1. During the term of the Deed, you must provide to the Department:
      1. A written Activity Progress Report to document progress on the Project to date and is to include:

* financial reporting as set out in the Project Status Reporting Template (Schedule D);
* audited accounts for the preceding financial year reporting period;
* progress and expenditure against the Project Plan;
* current and prospective partners for collaborations/engagement;
* any difficulties impacting the project, or which are anticipated to impact the project;
* an updated Project Budget for the following 12 months;
* 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;
2. if the Grant was expended in accordance with this Deed; and
3. the amount of interest earned on the investment of the Grant.
   1. The Activity Progress Report must be signed by an Executive Member or other person the Department approves in writing.
4. Activity Final Reporting
   1. The Final Report is to document completion of the Project and is to include:
      1. all activities undertaken during the reporting period;
      2. evaluation of the project and how successful the project was in achieving the objectives;
      3. the status of results achieved to date from the project;
      4. the results of research and collaborations with other organisations
      5. details about any Residual Funds which, unless authorisation has been or is being sought, must be returned to the Department
      6. any other information deemed to be relevant to the project that will assist the promotion of the PSF;
      7. a complete financial acquittal of how the funds were spent during the grant period and include a definitive statement as to whether:
5. the financial information for the Project represents the financial transactions fairly and is based on proper accounts and records; and
6. if the Grant was expended in accordance with this Deed.

Schedule C – “Worked Non-Binding Example” (refer to clause 9.3)

Schedule D Project Status Reporting Template

Forecast amounts to be replaced each year as “Actuals” become available.

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| **Profit And Loss** |  | | *Year of PSF Grant* | *1* | | *2* | *3* | *4* | | *5* |  |
| **Forecast ($)** | **Data Reference** | | ***Forecast*** | ***Forecast*** | | ***Forecast*** | ***Forecast*** | ***Forecast*** | | ***Forecast*** | **Rationale for Forecast** |
| **FY 2024/25** | **FY 2025/26** | | **FY 2026/27** | **FY 2027/28** | **FY 2028/29** | | **FY 2029/30** |
|  |  | |  |  | |  |  |  | |  |  |
| Commercial Revenue (incl. paid pilots) | A | | $ | $ | | $ | $ | $ | | $ |  |
| PSF Grant Income | B | | $ | $ | | $ | $ | $ | | $ |  |
| Other Grant Income | C | | $ | $ | | $ | $ | $ | | $ |  |
| Other Revenue (i.e. R&D Tax Incentive, etc.) | D | | $ | $ | | $ | $ | $ | | $ |  |
| **Total Operating Revenue** | **E=A+B+C+D** | | **$** | **$** | | **$** | **$** | **$** | | **$** |  |
| PSF Project Costs | F | | $ | $ | | $ | $ | $ | | $ |  |
| Staff Costs (S&W) | G | | $ | $ | | $ | $ | $ | | $ |  |
| Product/Service Related Costs | H | | $ | $ | | $ | $ | $ | | $ |  |
| Corporate/Admin Costs | I | | $ | $ | | $ | $ | $ | | $ |  |
| **Total Operating Expenditure** | **J=F+G+H+I** | | **$** | **$** | | **$** | **$** | **$** | | **$** |  |
| **Profit before Interest, Tax and Depreciation (EBITDA)** | **K=E-J** | | **$** | **$** | | **$** | **$** | **$** | | **$** |  |
| Depreciation and Amortisation Expense | L | | $ | $ | | $ | $ | $ | | $ |  |
| Tax Expense, (Refund), (R&D Offset) | M | | $ | $ | | $ | $ | $ | | $ |  |
| Interest Expense, (Income) | N | | $ | $ | | $ | $ | $ | | $ |  |
| **Net Profit / (Loss)** | **O=K-L-M-N** | | **$** | **$** | | **$** | **$** | **$** | | **$** |  |
|  |  | |  |  | |  |  |  | |  |  |
| PSF Grant Repayment | P | | $ | $ | | $ | $ | $ | | $ |  |
|  |  | |  |  | |  |  |  | |  |  |
| New Capital Raised during Financial Year | Q | | $ | $ | | $ | $ | $ | | $ |  |
|  |  | |  |  | |  |  |  | |  |  |
| Total Capital Expenditure (CAPEX) during Financial Year | R | | $ | $ | | $ | $ | $ | | $ |  |
|  |  | |  |  | |  |  |  | |  |  |
| Cash Balance at end of Financial Year | S | | $ | $ | | $ | $ | $ | | $ |  |
|  |  | |  |  | |  |  |  | |  |  |
|  |  | |  |  | |  |  |  | |  |  |
| Employees (FTE) at end of Financial Year | T | |  |  | |  |  |  | |  |  |
| **MONITORING AREAS** | | | | | | | | | | | |
| **IP Progress vs. Plan** | | **Regulatory Progress vs. Plan** | | | **Fundraising Progress & Strategy** | | | | **Other Indicators of Progress** | | |
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\*Note: May be subject to update/change