



Australian Government

Department of Defence

Defence Science and Technology Group

THE COMMONWEALTH OF AUSTRALIA represented by

**THE DEFENCE SCIENCE AND TECHNOLOGY GROUP
OF THE DEPARTMENT OF DEFENCE (ABN 68 706 814 312)**

and

[insert University/Related Body Corporate] (ABN [insert ABN])

RESEARCH AGREEMENT

[Insert Research Project Title]

**A Schedule Agreement under the
DEFENCE SCIENCE PARTNERING DEED**

DST Group TPO Contact:	
Telephone:	
Facsimile:	
Email:	
Reference:	MyIP:
DST Group Division:	
DST Group MSTC:	
DST Group Divisional Contact:	

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DATE

This Agreement is made on the day the last Party signs it.

PARTIES

This Agreement is made between

COMMONWEALTH OF AUSTRALIA represented by the Defence Science and Technology Group of the Department of Defence (ABN 68 706 814 312) (**the Commonwealth**); and

[insert name of University, or the name of the Related Body Corporate of the University] (ABN [insert ABN]) and having its principal office at [insert] (**the University**).

BACKGROUND

This Agreement is made in the following context:

- A. The Commonwealth and [insert the name of relevant University] entered into a Defence Science Partnering Deed on [insert date of Partnering Deed] (**the Partnering Deed**).
- B. It is envisaged under the terms of the Partnering Deed that separate Schedule Agreements will be entered into between the Commonwealth and the University (or a Related Body Corporate of the University) with respect to specific activities to be undertaken under the Partnering Deed.
- C. The Parties have agreed that:
 - (i) the University will carry out the Research Project and perform all its other obligations under this Agreement; and
 - (ii) in return, and subject to the conditions specified in this Agreement, the Commonwealth will pay to the University the Agreement Sum.

CONDITIONS OF AGREEMENT

The Parties agree as follows:

1 Definitions and Interpretation

1.1 In this Agreement, unless a contrary intention appears:

Agreement	means this agreement including the Annexure and any other attachments to this agreement;
Agreement Sum	as the context requires, means all or part of the sum determined in accordance with Item 4 of the Annexure;
Agreement Term	means the period between the Commencement Date and the Completion Date;
Annexure	means the annexure to this Agreement;
Background IP	means any IP, other than Third Party IP, embodied in, attached to, or otherwise necessarily related to the functioning, or operation of Background Material;
Background Material	means any Material made available by a Party in connection with this Agreement, including any copies or

	<p>derivations of such Material, whether:</p> <p>(a) existing prior to the execution of this Agreement; or</p> <p>(b) acquired or created after the execution of this Agreement, other than as a result of the performance of this Agreement,</p> <p>and includes, in the case of Background Material provided by the Commonwealth, the things set out in table 6.2 of Item 6 of the Annexure;</p>
Budget	means the budget (if any) set out in Item 5 of the Annexure;
Capital Item	means any item of tangible property purchased by the University using the Agreement Sum and identified as a Capital Item in the Budget;
Commencement Date	means the date both Parties sign this Agreement, or if it is signed on separate days, the date on which the last Party to sign this Agreement does so;
Commercialisation	has the same meaning as in the Partnering Deed;
Commonwealth Purposes	has the same meaning as in the Partnering Deed;
Commonwealth Resources	means the resources of the Commonwealth described in clause 5 (and for the avoidance of doubt, includes the Background Material provided by the Commonwealth);
Completion Date	means the date specified as the Completion Date in Item 1 of the Annexure;
Confidential Information	<p>means information of a Party that:</p> <p>(a) is by its nature confidential;</p> <p>(b) is referred to in clause 21; or</p> <p>(c) the receiving Party knows or ought to know is confidential,</p> <p>but does not include information that:</p> <p>(d) is, or becomes, public knowledge otherwise than by breach of this Agreement or any other confidentiality obligation;</p> <p>(e) is already known to the receiving Party prior to receipt from the disclosing Party; or</p> <p>(f) is developed or acquired by the receiving Party independent of this Agreement without having had access to the information of the disclosing Party and free of any other confidentiality obligation;</p>
Controlled Content Register (or CC Register)	means the register created in accordance with clause 22;
Financial Year	means a period of twelve (12) calendar months ending on 30 June;

Foreground IP	means any IP created under, or otherwise in connection with the performance of this Agreement;
Foreground Material	means any Material brought into existence (or required to be brought into existence) as part of, or for the purposes of performing this Agreement, including any copies or derivations of such Material;
Intellectual Property (or IP)	has the same meaning as in the Partnering Deed;
Liaison Officer	means a person appointed under clause 3;
Material	has the same meaning as in the Partnering Deed;
Parties	means the parties to this Agreement;
Partnering Deed	means the deed referred to in Background paragraph A above;
Partnership Executive Committee	means the committee established under clause 4 of the Partnering Deed;
Partnership Manager	has the same meaning as in the Partnering Deed;
Personnel	means officers, employees, subcontractors, agents or professional advisers;
Related Body Corporate	has the same meaning as in the Partnering Deed;
Research Project	means the research project described in Item 2 of the Annexure;
Schedule Agreement	has the same meaning as in the Partnering Deed;
Schedule Agreement Template	has the same meaning as in the Partnering Deed;
Specified Personnel	means the Personnel specified in Item 8 of the Annexure;
Third Party IP	means IP that is owned by a party other than the Commonwealth or the University;
University	means the University named as a Party to this Agreement, or where applicable, the University's Related Body Corporate which has entered this Agreement; and
Use	means, with respect to IP, to exercise any or all rights subsisting in Intellectual Property, including to license or sub-license those rights.

- 1.2 Any term used in this Agreement which is defined or interpreted in the Partnering Deed will have the same meaning in this Agreement except:
- (a) where the term is given a different definition in this Agreement, the definition in this Agreement will apply; or
 - (b) where the context otherwise requires.
- 1.3 Subject to clause 1.2, if a requirement in the following list conflicts with any other requirement in the list, then the requirement referred to earlier in the list will take precedence to the extent of any conflict:
- (a) a special condition set out in Item 16 of the Annexure;
 - (b) a clause in the Partnering Deed;
 - (c) a clause in this Agreement;
 - (d) an Item in an Annexure (other than the special conditions referred to in clause 1.3(a));
 - (e) a document or part of a document, if any, incorporated by reference (other than the Partnering Deed).

2 Commencement and Duration of Agreement

- 2.1 This Agreement commences on the Commencement Date and will continue in force until the Completion Date, unless terminated earlier in accordance with this Agreement.

3 Project Oversight – Liaison Officers

- 3.1 The Parties will each appoint one Liaison Officer and may at any time replace their appointee by notifying the other Party in writing. The initial Liaison Officers will be those people specified at Item 3 in the Annexure. A Liaison Officer may, from time to time, authorise another person to act on their behalf.
- 3.2 Each Party's Liaison Officer will be responsible for administering this Agreement on behalf of the relevant Party, having regard to the Objectives set out in clause 3 of the Partnering Deed.

4 Commonwealth to Pay the Agreement Sum

- 4.1 Subject to clause 4.4, the Commonwealth will pay the Agreement Sum to the University at the times and in the manner set out in Item 4 of the Annexure.
- 4.2 Subject to clause 25.3, the Agreement Sum is the maximum amount that the Commonwealth is required to pay to the University under this Agreement.
- 4.3 Any claim for payment made by the University under clause 4.1 must comply with the Department of Defence Invoice Scanning and Imaging System guidelines as amended from time to time, which are available online at <<http://www.defence.gov.au/isis/gettingpaid.htm>>.
- 4.4 The Commonwealth may, by notice, withhold payment of any amount of the Agreement Sum where it reasonably believes that the University has not complied with this Agreement.
- 4.5 A notice under clause 4.4 will contain the reasons for any payment being withheld and the steps the University can take to address those reasons.

- 4.6 The Commonwealth will pay the withheld amount once the University has satisfactorily addressed the reasons contained in the notice under clause 4.4.

5 Commonwealth to Provide Resources

- 5.1 The Commonwealth will provide the University with the Commonwealth Resources specified in table 6.1 and table 6.2 of Item 6 of the Annexure to assist the University to carry out the Research Project.
- 5.2 The Commonwealth may, at its discretion, provide additional Commonwealth Resources to the University to assist the University to carry out the Research Project.
- 5.3 Ownership of Commonwealth Resources does not pass to the University, unless otherwise dealt with under this Agreement.
- 5.4 Subject to clause 14.5, the Commonwealth does not warrant:
- (a) the suitability of the Commonwealth Resources for any purpose; nor
 - (b) the accuracy, precision, or life expectancy of the Commonwealth Resources.
- 5.5 The University must:
- (a) use Commonwealth Resources only for the Research Project, in accordance with this Agreement;
 - (b) use any item described in table 6.1 or 6.2 in Item 6 of the Annexure only in accordance with the conditions for use for that item, as indicated in the relevant table in Item 6 of the Annexure;
 - (c) use any item provided under clause 5.2 only in accordance with the conditions of use for that item, as imposed by the Commonwealth at the time the item is provided;
 - (d) ensure that Commonwealth Resources that comprise Materials are used only by persons who are properly trained and competent in the use of those resources;
 - (e) ensure that Commonwealth Resources that comprise Materials are used and stored:
 - (i) safely; and
 - (ii) in a manner that will not contaminate, or harm the environment;
 - (f) ensure that Commonwealth Resources that comprise Materials are stored securely to prevent their loss, and unauthorised access, when not in use;
 - (g) not provide access to, or transfer possession of, Commonwealth Resources to any third party without the prior written consent of the Commonwealth;
 - (h) not modify or reverse engineer any aspect of the Commonwealth Resources, other than to the extent permitted by this Agreement; and
 - (i) not dispose of the Commonwealth Resources other than in accordance with this Agreement.

- 5.6 The University must comply and ensure that the University's Personnel comply with any security requirements notified by the Commonwealth that may apply to the Commonwealth Resources.
- 5.7 Clause 5.8 applies to Commonwealth Resources that comprise Materials, other than those Commonwealth Resources that are incorporated into Foreground Material under this Agreement, or which are subject to other arrangements, as may be agreed in writing between the Parties.
- 5.8 At the earlier of:
- (a) the Completion Date;
 - (b) the date upon which the University ceases to require the Commonwealth's Resources for the Research Project;
 - (c) the date upon which this Agreement is terminated; or
 - (d) a date agreed between the Parties,
- the University must:
- (e) deal with the Commonwealth Resources in accordance with the Commonwealth's reasonable written instructions; or
 - (f) if no written instructions have been given – return the Commonwealth Resources to the Commonwealth in a manner that:
 - (i) is safe;
 - (ii) will not cause contamination, or harm to the environment; and
 - (iii) will prevent its loss or unauthorised access.
- 5.9 The Parties acknowledge that the Commonwealth may provide certain Commonwealth owned equipment to the University for the Research Project under a separate Schedule Agreement under the Partnering Deed.

6 University to Carry Out the Research Project

- 6.1 The University must carry out the Research Project in accordance with this Agreement, in particular as set out in Item 2 of the Annexure:
- (a) to a high professional standard;
 - (b) in accordance with all applicable laws;
 - (c) in accordance with the reasonable directions of the Commonwealth;
 - (d) to the Commonwealth's reasonable satisfaction, having regard to the Objectives set out in clause 3 of the Partnering Deed and the requirements referred to in this clause 6.1; and
 - (e) so as to complete any tasks set out in Item 2 of the Annexure or to deliver any deliverables set out in Item 2 of the Annexure by the due date for any such tasks or deliverables;
- 6.2 The University will deliver all deliverables to the Commonwealth's Liaison Officer, unless that officer directs the University in writing to deliver them elsewhere.
- 6.3 The University must provide all Personnel, facilities, services and resources (other than Commonwealth Resources) necessary for the effective conduct of the Research Project.

7 University to Follow Budget and Keep Financial Records

- 7.1 The University must expend the Agreement Sum in accordance with the Budget set out in Item 5 of the Annexure (including the budget items).
- 7.2 The University must, at no additional cost:
- (a) keep, and require its subcontractors to keep, financial records in accordance with applicable Australian accounting standards, in sufficient detail to enable the amounts payable by the Commonwealth under this Agreement to be determined and the University's performance of this Agreement to be audited; and
 - (b) retain and require its subcontractors to retain for a period of no less than seven years after the Completion Date books and records relating to the Research Project.

8 University to Report on Receipts and Expenditure

- 8.1 Without limiting the Commonwealth's rights under this Agreement or at law, the Commonwealth may require statements of receipt and expenditure in respect of:
- (a) the entire Agreement Term; and
 - (b) if the Agreement Term exceeds 12 months – each Financial Year in the Agreement Term.
- 8.2 A statement required under clause 8.1 must be provided to the Commonwealth:
- (a) if required under clause 8.1(a) – within sixty (60) days of the end of the Agreement Term; and
 - (b) if required under clause 8.1(b) – within sixty (60) days of the end of the Financial Year to which the statement relates.
- 8.3 The statements required under clause 8.1 must:
- (a) specify all Agreement Sum moneys received in the relevant period;
 - (b) for each budget item set out in Item 5 of the Annexure, specify all Agreement Sum moneys expended or committed for expenditure in the relevant period; and
 - (c) include such other matters that the Commonwealth reasonably requires (provided the Commonwealth notifies the University of that requirement in writing).
- 8.4 The University must ensure that each statement required under clause 8.1 is provided with a declaration by an appropriate senior officeholder of the University, such as the chief financial officer, that:
- (a) the statement of receipts and expenditure is correct;
 - (b) the Agreement Sum moneys have been expended in accordance with the Agreement; and
 - (c) proper accounting standards and controls have been exercised in respect of the Agreement Sum moneys.
- 8.5 The University will send any statement required under clause 8.1 to the Commonwealth address specified in Item 15 of the Annexure.

9 Treatment of Capital Items

- 9.1 The University must at all times during the Agreement Term:
- (a) use Capital Items only for the purpose of the Research Project;
 - (b) not encumber or dispose of any Capital Items other than as agreed with the Commonwealth;
 - (c) hold Capital Items securely and safeguard them against theft, loss, damage or unauthorised use;
 - (d) ensure that Capital Items are maintained in good working order;
 - (e) maintain appropriate insurances in respect of Capital Items;
 - (f) if required by law, maintain registration of, and licences for, the Capital Items;
 - (g) comply with all reasonable requests from the Commonwealth concerning Capital Items, including any request to register the Commonwealth's interest in a Capital Item; and
 - (h) maintain a register of all Capital Items which records:
 - (i) the date of purchase;
 - (ii) Capital Item description including serial number;
 - (iii) Capital Item location; and
 - (iv) the purchase price of the Capital Item.
- 9.2 Subject to any contrary written agreement between the Parties, the University must be the legal and beneficial owner of the Capital Items at all times during the Agreement Term.
- 9.3 Subject to any contrary written agreement between the Parties, at the earlier of:
- (a) the Completion Date;
 - (b) the date upon which the University ceases to require a Capital Item for the Research Project;
 - (c) the date upon which this Agreement is terminated; or
 - (d) a date agreed between the Parties,
- the University must:
- (e) transfer ownership of the Capital Items (or the relevant Capital Item if clause 9.3(b)) or 9.3(d) applies) to the Commonwealth or its nominee; and
 - (f) safely deliver the Capital Items (or the relevant Capital Item if clause 9.3(b)) or 9.3(d) applies) to the Commonwealth.

10 Subcontractors

- 10.1 The subcontractors approved by the Commonwealth for the purposes of this Agreement are set out in Item 7 of the Annexure.
- 10.2 The University must ensure that the subcontractors listed in Item 7 of the Annexure comply with any conditions set out in that Item.

11 University's Personnel (Including Specified Personnel)

- 11.1 The University must ensure that the Specified Personnel perform the roles and tasks for which they are nominated, as set out in Item 8 of the Annexure.
- 11.2 If any Specified Personnel is unable to perform the roles and tasks for which that Specified Personnel is nominated in Item 8 of the Annexure, the University must notify the Commonwealth immediately and must, if requested by the Commonwealth and after consultation with the Commonwealth, provide replacement Personnel acceptable to the Commonwealth at no additional cost and at the earliest opportunity. The Commonwealth will not unreasonably withhold its consent to the nomination of replacement Personnel.
- 11.3 The Commonwealth may, at any time and at its discretion (not to be exercised unreasonably), require the University to remove Personnel (including Specified Personnel) from carrying out work on the Research Project. The University must arrange for the removal of such Personnel from the Research Project and to replace them at the earliest opportunity with Personnel acceptable to the Commonwealth at no additional cost. The Commonwealth must not unreasonably withhold its consent to proposed replacement Personnel.
- 11.4 If the University is unable to provide replacement Personnel (including Specified Personnel) with suitable skills or in a sufficient time to enable the University to complete the Research Project in accordance with the research program set out in Item 2 of the Annexure, the Parties' Liaison Officers will meet at a time agreed between the Liaison Officers to determine, in good faith, if any aspect of this Agreement (for example – scope of the Research Project, timeframe for delivery of reports or other deliverables related to the Research Project, use of Specified Personnel, or use of subcontractors) needs to be varied to accommodate the inability or delay in replacing the Personnel.
- 11.5 If the Parties are unable to agree to vary this Agreement under clause 11.4, the Commonwealth may terminate this Agreement under clause 28.

12 Student Participation

- 12.1 The University must not permit a student studying at the University to participate in the Research Project unless:
- (a) either:
 - (i) the student is listed in Item 9 of the Annexure; or
 - (ii) the Commonwealth has consented to the student's participation in the Research Project; and
 - (b) the student, the Commonwealth and the University execute a separate written agreement, in the form of the Student Participation and IP Deed Schedule Agreement Template, governing the terms of the student's participation in the Research Project.
- 12.2 The University must ensure that (in relation to the Research Project) the student referred to in clause 12.1 only performs the tasks for which that student has been nominated, as set out in Item 9 of the Annexure, or as agreed to by the Commonwealth.
- 12.3 This clause 12 does not apply to any student of the University participating in the Research Project in a minor, or inconsequential manner.

- 12.4 The University is fully responsible for its students participating in the Research Project, including for their proper supervision, remuneration (if any), health and safety.

13 Access for Evaluations, Audits and Investigations

- 13.1 The University must allow the Commonwealth such access as it reasonably requires, to all its records and accounts relating to this Agreement, including those relating to how the University is carrying out the Research Project and receiving and spending the Agreement Sum. Such access will be given at all reasonable times to the following people:
- (a) a representative of the Commonwealth;
 - (b) a representative of the Commonwealth Auditor-General;
 - (c) a representative of the Commonwealth Privacy Commissioner.
- 13.2 The University must provide such assistance to a person referred to in clause 13.1 as they may reasonably require to:
- (a) locate, access, interpret and assess the records and accounts relating to this Agreement;
 - (b) make copies of those records or accounts; and
 - (c) use those records and accounts (or copies) for any purpose:
 - (i) connected with this Agreement (including to confirm information contained in a report, evaluate the Research Project or audit expenditure of the Agreement Sum); or
 - (ii) related to the person's statutory functions.
- 13.3 The access rights in this clause 13 are subject to the University's reasonable security procedures.
- 13.4 This clause 13 does not require the University to disclose information of a third party that is by its nature the Confidential Information of that third party.
- 13.5 In this clause 13, **access** includes access to:
- (a) any premises occupied by the University where the Research Project is being carried out or where records or accounts relating to this Agreement are located; and
 - (b) the University's Personnel, including any Personnel working on the Research Project and any other employee involved in the administration of the Research Project.

14 Intellectual Property – Background IP

- 14.1 Nothing in this Agreement affects the ownership of Background IP.
- 14.2 Subject to clause 14.3 each Party licenses the other Party to Use the Background IP (other than those IP rights that are limited by Item 10 of the Annexure), with those licences being for the purposes of:
- (a) in the case of the Commonwealth – exercising its rights under clause 17.3, clause 18.1, or clause 19.1 (as applicable), but only for Commonwealth Purposes; and

- (b) in the case of the University – carrying out the Research Project and exercising its rights under clause 17.1, clause 18.3, or clause 19.3 (as applicable), but only for purposes other than Commercialisation.
- 14.3 Subject to any limitations set out in clause 14.2, the licences under clause 14.2 have world-wide effect and are non-exclusive, royalty-free and perpetual, (other than a licence to the University in relation to clause 19.3 which will be for the duration of the Research Project).
- 14.4 The Party receiving a licence under clause 14.2 must, where reasonably practicable, acknowledge the other Party as the owner of the relevant Background IP in all communications or publications referring to that Background IP.
- 14.5 Each Party warrants that, to the best of its knowledge and belief, it is entitled, or will be entitled at the relevant time, to deal with its Background IP in accordance with this clause 14.

15 Intellectual Property – Third Party IP

- 15.1 Nothing in this Agreement affects the ownership of Third Party IP.
- 15.2 Before the University can incorporate Third Party IP into Foreground Material (including through the incorporation of Background Material which incorporates Third Party IP), the University must:
- (a) subject to clause 15.4, provide the Commonwealth with details of any restrictions, conditions or encumbrances that apply or may apply to use of the Third Party IP as part of the use of the Foreground Material by the Commonwealth in accordance with its rights under this Agreement; and
 - (b) use reasonable endeavours to obtain a free licence for the Commonwealth for the Third Party IP (other than for commercially available software) on equivalent terms as the licence granted to the Commonwealth for the University's Background IP under clause 14.
- 15.3 If the University is unable to obtain the Third Party IP licence for the Commonwealth's use under clause 15.2(b) it may only incorporate that Third Party IP into the Foreground Material if the Commonwealth agrees in writing.
- 15.4 Clause 15.2(a) does not apply to any Third Party IP (and any limitations on the use of that Third Party IP) which is contained in the Background Material provided by the Commonwealth and which is set out in table 6.2 of Item 6 of the Annexure.
- 15.5 The Commonwealth does not warrant that the Third Party IP referred to in clause 15.4 is suitable for any purpose.

16 Foreground IP – Application of Clauses 17-19

- 16.1 In this Agreement:
- (a) clause 17 applies (and clauses 18 and 19 do not apply) – if the Research Project is identified in Item 2.2 of the Annexure as a Standard Research Project;
 - (b) clause 18 applies (and clauses 17 and 19 do not apply) – if the Research Project is identified in Item 2.2 of the Annexure as part of a Defence Strategic Project;

- (c) clause 19 applies (and clauses 17 and 18 do not apply) – if the Research Project is identified in Item 2.2 of the Annexure as a National Security Classified Project.

- 16.2 Each Party must, if requested by the other Party and at its own cost, do all things and execute all documents necessary or convenient to give effect to clause 17, clause 18 or clause 19 (as applicable).
- 16.3 The Parties shall promptly notify each other of any infringement of any rights relating to Foreground IP which comes to its attention, and each Party agrees to give the other Party all assistance which the other Party may reasonably require in order to protect its interest in the Foreground IP.

17 Foreground IP – Standard Research Project

- 17.1 Ownership of all Foreground IP vests in the University upon creation.
- 17.2 The University must promptly inform the Commonwealth in writing whenever Foreground IP is created.
- 17.3 The University licenses the Commonwealth to Use the Foreground IP for the purposes of the Research Project and for Commonwealth Purposes, with that licence having world-wide effect and being non-exclusive, royalty-free and perpetual.

18 Foreground IP – Defence Strategic Project

- 18.1 Ownership of all Foreground IP vests in the Commonwealth upon creation.
- 18.2 The University must promptly inform the Commonwealth in writing whenever Foreground IP is created.
- 18.3 The Commonwealth licenses the University to Use the Foreground IP for the purposes of the Research Project and for any other purpose other than Commercialisation, with that licence having world-wide effect and being non-exclusive, royalty-free and perpetual.

19 Foreground IP – National Security Classified Project

- 19.1 Ownership of all Foreground IP vests in the Commonwealth upon creation.
- 19.2 The University must promptly inform the Commonwealth in writing whenever Foreground IP is created.
- 19.3 The Commonwealth licenses the University to Use the Foreground IP, but only for the purposes of the Research Project, with that licence having world-wide effect and being non-exclusive, royalty-free and for the duration of the Research Project.

20 Changes to National Security Classification

- 20.1 The Commonwealth may at any time, in accordance with the Australian Government Protective Security Manual, determine that a particular national security classification applies to information or equipment relevant to the Research Project.

- 20.2 If the Commonwealth makes a determination under clause 20.1, the Commonwealth must provide a written notice to the University, advising of:
- (a) the national security classification that is to apply to the information or equipment relevant to the Research Project; and
 - (b) any security conditions that are to apply.
- 20.3 After providing the University with a notice under clause 20.2, the Parties' Liaison Officers will meet within seven (7) days (or other time frame as agreed between the Liaison Officers) to:
- (a) discuss how the change in national security classification is to be implemented; and
 - (b) determine if any aspect of this Agreement (for example – scope of the Research Project, limits on publication, IP ownership, resourcing, timeframe for delivery of reports and other deliverables related to the Research Project, use of Specified Personnel, or use of subcontractors) needs to be varied to accommodate the change in national security classification.
- 20.4 If the University is unable or unwilling to comply with a security condition in accordance with clause 20.2 and if the Parties cannot agree to vary this Agreement under clause 20.3, the Commonwealth may terminate this Agreement.

21 Confidential Information

- 21.1 The Parties will treat each matter referred to in Item 11 of the Annexure as the Confidential Information of the Party whose name appears adjacent to that matter. In addition, a Party (**the Notifying Party**) may at any time notify the other Party in writing that a matter relating to the Research Project and not already referred to in Item 11 of the Annexure, is to be treated as the Notifying Party's Confidential Information.
- 21.2 Nothing in this clause 21 limits the definition of Confidential Information in this Agreement and nothing in this Agreement limits the operation of clause 9 of the Partnering Deed (as incorporated into this Agreement by clause 35.)

22 Controlled Content Register

- 22.1 If specified in Item 17 of the Annexure, the University will establish and maintain a Controlled Content Register in the form of that Item or as otherwise agreed by the Liaison Officers.
- 22.2 The CC Register is for record management purposes and does not in any way alter or limit the relevant provisions in this Agreement or the Partnering Deed.
- 22.3 The University will maintain the CC Register in accordance with the procedures:
- (a) set out in this clause 22 and
 - (b) as determined by the Liaison Officers from time to time.
- 22.4 If the Commonwealth becomes aware of a matters pertinent to the CC Register it will inform the University and the University will include those matters in the CC Register.

- 22.5 The University will provide a copy of the CC Register to the Commonwealth:
- (a) upon request of the Commonwealth; and
 - (b) within thirty (30) days of the expiry or termination of the Agreement.
- 22.6 If the Commonwealth notifies the University of any errors in the CC Register, the University must within seven (7) days:
- (a) amend the CC Register to the reasonable satisfaction of the Commonwealth; and
 - (b) provide a copy of the amended CC Register to the Commonwealth.

23 Dissemination of Information Arising From the Research Project

- 23.1 The Commonwealth encourages 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, dissemination of information may result in the release of Confidential Information, adversely affect national security interests, or jeopardise the Commonwealth's IP rights. Accordingly, the University must not and must ensure that its Personnel do not, disseminate information arising from the Research Project except:
- (a) to register, or enforce the University's IP related rights under this Agreement;
 - (b) if Item 12 of the Annexure specifies that the information may be disseminated and the University and its Personnel comply with the requirements of that Item; or
 - (c) if the Commonwealth agrees in writing to a request by the University to disseminate the information and the University and its Personnel comply with all conditions that the Commonwealth reasonably imposes as a condition to it agreeing to the proposed dissemination.
- 23.2 If the University makes a request to the Commonwealth under clause 23.1 (c), the University will provide the Commonwealth with details of the information arising from the Research Project that is proposed to be disseminated (for example, draft articles, lecture notes, or overhead slides) together with details of how, when and to whom it is proposed to be disseminated:
- (a) if the proposed dissemination of information arising from the Research Project is to be by way of publication – at least thirty (30) days before the proposed submission date for publication; and
 - (b) If the proposed dissemination of information arising from the Research Project is to be by way of presentation – at least thirty (30) days before the proposed presentation.
- 23.3 The Commonwealth may only refuse to allow, or may only impose conditions on, a proposed dissemination under clause 23.1 (c) to the extent reasonably necessary to protect:
- (a) its Confidential Information (including national security matters); or
 - (b) its Intellectual Property rights.
- 23.4 If the Commonwealth:
- (a) fails to respond to the University's request under clause 23.1 (c) within thirty (30) days of receiving the request;

- (b) refuses to agree to the request; or
- (c) imposes conditions on its consent that the University considers unreasonable,

the University may (if the matter cannot be promptly resolved by the Liaison Officers) refer the matter to the Partnership Managers, or to the Partnership Executive Committee for resolution.

- 23.5 In this clause 23, to **disseminate information arising from the Research Project** means to broadcast, publish, communicate or present information arising from the Research Project, whether in print, electronic form or otherwise.

24 Acknowledgement and Publicity

- 24.1 The University must, in all publications, promotional and advertising materials, public announcements and activities by the University or on the University's behalf in relation to the Project, or any products, processes or inventions developed as a result of it, acknowledge the financial and other support the University has received from the Commonwealth, in the manner set out in Item 13 of the Annexure.
- 24.2 The University must obtain the Commonwealth's agreement before it makes any announcements, or conducts any publicity events in relation to the Project. After the University has obtained the Commonwealth's agreement under this clause, it does not need to obtain the Commonwealth's further agreement to minor and non-material changes to the agreed announcements or publicity.
- 24.3 The Commonwealth reserves the right to publicise and report on the awarding of the funding to the University. The Commonwealth may do (but is not limited to doing) this by including the University's name, the amount of the Agreement Sum given to the University, the title and a brief description of the Project in media releases, general announcements about the Agreement, annual reports or through any other means as determined by the Commonwealth.
- 24.4 The Commonwealth will use reasonable endeavours to provide the University with advance notification of any proposed publicity or reporting under clause 24.3.
- 24.5 The University acknowledges that the Commonwealth may be required to provide information in relation to this Agreement, including the Agreement Sum, the Project, or the Project Purposes, as required by the operation of any law, judicial or parliamentary body or governmental agency.

25 Taxes, Duties and Government Charges

- 25.1 Except as provided by this clause 25, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement will be borne by the University.
- 25.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.
- 25.3 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply. That amount must be paid either at the same time and in the

same manner as the GST exclusive consideration is to be paid or provided, or, if subsequently determined to be payable, at that time.

- 25.4 A Party's right to payment under clause 25.3 is subject to a valid tax invoice being delivered to the Party who is the recipient of the taxable supply.
- 25.5 To the extent that a Party is required to reimburse or indemnify the other Party for a loss, cost or expense incurred by that other Party, that loss, cost or expense does not include any amount in respect of GST for which that other Party is entitled to claim an input tax credit.
- 25.6 In this clause 25:
- (a) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**the GST Act**) or any replacement or other relevant legislation and regulations;
 - (b) words or expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
 - (c) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

26 Insurance

- 26.1 The University must effect and maintain the insurances specified in Item 14 of the Annexure.
- 26.2 The University must, if requested, provide the Commonwealth with a copy, or a statement of particulars, of the policies or other evidence of the insurance which is satisfactory to the Commonwealth.
- 26.3 The University must ensure each subcontractor is insured against the subcontractor's corresponding liabilities.
- 26.4 Despite clause 2, this clause 26 will continue in effect while any obligations remain in connection with this Agreement.

27 Termination by Consent

- 27.1 The Parties may, at any time, terminate this Agreement on such terms as are agreed by the Parties in writing.

28 Termination for Fault

- 28.1 The Commonwealth may immediately terminate this Agreement by giving written notice to the University if any of the following occur:
- (a) the University breaches any provision of this Agreement and, in the reasonable opinion of the Commonwealth, the breach cannot be remedied;

- (b) subject to clause 28.2, the University breaches any provision of this Agreement;
- (c) subject to clause 28.2, in the reasonable opinion of the Commonwealth, the University becomes unable or unwilling to complete the Research Project;
- (d) a clause of this Agreement expressly permits the Commonwealth to terminate the Agreement in circumstances contemplated by that clause (other than clause 29);
- (e) the University becomes insolvent, bankrupt, subject to administration or is unable to meet its debts.

28.2 Prior to terminating this Agreement under clause 28.1 (b) or 28.1 (c), the Commonwealth will first give the University a notice requiring the University to remedy its default and will provide the University with thirty (30) days from the date of the notice to do so.

28.3 If the Commonwealth issues a notice under clause 28.1 the Commonwealth will not be liable for any payments to the University for work conducted after the effective date of termination, or for any other costs or losses arising thereafter as a result of the termination.

29 Termination or Reduction other than for Fault

29.1 In addition to its termination rights under clause 28, the Commonwealth may at any time by written notice to the University, terminate or reduce the scope of this Agreement.

29.2 If the Commonwealth issues a notice under clause 29.1 the Commonwealth will only be liable to the University for:

- (a) in the case of termination of this Agreement – payments due and owing to the University before the Commonwealth gave notice under clause 29.1;
- (b) in the case of reduction in scope of the Agreement – payment of the proportion of the Agreement Sum related to the part of the Agreement not affected by the reduction in scope, provided that the University complies with its obligations with respect to the payments; and
- (c) reasonable costs incurred by the University that are directly attributable to the termination or reduction and that the University substantiates to the Commonwealth's satisfaction,

but will not be liable to the University for:

- (d) any amount that exceeds the Agreement Sum payable under this Agreement; or
- (e) any loss of prospective profits, or loss of benefits that would have been conferred on the University if the termination or reduction had not occurred.

29.3 In clause 29.2(c), **reasonable costs** includes any liability of the University:

- (a) arising from the University entering into a legally binding, irrevocable commitment which was entered into for the purposes of this Agreement prior to the notice of termination; or
- (b) arising under relevant employment-related legislation, and

for which the payments made under clauses 29.2(a), or 29.2(b) (as applicable) are insufficient to cover the University's liability.

30 Consequences of Termination or Reduction in Scope

- 30.1 Upon termination of this Agreement, the University must:
- (a) cease to incur expenditure in respect of the Research Project and arrange for the orderly cessation of work on the Research Project;
 - (b) cease using all Commonwealth Resources;
 - (c) deal with all Commonwealth Resources that comprise Materials in accordance with clause 5.8;
 - (d) deal with the Commonwealth's Confidential Information in accordance with clause 9 of the Partnering Deed (as incorporated into this Agreement by clause 35); and
 - (e) within sixty (60) days of termination, provide a statement of receipt and expenditure that complies with clause 8.3 and clause 8.4, for all money received from the Commonwealth, if the Commonwealth requests it.
- 30.2 If this Agreement is reduced in scope under clause 29.1, the University must comply with clause 30.1 only to the extent necessary to give effect to the reduction in scope.

31 Treatment of Unspent or Misspent Agreement Sum

- 31.1 Subject to clause 31.2, the University must, upon written notice from the Commonwealth, repay the Agreement Sum (or the relevant part of it) to the Commonwealth in any of the following circumstances:
- (a) the University spends or commits the Agreement Sum (or part of the Agreement Sum) other than in accordance with this Agreement;
 - (b) the Commonwealth reasonably believes that the University is unable to spend the Agreement Sum (or part of the Agreement Sum) in accordance with this Agreement;
 - (c) the Commonwealth overpays the University, or pays the University an amount that it incorrectly claimed.
- 31.2 Before the Commonwealth can issue a notice under clause 31.1, it must give the University reasons for its decision under that clause and an opportunity for the University to respond.
- 31.3 If the Commonwealth terminates this Agreement under clause 28.1 or clause 29.1, the University must, within thirty (30) days of receipt of a written notice from the Commonwealth, repay any of the Agreement Sum to the Commonwealth which the University has not spent or committed in accordance with this Agreement as at the date it received the notice of termination.
- 31.4 Any amount to be repaid under this clause 31 may be recovered by the Commonwealth as a debt due to the Commonwealth, or deducted by the Commonwealth from subsequent payments of the Agreement Sum (if this Agreement has not been terminated).
- 31.5 Despite clause 31.1 or clause 31.3, if at the end of this Agreement or upon its earlier termination, some of the Agreement Sum has not been spent or

committed (**the Unspent Amount**), the Commonwealth may at its sole discretion give the University permission to retain the Unspent Amount for such purposes as the Commonwealth directs.

- 31.6 In this clause 31, **commit**, in relation to a sum of money, means to enter into a legally binding, irrevocable commitment to make a payment of that sum of money in the future, or to incur a liability to make a payment under relevant employment-related legislation.

32 Variation of the Research Plan, Deliverables, or Budget Items

- 32.1 Despite clause 6 of the Partnering Deed, if the University proposes any change to:
- (a) the research plan or deliverables set out in Item 2 of the Annexure; or
 - (b) the budget items set out in Item 5 of the Annexure (provided the proposed change does not result in an increase to the Agreement Sum),
- it must notify the Commonwealth's Liaison Officer of the proposed changes in writing and must not implement any such change without the prior written consent of the Commonwealth.

33 Unavoidable Delay

- 33.1 If, by reason of an Unavoidable Delay, a Party is delayed in performing, or is unable, wholly or in part, to perform, any obligation under this Agreement (other than an obligation to make a payment), and that Party:
- (a) gives the other Party prompt notice of that Unavoidable Delay including reasonable particulars, 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 Unavoidable Delay as quickly as possible,
- that obligation is suspended so far as it is affected by the Unavoidable Delay during the continuance of that Unavoidable Delay and that Party will be allowed a reasonable extension of time to perform its obligations.
- 33.2 If, after thirty (30) days, an Unavoidable Delay 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.
- 33.3 In this clause 33, **Unavoidable Delay** 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. For clarity, decisions of the Australian Government or Cabinet will be taken to be beyond the reasonable control of the Commonwealth.

34 Addresses for Notices

- 34.1 Any notice that is required to be given under this Agreement is to be sent by a Party to the other Party care of the relevant name and address provided in Item 15 of the Annexure. For clarity, claims for payment by the University under clause 4.1 are not notices and must be made in accordance with clause 4.3.

35 Application of Clauses from the Partnering Deed

35.1 Subject to clause 35.2, the following provisions of the Partnering Deed apply as clauses of this Agreement:

- (a) clauses 1.1 and 1.2 – Definitions and Interpretation (other than any definition that has a different definition in this Agreement);
- (b) clause 2.6 – Defence Science Partnership – Term and Scope;
- (c) clause 3 – Objectives;
- (d) clause 4 – Management;
- (e) clause 6 – Variations to this Deed or Activity Agreements;
- (f) clause 8 – Treatment of Conflicts of Interest;
- (g) clause 9 – Treatment of Confidential Information;
- (h) clause 10 – Treatment of National Security Matters;
- (i) clause 13 – Personnel;
- (j) clause 14 – Work Health and Safety Obligations;
- (k) clause 15 – Environmental Protection Obligations;
- (l) clause 16 – Protection of Personal Information;
- (m) clause 17 – No Benefit or Advantage;
- (n) clause 18 – Defence Interests;
- (o) clause 20 – Resolving Disputes;
- (p) clause 22 – Restrictions on Assignment;
- (q) clause 23 – Restrictions on Subcontracting;
- (r) clause 24 – Entire Agreement;
- (s) clause 25 – Governing Law and Jurisdiction;
- (t) clause 26 – Waiver;
- (u) clause 27 – Clause Severance;
- (v) clause 28 – Survival of Clauses; and
- (w) clause 29 – Notices.

35.2 The clauses from the Partnering Deed referred to in clause 35.1 are modified for the purposes of this Agreement as follows:

- (a) if a clause refers to “this Deed”, “this Deed and any Activity Agreement”, or “this Deed or an Activity Agreement” – by changing the reference to “this Agreement”;
- (b) if a clause contains a definition that is defined differently in this Agreement – by applying the definition from this Agreement; and
- (c) by making any other necessary modifications required to give effect to the clauses.

35.3 If this Agreement has been entered into by a Related Body Corporate of a Party to the Partnering Deed, that Related Body Corporate:

- (a) acknowledges that it is aware of the terms of the Partnering Deed; and

- (b) agrees to be bound by clauses of the Partnering Deed referred to in clause 35.1.

36 Special Conditions

- 36.1 The special conditions set out in Item 16 of the Annexure apply to this Agreement. If there is a conflict between a special condition and another clause of this Agreement or the Partnering Deed, the special condition prevails.

37 Counterparts

- 37.1 This Agreement may be executed in counterparts. All executed counterparts constitute one document.
- 37.2 In the event that the Agreement is executed in counterparts, the date of the Agreement is the date upon which the last Party signed the Agreement.

DRAFT

The Annexure – Agreement Details

Item 1 Agreement Term

(refer to clauses 1.1 and 2)

The Commencement Date for this Agreement is the date both Parties signed this Agreement, or if it was signed on separate days, the date on which the last Party to sign this Agreement did so.

The Completion Date is: [Insert completion date]

Item 2 Research Project

(refer to clauses 1.1 and 6)

Item 2.1 Title of Research Project:

[insert title]

Item 2.2 Type of Research Project (for Intellectual Property Purposes)

(refer to clause 16)

Note to User: This Item is used to determine ownership of intellectual property rights in Foreground IP created under this Agreement. One of the following options **MUST** be selected.

[insert one of the following:]

The Research Project is a Standard Research Project.

or

The Research Project is part of a Defence Strategic Project.

or

The Research Project is a National Security Classified Project.

Item 2.3 Background of Research Project:

[insert Background]

Item 2.4 Aims of Research Project:

[insert aims, if any]

Item 2.5 Research Plan, Research Project Reports, and Other Deliverables:

Note to User: This part of Item 2 should focus on what the University will be doing and what it will be providing (in the way of deliverables and reports) to the Commonwealth and when those things will be done or delivered. A timeframe for various elements of the research project should be set out and the various deliverables or reports required by the Commonwealth should be listed and their expected delivery dates included. Payments (set out in Item 4 below), should be linked to the key performance or delivery dates in this Item. The following is an example of how this could be set out.

The University must carry out the Research Project in accordance with the following program:

Table 2.1 Research Program		
Research Element	Description	Due Date for Completion

[insert name of element]	[Insert description of work to be done]	[Insert due date for completion]

Note to User: In relation to table 2.2 below, deliverables could, for example, include matters other than reports such as new chemical compounds, computer programs, experimental prototypes, or raw data from experiments.

Reports could, for example, include both interim and final reports outlining or detailing:

- current activities and progress in carrying out the Research Project;
- the extent to which the project's aims have been achieved;
- difficulties encountered;
- serendipitous discoveries; and
- findings and conclusions reached.

The University must provide to the Commonwealth each of the following deliverables and reports by the applicable due date:

Report or other Deliverable Title	Description	Delivery Format and Location	Due date
[insert]	[insert details]	[insert]	[insert]

Item 3 Liaison Officers

(refer to clauses 1.1, 3.1, 20, 22 and 32)

Item 3.1 Commonwealth's Liaison Officer

Name: [insert Commonwealth contact person's name]

Title: [insert]

Telephone: [insert]

Address: [insert]

Email: [insert]

Item 3.2 University's Liaison Officer

Name: [insert University contact person's name]

Title: [insert]

Telephone: [insert]

Address: [insert]

Email: [insert]

Item 4 Agreement Sum

(refer to clauses 1.1 and 4)

Subject to this Agreement, the Commonwealth will pay the Agreement Sum of [insert amount], excluding GST, in the instalments and at the times, as set out in the following table:

Note to User: Payments should be linked to performance, therefore the payment schedule below should be linked to the University's conduct of key tasks (as set out in Table 2.1 of Item 2) or better still, the delivery by the University of their key reports or other deliverables (as set out in Table 2.2 of Item 2).

Agreement Sum – Payment Schedule			
No	Description of task to be completed or Deliverable to be delivered to the Commonwealth	Date Due	Amount (exclusive of GST)
1	Insert either: Completion of [insert University task] or Delivery of [insert University Deliverable]		
2			
3			
4			
Total			

Item 5 Budget

(refer to clauses 7 and 8)

The Budget for the Research Project is set out in the table below. The Research Rate (from Schedule 2 of the Partnering Deed) used is [insert research rate]:

Budget Item	Amount (exclusive of GST)
1. Salaries for University research staff:	
[Insert description]	[Insert amount]
2. University infrastructure costs:	
[Insert description]	[Insert amount]
3. Material/consumables:	
[Insert description]	[Insert amount]
4. Travel:	
[Insert description]	[Insert amount]
5. Capital Items:	
[Insert description]	[Insert amount]
<p>Note: Only list items that are 100% funded by the Commonwealth. Seek advice from DST Group TPO, or Defence Legal before agreeing to joint funding of Capital Items.</p>	

TOTAL	[Insert total amount]
-------	-----------------------

The amounts listed in the table above include all applicable on-costs and multipliers.

Item 6 Commonwealth Resources

(refer to clauses 1.1, 5 and 15.4)

Note to User 1: Items that are intended to be included in table 6.1 below are Commonwealth Resources that are:

- “intangible” assistance such as access to DST Group laboratories, DST Group researchers, video-conferencing facilities;
- physical items that are intended to be returned after they are used by the University; or
- documentation and information where **NO** intellectual property rights are passing to the University (eg the documentation is **NOT** going to be incorporated into Foreground Material or where the use of the Material does not involve copying).

Items that are intended to be included in table 6.2 are those resources to be provided by the Commonwealth that are intended to be available for incorporation into the Foreground Material. These **MUST** be listed as “Background Material” in table 6.2 below.

Before supplying Background Material for use in the project it is **ESSENTIAL** to consider the scope of the Commonwealth’s IP rights in the Background Material. The following should be considered:

- Does the Commonwealth own the Background Material free of any Third Party IP rights?
- If not, what is the range of the IP licence that the third party gave to the Commonwealth? Does the licence include the right to sublicense? (the right to sub-licence is essential to enable the Commonwealth to supply the third party’s material).
- Did the third party impose any restrictions on the use of their IP?

Ideally, the Commonwealth should not provide Background Material if it does not own the IP associated with that material.

Note to User 2: Any proposed use of Third Party IP as part of the Research Project must be dealt with in accordance with clause 15 of the Agreement. In the case of Commonwealth supplied Background Material that has Third Party IP incorporated into it, the Commonwealth should make reasonable efforts to identify that Third Party IP and to advise the University in advance of any limits on its use. This should be included in table 6.2 below.

Note to User 3: If the Commonwealth resource is a significant piece of equipment or infrastructure access, the Parties should execute a separate Schedule Template Agreement in the form of either an Equipment Loan Agreement or an Infrastructure Access Agreement.

Table 6.1 Commonwealth Resources (other than Background Material provided by the Commonwealth):

The Commonwealth will provide the following resources (other than Background Material) to the University, subject to the terms of this Agreement:

Table 6.1 – Commonwealth Resources (other than Background Material)			
No	Item Description	Delivery date and Location (for Commonwealth Resources that comprise Material)	Comment / Conditions for Use
1	[insert details]		
2			

Table 6.2 Background Material Provided by the Commonwealth:

The Commonwealth will provide the following Background Material to the University, subject to the terms of this Agreement:

Table 6.2 – Background Material Provided by the Commonwealth			
No	Title of Background Material	Description of Background Material and Format of Background Material (eg document, email, CD)	Owner (if not Commonwealth) and restrictions on use (if any) (See clause 15.4 – if Third Party IP is being provided, list any known restrictions on its use here)
1			
2			

Item 7 Subcontractors

(refer to clause 10)

Subcontractor name and ABN	Task/Role	Comments
Conditions for Subcontractors		
The Commonwealth's consent to the subcontractor/s is subject to the following conditions: [insert any conditions or state 'Not Applicable']		

Item 8 Specified Personnel

(refer to clause 11)

Note to User: Only **University** Personnel with a key role in the Research Project are to be included as Specified Personnel.

Specified Personnel			
Name	Position at University	Task/Role	Comments

Item 9 Student Participation

(refer to clause 12)

Participating Students		
Student's name	Task/Role	Comments

Item 10 Background IP – Intellectual Property Rights Restrictions

(refer to clause 14)

Note to User 1: This Item should be used sparingly and carefully, as it impacts on the Parties' ability to exercise their broad IP licence rights otherwise provided for in clause 14. Seek legal advice from Defence General Counsel's Office, or commercial advice from DST Group TPOs, if in doubt.

Note to User 2: This Item relates to the licence for the use of each Party's Background IP, which is defined to be the IP attached to, or otherwise necessarily related to the operation or functioning of Background Material (other than Third Party IP). The Commonwealth's Background Material is listed in Table 6.2 in Item 6 above. The University provides other, unspecified Background Material as it sees fit to effectively perform the Project. However, where the University's Background Material is known in advance (and assuming the Uni wants to limit the Commonwealth's IP licence in the Background IP subsisting in that Background Material), this Item can be used to record any restrictions on the use of that Background IP.

Generally, the licence being provided by each Party under clause 14 permits the other Party to use Background IP for the purposes of the Research Project and in order for the Parties to exercise their rights with respect to the Foreground IP. Generally Foreground IP can be used for anything that does not involve commercialisation (in the case of the University) and can be used for 'Commonwealth Purposes' (in the case of the Commonwealth). In its 'default' form, clause 14 provides licences as discussed above in respect of all Intellectual Property rights (ie copyright, patent rights, registered design rights, trade mark rights, rights in circuit layouts etc).

This Item can be used to further limit a Party's use of the other Party's Background IP to something narrower than non-commercialisation (for the University) and something narrower than Commonwealth Purposes (for the Commonwealth). For example the Item can be used to limit the use of particular pieces of Commonwealth Background IP to academic research and to exclude its use from teaching purposes, limit its use to inside Australia, or limit the number of copies to be made. This Item can also be used to exclude particular types of Intellectual Property, or particular IP rights from the licence under clause 14.

Note to User 3: The Commonwealth Resources listed in Table 6.1 in Item 6 are not treated as the Commonwealth's "Background Material" (ie they are only subject to the restrictions on use set out in clause 5 of the Agreement) and are not intended to be available to be incorporated into Foreground Material. They do not need to be referred to in this Item.

Note to User 4: Restrictions on the use of Third Party IP do not need to be included here. They are dealt with in table 6.2 above.

Item 10.1 Commonwealth's Intellectual Property rights that are not included in the licence under clause 14.2:

[insert excluded IP rights, or insert "not used"]

Item 10.2 Other restrictions on use of the Commonwealth's Background IP under clause 14.2:

[insert restrictions on use of Background IP, or insert "not used"]

Item 10.3 University's Intellectual Property rights that are not included in the licence under clause 14.2:

[insert excluded IP rights, or insert "not used"]

Item 10.4 Other restrictions on use of the University's Background IP under clause 14.2:

[insert restrictions on use of Background IP, or insert "not used"]

Item 11 Confidential Information

(refer to clause 21)

Note to User: The following table can be used to list the things that are (or are likely to be) commercially confidential or have a national security classification, such as specific pieces of sensitive information or important and sensitive matters that might be passed from one Party to the other Party under this Agreement.

It can also be used to specify any clauses of this Agreement (or Items in the Annexure) that are intrinsically commercially confidential or which contain or refer to matters that have a national security classification.

DST Group should include the Commonwealth Commercial-in-Confidence items and clauses; and the University should include what it considers to be its Commercial-in-Confidence items and clauses.

A clause in the Agreement may be considered Commercial-in-Confidence if it:

- (a) contains commercially sensitive information, disclosure of which may harm the relevant Party's commercial interests if published;
- (b) contains details about intellectual property regimes that are commercially sensitive;
- (c) contains details about the capability/services being delivered that are commercially sensitive.

The Department of Defence is required annually to justify to the Senate why clauses in contracts are confidential, therefore clauses or Items should only be included in the table below if they are legitimately commercially sensitive, or, where the clause or Item refers to national security classified matters.

Matter (or clause of Agreement)	Reason for confidentiality	Party for whom the information is confidential
This Item 11	This Item 11 contains a list of Confidential Information and the reasons for their confidentiality.	Both Parties
[Insert details]	[Insert reason]	[Insert name of party]
[Insert details]	[Insert reason]	[Insert name of party]

Item 12 Dissemination of Information

(Refer to clause 23)

insert either:

No information arising from the Research Project may be disseminated without the Commonwealth's prior consent.

or

The following information arising from the Research Project may be disseminated:

[describe information that can be disseminated]

The information described above may be disseminated subject to the following conditions:

[insert any conditions, if applicable]

Item 13 Acknowledgement and Publicity

(refer to clause 24)

Acknowledgement of the Commonwealth's assistance is to be in the following form or as otherwise agreed by the Commonwealth:

[insert wording for publication]

Item 14 Insurance

(refer to clause 26)

Note to User: Advice on Defence insurance requirements can be obtained from the Defence Insurance Office.

The insurances required to be maintained by the University are set out in the table below.

Type of Insurance	Amount
Public Liability insurance	not less than 10 million dollars (\$10,000,000.00) per event.
Workers' Compensation	in accordance with applicable legislation.
Professional Indemnity Insurance	not less than five million dollars (\$5,000,000.00) per event.
[Insert any additional insurance required]	[Insert amount]

Item 15 Notices

(Refer to clause 34 and clause 29 of the Partnering Deed)

(Invoices are dealt with under clause 4.3, not this Item.)

For the Commonwealth:

Name: [insert]

Title: [insert]

Address: [insert]

Email: [insert]

Telephone: [insert]

For the University:

Name: [insert]

Title: [insert]

Address: [insert]

Email: [insert]

Telephone: [insert]

Item 16 Special Conditions

(refer to clause 36)

Note to User: Do not insert special conditions without first obtaining legal advice. Special conditions are not intended to be used to make minor modifications to clauses in the agreement, as the template Agreement has been negotiated and agreed to by Universities and DST Group. The use of special conditions is intended to deal with unusual or genuinely novel situations, not contemplated by the existing clauses. They are not intended to be a device to enable existing clauses to be re-

negotiated. Special Conditions will be required for classified project agreements, or Australian Defence Force Academy projects involving ADF personnel.

[Insert special conditions, if any. If there are no special conditions, insert "not used"]

or use the following format:

The following special conditions apply to this Agreement:

Special Condition number	Special Conditions
SC 1	[Insert special condition No 1 here]
SC 2	[Insert special condition No 2 here]
etc	etc

Item 17 Controlled Content Register

(refer to clause 22)

[Insert either:

No Controlled Content Register is required. [and delete the table below]

or

The University will maintain a Controlled Content Register in the following format:

Background IP					
No	Owner	Title of Background IP	Description of Background IP	Form of Background IP (eg document, email, CD)	Licence and Restrictions
1					
2					
Foreground IP					
No	Owner	Title of Foreground IP	Description of Foreground IP	Form of Foreground IP (eg document, email, CD)	Licence and Restrictions
1					
2					
Third Party IP					
No	Owner	Title of Third Party IP	Description of Third Party IP	Form of Third Party IP (eg document, email, CD)	Licence and Restrictions
1					
2					
Commercial in Confidence Information					
No	Description	Why confidential	Party for whom the information is confidential	Date supplied	Date entered in register
1					

2					
Security Classified Information					
No	Description	Security Classification	Supplying Party	Date supplied	Date entered in register
1					
2					
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No	Description	Country	Law	Restriction	Date entered in register
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DRAFT

SIGNED BY THE PARTIES AS AN AGREEMENT

SIGNED for and on behalf of the
**Commonwealth of Australia, as
represented by the Defence Science
and Technology Group of the
Department of Defence (ABN 68 706
814 312)**

on _____
insert date the agreement is signed

by its duly authorised representative:

Name of DST Group representative (print)

Signature of DST Group representative

Position held by DST Group representative (print)

In the presence of:

Name of witness (print)

Signature of witness

SIGNED for and on behalf of the
**[insert name of University/Related Body
Corporate] (ABN [insert ABN])**

on _____
insert date the agreement is signed

by its duly authorised representative:

Name of representative (print)

Signature of representative

Position held by representative (print)

In the presence of:

Name of witness (print)

Signature of witness