



**Australian Government**  
**Department of Defence**

**Defence Science Partnering Deed—Deed Terms**

Agreement No: insert agreement number/descriptor

Between:

The Commonwealth of Australia, represented by the Department of Defence

and:

[University Name]

**Contents**

Division 1. Deed Framework ..... 3

    1.1. Duration of Deed ..... 3

    1.2. Composition of Deed and priority of documents ..... 3

    1.3. Definitions and interpretation ..... 3

Division 2. Operation of the Defence Science Partnership ..... 4

    2.1. Objectives of the Defence Science Partnership ..... 4

    2.2. Scope of the Defence Science Partnership ..... 5

    2.3. Management of the Defence Science Partnership—the Partnership Executive Committee and Partnership Managers ..... 5

    2.4. Activity Agreements ..... 6

    2.5. Special arrangements for Projects which are to be conducted by more Than one University ..... 7

    2.6. Security arrangements ..... 7

    2.7. Review of the Deed and Activity Agreement Templates ..... 8

    2.8. Additional Activity Agreement Templates ..... 9

    2.9. Costing Activity Agreements ..... 9

    2.10. Personnel and students ..... 9

    2.11. Treatment of Conflicts of Interest ..... 10

    2.12. Prioritising Australia’s defence and national security ..... 10

    2.13. Acknowledgements, partnership branding and publicity ..... 10

Division 3. Arrangements Regarding Confidential Information and Intellectual Property ..... 11

    3.1. Confidential Information—Meaning of Providing Party and Receiving Party ..... 11

    3.2. Confidential Information—General conditions on its provision ..... 11

    3.3. Confidential Information—Restrictions on its use or disclosure ..... 11

3.4.	<i>Confidential Information—Return or destruction</i> .....	13
3.5.	<i>Confidential Information—Duration of confidentiality obligations</i> .....	13
3.6.	<i>Confidential Information—No reduction in privacy obligations</i> .....	14
3.7.	<i>Confidential Information—Remedies for breaches and evidential burden of proof</i> .....	14
3.8.	<i>Dissemination of information</i> .....	14
3.9.	<i>Treatment of Intellectual Property</i> .....	14
<b>Division 4.</b>	<b>Compliance with Legislation and Commonwealth Policies</b> .....	<b>14</b>
4.1.	<i>Work Health and Safety obligations</i> .....	14
4.2.	<i>Environmental protection obligations</i> .....	16
4.3.	<i>Protection of Personal Information</i> .....	16
4.4.	<i>Workplace gender equality requirements</i> .....	16
4.5.	<i>Treatment of national security matters</i> .....	17
4.6.	<i>Access for evaluations, audits and investigations</i> .....	17
<b>Division 5.</b>	<b>General Provisions</b> .....	<b>18</b>
5.1.	<i>Taxes, duties and government charges</i> .....	18
5.2.	<i>Managing unexpected delays</i> .....	19
5.3.	<i>Resolving Disputes</i> .....	19
5.4.	<i>Termination rights</i> .....	20
5.5.	<i>Notices</i> .....	21
5.6.	<i>Other general provisions</i> .....	21
<b>Schedule 1.</b>	<b>Dictionary</b> .....	<b>24</b>
<b>Schedule 2.</b>	<b>Costing Activity Agreements</b> .....	<b>27</b>
<b>Schedule 3.</b>	<b>DSP Research Agreement Template</b> .....	<b>31</b>
<b>Schedule 4.</b>	<b>DSP Bilateral Collaborative Project Agreement Template</b> .....	<b>32</b>
<b>Schedule 5.</b>	<b>DSP Multi-Party Collaborative Project Agreement Template</b> .....	<b>33</b>
<b>Schedule 6.</b>	<b>DSP Multi-Party Non Disclosure Agreement</b> .....	<b>34</b>
<b>Schedule 7.</b>	<b>DSP Staff Secondment and Exchange Agreement</b> .....	<b>35</b>
<b>Schedule 8.</b>	<b>DSP Centre for Advanced Defence Research Agreement Template</b> .....	<b>36</b>
<b>Schedule 9.</b>	<b>DSP Academic Funding Agreement Template</b> .....	<b>37</b>
<b>Schedule 10.</b>	<b>DSP Postdoctorate Funding Agreement Template</b> .....	<b>38</b>
<b>Schedule 11.</b>	<b>DSP Infrastructure Access Agreement Template</b> .....	<b>39</b>
<b>Schedule 12.</b>	<b>DSP Equipment Loan Agreement Template</b> .....	<b>40</b>
<b>Schedule 13.</b>	<b>DSP Material Transfer Agreement Template</b> .....	<b>41</b>
<b>Schedule 14.</b>	<b>DSP Defence Staff PhD STUDIES Agreement Template</b> .....	<b>42</b>
<b>Schedule 15.</b>	<b>DSP Student (No Project) Scholarship Agreement Template</b> .....	<b>43</b>
<b>Schedule 16.</b>	<b>DSP Student (Project-based ) Scholarship Agreement Template</b> .....	<b>44</b>
<b>Schedule 17.</b>	<b>DSP Student Participation and Intellectual Property Deed Template</b> .....	<b>45</b>
<b>Schedule 18.</b>	<b>DSP Variation Agreement Template</b> .....	<b>46</b>

## DIVISION 1. DEED FRAMEWORK

### 1.1. Duration of Deed

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- 1.1.1. This Deed commences on the Commencement Date and will continue in force for the period set out in Item 2.2 of the Deed Details, (*the Initial Term*) unless terminated earlier in accordance with this Deed.
- 1.1.2. The Parties may extend operation of this Deed for a further period set out in Item 2.3 of the Deed Details (*the Extended Term*) by mutual agreement in writing prior to the expiry of the Initial Term, in which case this Deed continues in force until the end of the Extended Term unless terminated earlier in accordance with this Deed.

### 1.2. Composition of Deed and priority of documents

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- 1.2.1. This Deed comprises the following documents:
- (a) these Deed Terms;
  - (b) the Deed Details;
  - (c) the attachments (if any) to the Deed Details; and
  - (d) any other documents incorporated by express reference.
- 1.2.2. If there is any inconsistency between documents comprising this Deed, then a document higher in the list in clause 1.2.1 will prevail over documents lower in the list to the extent of the inconsistency.

### 1.3. Definitions and interpretation

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#### Definitions

- 1.3.1. Words or phrases defined in the Dictionary in Schedule 1 of this Deed apply to this Deed, unless a contrary intention appears elsewhere in the Deed.

#### Definitions found elsewhere in these Deed Terms

- 1.3.2. A word or phrase defined in a clause (indicated by words in bold italics) applies only to that clause, unless:
- (a) it is also included in the Dictionary in Schedule 1 of this Deed; or
  - (b) the context otherwise requires (for example, a dictionary in an Activity Agreement applies to that Activity Agreement, or a word or phrase defined in a clause may be stated to apply to a Division, or to several clauses).

#### Interpretation

- 1.3.3. In this Deed, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa, and a gender includes other genders;
  - (b) another grammatical form of a defined word or expression has a corresponding meaning to that defined word or expression;
  - (c) a reference to a clause is to a clause in these Deed Terms (and includes references to sub-clauses and paragraphs);
  - (d) a reference to a Division is to a Division of these Deed Terms and the clauses in that Division;
  - (e) a reference to a Party includes that Party's executors, administrators, successors and permitted assignees and substitutes;
  - (f) a reference to an individual or person includes an incorporated entity, no matter how it is incorporated;

- (g) a reference to an Act, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) a reference to a specification, policy, document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (i) a reference to an amount of money is a reference to Australian currency;
- (j) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a Party merely because that Party was responsible for the preparation of this Deed or any part of it; and
- (l) headings and notes are for reference only and do not affect interpretation.

## **DIVISION 2. OPERATION OF THE DEFENCE SCIENCE PARTNERSHIP**

### **2.1. Objectives of the Defence Science Partnership**

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2.1.1. The Objectives of the Partnership are to:

- (a) engage in long-term strategic engagement;
- (b) identify the alignment of academic and Commonwealth research priorities where appropriate;
- (c) utilise complementary skills bases;
- (d) leverage infrastructure access rights and resource sharing;
- (e) improve mutual access to world class research infrastructure;
- (f) increase access to research programs;
- (g) foster long term partnership activities;
- (h) develop capabilities and technologies;
- (i) identify and promote new and innovative research opportunities;
- (j) investigate future technologies;
- (k) work collaboratively to foster development of scientific excellence and to become recognized leaders in their fields;
- (l) develop and conduct postgraduate programs and enhance personnel skills;
- (m) identify and develop education and training programs and promote them to Defence employees and students;
- (n) encourage publication of papers and articles, including joint publications;
- (o) collaborate in the development of niche areas of expertise;
- (p) streamline the entering into of Activity Agreements;
- (q) contribute to the broader innovation agenda and facilitate national wealth creation; and
- (r) contribute to the broader promotion of:
  - (i) science, technology, engineering and mathematics (**STEM**) in schools and the follow through in the tertiary sector;
  - (ii) women in STEM studies and employment opportunities in the research sector;
  - (iii) Australian indigenous student take up of STEM disciplines and interest in schools and the tertiary sector.

2.1.2. The Parties will use their reasonable endeavours in planning, negotiating and conducting Projects to achieve the Objectives by the means outlined in Item 3 of the Deed Details.

## **2.2. Scope of the Defence Science Partnership**

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- 2.2.1. Any agreements currently in effect between the Parties are not affected by this Deed.
- 2.2.2. The scope of this Deed is limited to the formation and operation of the Partnership and does not govern any activities of the Parties beyond that scope.
- 2.2.3. Subject to this Deed, each Party is free to engage in any research or commercial activities with any other person independently of this Deed.
- 2.2.4. Nothing in this Deed prevents the Commonwealth from entering into partnering arrangements with anyone else.

## **2.3. Management of the Defence Science Partnership—the Partnership Executive Committee and Partnership Managers**

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### **Partnership Executive Committee**

- 2.3.1. The Partnership (including this Deed and any Activity Agreement) will be managed at the strategic level by the Partnership Executive Committee, having regard to, and consistently with, the Objectives.
- 2.3.2. The Partnership Executive Committee's functions will include:
  - (a) overseeing the strategic implementation and operation of the Partnership;
  - (b) providing strategic and policy direction for the Partnership;
  - (c) receiving and considering reports regarding proposals for Specialty Agreements;
  - (d) evaluating and reporting to the Parties on the success of the Partnership (including by review of its performance on an annual or as otherwise mutually agreed basis) in accordance with the performance measures set out in Item 4 of the Deed Details, or as may be agreed by the Partnership Executive Committee from time to time;
  - (e) considering any review of this Deed (and Agreement Schedule Templates) prepared by the Commonwealth under clause 2.7; and
  - (f) considering any proposed Adjunct roles by Commonwealth employees under clause 2.10.9.

### **Composition**

- 2.3.3. The Parties will each appoint equal numbers of members to the Partnership Executive Committee and may, subject to clause 2.3.4, replace any of their appointees by giving at least ten (10) Working Days' Notice to the other Party. The Committee will be composed of not more than three members for each Party, comprising:
  - (a) the University Partnership Manager (or their authorised representative as agreed between the Parties);
  - (b) the Commonwealth Partnership Manager (or their authorised representative, as agreed between the Parties); and
  - (c) other persons, preferably with technical and business expertise as agreed by the Partnership Managers.
- 2.3.4. The Parties' initial Partnership Managers are specified in Item 5 of the Deed Details. Replacement Partnership Managers must be at the most appropriate level of management seniority acceptable to both Parties.
- 2.3.5. The Parties may invite other individuals from time to time to participate in meetings of the Partnership Executive Committee in order to make specific contributions as required.

### **Meetings**

- 2.3.6. The Partnership Executive Committee will meet a minimum of twice per year to carry out its functions as outlined in clause 2.3.2 and will maintain regular contact as mutually determined.

- 2.3.7. Meetings can be by video teleconference (or other form of instantaneous communication) if both Parties agree. However the Parties will seek to have at least one meeting per year held in person.

#### **Confidentiality of Partnership Executive Committee meetings and other discussions**

- 2.3.8. All information and Material revealed or provided during Partnership Executive Committee meetings, or other discussions between members of the committee, must be treated by the Parties as Confidential Information and clauses 3.1 to 3.7 apply to that information and Material.

#### **Powers**

- 2.3.9. The Parties acknowledge and agree that the Partnership Executive Committee:
- (a) is not granted under this Deed, or otherwise, any decision making power or any right or authority to bind the Parties; and
  - (b) cannot impose any obligations on the Parties or grant any rights to the Parties under this Deed or otherwise.

#### **Managing Material Personal Interests**

- 2.3.10. Each Party must use its reasonable endeavours to ensure that each of its representatives on the Partnership Executive Committee will disclose any actual or potential Material Personal Interest in an issue to be considered by the Committee under this Deed, a potential Project, or an Activity Agreement. A Material Personal Interest will be treated as a Conflict of Interest under clause 2.11.
- 2.3.11. For the purposes of clause 2.3.10 a Partnership Executive Committee member has a ***Material Personal Interest*** in an issue if the member has:
- (a) a direct or indirect personal financial interest in the issue; or
  - (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the Partnership Executive Committee's consideration of the issue.

## **2.4. Activity Agreements**

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- 2.4.1. If the Parties identify a possible Project they wish to pursue, the Parties will negotiate in good faith to enter into a legally binding Activity Agreement in relation to the proposed Project. The Activity Agreement for the proposed Project will be:
- (a) in the form of the relevant Schedule Agreement Template; or
  - (b) if there is no Schedule Agreement Template that is relevant to the proposed Project—in the form of a Specialty Agreement that is developed specifically for the proposed Project but that aligns with the Schedule Agreement Templates as far as practicable.
- 2.4.2. To the extent that an activity of the Parties is within the scope of the Partnership, the Parties will conduct the activity under this Deed or an Activity Agreement. This includes any of the following activities:
- (a) research activities and collaborations;
  - (b) secondments and exchanges;
  - (c) funding of scholarships and academic positions; and
  - (d) equipment loans and infrastructure access.
- 2.4.3. Despite any discussions or other exchanges between the Parties in relation to a potential Project or an Activity Agreement, no Party is under any obligation to proceed with the Project unless and until an Activity Agreement has been signed by all Parties in relation to that Project.
- 2.4.4. The University acknowledges that, notwithstanding anything in this Deed or an Activity Agreement, any acquisition of goods or services by the Commonwealth is subject to the Commonwealth Procurement Rules as made under the *Public Governance, Performance and Accountability Act 2013*.

- 2.4.5. The Commonwealth acknowledges that the University may enter into Activity Agreements through a Related Body Corporate of the University. The University will ensure any such Related Body Corporate is made aware:
- (a) of the terms of this Deed; and
  - (b) that it will be required to comply with clauses of this Deed that are incorporated by reference into Activity Agreements.

#### **Confidentiality of discussions about proposed Projects**

- 2.4.6. All information and Material revealed or provided during discussions and other exchanges between the Parties in relation to the development of a proposal for a Project, negotiation of a Project or the negotiation of the terms and conditions of an Activity Agreement must be treated by the Parties as Confidential Information and clauses 3.1 to 3.7 (Confidential Information clauses) apply to that information and Material.

### **2.5. Special arrangements for Projects which are to be conducted by more Than one University**

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- 2.5.1. The Parties acknowledge that the Commonwealth may enter separate partnering deeds with other universities on similar terms to this Deed and that the Parties and other such universities may wish to conduct multi-party collaborative projects, preferably using the multi-party collaborative Schedule Agreement Template.
- 2.5.2. All information and Material revealed or provided during discussions and other exchanges between the Parties and other universities in relation to the development of a proposal for a multi-party Project, negotiation of a multi-party Project or the negotiation of the terms and conditions of a multi-party Activity Agreement must be treated by the Parties as Confidential Information, and the Parties and any other party involved in those negotiations may sign a multi-party non-disclosure agreement, substantially in the form of Schedule 6 of this Deed to acknowledge the confidentiality of those negotiations.

### **2.6. Security arrangements**

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- 2.6.1. The University undertakes to make a good faith application for entry-level membership of the DISP within three (3) months of the Commencement Date and to obtain membership of the DISP within twelve (12) months of the Commencement Date, or within a longer period of time as agreed by the Commonwealth.
- 2.6.2. Once the University has obtained membership of the DISP it must, at a minimum, maintain entry-level membership of the DISP for the Term of this Deed.
- 2.6.3. Without limiting the requirements of the DISP, the Commonwealth may undertake security risk assessments and the University must fully assist and cooperate with the Commonwealth in relation to those assessments.
- 2.6.4. To enable the Commonwealth to undertake its security risk assessments, the University must:
- (a) disclose to the Commonwealth all Material Facts known to the University; and
  - (b) provide the Commonwealth, upon reasonable notice, with access to its Premises and facilities.
- 2.6.5. The University is under a continuing obligation throughout the Term of this Deed, to disclose Material Facts to the Commonwealth.
- 2.6.6. The University acknowledges that giving false or misleading information to the Commonwealth is a serious offence—see sections 137.1 and 137.1A of the *Criminal Code Act 1995* (Cth).
- 2.6.7. If the University breaches any obligation of this cause 2.6, the Commonwealth may do any of the following:
- (a) stop negotiations for any or all prospective Activity Agreements;

- (b) terminate an Activity Agreement under the termination for default clause in that Activity Agreement;
- (c) remove the Party from a multi-party Activity Agreement;
- (d) terminate this Deed under clause 5.4.2.

2.6.8. For this clause 2.6 the following definitions apply:

- (a) **Controlled** means, with respect to an Australian entity:
  - (i) the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in that entity;
  - (ii) the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in that entity;
  - (iii) the ability to appoint or remove a majority of the directors of the entity;
  - (iv) the ability to exercise or control the exercise of the casting of a majority of the votes at the meeting of the board of directors of the entity; or
  - (v) any other means, direct or indirect, of dominating the decision making and financial and operating policies of the entity.
- (b) **DISP** means the Defence Industry Security Program contained in the Defence Security Principles Framework, or its replacement.
- (c) **Foreign Entity** means an entity that is not an Australian entity and includes a foreign government, or an individual not ordinarily resident in Australia.
- (d) **Material Fact** means, in relation to a security risk assessment undertaken by the Commonwealth under this clause 2.6, any fact which the University knows and which a reasonable person would consider relevant to that security risk assessment and includes, when that security risk assessment is in relation to a Project, or a proposed Project:
  - (i) whether the University is seeking, or has obtained, funding or assistance for the Project, or proposed Project, from any organisation which the University knows, after making reasonable enquiries, is a Foreign Entity, or an Australian organisation which is Controlled by a Foreign Entity;
  - (ii) the titles of all research projects being undertaken by the Research Group at the time of the security assessment and for the five years before the security assessment;
  - (iii) the quantum and source of funding for all research activities being undertaken by the Research Group at the time of the security assessment and for the five years before the security assessment;
  - (iv) all affiliations and appointments of the Research Group (or individuals in the Research Group), as at the time of the security assessment and for the five years before the security assessment, with any organisation (whether government run, or privately owned), which the University knows, after making reasonable enquiries, is a non-Australian organisation, or an Australian organisation which is Controlled by a Foreign Entity; and
  - (v) any additional fact, or change of circumstance, of any of the matters referred to in paragraphs (ii) to (iv) of this definition, while the Project is being conducted.
- (e) **Research Group** means, in relation to a Project, or proposed Project, any research group of the University that is participating, or is to participate, in the Project.

2.6.9. This clause 2.6 is subject to any other contrary or additional security requirements under clause 4.5.

## 2.7. Review of the Deed and Activity Agreement Templates

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2.7.1. The Commonwealth will review this Deed and its Schedule Agreement Templates by the end of the third year of the Initial Term of the Deed and provide its review to the Partnership Executive Committee for discussion.



## **2.8. Additional Activity Agreement Templates**

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- 2.8.1. The Parties may, at any time, agree in writing to include additional agreements as schedules to this Deed.

## **2.9. Costing Activity Agreements**

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- 2.9.1. Unless otherwise agreed by the Parties, each Party will be responsible for its own costs and expenses incurred in connection with the entry into and operation of this Deed or an Activity Agreement and any activities conducted in relation to them.
- 2.9.2. The Parties acknowledge that some Activity Agreements will not require financial contribution by the Commonwealth, but will instead involve (for example) exchange of Material, data, access to facilities, in kind contributions, or undertakings to collaborate on research. However, for an Activity Agreement which will require payment by the Commonwealth to the University, the Parties agree that the payment rate applicable to the Activity Agreement will be determined in accordance with Schedule 2 of this Deed.
- 2.9.3. In valuing each Party's in-kind contributions to Projects, the Parties will:
- (a) agree upon a consistent valuation method to apply each Party's in-kind contribution and apply that method in valuing all in-kind contributions; and
  - (b) not apply any multiplier to the value of any in-kind contributions, unless they otherwise agree.
- 2.9.4. The University acknowledges that the liability of the Commonwealth to support a particular Project is limited to the amount specified in the relevant Activity Agreement (exclusive of GST). Payments will be linked to receipt of key deliverables and satisfactory performance or as otherwise mutually agreed.

## **2.10. Personnel and students**

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- 2.10.1. Each Party will be responsible for its Personnel engaged under this Deed and any Activity Agreement.
- 2.10.2. Seconded Personnel of each Party will in no circumstances be considered to be an employee of the other Party.
- 2.10.3. The Parties acknowledge that the University and its students are generally not in an employment relationship and that the University's ability to give directions to its students is subject to the University's rules, statutes or official procedures. The Commonwealth may therefore require a student of the University who is participating in research, accessing Commonwealth Premises or using Commonwealth facilities to enter into a separate agreement in relation to that research, access or use.

### **Access to Parties Premises**

- 2.10.4. A Party's Personnel do not have a right of access to the other Party's Premises except as set out in an Activity Agreement or in the absolute discretion of the other Party. In granting access to the Personnel of the other Party, unless otherwise specified in this Deed or an Activity Agreement, the Party may impose such conditions as it thinks fit, and the other Party agrees to comply with these conditions.
- 2.10.5. When Personnel of a Party (*the Sending Party*) are using the Premises or facilities of the other Party (*the Host Party*), the Sending Party will ensure that those Personnel comply with all Policies issued by the Host Party applicable to those Premises or facilities.
- 2.10.6. The Host Party may:
- (a) refuse access to its Premises or facilities to the Sending Party's Personnel or students who refuse to comply with the Host Party's Policies in relation to those Premises or facilities; or

- (b) immediately remove any of the Sending Party's Personnel or students from its Premises or its facilities if those Personnel or students have failed to comply with any Policy issued by the Host Party in relation to those Premises or facilities.
- 2.10.7. The Host Party will endeavour to provide its relevant Policies to the Sending Party's Personnel or students before, or at the first instance at which, such Personnel or students attend the Host Party's Premises or use the Host Party's facilities. The Host Party will endeavour to notify such Personnel and students if it subsequently changes those Policies, or adopts new Policies.
- 2.10.8. In clauses 2.10.5, 2.10.6 and 2.10.7, **Policies** includes policies, procedures and reasonable directions.

#### **Commonwealth employees as University Adjunct Staff**

- 2.10.9. The University acknowledges that Commonwealth employees are not permitted, under their conditions of employment, to undertake work (including unpaid work) other than for the Commonwealth, without first obtaining the approval of the Commonwealth. Accordingly, the University will not offer a Commonwealth employee an Adjunct role at the University without first obtaining the agreement of the Partnership Executive Committee.
- 2.10.10. For clause 2.10.9 **Adjunct** means a person who is not a salaried member of the University staff but who, following their appointment, is intended to make contributions to the teaching, research or scholarship of the University.

#### **2.11. Treatment of Conflicts of Interest**

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- 2.11.1. Each Party agrees to promptly give Notice to the other Party of any Conflicts of Interest which could conflict with, or restrict that Party (**the Conflicted Party**) performing its obligations under this Deed or an Activity Agreement fairly and independently.
- 2.11.2. In providing the Notice under clause 2.11.1, the Conflicted Party will provide sufficient detail to the other Party about the matter to enable the Parties to determine appropriate action to resolve or manage the Conflict of Interest.
- 2.11.3. The Conflicted Party will take the action determined under clause 2.11.2 to resolve or manage the Conflict of Interest in the timeframe agreed between the Parties.

#### **2.12. Prioritising Australia's defence and national security**

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- 2.12.1. Despite anything in this Deed or an Activity Agreement, the Commonwealth will not be obliged to do any act or thing if, in the sole opinion of the Commonwealth (which will not be obliged to give reasons), that act or thing would prejudice:
  - (a) the Commonwealth's defence of Australia, or
  - (b) the Commonwealth's international or national security interests,or prevent the Commonwealth from properly performing its obligations, functions or duties with respect to the matters referred to in clauses 2.12.1(a) or 2.12.1(b).

#### **2.13. Acknowledgements, partnership branding and publicity**

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- 2.13.1. Subject to clause 2.13.2, the Parties must acknowledge the Partnership in any public announcements, media statements, publications or other statements which refer to or are connected to the Partnership.
- 2.13.2. The University must by Notice advise the Commonwealth of any proposed public announcement or media statement relating to the Partnership and obtain the Commonwealth's consent to the announcement or statement before making it public.
- 2.13.3. Each Party must acknowledge the contribution of the other Party and the Partnership to Projects:
  - (a) as required by an Activity Agreement; and
  - (b) otherwise as agreed between the Parties.

- 2.13.4. The Commonwealth reserves the right to publicise and report on this Deed and any Activity Agreement by including the University's name, the amount of the Project Payments given to the University (if any), the title and a brief description of any Project in media releases, general announcements about the Deed and any Activity Agreement, annual reports, answers to Parliamentary questions, or through any other means as determined by the Commonwealth.
- 2.13.5. The Commonwealth will use reasonable endeavours to provide the University with advance notification of any proposed publicity or reporting under clause 2.13.4.

### **DIVISION 3. ARRANGEMENTS REGARDING CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY**

#### **3.1. Confidential Information—Meaning of *Providing Party* and *Receiving Party***

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- 3.1.1. Each Party acknowledges and agrees that:
- (a) it is the ***Providing Party*** with respect to the Confidential Information it provides, or makes accessible to, the other Party;
  - (b) it is the ***Receiving Party*** with respect to the Confidential Information which it receives, or has access to, from the other Party; and
  - (c) clauses 3.1 to 3.7 are binding upon it as the Receiving Party and enforceable by it as the Providing Party.

#### **3.2. Confidential Information—General conditions on its provision**

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- 3.2.1. Activity Agreements may specify the means by which Confidential Information is to be provided by the Parties for the purposes of that Activity Agreement.
- 3.2.2. Each Party acknowledges and agrees that the other Party's Confidential Information provided for the purposes of this Deed, or for the purposes of any Activity Agreement, is valuable.

##### **No implied licences**

- 3.2.3. Nothing in this Deed or any Activity Agreement gives the Receiving Party any right, title or interest (including any intellectual property rights) in or to the Providing Party's Confidential Information other than the limited right to use the Confidential Information as contemplated by this Deed, or the relevant Activity Agreement (as applicable).

##### **No warranty as to accuracy or suitability**

- 3.2.4. Neither Party represents or warrants that its Confidential Information is accurate, complete, up to date or fit for any particular purpose. Each Party must make its own assessment of the other Party's Confidential Information and must satisfy itself as to its accuracy, completeness and suitability.

#### **3.3. Confidential Information—Restrictions on its use or disclosure**

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##### **Use or disclosure for intended purpose, or with consent**

- 3.3.1. The Receiving Party must use the Providing Party's Confidential Information only:
- (a) in the case of Confidential Information provided under, or for the purposes of a clause of this Deed—for the purposes of that clause; or
  - (b) in the case of Confidential Information provided as part of an Activity Agreement—for the purpose of performing the Receiving Party's obligations, or exercising its rights under that Activity Agreement,

and must not disclose that information without the Providing Party's prior written consent, or as otherwise permitted by clauses 3.3.2, clause 3.3.5, or clause 3.3.7.

- 3.3.2. The Receiving Party may disclose the Providing Party's Confidential Information to its Personnel, but only to the extent necessary:
- (a) in the case of Confidential Information provided under, or for the purposes of a clause of this Deed—for the purposes of that clause; or
  - (b) in the case of Confidential Information provided as part of an Activity Agreement—for the purpose of performing the Receiving Party's obligations, or exercising its rights under that Activity Agreement.
- 3.3.3. The Receiving Party must take proper and effective precautions to prevent persons from accessing the Providing Party's Confidential Information that is in its possession or control and must ensure:
- (a) its Personnel and professional advisers are made aware of the confidential nature of the Confidential Information and the terms relating to confidentiality under this Deed, or relevant Activity Agreement (as applicable) before being provided with or having access to the Confidential Information; and
  - (b) its Personnel and professional advisers (whether or not still employed or engaged in that capacity) do not do or fail to do anything that, if done or not done, would amount to a breach of the Receiving Party's obligations relating to confidentiality under this Deed or relevant Activity Agreement (as applicable).
- 3.3.4. In addition to the requirements of clause 3.3.3, the Providing Party may at any time give reasonable directions to the Receiving Party concerning the use and storage of the Providing Party's Confidential Information and the Receiving Party must comply with those directions.

#### **Other permitted disclosures Confidential Information**

- 3.3.5. Despite clause 3.3.1, the Receiving Party may disclose the Providing Party's Confidential Information:
- (a) to its Personnel and professional advisers (subject to clause 3.3.3) who have a genuine need to know that information to enable the Receiving Party:
    - (i) to comply with its obligations or to exercise its rights in relation to this Deed or the relevant Activity Agreement (as applicable);
    - (ii) to obtain advice on its obligations and rights in relation to this Deed or the relevant Activity Agreement (as applicable); or
    - (iii) to effectively manage or audit activities relating to this Deed or the relevant Activity Agreement (as applicable); or
  - (b) as authorised or required to comply with a court order or other lawful government demand (subject to clause 3.3.6).
- 3.3.6. Before the Receiving Party discloses Confidential Information under clause 3.3.5(b) it must, where possible, give the Providing Party prior notification of the intended disclosure to enable the Providing Party to seek a protective order, or such other order to limit the scope of the intended disclosure.
- 3.3.7. If the Receiving Party is the Commonwealth it may disclose the Providing Party's Confidential Information:
- (a) to another Commonwealth agency if this serves the legitimate purposes of the Commonwealth of Australia;
  - (b) to a Commonwealth Minister or Parliamentary Secretary with responsibility for defence, defence science or national security matters; or
  - (c) in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia.

#### **Requirement for undertakings by individuals (other than public servants)**

- 3.3.8. The Providing Party may at any time direct the Receiving Party to arrange for its Personnel and its professional advisers (other than individuals who are Australian Public Servants who are subject to statutory confidentiality requirements in the *Public Service Act 1999* and the *Criminal Code Act 1995*) to give legally binding, written undertakings relating to the use and non-disclosure of the

Providing Party's Confidential Information which are no less onerous than the Receiving Party's confidentiality obligations under this Deed or the relevant Activity Agreement (as applicable).

- 3.3.9. If the Receiving Party receives a direction under clause 3.3.8, it must promptly arrange for all such undertakings to be made and copies of those undertakings given to the Providing Party.

#### **Reporting breaches or possible breaches of confidentiality obligations**

- 3.3.10. If the Receiving Party becomes aware that it has or may have breached this clause 3.3, it must immediately notify the Providing Party and take all reasonable steps to stop the breach.

### **3.4. Confidential Information—Return or destruction**

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- 3.4.1. Subject to clause 3.4.3 the Receiving Party must promptly after the Relevant Date:
- (a) safely and securely return to the Providing Party all material (such as documents, computer thumbnails, compact discs, prototypes, or test samples) containing the Providing Party's Confidential Information, or destroy such material at the direction of the Providing Party; and
  - (b) destroy or erase every record of the Providing Party's Confidential Information in any other document, computer disc, tape or other media created or generated by or for the Receiving Party.
- 3.4.2. For clause 3.4.1, the *Relevant Date* is:
- (a) the date when the Providing Party requests the Receiving Party to return, or destroy, material containing the Confidential Information;
  - (b) the date when the Receiving Party no longer requires material containing the Providing Party's Confidential Information for the purposes of this Deed or the relevant Activity Agreement (as applicable); or
  - (c) the date when this Deed expires or is terminated (but only in relation to Confidential Information provided for the purposes of this Deed);
  - (d) the date when an Activity Agreement expires or is terminated (but only in relation to Confidential Information provided for the purposes of that Activity Agreement),
- whichever first occurs.
- 3.4.3. The Receiving Party may retain a copy of any of the Confidential Information:
- (a) which it is required to retain by law;
  - (b) so as to comply with the rules of an applicable stock exchange, or professional regulatory body; or
  - (c) which is stored in an electronic back-up system maintained in the ordinary course of the Receiving Party's business and which is not readily capable of search and destruction.
- 3.4.4. Confidential Information which is retained under clauses 3.4.3 may only be used or disclosed where, and to the extent, necessary for the Receiving Party to comply with its statutory or other legal obligations.

### **3.5. Confidential Information—Duration of confidentiality obligations**

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- 3.5.1. Unless clause 3.5.2 or clause 4.5 applies, the Receiving Party's obligations under clauses 3.3 and 3.4 continue:
- (a) in relation to Confidential Information provided for the purposes of this Deed—until five (5) years from the end of the Term of this Deed, or the end of the last Activity Agreement made under this Deed, whichever is later; and
  - (b) in relation to Confidential Information provided for the purposes of an Activity Agreement—until five (5) years from the end of that Activity Agreement.
- 3.5.2. Despite clause 3.5.1, if the Providing Party specifies a period of confidentiality for a piece of Confidential Information either:

- (a) as set out in the relevant item which lists Confidential Information in the Agreement Details of an Activity Agreement; or
- (b) when the Providing Party provides that piece of Confidential Information to the Receiving Party (provided it specifies the period of confidentiality in writing when that information is provided),

then the obligations under clauses 3.3 and 3.4 in relation to that piece of Confidential Information will continue for the period so specified by the Providing Party.

### **3.6. Confidential Information—No reduction in privacy obligations**

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- 3.6.1. Nothing in clause 3.3 or clause 3.4 is intended to relieve the Receiving Party from its obligations under the Relevant Privacy Legislation.

### **3.7. Confidential Information—Remedies for breaches and evidential burden of proof**

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- 3.7.1. The Receiving Party acknowledges that disclosure or misuse of any Confidential Information in breach of clause 3.3 or clause 3.4 would cause irreparable harm to the Providing Party for which damages may not be an adequate remedy.

- 3.7.2. The Receiving Party consents to the grant of:

- (a) injunctive relief to restrain any breach of clause 3.3 or clause 3.4 by the Receiving Party; or
- (b) specific performance to compel the Receiving Party to perform its obligations under clause 3.3 or clause 3.4,

as a remedy for any breach or threatened breach of clause 3.3 or clause 3.4, in addition to any other remedies available to the Providing Party.

- 3.7.3. The evidential burden of proving that any information is not subject to the obligations of confidentiality in clause 3.3 or clause 3.4 will rest on the Receiving Party.

### **3.8. Dissemination of information**

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- 3.8.1. The Parties agree that they should encourage the publication of articles of an academic scientific and technical nature intended for learned journals and the participation in academic conferences and symposiums. However, in some circumstances, the disseminating of information arising from a Project may result in the release of Confidential Information, adversely affect national security interests, or jeopardise the Parties' IP rights. Accordingly, Activity Agreements may include arrangements addressing these concerns.

- 3.8.2. In clause 3.8.1, the *disseminating of information arising from a Project* means the broadcasting, publication, communication or presentation of information arising from a Project, whether in person, in print, in electronic form, or by any other means.

### **3.9. Treatment of Intellectual Property**

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- 3.9.1. Activity Agreements will include, to the extent relevant to the Project, provisions relating to the ownership, licencing (including licencing for Commonwealth Purposes) and management of Intellectual Property or Material that is applied or created in accordance with the Activity Agreement.

## **DIVISION 4. COMPLIANCE WITH LEGISLATION AND COMMONWEALTH POLICIES**

### **4.1. Work Health and Safety obligations**

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- 4.1.1. Each Party must comply with Applicable WHS Legislation when performing any function under this Deed or an Activity Agreement, in particular:

- (a) so far as is reasonably practicable, to consult, co-operate and co-ordinate activities with the other Party and any other person who has a work health and safety duty under WHS Legislation in relation to the same matter; and
  - (b) to give careful, prudent and comprehensive consideration to the work health and safety implications of the performance of its obligations under this Deed or an Activity Agreement and the proposed method of performance of those obligations.
- 4.1.2. Without limiting clause 4.1.1, but subject to clause 4.1.3 each Party will (upon reasonable notice) permit work health and safety representatives of other Party to attend their respective Premises to:
- (a) assess those Premises for compliance with Applicable WHS Legislation; and
  - (b) consult with the other Party's work health and safety representatives to determine safe work practices at those Premises.
- 4.1.3. Clause 4.1.2 only applies to the extent that the Party requiring access to the other Party's Premises has an obligation under Applicable WHS Legislation in relation to those Premises.
- 4.1.4. Each Party must ensure that when its work health and safety representatives attend the other Party's Premises, those representatives will comply with the other Party's security requirements.
- 4.1.5. In relation to any work conducted under this Deed or an Activity Agreement, each Party will:
- (a) maintain a system for identifying and managing work health and safety risks which complies with Applicable WHS Legislation; and
  - (b) promptly provide any information or copies of documentation held by the Party (such as work health and safety assessments, reports, safe work method statements, safety procedures and manuals) to the other Party, following a request from that Party, to enable that other Party to comply with its obligations under the Applicable WHS Legislation.
- 4.1.6. Without limiting clause 4.1.5, each Party will promptly provide to the other Party copies of:
- (a) all formal notices and written communications issued under Applicable WHS Legislation to the Party by a WHS Regulator, an agent of a WHS Regulator, or a safety representative under the Applicable WHS Legislation in connection with this Deed or an Activity Agreement; and
  - (b) all formal notices, written communications and written undertakings given by the Party to a WHS Regulator or agent of a WHS Regulator under the Applicable WHS Legislation, in connection with this Deed or an Activity Agreement.
- 4.1.7. If a Notifiable Incident occurs at a Party's Premises that involves the other Party's Personnel, students or professional advisors in connection with this Deed or an Activity Agreement, the Party at whose Premises the Notifiable Incident occurred must:
- (a) immediately report the incident to the other Party;
  - (b) promptly provide the other Party with a copy of any notice provided to the relevant WHS Regulator,
  - (c) provide assistance to the other Party to undertake mandatory incident reporting; and
  - (d) provide the other Party with such other information required by that Party to enable it to notify the appropriate WHS Regulator of the Notifiable Incident in accordance with the Applicable WHS Legislation, which includes, if that other Party is the Commonwealth, completing the Department of Defence Form AC563 (as amended or replaced from time to time).
- 4.1.8. Each Party must ensure its Subcontractors comply with this clause 4.1.
- 4.1.9. In this clause 4.1 the following definitions apply:
- (a) **Applicable WHS Legislation** means the WHS Legislation that each Party is required to comply with;
  - (b) **Notifiable Incident** has the meaning given in sections 35 to 37 of the *Work Health and Safety Act 2011* (Cth), or similar provisions in any other applicable WHS legislation;
  - (c) **WHS** means work health and safety and includes similar terms such as 'workplace health and safety', or 'occupational health and safety';

- (d) **WHS Legislation** means:
  - (i) the *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulations 2011* (Cth); and
  - (ii) any corresponding WHS law as defined in section 4 of the *Work Health and Safety Act 2011* (Cth);
- (e) **WHS Regulator** means a person, government agency or organisation with regulatory responsibilities under the applicable WHS Legislation.

## 4.2. Environmental protection obligations

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- 4.2.1. Each Party must carry out its obligations under this Deed or an Activity Agreement in such a way that the Commonwealth:
  - (a) is not placed in breach of; and
  - (b) is able to exercise its rights under this Deed or an Activity Agreement without being in breach of,any applicable environmental legislation including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

## 4.3. Protection of Personal Information

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- 4.3.1. If a Party obtains Personal Information in the course or performing its obligations under this Deed or an Activity Agreement that Party agrees that it:
  - (a) will comply with its obligations under the Relevant Privacy Legislation; and
  - (b) in relation to the University—will not to do any act, or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of the Australian Privacy Principles as defined in the Privacy Act.
- 4.3.2. Each Party must immediately give Notice to the other Party if:
  - (a) it becomes aware of a breach, or possible breach of any obligations under this clause 4.3;
  - (b) a privacy-related complaint is received by it in relation to anything done under this Deed or an Activity Agreement; or
  - (c) it is approached by the Privacy Commissioner, or an equivalent regulator under the Relevant Privacy Legislation, in relation to anything done under this Deed or an Activity Agreement.
- 4.3.3. Each Party must ensure that its Personnel comply with this clause 4.3.

## 4.4. Workplace gender equality requirements

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- 4.4.1. This clause 4.4 applies only to the extent that the University is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (**the WGE Act**).
- 4.4.2. The University must comply with its obligations, if any, under the WGE Act.
- 4.4.3. If the University becomes non-compliant with the WGE Act the University must promptly give Notice of that fact to the Commonwealth. This obligation operates until the expiry of this Deed, or the conclusion of the last Activity Agreement entered into under this Deed, whichever occurs later.
- 4.4.4. The University must by Notice provide a current letter confirming their compliance with the WGE Act within 18 months from the Commencement Date of this Deed and following this annually to the Commonwealth, until the expiry of this Deed, or the conclusion of the last Activity Agreement entered into under this Deed, whichever occurs later. For clarity, the University does not have to send separate letters of compliance for each Activity Agreement.
- 4.4.5. Compliance with the WGE Act does not relieve the University from its responsibility to comply with its other obligations under this Deed, or an Activity Agreement.



- 4.4.6. The University must not enter into a subcontract under an Activity Agreement with an entity named by the Director of Workplace Gender Equality in a report to the Minister responsible for the WGE as an employer not complying with the reporting requirements of the WGE Act.

#### **4.5. Treatment of national security matters**

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##### **Obtaining and maintaining security clearances and accreditations**

- 4.5.1. In relation to this Deed and any Activity Agreement, the University must obtain, comply with, and maintain any security clearances and accreditations as notified from time to time by the Commonwealth (acting consistently with the Defence Security Principles Framework) and, in relation to any Activity Agreement, any other clearances and accreditations set out in the relevant item of the Agreement Details of that Activity Agreement.
- 4.5.2. The University must ensure that any of its Personnel, students or professional advisors acting in connection with this Deed or any Activity Agreement also comply with clause 4.5.1.

##### **Compliance with Commonwealth security requirements**

- 4.5.3. Despite any other provision of this Deed or any Activity Agreement, if the Commonwealth makes Material available to the University and that Material has a national security classification, the University must comply with all relevant security requirements and procedures as specified by the Commonwealth from time to time, including:
- (a) those requirements and procedures required by the Defence Security Principles Framework; and
  - (b) any requirements and procedures required in relation to the clearances and accreditations referred to in clause 4.5.1 above.
- 4.5.4. The University must ensure that any of its Personnel, students, or professional advisors who have access to national security classified Material also comply with clause 4.5.3.
- 4.5.5. The obligations on the University under clauses 4.5.3 and 4.5.4 continue until such time as the Commonwealth advises the University that the Material is no longer classified.

##### **Addressing National Security Concerns**

- 4.5.6. The Commonwealth may at any time send a Notice to the University advising it that it has a security concern relating to this Deed or an Activity Agreement.
- 4.5.7. Representatives of the Parties must meet within five (5) Working Days after the University has received the Notice referred to in clause 4.5.6 (or other time frame as agreed between them) to discuss the Commonwealth's security concern and whether any aspect of this Deed or the relevant Activity Agreement needs to be modified to address the Commonwealth's security concern (for example: limitations on publication or dissemination of information, enhanced security requirements, changing ownership and licencing arrangements for Material and IP created as part of Projects, use of Key Persons, or use of subcontractors).
- 4.5.8. If the Parties cannot agree on how the Commonwealth's security concern is to be addressed (including agreeing on how this Deed, or the relevant Activity Agreement is to be varied, if necessary), the Commonwealth may terminate this Deed under clause 5.4.2, or terminate the relevant Activity Agreement under the termination for default clause in that Activity Agreement.

#### **4.6. Access for evaluations, audits and investigations**

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- 4.6.1. The University must allow the Commonwealth such access as the Commonwealth reasonably requires, to the University's records and accounts relating to this Deed, or any Activity Agreement, including those relating to how the University is carrying out its tasks with respect to any Project and its receipt and spending of any Project payments (if any) received from the Commonwealth. Such access will be given at all reasonable times to the following officials (acting in their official capacity):
- (a) a representative of the Commonwealth;

- (b) the Commonwealth Auditor-General;
  - (c) the Privacy Commissioner.
- 4.6.2. The University must provide such assistance to the officials referred to in clause 4.6.1 as they may reasonably require:
- (a) to locate, access, interpret and assess the records and accounts referred to in clause 4.6.1;
  - (b) to make copies of those records or accounts; and
  - (c) to use those records and accounts (or copies) for any purpose:
    - (i) connected with this Deed or any Activity Agreement (including to confirm information contained in a report, evaluate any Project or audit expenditure of any Project Payments received from the Commonwealth); or
    - (ii) related to the representative's statutory functions.
- 4.6.3. The access rights in this clause 4.6 are subject to the University's reasonable security procedures.
- 4.6.4. This clause 4.6 does not require the University to disclose information of a third party that is by its nature the Confidential Information of that third party.
- 4.6.5. In this clause 4.6, **access** includes access to:
- (a) any Premises occupied by the University where a Project is being carried out or where records or accounts relating to this Deed or any Activity Agreement are located; and
  - (b) the University's employees, including any Personnel working on any Project and any other Personnel involved in the administration of this Deed or any Project.

## DIVISION 5. GENERAL PROVISIONS

### 5.1. Taxes, duties and government charges

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#### Payment of taxes, duties and charges, other than GST

- 5.1.1. Except as provided by this clause 5.1, all taxes, duties and government charges imposed or levied in Australia or overseas on a Party in connection with the performance of this Deed or any Activity Agreement will be borne by that Party.

#### GST arrangements

- 5.1.2. Unless otherwise stated, any payment under this Deed or any Activity Agreement is exclusive of GST. If a payment under this Deed or an Activity Agreement is stated to include GST, then clause 5.1.3 does not apply to that payment.
- 5.1.3. If a Party (**the Supplier**) makes, or is assessed by the Australian Taxation Office as having made, a taxable supply to the other Party (**the Recipient**) in connection with this Deed or any Activity Agreement, the Recipient must, subject to the Supplier providing the Recipient with a tax invoice, pay to the Supplier an amount (**the GST Amount**) equal to the GST payable in respect of that taxable supply within twenty (20) calendar days of receiving the tax invoice.
- 5.1.4. If the amount of a Supplier's GST liability in respect of a supply to which clause 5.1.3 applies differs from the amount of GST paid by the Supplier because of the occurrence of an adjustment event:
- (a) the Supplier must issue the Recipient with an adjustment note within seven (7) calendar days of that adjustment event;
  - (b) the GST Amount must be adjusted to reflect that adjustment event; and
  - (c) either:
    - (i) the Recipient must make the required additional payment to the Supplier within twenty (20) calendar days of its receipt of the adjustment note from the Supplier (if the adjustment event requires an additional payment by the Recipient); or

- (ii) the Supplier must pay the required refund to the Recipient at the time it issues the adjustment note to the Recipient (if the adjustment event requires the Supplier to refund money to the Recipient).

- 5.1.5. If a Party is entitled to be reimbursed or indemnified for a loss, cost or expense (**Expense**) in connection with this Deed or any Activity Agreement, that Expense must be reduced to the extent that the Party (or the representative member for a GST group of which that Party is a member) is entitled to an input tax credit for the Expense.
- 5.1.6. Unless otherwise stated, if a payment payable in connection with this Deed or any Activity Agreement (**the Calculated Payment**) is to be calculated by reference to another payment payable in connection with this Deed or any Activity Agreement (**the Referenced Payment**) (for example where the Calculated Payment is stated to be a percentage of the Referenced Payment) then, for the purposes of that calculation, the amount of the Referenced Payment is to be reduced to the extent that it included any amount on account of GST.
- 5.1.7. For the purposes of this clause 5.1:
  - (a) unless otherwise stated, terms that have a defined meaning in the GST Law have the same meaning as in the GST Law, except that in addition to its meaning in the GST Law, the term GST includes any notional liability to pay GST; and
  - (b) if a supply is treated as a periodic or progressive supply under the GST Law, each periodic or progressive component of the supply will be treated as if it were a separate supply.

## 5.2. Managing unexpected delays

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- 5.2.1. If, by reason of an Unexpected Event, a Party is temporarily unable to perform any obligation under this Deed or any Activity Agreement (other than an obligation to make a payment), that Party's obligation is suspended so far as it is affected by the Unexpected Event during the continuance of the Unexpected Event and that Party will be allowed a reasonable extension of time, not exceeding twenty (20) Working Days, to perform that obligation, subject to it complying with clause 5.2.2.
- 5.2.2. A Party is only relieved of an obligation under clause 5.2.1 if that Party:
  - (a) promptly notifies the other Party of the Unexpected Event (including reasonable details), and in so far as known, the probable extent to which it will be unable to perform, or be delayed in performing that obligation; and
  - (b) uses reasonable endeavours to remove, or mitigate the effects of, that Unexpected Event as quickly as possible.
- 5.2.3. If, after twenty (20) Working Days, the Unexpected Event has not ceased, the Parties must meet to discuss the situation and endeavour in good faith to achieve a mutually satisfactory resolution to the problem.
- 5.2.4. In this clause 5.2, **Unexpected Event** means, in respect of a Party, an event beyond the reasonable control of that Party and which was not reasonably foreseeable by that Party at the Commencement Date. Decisions of the Australian Government or Cabinet will be taken to be beyond the reasonable control of the Commonwealth.

## 5.3. Resolving Disputes

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### Deferral of legal proceedings

- 5.3.1. If a dispute arises out of or in connection with this Deed or any Activity Agreement (**Dispute**), the Parties must act in accordance with this clause 5.3 before commencing court proceedings.
- 5.3.2. Despite clause 5.3.1, the dispute resolution procedures in this clause 5.3 do not apply to any Dispute where legal proceedings are commenced by a Party seeking urgent interlocutory relief from a court, provided that after that Party has obtained any such relief (or sought and failed to obtain any such relief), that Party must follow this clause 5.3 with respect to that Dispute.

### **Good faith**

5.3.3. Each Party must act in good faith to resolve any Dispute.

### **Process for resolving a Dispute**

5.3.4. A Party claiming that a Dispute has arisen with the other Party must give the other Party a Notice of the Dispute. The Notice must include details of the Dispute.

5.3.5. The Parties must promptly attempt to resolve the Dispute by Personnel at a more senior management level than those with responsibility for the day to day management of:

- (a) the particular Activity Agreement to which the Dispute relates; or
- (b) this Deed, if the Dispute relates to this Deed, but not to a particular Activity Agreement.

5.3.6. If the Dispute is not resolved by the Personnel described in clause 5.3.5, the Parties may agree to refer the Dispute to an independent third person with power:

- (a) to intervene and direct some form of resolution, in which case the Parties will be bound by that resolution; or
- (b) to mediate and recommend some form of non-binding resolution.

5.3.7. The Parties must cooperate fully with any process under clause 5.3.6, with each Party bearing its own costs. The Parties will share equally the cost of the independent third person referred to in clause 5.3.6.

5.3.8. The process under clause 5.3.6 must be conducted in English and may be conducted in person, or by telephone conferencing, video conferencing or other means of instantaneous, or near-instantaneous, communications, as agreed between the Parties.

### **Commencement of Legal Proceedings**

5.3.9. If the dispute resolution process described in clauses 5.3.4 to 5.3.8 fails to resolve the Dispute within sixty (60) Working Days of the initial Notice of the Dispute under clause 5.3.4, a Party may then commence legal proceedings in relation to that Dispute.

5.3.10. If a Party fails to comply this clause 5.3 in relation to a Dispute, the other Party may choose not to follow this clause 5.3 in relation to that Dispute.

## **5.4. Termination rights**

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5.4.1. This Deed will terminate:

- (a) at any time by the agreement in writing of the Parties;
- (b) by either Party providing sixty (60) Working Days' Notice to the other Party; or
- (c) at the end of the Term of this Deed.

5.4.2. A Party (*the Terminating Party*) may terminate this Deed by Notice to the other Party if any of the following occurs:

- (a) the other Party has breached this Deed and that breach is, in the Terminating Party's reasonable opinion, not capable of being remedied;
- (b) the other Party has breached this Deed in circumstances not covered by clause 5.4.2(a) and has failed to remedy the breach within forty (40) Working Days after receiving a Notice from the Terminating Party requiring it to do so;
- (c) a circumstance arises in respect of which a clause of this Deed provides that the Terminating Party may by Notice terminate this Deed under this clause 5.4.2.

5.4.3. The expiry or termination of this Deed does not:

- (a) affect any Activity Agreement which in progress at the time of the expiry or termination of this Deed; or

- (b) prejudice any prior right of action or remedy which either Party has or may have.

## **5.5. Notices**

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### **Obligation for Notices**

- 5.5.1. Any Notice under this Deed or an Activity Agreement must be:
  - (a) in writing;
  - (b) subject to clause 5.5.2 below, addressed to the recipient at its address for Notices:
    - (i) for this Deed—as set out in Item 1 of the Deed Details; and
    - (ii) for an Activity Agreement—as set out in Item 1 of the Agreement Details for that Activity Agreement; and
  - (c) delivered to that address by hand, pre-paid post (and only by air mail when mailed from one country to another), facsimile or email.
- 5.5.2. A Party may change its address for Notices by giving at least ten (10) Working Days' Notice to the other Party.

### **When Notice takes effect**

- 5.5.3. A Notice takes effect either:
  - (a) in accordance with the time frame set out in the clause under which it was issued; or
  - (b) when it is received, if no time frame is set out in the clause under which it was issued.

### **Deemed receipt**

- 5.5.4. A Notice issued in accordance with clause 5.5.1 will be deemed to have been received:
  - (a) on the day of delivery if delivered by hand;
  - (b) if delivered by pre-paid post—five (5) Working Days after the Notice was mailed (if it was mailed from one place in Australia to another place in Australia) and ten (10) Working Days after the Notice was mailed (if it was mailed from one country to another country);
  - (c) if delivered by facsimile—when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the Notice, unless within one Working Day after that transmission, the recipient informs the sender that it has not received the entire Notice; or
  - (d) if delivered by email—when the email enters the recipient's information system, unless the sender's information system receives a message within one Working Day that the email has not been delivered to the recipient,but if the delivery, transmission or entry into the information system is not on a Working Day or is after 5.00pm (recipient's local time) on a Working Day, the Notice is taken to be received at 9.00am (recipient's local time) on the next Working Day.

## **5.6. Other general provisions**

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### **Governing law**

- 5.6.1. This Deed and any Activity Agreement are governed by the laws of the State or Territory referred to in Item 6 of the Deed Details. The Parties agree to submit to the non-exclusive jurisdiction of its courts in connection with any matter arising under this Deed and any Activity Agreement.

### **Entire agreement**

- 5.6.2. This Deed and any Activity Agreement constitute the entire agreement between the Parties in connection with their respective subject matters and supersede all previous communications, negotiations, arrangements and agreements between the Parties in connection with that subject matter.

### **Variations**

- 5.6.3. Except as provided for elsewhere in this Deed or an Activity Agreement, no agreement or understanding varying or extending this Deed or an Activity Agreement (including changes to a research program or budget in an Activity Agreement) is legally binding upon the Parties unless that agreement or understanding is in writing and signed by both Parties. Such variation or extension may be executed by the Parties in counterparts.

### **Clause severance**

- 5.6.4. Any provision of this Deed or any Activity Agreement that is held void by a court, or is or becomes at any time unlawful or unenforceable, will, to the extent to which it is void, unlawful or unenforceable, be deemed to be excluded from the Deed or that Activity Agreement (as applicable) without affecting the validity or enforceability of the remaining provisions.

### **Waiver and partial exercise of rights**

- 5.6.5. A failure or delay by a Party to exercise any Right it has under this Deed or any Activity Agreement does not operate as a waiver of that Right. A waiver of a Right is only effective if it is in writing and expressed to be a waiver of that Right.
- 5.6.6. A single exercise by a Party of any Right it has under this Deed or any Activity Agreement does not prevent that Party from exercising the Right again and a partial exercise by a Party of any Right it has under this Deed or any Activity Agreement does not prevent that Party from fully exercising that Right.
- 5.6.7. In clauses 5.6.5 and 5.6.6 **Right** means a right or remedy provided by this Deed or any Activity Agreement, or at law.

### **Survival of obligations**

- 5.6.8. Unless the contrary intention appears, the expiration or earlier termination of this Deed or any Activity Agreement does not affect the continued operation of any provision relating to:
- (a) Confidential Information;
  - (b) any reporting obligations after that occurs after the completion of a Project under an Activity Agreement;
  - (c) any obligation to refund money to a Party after the completion of a Project under an Activity Agreement;
  - (d) the protection of Personal Information;
  - (e) the treatment of Material that has a national security classification;
  - (f) licencing of Intellectual Property;
  - (g) GST, or
  - (h) any other provision which expressly or by implication from its nature is intended to survive the expiration or earlier termination of this Deed or any Activity Agreement.

### **Liability**

- 5.6.9. The Parties agree that general law principles of liability apply to this Deed and any Activity Agreement, and that the liabilities of the Parties are not joint, nor joint and several, but are several liabilities.

### **Relationship of Parties**

- 5.6.10. The relationship between the Parties is that of independent contractors. The Parties are not partners, joint venturers, nor principal and agents, nor are they, by virtue of this Deed or any Activity Agreement, in any in any form of legal relationship in which a party may be liable generally for the acts or omissions of another party, or where one party has fiduciary duties in relation to another party.

- 5.6.11. Neither Party may make representations on behalf of the other Party, nor represent that they are the agents of the other Party. Each party must ensure that its Personnel do not represent that they are the agents or employees of the other Party.

**No Obligation to Provide any Benefit, Advantage or Approval**

- 5.6.12. Nothing in this Deed or an Activity Agreement:
- (a) creates an obligation on the Commonwealth to provide any benefit, advantage or approval (including any benefit, advantage or approval in relation to the acquisition by the Commonwealth of goods or services other than those expressly provided for in this Deed or an Activity Agreement) in favour of the University; or
  - (b) creates any right or claim in favour of the University against the Commonwealth, in connection with any acquisition by the Commonwealth of goods or services, other than the rights expressly provided for in this Deed or an Activity Agreement.

**Restrictions on Assignment**

- 5.6.13. A Party must not Assign its obligations or rights under this Deed or any Activity Agreement without first obtaining the other Party's written consent. The other Party may impose conditions when giving its consent and the Party seeking consent must comply with those conditions.
- 5.6.14. Nothing in clause 5.6.13 limits or restricts a Party right to Assign its Intellectual Property as contemplated by this Deed or an Activity Agreement.
- 5.6.15. In clauses 5.6.13 and 5.6.14 **Assign** includes novate, transfer, or encumber in whole or in part.

**Restrictions on Subcontracting**

- 5.6.16. A Party must not:
- (a) subcontract any of its obligations under this Deed or an Activity Agreement, or
  - (b) vary a subcontract approved under clause 5.6.16(a),
- without first obtaining the other Party's written consent. The other Party may impose conditions when giving their consent and the Party seeking consent must comply with those conditions.
- 5.6.17. A Party that has been permitted to subcontract its obligations remains fully responsible for the performance of its obligations and for ensuring its Subcontractor's compliance with the requirements of this Deed or the relevant Activity Agreement.

**Further assurances**

- 5.6.18. Each Party agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of this Deed and any Activity Agreement and the transactions contemplated by them.

**Counterparts**

- 5.6.19. This Deed and any Activity Agreement may be executed in any number of counterparts each of which will be considered an original but all of which will constitute one and the same instrument.
- 5.6.20. A Party which has executed a counterpart of this Deed or an Activity Agreement may exchange it with the other Party by:
- (a) hand delivery or mailing it;
  - (b) faxing a copy of it; or
  - (c) emailing a pdf (portable document format) copy of it.

## SCHEDULE 1. DICTIONARY

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*Note: This is the Dictionary for the Deed, however each template agreement has its own dictionary.*

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<b>Activity Agreement</b>	means either a Schedule Agreement or a Specialty Agreement.
<b>Auditor-General</b>	means the official with that title appointed under the Auditor-General Act 1997 and includes the staff of the Australian National Audit Office and any contractor engaged under section 27 of that Act.
<b>Commencement Date</b>	means the date set out in Item 2.1 of the Deed Details.
<b>Confidential Information</b>	means information of a Party that: <ul style="list-style-type: none"><li>(a) is by its nature confidential;</li><li>(b) is referred to in clause 2.4.6, or clause 2.5.2, or clause 3.1 of an Activity Agreement (for the purposes of that Activity Agreement);</li><li>(c) the receiving Party knows or ought to know is confidential, but does not include information that:<ul style="list-style-type: none"><li>(d) is or becomes publicly available without a breach of this Deed, any Activity Agreement, or any other confidentiality obligation;</li><li>(e) is already known by the Party receiving the information and is not subject to an existing obligation of confidentiality;</li><li>(f) was independently developed by the Party receiving the information; or</li><li>(g) was provided to the Party receiving the information by a third party who is not under an obligation of confidentiality with respect to that information.</li></ul></li></ul>
<b>Conflict of Interest</b>	includes an actual, potential or perceived conflict of interest and includes the matters described in clause 2.3.11.
<b>Deed</b>	means this Deed, comprising the documents described in clause 1.2.1.
<b>Deed Details</b>	means the document titled "Defence Science Partnering Deed—Deed Details" as signed by the Parties.
<b>Deed Terms</b>	means this document titled "Defence Science Partnering Deed—Deed Terms" (including its schedules and any annexures to its schedules).
<b>GST</b>	means Australian Goods and Services Tax.
<b>GST Law</b>	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and associated taxation legislation.
<b>Intellectual Property or IP</b>	includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include the Moral Rights of authors or similar non-assignable personal rights of any person.
<b>Material</b>	includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same.

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<b><i>Moral Rights</i></b>	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 <i>Copyright Act 1968</i> (Cth), or similar legislation in other jurisdictions.
<b><i>Notice</i></b>	means a notice which satisfies the requirements of clause 5.5.1, subject to clause 5.5.2.
<b><i>Objectives</i></b>	means the objectives described in clause 2.1.
<b><i>Party</i></b>	means a party to this Deed as set out in Item 1 of the Deed Details.
<b><i>Partnership</i></b>	means the framework for cooperation that is established under this Deed.
<b><i>Partnership Executive Committee</i></b>	means the committee established under clause 2.3 of this Deed.
<b><i>Partnership Manager</i></b>	means: <ul style="list-style-type: none"> <li>(a) for the Commonwealth—the person specified in Item 5.1 of the Deed Details (or a person who replaces them under clause 2.3.3); and</li> <li>(b) for the University—the person specified in Item 5.2 of the Deed Details (or a person who replaces them under clause 2.3.3).</li> </ul>
<b><i>Personal Information</i></b>	means information or an opinion about an identified individual, or an individual who is reasonably identifiable: <ul style="list-style-type: none"> <li>(a) whether the information or opinion is true or not; and</li> <li>(b) whether the information or opinion is recorded in a material form or not.</li> </ul>
<b><i>Personnel</i></b>	means, in relation to a Party, any of the following: <ul style="list-style-type: none"> <li>(a) an employee, officer or agent of the Party;</li> <li>(b) a Subcontractor of the Party;</li> <li>(c) an employee, officer or agent of a Subcontractor of the Party.</li> </ul>
<b><i>Premises</i></b>	includes premises, vehicles, vessels and aircraft.
<b><i>Privacy Act</i></b>	means the <i>Privacy Act 1988</i> (Cth).
<b><i>Privacy Commissioner</i></b>	means the Australian Privacy Commissioner appointed under the <i>Australian Information Commissioner Act 2010</i> (Cth) or another information officer appointed under that Act, but only to the extent that person is exercising their functions under that Act.
<b><i>Project</i></b>	means an activity undertaken by one or both of the Parties, their Related Bodies Corporate, a student or students of the University under the Partnership, the terms of which are set out, or are intended by the Parties to be set out, in an Activity Agreement.
<b><i>Providing Party</i></b>	has the meaning given to that phrase in clause 3.1.1.
<b><i>Receiving Party</i></b>	has the meaning given to that phrase in clause 3.1.1.
<b><i>Related Body Corporate</i></b>	has the meaning given in the <i>Corporations Act 2001</i> (Cth).

<b><i>Relevant Privacy Legislation</i></b>	means: (a) for the Commonwealth and if the University is bound by the Privacy Act—the Privacy Act; and (b) if the University is not bound by the Privacy Act—the relevant legislation of similar purpose to the Privacy Act that deals with the collection, management and protection of Personal Information, to which the University is required by that legislation to comply.
<b><i>Schedule Agreement</i></b>	means an agreement that: (a) is signed by the Parties in relation to a Project; and (b) is substantially in the form of a Schedule Agreement Template.
<b><i>Schedule Agreement Template</i></b>	means a template agreement contained in Schedules 3 to 18 of this Deed, as amended or added to from time to time.
<b><i>Specialty Agreement</i></b>	means an agreement that: (a) is signed by the Parties in relation to a Project; and (b) is not substantially in the form of a Schedule Agreement Template.
<b><i>Subcontractor</i></b>	means, in relation to a Party, any person that provides items or services directly or indirectly to the Party for the purposes of this Deed or an Activity Agreement and <b><i>Subcontract</i></b> means the arrangement by which a Subcontractor is engaged.
<b><i>Term of this Deed</i></b>	is the Initial Term as set out in clause 1.1.1, together with the Extended Term as set out in clause 1.1.2, if this Deed is extended under that clause.
<b><i>University</i></b>	means the Party to this Agreement not being the Commonwealth and includes a Related Body Corporate of that University.
<b><i>Working Day</i></b>	means, in relation to the doing of a thing at a particular place, any day in that place other than: (a) Saturdays, Sundays and declared public holidays in that place; and (b) any day within the 2 week period that starts on either: (i) 25 December—in years where that date year falls on a Saturday; or (ii) the Saturday immediately before 25 December—in years where that date does not fall on a Saturday.

## SCHEDULE 2. COSTING ACTIVITY AGREEMENTS

### Item 1 Application of Schedule 2

1.1 In respect of each Agreement Type specified in column 1 of the table below, Schedule 2 applies to the Budgetary Items specified in column 2 of the table, at the Applicable Rate specified in column 3 of the table and as further described in Item 2 of this Schedule:

Column 1—Agreement Type	Column 2—Budgetary Items	Column 3—Applicable Rate
Schedule 3: Research Agreement	Salary and non-salary costs	Apply Research Rate
Schedule 4: Bilateral Collaboration	Salary and non-salary costs	Apply Research Rate
Schedule 5: Multi-Party Collaboration	Salary and non-salary costs	Apply Research Rate
Schedule 6: Multi-Party NDA	None	Not applicable
Schedule 7: Staff Secondment	None	Not applicable
Schedule 8: Centre for ADR	As determined in initial scope	Not applicable
Schedule 9: Academic Funding	Salary and non-salary costs	Apply Research Rate
Schedule 10: Post Doc Funding	Salary and non-salary costs	Apply Research Rate
Schedule 11: Infrastructure Access	Cost of Infrastructure Access	Apply 1.15 multiplier to non-salary costs, as per Research Rate
Schedule 12: Equipment Loan	Loan fees and/or associated costs	Agree rate. Loan fees (if applicable)- e.g. depreciation over the loan period; Associated costs – e.g. transport
Schedule 13: Material Transfer	None	Not applicable
Schedule 14: Defence Staff PhD	Stipend and possible non-salary costs	No multiplier on stipend, apply 1.15 multiplier to non-salary costs, as per Research Rate
Schedule 15: Scholarship (No project)	Stipend only	No multipliers apply
Schedule 16: Scholarship (Project-based)	Stipend and possible non-salary costs	No multiplier on stipend, apply 1.15 multiplier to non-salary costs, as per Research Rate
Schedule 17: Student Participation	None	Not applicable
Schedule 18: Variation	Refer to initial agreement	Refer to initial agreement

## Item 2 Payment Rates:

2.1 The appropriate rate set out below will be determined by using the instructions set out in Item 3 of this Schedule.

Research Rate	Multiplier
1. ADFA Rate	1.0
2. Basic Activity (BA Rate)	1.2
3. Standard Rate (S Rate)	1.4
4. Defence Sensitive (DS Rate)	1.7

2.2 Where Item 1 of this Schedule indicates the use of a Research Rate and the agreement involves the Australian Defence Force Academy, always use the ADFA Rate.

2.3 Where any agreement is above a threshold value of \$500,000, DST will negotiate these agreements on a case-by-case basis with the university in terms of the funding provided. This will take into consideration factors including:

- in-kind resources provided;
- co-funding of joint appointments;
- ownership of IP;
- commercialisation rights;
- capability and quality of researchers;
- other items specific to the particular agreement.

2.4 For the purposes of all costing activities under this Schedule:

**Direct Salary Costs** means the cost of the salaries of the personnel who will work directly on the relevant Project (typically those identified, by name or by academic level, in the relevant Activity Agreement).

**Direct Salary On-costs** are 30% of the Direct Salary Costs.

**Non-salary Costs** include but are not limited to: the cost of consumables, equipment use, travel and accommodation costs, normal infrastructure access costs and capital items (as itemised in an Annexure to the relevant Activity Agreement), but do not include the cost of access to infrastructure:

- (a) that is intended to be dealt with in a specific Infrastructure Access Agreement under this Deed; or
- (b) that has unique or unusual costs associated with its access and use.

### Item 3 Instructions for Determining Applicable Research Rate

#### ADFA Rate

- 3.1 All agreements undertaken by The Australian Defence Force Academy (referred to in this Schedule as **ADFA**) will be subject to this rate regardless of the nature of the agreement, size or any other variable.
- 3.2 There are no exceptions for the ADFA Rate.

#### Basic Activity Rate

- 3.3 To utilise the Basic Activity Rate the following requirements must be met:
- (a) all activities are being completed at Commonwealth Facilities using Commonwealth Resources; or
  - (b) all activities are being completed at University facilities that were significantly developed or contributed to by the Commonwealth to maintain capability.

#### Standard Rate

- 3.4 This is the rate for all agreements unless the other rates apply.

#### Defence Sensitive Rate

- 3.5 To utilise the Defence Sensitive Rate all the following requirements must be met:
- (a) the activities are security assessed as "Defence Sensitive" and require the Commonwealth to restrict usage and publication rights;
  - (b) there is little or no use of Defence Facilities or equipment to undertake the activities;
  - (c) there is little or no investment by Defence in the University facilities or capabilities.

#### Item 4 Explanation of DSP Project Types and IP Models as they relate to Research Rates

4.1 The types of projects, the related IP provisions and Research Rates are shown in the table below:

Project Type	IP Arrangements	ADFA Rate	BA Rate	S Rate	DS Rate
Standard	University owns the Project IP and Defence gets a licence for Defence Purposes	Yes*	Yes**	Yes	No
Defence Strategic	Commonwealth owns Project IP and the University gets a licence for all uses other than commercialisation	Yes*	No	Yes	Yes***
Defence Sensitive	Commonwealth owns Project IP and the University gets a restricted licence only for the purposes of the project. Can be used for classified projects.	Yes*	No	Yes****	Yes

\* If the project is being conducted at ADFA then the ADFA rate will always apply.

\*\* Reduced from the Standard Rate only if the requirements in Item 3 of this Schedule are met.

\*\*\* May be applicable only if the requirements in Item 3.5 of this Schedule are met.

\*\*\*\* Reduced from the Defence Sensitive Rate only if the requirements in Item 3.5 of this Schedule are not met.

The cost to DST is = [(Direct Salary Costs + Direct Salary On-Costs) x Research Rate] + (Non-Salary Costs x 1.15)

**SCHEDULE 3. DSP RESEARCH AGREEMENT TEMPLATE**

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Part 3.1 DSP Research Agreement—Agreement Details

Part 3.2 DSP Research Agreement—Agreement Terms

**SCHEDULE 4. DSP BILATERAL COLLABORATIVE PROJECT AGREEMENT TEMPLATE**

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Part 4.1 DSP Bilateral Collaborative Agreement—Agreement Details

Part 4.2 DSP Bilateral Collaborative Agreement—Agreement Terms



**SCHEDULE 5. DSP MULTI-PARTY COLLABORATIVE PROJECT AGREEMENT TEMPLATE**

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Part 5.1 DSP Multi-Party Collaborative Project Agreement—Agreement Details

Part 5.2 DSP Multi-Party Collaborative Project Agreement—Agreement Terms

**SCHEDULE 6. DSP MULTI-PARTY NON DISCLOSURE AGREEMENT**

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Part 6.1 DSP Multi-Party Non-Disclosure Agreement—Agreement Details

Part 6.2 DSP Multi-Party Non-Disclosure Agreement—Agreement Terms

## **SCHEDULE 7. DSP STAFF SECONDMENT AND EXCHANGE AGREEMENT**

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Part 7.1 DSP Staff Secondment and Exchange Agreement—Agreement Details

Part 7.2 DSP Staff Secondment and Exchange Agreement—Agreement Terms

**SCHEDULE 8. DSP CENTRE FOR ADVANCED DEFENCE RESEARCH AGREEMENT TEMPLATE**

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Part 8.1 DSP Centre for Advanced Defence Research Agreement—Agreement Details

Part 8.2 DSP Centre for Advanced Defence Research Agreement—Agreement Terms

**SCHEDULE 9. DSP ACADEMIC FUNDING AGREEMENT TEMPLATE**

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Part 9.1 DSP Academic Funding Agreement—Agreement Details

Part 9.2 DSP Academic Funding Agreement—Agreement Terms

**SCHEDULE 10. DSP POSTDOCTORATE FUNDING AGREEMENT TEMPLATE**

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Part 10.1 DSP Postdoctorate Funding Agreement—Agreement Details

Part 10.2 DSP Postdoctorate Funding Agreement—Agreement Terms

**SCHEDULE 11. DSP INFRASTRUCTURE ACCESS AGREEMENT TEMPLATE**

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Part 11.1 DSP Infrastructure Access Agreement—Agreement Details

Part 11.2 DSP Infrastructure Access Agreement—Agreement Terms

**SCHEDULE 12. DSP EQUIPMENT LOAN AGREEMENT TEMPLATE**

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Part 12.1 DSP Equipment Loan Agreement—Agreement Details

Part 12.2 DSP Equipment Loan Agreement—Agreement Terms



**SCHEDULE 13. DSP MATERIAL TRANSFER AGREEMENT TEMPLATE**

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Part 13.1 DSP Material Transfer Agreement—Agreement Details

Part 13.2 DSP Material Transfer Agreement—Agreement Terms

**SCHEDULE 14. DSP DEFENCE STAFF PHD STUDIES AGREEMENT TEMPLATE**

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Part 14.1 DSP Defence Staff PhD Studies Agreement—Agreement Details

Part 14.2 DSP Defence Staff PhD Studies Agreement—Agreement Terms

**SCHEDULE 15. DSP STUDENT (NO PROJECT) SCHOLARSHIP AGREEMENT TEMPLATE**

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Part 15.1 DSP Scholarship (No Project) Agreement—Agreement Details

Part 15.2 DSP Scholarship (No Project) Agreement—Agreement Terms

**SCHEDULE 16. DSP STUDENT (PROJECT-BASED ) SCHOLARSHIP AGREEMENT TEMPLATE**

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Part 16.1 DSP Scholarship (Project-Based) Agreement—Agreement Details

Part 16.2 DSP Scholarship (Project-Based) Agreement—Agreement Terms

**SCHEDULE 17. DSP STUDENT PARTICIPATION AND INTELLECTUAL PROPERTY DEED TEMPLATE**

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Part 17.1 DSP Student Participation and Intellectual Property Deed—Agreement Details

Part 17.2 DSP Student Participation and Intellectual Property Deed—Agreement Terms

**SCHEDULE 18. DSP VARIATION AGREEMENT TEMPLATE**

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Part 18.1 DSP Variation Agreement—Agreement Details

Part 18.2 DSP Variation Agreement—Agreement Terms