**DEFENCE SCIENCE CENTRE**

**Research Funding Proforma**

**BETWEEN**

**DEPARTMENT OF JOBS, TOURISM, SCIENCE AND INNOVATION**

**AND**

**XXXXXXXXXX (Recipient)**

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### SCHEDULE

### ANNEXURE A PROFORMA CLAIM NOTICE

**AGREEMENT** dated day of 2020

**PARTIES:**

**THE STATE OF WESTERN AUSTRALIA (“State”) acting by and through the Department of Jobs, Tourism, Science and Innovation (“Department”)**

And

**xxxx** (“**Recipient**”)

**RECITALS**

1. The Recipient is seeking to undertake a research project related to <Project Title> (**Project**)**.**

1. The research will include work in the following area(s): <Project Summary>

1. At the Recipient’s request the Department has agreed to provide to the Recipient **Funds**, in aggregate not to exceed $XXXX, excluding GST, to facilitate the Project.

1. The Department is the administering organisation for the Defence Science Centre (DSC).

**IT IS AGREED**:

# 1. TERM OF AGREEMENT

The **Term** of this agreement is the period specified in the schedule.

# 2. ADMINISTRATION OF AGREEMENT

Any power or discretion exercisable by the Department under this agreement may be exercised by the person for the time being in the position of Director General of the Department.

# 3. PAYMENT OF FUNDS

3.1 Subject to this agreement, in consideration of the Recipient participating in the **Project** the Department agrees to pay the funds to the Recipient in accordance with the **Milestone Payments** (if any) as specified in the schedule.

3.2 The Recipient may only use the Funds for the **Purpose** specified in the Schedule.

3.3 The Department will pay the Funds to the Recipient at the times specified in the Schedule and within thirty (30) days of receipt of claim notice in the form provided in Annexure A, or another form satisfactory to the Department.

 3.4 At the end of the Term the Recipient must:

3.4.1 provide a report on the level of any unexpended Funding to the Department;

3.4.2 repay any part of the Funding which is unexpended at the end of the Term to the Department, unless the Department gives written approval for the Recipient to retain the money.

# 4. OBLIGATIONS OF THE RECIPIENT

The Recipient must:

4.1 comply with the terms and conditions of this agreement, including the **Special Conditions** (if any) specified in the schedule.

4.2 at all times, make best endeavours to achieve the **Key Performance Indicators** (if any) specified in the Schedule;

4.3 maintain accounting records of the Funding in accordance with generally accepted accounting principles and any other standards reasonably required by the Department;

4.4 ensure that any activity carried out by the Recipient in connection with the Project complies with the laws from time to time in force in Western Australia; and

# 5. INFORMATION AND REPORTS

5.1 The Recipient must provide the Department with appropriate and regular information, records and reports as specified in the schedule and otherwise as requested by the Department from time to time, including information about:

5.1.1 the progress of and material changes to the nature and scope of the Project;

5.1.2 any other funding or financial assistance promised or received for the Project from sources other than the Department;

 5.1.3 the use of the Funding; and

5.1.4 any other matters relevant to the Project, as reasonably required by the Department.

 5.2 The Recipient must:

5.2.1 prepare financial statements in the nature of a general-purpose financial report; and

5.2.2 where requested by the Department, provide management accounts, annual reports, financial statements and any other information or documents relevant to the Funding.

 5.3 The Recipient must permit any officer authorised by the Department:

5.3.1 to have access to all accounting records, equipment, documents and information in relation to the Project and the Funding; and

5.3.2 to discuss matters pertaining to the Project and the Funding with employees of the Recipient.

# 6. TERMINATION

6.1 If the Recipient fails to comply with this agreement, the Department may, at its sole and absolute discretion, do one or more of the following:

6.1.1 require the Recipient to repay any portion of the Funding Amount paid but not properly expended at the time of termination, in the Department’s absolute discretion;

6.1.2 pursue any legal rights or remedies which may be available to the Department; and

 6.1.3 terminate this agreement by giving thirty (30) days written notice.

# 7. INSURANCE

The Recipient agrees to maintain adequate insurance for as long as any obligations remain in connection with this Agreement and provide proof of insurance to the Department upon request.

# 8. GST

8.1 The parties acknowledge that compliance with obligations or the funding of rights under this agreement by the Recipient will be a Taxable Supply as defined in the GST Law and the Recipient will be liable to pay GST on the Taxable Supply.

8.2 In addition to the Funding the Department will pay an amount calculated by multiplying the Funding by the rate at which GST is levied at the time of this agreement (**GST payment**).

8.3 If the Funding is payable in instalments, the GST payment will be payable in proportionate instalments.

8.4 The Department is not liable to pay the GST payment or any instalment of the GST payment unless the Recipient has delivered to the Department a valid Tax Invoice under GST Law, referable to the Funding (or instalment of the Funding) and associated GST payment.

8.5 For the purpose of this clause, **GST Law** has the meaning attributed to it in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth).*

# 9. AUDIT

9.1 The Department may direct the Recipient to arrange for the financial accounts relating to the Funding to be audited at the Recipient’s expense.

9.2 The Department may specify the minimum qualifications to be held by a person appointed to conduct the audit.

# 10. ASSIGNMENT

The Recipient must not assign, novate or encumber any of its rights or obligations under this agreement without the prior written consent of the Department.

# 11. PUBLICITY

11.1 Subject to clause 11.2, the Recipient must not make or permit a public announcement or media release to be made about any aspect of this agreement without first obtaining the Department’s consent, which may not be unreasonably withheld and which will not be required if the public announcement is required by law.

11.2 Nothing in clause 11.1 derogates from the operation of the *Not-for-profit Freedom to Advocate Act 2013* or operates to restrict the Recipient from engaging in political or policy advocacy.

# 12. CONSENT

If the Recipient requires the Department’s consent under this agreement, the Director General of the Department may, in their absolute discretion, give or withhold its consent (subject to any provision in this agreement to the contrary) and if giving consent, the Department may impose any condition on that consent that it considers appropriate. The Department’s consent will not be effective unless it is in writing and signed.

# 13. ENTIRE AGREEMENT

 13.1 This agreement incorporates any schedules and annexures.

13.2 This agreement contains the entire agreement between the parties with respect to its subject matter and supersedes any prior agreement, understanding or representation of the parties on the subject manner.

# 14. INTELLECTUAL PROPERTY

 14.1 If no portion from the Funds paid to the Recipient comes from the Commonwealth [insert sponsor], the Recipient shall retain all right of the project’s intellectual property.

 14.2 Where an agency of the Commonwealth of Australia contributes towards the Funds paid to the Recipient, then the Recipient must execute an Intellectual Property license Deed with the relevant agency of the Commonwealth of Australia.

14.3 The Background Intellectual Property to be contributed by the Recipient to the Project is identified in the Intellectual Property Licence Deed relevant to this Project. Any additional Background Intellectual Property to be contributed to the Project will be identified in writing to the Department.

# 16. JURISDICTION OF COURTS

16.1 The courts of Western Australia will have exclusive jurisdiction to determine any proceeding in relation to this agreement.

16.2 Any proceeding brought in a Federal Court must be instituted in the Western Australia Registry of that Federal Court.

# 17. COMPLIANCE WITH LAWS

The Recipient must comply with the laws in force in Western Australia in the course of performing its obligations under this agreement.

# 18. NOTICES

18.1 A “**notice**” means a notice in writing or a consent, approval or other communication required to be in writing under this agreement.

 18.2 Addresses for notices are set out in the Schedule.

18.3 A notice must be signed by or on behalf of the sender addressed to the recipient and:

17.3.1 delivered to the recipient’s address;

17.3.2 sent by pre-paid mail to the recipient’s address; or

17.3.3 transmitted by email to the recipient’s address.

18.4 A notice given to a person in accordance with this clause is treated as having been given and received:

17.4.1 on the day of delivery if delivered before 5.00 pm on a business day, otherwise on the next business day;

17.4.2 if sent by pre-paid mail, on the third business day after posting; or

17.4.3 if transmitted by email:

1. when the relevant email appears in the sender’s sent log with properties disclosing an appropriate routing; and
2. the sender does not receive a message from the system operator to the effect that the relevant email was undeliverable.

18.5 A party may from time to time notify its change of its contact details by written notice to the other party.

# 19. WAIVER

19.1 Any waiver of any provision of this agreement is ineffective unless it is in writing and signed by the party waiving its rights.

19.2 A waiver by either party in respect of a breach of a provision of this agreement by the other party is not a waiver in respect of any other breach or any other provision.

19.3 The failure of either party to enforce any of the provisions of this agreement at any time must not be interpreted as a waiver of that provision.

# 20. MODIFICATION

Any modification of this agreement must be in writing and signed by each party.

# 21. SEVERANCE

21.1 Each word, phrase, sentence, paragraph and clause of this agreement is severable.

21.2 If a court determines that a part of this agreement is unenforceable, invalid, illegal or void, that part may be severed.

 21.3 Severance of a part of this agreement will not affect any other part of it.

# 22. READING DOWN

Where a word, phrase, sentence, paragraph, clause or other provision of this agreement would otherwise be unenforceable, illegal or void, the effect of that provision will, so far as possible, be limited and read down so that it is not unenforceable, illegal or void.

# 24. PUBLIC DISCLOSURE

24.1 The Department may disclose this agreement and/or information in relation to this agreement in either printed or electronic form to the public or to a particular person as a result of a specific request.

# 25. DISPUTE RESOLUTION

25.1 The Parties will without delay and in good faith attempt to resolve any dispute or difference that may arise between them in relation to this Agreement and will refer resolution of the dispute to officers within each Party who are authorised to hear the dispute (‘Authorised Officers’) before commencing any legal proceedings in relation to the dispute.

25.2 Any dispute or difference will be resolved in accordance with the following procedure:

(a) Any one or more of the Parties claiming that a dispute exists will notify the other Parties that a dispute exists;

(b) Where the subject matter of the dispute is within the power of the Authorised Officers to resolve and it relates to a matter that has not previously been considered by the Authorised Officers for resolution, the Parties will forthwith submit such dispute to the Authorised Officers for resolution;

(c) If the dispute relates to a matter that cannot be resolved by the Authorised Officers or the Authorised Officers are unable to resolve the dispute within a reasonable time, a meeting will be convened immediately between senior representatives of the disputing Parties who are not Board Members for resolution of the dispute. The Parties may agree to refer the dispute to an independent third person with power to intervene and direct some form of resolution, in which case the Parties will be bound by that resolution; and

(d) if the dispute is not resolved within sixty days of the notification in clause 25.2(a), then any one of the disputing Parties is free to take whatever action it considers appropriate to resolve the dispute including initiation of proceedings in a court.

25.3 Prior to and during the resolution of any dispute, the Parties will continue to perform their respective obligations in relation to the continued operations of the Department and under this Agreement as far as practicable and insofar as those obligations are not the subject matter of the dispute.

# 26. ACKNOWLEDGEMENTS AND PUBLICATIONS

26.1 The Recipient must make reasonable efforts to publicly acknowledge the support of the Department in relation to publication of reports in relation to the Project. An appropriate form of acknowledgement is "*This research was supported by the Defence Science Centre, an initiative of the State Government of Western Australia*" or similar.

26.2 The Recipient must, within one week of the end of the **Term**, deliver to the Department a document suitable for public release which outlines the outcomes of the Project ("the Release"). The Recipient is responsible for ensuring the proposed release does not contain any unprotected Intellectual Property or Confidential Information. The Department may, at its option

26.2.1 accept the Release; or

26.2.2 require that the Recipient make reasonable amendments to the Release. The Recipient must make such amendments in a timely manner.

The Department may then publicly disclose the Release, including uploading the Release on the Department’s website.

**Executed** by the Parties hereto.

**SIGNED for and on behalf of THE** **STATE OF WESTERN AUSTRALIA** )

by )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Ms Fiona Roche**

**Deputy Director General, Science and Innovation**

**Department of Jobs, Tourism, Science and Innovation**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

**SIGNED for and on behalf of XXXXXXXXXX** )

by )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**<Authorised Person>**

**<Position of Authorised Person>**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

# SCHEDULE

## THE TERM

The period commencing on the date of execution of this agreement and ending **XXX** after that date.

## THE ACTIVITY

1. <State the activities to be performed as milestones>.

## THE PURPOSE

<State the purpose of the research>

## KEY PERFORMANCE INDICATORS

The Key Performance Indicators are the achievement of Major Milestones as outlined in Section 2 of this schedule.

## THE FUNDING

The total amount of Funding is $**XXXX** (excluding GST) over the Term, to be paid as set out below.

Payment 1 75% ($XXXXx0.75) on signing of this agreement and provision of a tax invoice for this amount

Payment 2 25% ($XXXXx0.25) on provision of a Completion Report at the end of the Term and provision of a tax invoice for this amount.

## SPECIAL CONDITIONS

Funding for this agreement was contributed by the Commonwealth [insert sponsor]. In accordance with paragraph 14.2 the Recipient will be required to execute an intellectual property deed with the [insert sponsor].

## PROJECT OUTCOMES AND DELIVERABLES

### Completion Report

To be provided within two weeks of completing the Term the Recipient must:

1. Complete a Completion Report, and
2. Support the preparation of a short case study and presentation to highlight the activity methodology, outcomes and potential benefits for key stakeholders.

The Completion Report should be limited to no more than four pages and contain (at least) the following information:

* 1. Activity name;
	2. Lead participant details;
	3. Statement of outcomes;
	4. Details of technical aspects relating to the outcomes in solving the specified Project and any other benefits or opportunities identified;

Support the preparation of a short case study and presentation to highlight the activity methodology

### Oral Presentation

To undertake an oral presentation within two months of completion to the Commonwealth sponsor and/or the Defence Science Centre on research outcomes including response to questions and answers.

Deliverables

The delivery of code, software modules, etc as appropriate to the project. [To be negotiated on execution of agreement]

## NOTICES

**Defence Science Centre**

Director, Defence Science Centre

Department of Jobs, Tourism, Science and Innovation

Level 11, 1 William Street, Perth, WA 6000

Ph: + 61 (08) 6277 3000

Email: dsc@jtsi.wa.gov.au

**<Recipient>**

<Representative of the recipient>

Email: <email address for the recipient>

# Annexure A

## CLAIM NOTICE

[Proforma to be completed by Recipient]

To: Director, Defence Science Centre

Level 11, 1 William Street

Perth

WA 6000

(08) 6277 3000

This notice requesting payment of Funding is issued under the agreement dated [Insert] between the Director General of the Department of Jobs, Tourism, Science and Innovation and [insert name of the Recipient].

Unless the context otherwise requires, terms defined in the agreement have the same meanings where used in this notice. The Payment Milestone relevant to this notice has been achieved.

1. **Required Information**
2. Financial Year:
3. Deposit account details:

Bank:

Name:

Account No:

BSB No:

1. Details of achieved Milestone/s
2. **Representations and Warranties**

The Recipient represents and warrants as at the date of this notice that:

1. The proposed Funding will be applied towards the Purpose
2. The representations and warranties set out in the Agreement are true and correct and not misleading in any respect;
3. The Payment Milestone relevant to this notice has been achieved;
4. The amount of funding requested is in accordance with the agreement to provide Funding under the agreement; and
5. The Recipient has used all previous payments of the Funding for the Purpose and is not otherwise in breach of the agreement.
6. **Attachments (if required)**

The completion report required under the agreement for Payment 2 is attached.

Signed for and on behalf of the Recipient by [insert name and position]

…………………………………………

Date: