



- (i) after the date of its disclosure by the Disclosing Party to the other Party (**Receiving Party**), properly available to the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party;
  - (ii) at the date of its disclosure by the Disclosing Party to the Receiving Party, already properly in the possession of the Receiving Party in written form otherwise than by prior confidential disclosure from the Disclosing Party;
  - (iii) available to the public other than as a result of a breach of confidentiality by the Receiving Party or its permitted disclosees; or
  - (iv) demonstrated by the Receiving Party to be independently developed by an employee or agent of the Receiving Party having no knowledge of such information the subject of the disclosure.
- 1.1.5. Disclosing Party has the meaning given to it in the definition of Confidential Information.
- 1.1.6. Dispute has the meaning given to it in clause 12.1.
- 1.1.7. DEDJTR Grant Agreement means the grant agreement dated 13 June 2018 between the University and the State of Victoria, as represented by the Department of Economic Development, Jobs, Transport and Resources (DEDJTR).
- 1.1.8. DSI Participation Agreement means the participation agreement entered into between the University, the Commonwealth of Australia as represented by the Defence Science Technology Group (DST) and various other parties for the purpose of conducting the DSI.
- 1.1.9. End Date means the date specified in Item 4 of Schedule 1.
- 1.1.10. Grant means the amount specified in Item 5 of Schedule 1.
- 1.1.11. Grant Sponsor means the provider of the funds to support the grant as specified in Item 2 of Schedule 1.
- 1.1.12. Intellectual Property means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity and including copyright, discoveries, inventions, patent rights, trade marks, design rights, circuit layouts and plant varieties and all rights and interests of a like nature including but not limited to methods and techniques, together with any documentation relating to such rights and interests whether registered or unregistered and existing in Australia or elsewhere in the world and whether created before or after the date of this Agreement.
- 1.1.13. Notice means any notice, demand, consent or other communication whatsoever given or made under this Agreement and must be in writing.
- 1.1.14. Parties means the parties to this Agreement and their respective successors and permitted assigns, and Party means any one of them.
- 1.1.15. Project means the research activities as detailed in the Project Specification.
- 1.1.16. Project Intellectual Property means the Intellectual Property which is created, developed or discovered in the course of conducting the Project.
- 1.1.17. Project Specification refers to the details of the Project set out in Schedule 2.

- 1.1.18. Receiving Party has the meaning given to it in the definition of “Confidential Information”.
  - 1.1.19. Reporting Obligations means the reporting obligations specified in Item 7 of Schedule 1.
  - 1.1.20. Scholarship means the scholarship to be paid by the Recipient to the Student in accordance with Schedule 2 in order to assist the Student undertake the Project.
  - 1.1.21. Start Date means the date specified in Item 3 of Schedule 1.
  - 1.1.22. Student means the student enrolled in a postgraduate degree by research at the Recipient who is selected to undertake the Project.
  - 1.1.23. Term means the period from the Start Date to the End Date, subject to clause 11.
  - 1.1.24. Thesis means any thesis which is to be submitted to the Recipient by the Student to fulfill the Recipient’s requirements for the postgraduate degree in which the Student is enrolled.
- 1.2. In this Agreement, except where the context otherwise requires:
- 1.2.1. headings are for convenience only and do not affect interpretation;
  - 1.2.2. the singular includes the plural and conversely;
  - 1.2.3. another grammatical form of a defined word or expression has a corresponding meaning;
  - 1.2.4. a reference to a person includes a natural person, partnership, body corporate, association, trust, unincorporated body, governmental or local authority or agency or other entity;
  - 1.2.5. a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
  - 1.2.6. a reference to A\$, \$A, dollar, or \$ is to Australian currency;
  - 1.2.7. a reference to an agreement or document is to the agreement or document as amended, replaced or otherwise varied, except to the extent prohibited by this Agreement or that other agreement or document;
  - 1.2.8. a reference to “writing” includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form; and
  - 1.2.9. a reference to “GST”, “input tax credit”, “supply”, “tax invoice” and “taxable supply” have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## **2. TERM**

This Agreement commences on the Start Date and will remain in effect for the Term, unless extended or terminated earlier in accordance with this Agreement.

## **3. GRANT**

- 3.1. The University must pay the Grant to the Recipient. Unless specified to the contrary in Item 5 of Schedule 1, the University must make such payments within 30 days of receipt by the University of a valid tax invoice from the Recipient.
- 3.2. The Recipient must only use the Grant for the Project.

- 3.3. For the purposes of this clause 3, the value of supplies made by each Party under this Agreement is as follows:
  - 3.3.1. unless expressly stated to the contrary, the consideration to be provided for any taxable supply made by one Party to the other under this Agreement has been calculated without regard to, and is exclusive of, GST;
  - 3.3.2. the consideration referred to in sub-clause 3.3.1 shall be increased by the amount of any GST;
  - 3.3.3. the Party receiving any payment for a taxable supply under this Agreement must provide to the Party making a payment for a taxable supply a tax invoice in respect of that payment; and
  - 3.3.4. the Party receiving any payment under this Agreement for a taxable supply must do all things necessary (including, without limitation, registering with any required Government authority) to enable the party making a payment for a taxable supply to claim any credits or other benefits under the relevant law relating to GST.

#### **4. CONDUCT OF THE RESEARCH**

- 4.1. The Recipient must:
  - 4.1.1. carry out the Project in accordance with the Project Specification and with all reasonable professional, scientific and ethical principles and standards;
  - 4.1.2. comply with the Reporting Obligations;
  - 4.1.3. enter into any third party agreements as may be necessary to carry out the project; and
  - 4.1.4. provide to the University, at its reasonable request, all information, documents and assistance relevant to the Project as may be necessary for the University to satisfy its obligations under the DEDJTR Grant Agreement and the DSI Participation Agreement.
- 4.2. If the Grant includes funding to provide a Scholarship to a Student, the Recipient must:
  - 4.2.1. appoint a Student to conduct the Project;
  - 4.2.2. supervise the carrying out of the Project by the Student;
  - 4.2.3. take all reasonable steps to ensure that the Student carries out the Project in a competent and diligent manner, in accordance with the Project Specification and with all reasonable professional, scientific and ethical principles and standards and national security classification information;
  - 4.2.4. provide the Scholarship to the Student from the Grant as specified in Schedule 1;
- 4.3. If a Student is involved in a Project, the Parties agree that the Recipient cannot guarantee performance of the Project by the Student

#### **5. INTELLECTUAL PROPERTY**

- 5.1. As between the Parties, the Recipient shall own the Project Intellectual Property in the first instance.
- 5.2. The Recipient agrees to comply with the Intellectual Property ownership or licensing requirements relating to the Sponsor and other terms as specified in Schedule 1 and undertakes to execute any Deed or Agreement as necessary to fulfil this requirement.

- 5.3. To the extent that reports delivered by the Recipient to the University contain Project Intellectual Property or the Recipient's Background Intellectual Property, the Recipient grants to the University a royalty-free, non-exclusive licence to use such Intellectual Property for the purpose of complying with any of its reporting obligations under the DEDJTR Grant Agreement or the DSI Participation Agreement.
- 5.4. The Recipient agrees that it will not have any claim, ownership or interest in the University's Background Intellectual Property and Confidential Information. This Agreement is not intended to grant the Recipient any ownership or usage rights in respect of the University's Background Intellectual Property or Confidential Information.
- 5.5. The University agrees that it will not have any claim, ownership or interest in the Recipient's Background Intellectual Property and Confidential Information. This Agreement is not intended to grant the University any ownership or usage rights in respect of the Recipient's Background Intellectual Property or Confidential Information

## **6. ACKNOWLEDGEMENT AND PUBLICATIONS**

- 6.1. The Recipient must make reasonable efforts to publicly acknowledge the support of the DSI and the Sponsor in relation to publications arising from to the Project. An appropriate form of acknowledgement is "*This research was supported by [Sponsor Name] and the Defence Science Institute, an initiative of the State Government of Victoria*" or similar.
- 6.2. The Recipient must, within one week of the End Date, deliver to the University a document suitable for public release which outlines the outcomes of the Project ("**Release**"). The Recipient is responsible for ensuring the proposed release does not contain any unprotected Intellectual Property or Confidential Information The University may, at its option
  - 6.2.1. accept the Release; or
  - 6.2.2. require that the Recipient make amendments to the Release. The Recipient must make such amendments in a timely manner.

The University may then may publicly disclose the Release, including uploading the Release on the University website.

## **7. STUDENT THESIS**

- 7.1. If a Student is involved in the Project
  - 7.1.1. nothing in this Agreement will inhibit the right of the Student to have his or her thesis examined, provided the Recipient at all times complies, and procures compliance by the Student, with clause 8.
  - 7.1.2. subject to the Recipient at all times complying, and procuring compliance by the Student, with clause 8, nothing in this Agreement will affect any statutory obligations the Recipient may have regarding the deposit of a copy of the Student's thesis in the Recipient's library (including a digital copy) or otherwise publishing or disseminating the Student's thesis.
  - 7.1.3. nothing in this Agreement affects any ownership by the Student of copyright in their thesis.

## **8. CONFIDENTIALITY**

- 8.1. When receiving Confidential Information, the Receiving Party must:

- 8.1.1. keep all Confidential Information of the Disclosing Party confidential unless strictly required otherwise by law;
  - 8.1.2. limit access to those of its employees or agents reasonably requiring the Confidential Information on a strictly need to know basis;
  - 8.1.3. not use the Confidential Information in any way other than as contemplated by this Agreement without the prior written permission of the Disclosing Party;
  - 8.1.4. ensure that all employees, students or agents to whom the Confidential Information is disclosed are bound to keep the Confidential Information confidential and not to use the Confidential Information except for the Project; and
  - 8.1.5. immediately notify the Disclosing Party of any disclosure required by law.
- 8.2. At any time upon the written request of the Disclosing Party, the Receiving Party must, at its own expense, promptly destroy or return to the Disclosing Party any documents which embody the Disclosing Party's Confidential Information. The Receiving Party may retain:
- 8.2.1. one copy of the foregoing documents in a secure location for record-keeping purposes only; and
  - 8.2.2. copies of the foregoing documents to the extent required by any applicable laws.
- 8.3. The Receiving Party shall not be required to delete or destroy any electronic back-up tapes or other electronic back-up files that have been created solely by their automatic or routine archiving and back-up procedures, to the extent created and retained in a manner consistent with its or their standard archiving and back-up procedures.

## **9. WARRANTIES**

- 9.1. Each Party warrants to the other Party that:
- 9.1.1. it will not use, nor allow, explicitly or implicitly, the use by third parties, of the other Party's name and logo in any manner, unless the Party has expressly agreed in writing; and
  - 9.1.2. except where due to a breach of this Agreement, a Party will not institute any proceedings against the other Party or join in any legal proceedings against the other Party brought by another person with respect to the Project or Project Intellectual Property.

## **10. LIMITATION OF LIABILITY**

- 10.1. Except as otherwise provided in this Agreement, the Parties do not make any warranties regarding the Project, Project Intellectual Property or any part thereof.
- 10.2. Except as otherwise provided in this Agreement, to the extent permitted by law, the Parties have no liability whatsoever in respect of the Project or the Project Intellectual Property.

## **11. TERMINATION**

- 11.1. The University may terminate this Agreement immediately upon the giving of Notice to the Recipient if:
- 11.1.1. the Recipient is unable to identify and enrol a suitable Student within six (6) months of the execution of this Agreement;

- 11.1.2. the Recipient is insolvent within the meaning of the Corporations Act 2001 (Cth);
  - 11.1.3. an application or order is made, or other steps are taken for the Recipient's winding up or dissolution, or the Recipient enters into an arrangement for the benefit of its creditors or any of them;
  - 11.1.4. an administrator is appointed over all or any of the Recipient's assets or undertakings, or a controller within the meaning of section 9 of the Corporations Act 2001 or similar officer is appointed to all or any of the Recipient's assets or undertakings; or
  - 11.1.5. the Sponsor has given notice to the University of termination of the Head Agreement (as defined in Schedule 1).
- 11.2. Either the Recipient or the University may terminate this Agreement:
- 11.2.1. if the other Party is in default of the terms and conditions of this Agreement and fails to remedy the default within twenty (20) Business Days after Notice requiring the remedy of the default is received; or
  - 11.2.2. on giving ninety (90) days Notice without cause.
- 11.3. Termination of this Agreement for whatever cause shall be without prejudice to any rights or obligations that have accrued and are owing prior to such termination, including but not limited to payments of money.
- 11.4. Clauses 5 and 8 survive the expiration or termination of this Agreement along with any other provision which by its nature survives termination or expiration of this Agreement.

## 12. DISPUTE RESOLUTION

- 12.1. A Party claiming that a dispute has arisen under this Agreement (**Dispute**) must notify the other Party giving written details of the Dispute. The Parties agree to negotiate in good faith on a commercially realistic basis to resolve the Dispute and will refer resolution of the Dispute to officers within each Party who are authorised to hear the dispute before commencing any legal proceedings in relation to the Dispute.
- 12.2. Any Dispute which cannot be settled under clause 12.1 within thirty (3) days of commencement of negotiation under clause 12.1 must be referred for determination by a person appointed for that purpose by the Parties, and failing agreement, appointed by the President of the Institute of Arbitrators and Mediators Australia (Victorian Division).
- 12.3. Any determination made under clause 12.2 is binding on the Parties and the *Commercial Arbitration Act 2011 (Vic)* applies to the determination except to the extent otherwise agreed by the Parties.
- 12.4. Nothing in this clause 12 will prevent a Party from seeking urgent interlocutory relief.

## 13. GENERAL

- 13.1. **Governing law.** This Agreement is governed by the laws of the State of Victoria, Australia. The Parties submit to the jurisdiction of the courts of the State of Victoria and any courts which may hear appeals from those courts.
- 13.2. **Entire agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the Grant and Project, and supersedes all prior oral or written representations and agreements with respect to the Grant and Project.
- 13.3. **Amendment.** This Agreement may only be amended in writing signed by the Parties.

- 13.4. **Assignment.** A Party may not assign its rights or obligations arising under this Agreement without the prior written consent of the other Party.
- 13.5. **Waiver.** A Party's failure to exercise or delay in exercising a right, power or remedy does not operate as a waiver of that right, power or remedy and does not preclude the future exercise of that right, power or remedy. To be effective, a waiver of a right, power or remedy must be in writing and signed by the Party granting the waiver.
- 13.6. **Severance.** If any provision or part provision of this Agreement is invalid or unenforceable, such provision shall be deemed deleted but only to the extent necessary and the remaining provisions of this Agreement shall remain in full force and effect.
- 13.7. **Notices.** Notices must be in writing and signed by a duly authorised person. Notices to or by a Party delivered in person are deemed to be given by the sender and received by the addressee when delivered to the addressee:
- 13.7.1. if by domestic post, 3 Business Days from and including the date of postage;
  - 13.7.2. if by international post, 10 Business Days from and including the date of postage;
  - 13.7.3. if by email, when an emailed Notice is acknowledged by the recipient personally (that is, not by any automatically generated system email); or
  - 13.7.4. or if by facsimile, when transmitted to the addressee;
- provided that if transmission is on a day which is not a Business Day or is after 5.00pm (addressee's time) on the next Business Day.
- 13.8. **Relationship of the Parties.** The Parties are independent contracting parties, and nothing in this Agreement shall make any Party the agent, partner or legal representative of the other Party for any purpose whatsoever, nor does it grant either Party any authority to assume or to create any obligation on behalf of or in the name of the other Party.
- 13.9. **Privacy.** Each Party must comply with its obligations under all applicable laws in relation to the collection, storage, use and disclosure of any personal or health information which it provides to the other Party or to which it becomes privy as a result of this Agreement.
- 13.10. **Force Majeure.** No Party is liable for any failure to perform or delay in performing its obligations under this Agreement if that failure or delay is due to anything beyond that party's reasonable control (including acts of God, natural disasters or any change in laws or regulations) (**Force Majeure Event**), provided that the party affected by the Force Majeure Event uses its reasonable endeavours to mitigate the impact of the Force Majeure Event. If a Force Majeure Event occurs, the affected Party must Notify the other Party as soon as practicable thereafter.
- 13.11. **Counterparts.** This Agreement may be executed in counterparts. All executed counterparts constitute one document.

**EXECUTED AS AN AGREEMENT**

**SIGNED** for and on behalf of **THE UNIVERSITY OF MELBOURNE** in the presence of: )  
)  
)  
)

.....  
Signature of authorised person

.....  
Signature of Witness

.....  
Office held

.....  
Name of Witness (block letters)

.....  
Name of authorised person (block letters)

.....  
Date

**SIGNED** for and on behalf of **THE RECIPIENT** in the presence of: )  
)  
)  
)

.....  
Signature of authorised person

.....  
Signature of Witness

.....  
Office held

.....  
Name of Witness (block letters)

.....  
Name of authorised person (block letters)

.....  
Date

[The **last Party** to sign the Agreement must complete the date field on the first page. If the Agreement is signed by counterparts, **both Parties** must complete the date field on the first page and the later of the two dates shall be taken as the date of the Agreement.]

## SCHEDULE 1: AGREEMENT DETAILS

### ITEM 1 THE PARTIES

**The University**

<b>Legal name</b>	The University of Melbourne
<b>Contact person for Notices</b>	Deputy Vice-Chancellor (Research)
<b>Address</b>	The University of Melbourne VIC 3010
<b>Fax No</b>	+61 3 9347 6739
<b>Email</b>	dvc-research@unimelb.edu.au
<b>ABN</b>	84 002 705 224

**The Recipient**

<b>Legal name</b>	
<b>Contact person for Notices</b>	
<b>Address</b>	
<b>Fax No</b>	
<b>Email</b>	
<b>ABN</b>	

**ITEM 2 SPONSOR** The Commonwealth of Australia as represented by the Defence Science and Technology Group of the Department of Defence (**DST**)

**ITEM 3 START DATE** The date upon which this Agreement is signed by both Parties  
*Or*  
[specified date]

**ITEM 4 END DATE** XXX (X) months commencing from the Start Date  
*Or*  
[specified date]

**ITEM 5 GRANT** XXXX (ex GST) as follows:

- XXXX (ex GST) upon signing of this Agreement
- XXXX (ex GST) upon receipt of Progress Report X

*Or*

- XXXX (ex GST) upon completion of Milestone X
- XXXX (ex GST) upon receipt of Final Report

The above amounts will be payable within 30 days of UoM receiving a valid tax invoice for the payment amount.

Tax invoices for payment are to be submitted to [dsi.info@defencescienceinstitute.com](mailto:dsi.info@defencescienceinstitute.com)

**ITEM 6 INTELLECTUAL PROPERTY**

**SPONSOR-SPECIFIC INTELLECTUAL PROPERTY ARRANGEMENTS**

**1. DEFINITIONS**

In addition to the definitions set out in clause 1.1 of the body of this Agreement, the following definitions apply in relation to this Item 6:

**Pre-existing Material** means Material owned or developed by a party before execution of this Agreement.

**Project Material** means any Material developed in the course of carrying out the Project.

**Material** means includes property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property.

**Moral Rights** means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the *Copyright Act 1968* (Cth).

**Third Party Material** means Material owned by another person that is used in performing the Project.

**Warranted Materials** means:

the Recipient's Pre-existing Material used in performing the Project;

Third Party Material; and

Project Material.

**2. OWNERSHIP**

As between the Sponsor and Recipient, Project Material will be owned by the Recipient. This Item 6 does not affect the ownership of the Intellectual Property in any Pre-existing Material or Third Party Material.

**3. THIRD PARTY MATERIAL**

The Recipient must obtain all necessary copyright and other Intellectual Property permissions before making any Third Party Material or Project Material available for the purpose of this Agreement or the Head Agreement.

**4. IP DEED**

Without limiting this Item 6, the Recipient must provide to the University no later than three (3) days after the execution of this Agreement, an intellectual property rights deed in the form of the intellectual property rights deed template attached to this agreement as Annexe B that is duly executed by the Recipient on the same date as the execution of this Agreement.

## **5. LICENCE TO THE COMMONWEALTH**

To the extent that the Sponsor needs to use any of the Pre-existing Material, Third Party Material or Project Material in accordance with clause 8.5 of the Head Agreement, the Recipient grants, or will obtain for the University, a perpetual, irrevocable, worldwide-wide, royalty-free licence to sublicense the Sponsor to use, reproduce, adapt, modify, communicate, broadcast, distribute and publish that Material.

## **6. WARRANTY**

The Recipient warrants that to the best of its knowledge after making diligent inquiry:

the Warranted Materials and the Sponsor's use of the Warranted Materials will not infringe the Intellectual Property or Moral Rights of any person; and

it has the necessary rights to vest the Intellectual Property and grant the licences as provided for in this Item 6 of Schedule 1.

## **7. REMEDY FOR BREACH OF IP WARRANTY**

If someone claims, or the Sponsor reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property or Moral Rights, the Recipient must, in addition to any other rights that the Sponsor or the University may have against it, promptly, at the Recipient's expense:

use its best efforts to secure the rights for the Sponsor to continue to use the affected Warranted Materials free of any claim or liability for infringement; or

replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property or Moral Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

## **8. SURVIVAL**

This Item 6 will survive termination or expiry of this Agreement.

**ITEM 7      REPORTING  
OBLIGATIONS**

The Recipient must provide the following reports for the Sponsor:

*[list any reports required by the sponsor]*

The Recipient must provide the following reports to DSI:

- Within thirty (30) days of the End Date, the Recipient must provide DSI with a written Final Report detailing the outcomes of the project
- Six (6) monthly progress reports for the duration of the project
- 12 months after the end of the project, the Recipient must provide DSI with a short, post-grant report on further outcomes from the project (eg grants applied for and received, further or new collaborations, ongoing relationships)

The above reports to DSI are to be submitted using the pro formas attached at Schedule 4.

DSI shall forward reports to the Sponsor on behalf of the Recipient.

The email address for submission of reports and invoices for payment is

[dsi.info@defencescienceinstitute.com](mailto:dsi.info@defencescienceinstitute.com)

**ITEM 8 OTHER OBLIGATIONS & CONDITIONS**

**1. THE UNIVERSITY'S OBLIGATIONS UNDER THE HEAD AGREEMENT**

The Recipient accepts that its obligations under this Agreement form part of the University's obligations under the means the agreement between the University and the Commonwealth annexed to this agreement at Annexure 3 (**Head Agreement**) and agrees to fully cooperate with the University by complying with the Recipient's obligations under this Agreement and with all reasonable requests that the University makes to enable the University to meet its obligations under the Head Agreement.

In performing this Agreement, the Recipient must not do anything that would place the University in breach of its obligations under the Head Agreement.

The Recipient indemnifies the University, its officers and employees against any claim, loss or damage arising in connection with the Project, including under the Head Agreement. The Recipient's obligation to indemnify the University under this clause 1.3 of Item 8 of Schedule 1 will reduce proportionally to the extent any act or omission involving fault on the part of the University contributed to the claim, loss or damage.

Nothing in this Agreement will reduce or otherwise affect the obligations of the University under the Head Agreement. In the event of any inconsistency between this Agreement and the Head Agreement, the Head Agreement takes precedence.

**RECIPIENT OBLIGATIONS**

The Recipient must perform its activities under this agreement:

- 1.1.1.to the reasonable satisfaction of the University;
- 1.1.2.with due skill and care to the best of the Recipient's knowledge and expertise;
- 1.1.3.to a high standard and in accordance with the professional standards of conduct applying to the relevant industry;
- 1.1.4.in accordance with all applicable statutes, regulations, by-laws, ordinances or subordinate legislation and any relevant Defence Science and Technology Group policies;
- 1.1.5.in accordance with any directions given by the University that give effect to directions given by the Sponsor under the Head Agreement;
- 1.1.6.so as to keep accurate and auditable records; and
- 1.1.7.otherwise in accordance with this Agreement and the Head Agreement.

**WARRANTIES**

The Recipient represents and warrants that:

- 1.1.8.any statement or information given or made to the University by the Recipient in relation to the Project or this Agreement is true and correct;
- 1.1.9.the Recipient and its personnel (including, if applicable, any subcontractors), have the necessary experience, skill, knowledge and competence to perform the Project and, where

applicable, will hold such licences, permits or registrations as are required under any State, Territory or Commonwealth legislation to perform the Project, and are fit and proper people; and

- 1.1.10. the Recipient's personnel (including, if applicable, any subcontractors), receive ongoing training and professional development to ensure they have, and maintain, the appropriate skills to deliver the Project, as appropriate to their respective role(s);
- 1.1.11. it has, or will have, sufficient funds to complete the Project.

## **SUBCONTRACTING**

- 1.1.12. Subcontracting any part of, or the entire. Recipient's obligations under this Agreement will not relieve the Recipient from any of its obligations under this Agreement.
- 1.1.13. The Recipient must not subcontract any aspect of the performance of the Project without the prior written approval of the University.
- 1.1.14. The Recipient must not, in any event, enter into a subcontract under this Agreement with a subcontractor named by the Director of Workplace Gender Equality in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the *Workplace Gender Equality Act 2012 (Cth)*.
- 1.1.15. The Recipient must make available to the University the details of all subcontractors engaged to perform any activities under this Agreement. The Recipient acknowledges that the University may pass those details to the Sponsor, who may be required to publicly disclose that information.
- 1.1.16. The Recipient must enter into a written agreement with any subcontractor that is consistent with this Agreement, including the University's rights under it, and to ensure that any subcontract does not conflict with or detract from the Sponsor's rights under the Head Agreement.

## **REPAYMENT**

### **Misspent funds**

The University will be entitled to recover from the Recipient any amount of the Grant that the University reasonably considers corresponds to funds that the University is required to repay to the Sponsor under clause 11.1 of the Head Agreement, to the extent that the repayment is caused or contributed to by the Recipient's failure to spend or use funds in accordance with this Agreement or the Head Agreement.

### **Unspent funds**

On expiry or termination of the Head Agreement, the University will be entitled to recover from the Recipient any amount of the Grant which the University reasonably considers correspond with

unspent funds that the Sponsor requires the University to repay to the Sponsor under clause 11.2 of the Head Agreement.

#### **Repayment notice**

The University may give the Recipient a notice requiring the Recipient to pay to the University (or deal with as specified by the University) an amount which the University is entitled to recover under this clause 5 of Item 8 of Schedule 1.

If the University gives a notice under clause 5.3 of Item 8 of Schedule 1, the Recipient must pay the amount specified in the notice in full (or deal with it as specified by the University) within 14 days after the date of the notice.

#### **PRIVACY**

In performing the Project, the Recipient agrees to comply with the *Privacy Act 1988* (Cth) and not to do anything, which if done by the Sponsor would breach an Australian Privacy Principle as defined in that Act.

#### **CONFLICT OF INTEREST**

The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.

If a conflict of interest arises, or appears likely to arise, the Recipient must:

- 1.1.17. notify the University immediately in writing;
- 1.1.18. make full disclosure of all relevant information relating to the conflict; and
- 1.1.19. take such steps as the University requires to resolve or otherwise deal with the conflict.

#### **HEAD AGREEMENT CONFIDENTIAL INFORMATION**

Nothing in this Agreement will prevent the University from disclosing Confidential Information of the Recipient to the Sponsor in accordance with the Head Agreement. However, if the Recipient provides prior or concurrent written notice to the University that it wishes for any Confidential Information provided to the University under this Agreement to be considered 'Confidential Information' for the purposes of the Head Agreement then the University will communicate any such reasonable request to the Sponsor in circumstances where the University provides that Confidential Information to the Sponsor.

Notwithstanding any request for Confidential Information under this Agreement to be considered Confidential Information for the purposes of the Head Agreement under clause 8.2 of Item 8 of Schedule 1, the Recipient acknowledges that the Sponsor may disclose that Confidential Information in accordance with any of the Commonwealth's right(s) to do so under the Head Agreement.

#### **WORK HEALTH AND SAFETY**

The Recipient must comply with all reasonable directions and procedures relating to work health and safety, whether specifically informed by the University or as might reasonably be inferred from the circumstances.

## COMPLIANCE WITH LAWS

The Recipient must comply with, and ensure its Personnel (including subcontractors) comply with the laws from time to time in force in any jurisdiction in which any part of this Agreement is performed.

## BOOKS AND RECORDS AND AUDIT AND ACCESS

For the purposes of this clause 11 of Item 8 of Schedule 1, **Accounting Standards** means the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the *Australian Securities and Investments Commission Act 2001* (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.

The Recipient must:

- 1.1.20. keep and require its subcontractors to keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable:

all receipts and payments related to the Project to be identified and reported in accordance with this Agreement; and

the amounts payable by the University under this Agreement to be determined; and

- 1.1.21. retain and require its subcontractors to retain for a period of seven years after the expiry or termination of this Agreement, all books and records relating to the Project.
- 1.1.22. The University or Sponsor, or a representative of one of them, may conduct audits relevant to the performance of the Recipient's obligations under this Agreement.
- 1.1.23. The Recipient must grant the University or Sponsor, or any nominees of either of them, the Auditor-General, the Freedom of Information Commissioner, the Information Commissioner and the Privacy Commissioner access at reasonable times and on reasonable notice (except where there is a suspected breach of this Agreement in which case no notice is required) to the Recipient's premises and data, records, accounts and other Material (as defined in Item 6) relevant to the performance of this Agreement, however and wherever stored or located, under the Recipient's custody, possession or control for inspection and copying. In the case of documents or records stored on a medium other than in writing, the Recipient must make available on request at no cost such reasonable facilities as may be necessary to enable a legible reproduction to be created.

## TERMINATION OR REDUCTION UNDER HEAD AGREEMENT

The Recipient acknowledges that the Sponsor may, by notice to the University, terminate or reduce the scope of the Head Agreement. On receipt of a notice from the University that the Sponsor has terminated or reduced the scope of the Head Agreement:

- 1.1.24. this scope of this Agreement will be reduced or terminated accordingly, in the manner as notified by the University to the Recipient:
- 1.1.25. the Recipient take all available steps to minimise loss resulting from that termination or reduction; and
- 1.1.26. in the case of a reduction in scope, continue to undertake any part of the Project not affected by the notice (unless the Recipient and University agree that it is not commercially viable for the Recipient to do so).

If the Head Agreement is terminated or reduced in scope, the University will only be liable to the Recipient for payments under this Agreement or any compensation in connection to the termination or reduction in scope to the extent that the Sponsor provides corresponding payments to the University under the Head Agreement.

#### **ANNOUNCEMENTS**

The Recipient must, before making a public announcement in connection with this Agreement or any transaction contemplated by it, obtain the University's agreement to the announcement, except if required by law or a regulatory body (including a relevant stock exchange).

If the Recipient is required by law or a regulatory body to make a public announcement in connection with this Agreement or any transaction contemplated by this Agreement the Recipient must, to the extent practicable, first consult with and take into account the reasonable requirements of the University.

#### **SURVIVAL OR TERMINATION**

The following clauses of this Item 8 of Schedule 1 survive the expiration or termination of this Agreement:

- 1.1.27. clause 5 (Repayment);
- 1.1.28. clause 6 (Privacy);
- 1.1.29. clause 8 (Head Agreement Confidential Information);
- 1.1.30. clause 9 (Work health and safety);
- 1.1.31. clause 11 (Books and Records and Audit and Access); and
- 1.1.32. clause 12 (Termination or Reduction of the Head Agreement),

along with any other clause which by its nature is intended to survive expiration or termination.

**SCHEDULE 2: PROJECT SPECIFICATION**

<b>Project Title</b>	
<b>Project Manager</b>	
<b>Project Collaborators</b>	
<b>Project description</b>	
<b>Project Personnel</b>	
<b>Project Students</b> (if applicable and known)	
<b>Other</b>	

SAMPLE

**SCHEDULE 3: GRANT APPLICATION**

[to be attached]

SAMPLE

**SCHEDULE 4: DSI REPORT PRO FORMAS**

[to be attached]

SAMPLE

**ANNEX B: SPONSOR – RECIPIENT INTELLECTUAL PROPERTY DEED**

SAMPLE

SAMPLE

**ANNEX C: HEAD AGREEMENT**

To be attached

SAMPLE