**DEFENCE SCIENCE CENTRE**

**COLLABORATIVE RESEARCH FUNDING AGREEMENT**

**BETWEEN**

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

**AND**

**[XXX]**

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### SCHEDULE

### ANNEXURE A PROFORMA CLAIM NOTICE

### ANNEXURE B PROFORMA FINANCIAL REPORT

**AGREEMENT** dated day of 2023

**PARTIES:**

The Department of Jobs, Tourism, Science and Innovation(**JTSI**)

### AND

[XXX], a body corporate established under [XXX] of [ADDRESS] (**Recipient**)

**RECITALS**

1. The Recipient is seeking to undertake research as described in ‘The Activity’ of the Schedule**.**
2. At the Recipient’s request JTSI has agreed to provide to the Recipient grant Funds, in aggregate not to exceed [$XXXX], excluding GST, to facilitate the Project.
3. JTSI agrees to provide the Funds on the terms and conditions of this agreement.

**IT IS AGREED**:

## TERM OF AGREEMENT

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

## ADMINISTRATION OF AGREEMENT

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

## PAYMENT OF FUNDS

* 1. Subject to this agreement, in consideration of the Recipient participating in the **Project** JTSI agrees to pay the funds to the Recipient in accordance with the **Milestone Payments** (if any) as specified in the Schedule.
	2. The Recipient may only use the Funds for the **Purpose** specified in the Schedule.
	3. JTSI 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 JTSI.
	4. At the end of the Term, the Recipient must:
		1. provide a report on the level of any unexpended Funding to JTSI;
		2. repay any part of the Funding which is unexpended at the end of the Term to JTSI, unless JTSI gives written approval for the Recipient to retain the money.

## OBLIGATIONS OF THE RECIPIENT

The Recipient must:

* 1. comply with the terms and conditions of this agreement, including the **Special Conditions** specified in the Schedule;
	2. at all times, make best endeavours to achieve the **Key Performance Indicators** specified in the Schedule;
	3. maintain accounting records of the Funding in accordance with generally accepted accounting principles and any other standards reasonably required by JTSI;
	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. comply with its constitution, or other governing instrument.

## INFORMATION AND REPORTS

* 1. The Recipient must provide JTSI with appropriate and regular information, records and reports as specified in the Schedule and otherwise as requested by JTSI from time to time, including information about:
		1. the progress of and material changes to the nature and scope of the Project;
		2. any other funding or financial assistance promised or received for the Project from sources other than JTSI;
		3. the use of the Funding; and
		4. any other matters relevant to the Project, as reasonably required by JTSI.
	2. The Recipient must:
		1. prepare financial statements in the nature of a general purpose financial report; and
		2. where requested by JTSI, provide management accounts, annual reports, financial statements and any other information or documents relevant to the Funding.
	3. The Recipient must permit any officer authorised by JTSI:
		1. to have access to all accounting records, equipment, documents and information in relation to the Project and the Funding; and
		2. to discuss matters pertaining to the Project and the Funding with employees of the Recipient.

## TERMINATION

* 1. If the Recipient fails to comply with this agreement, JTSI may, at its sole and absolute discretion, do one or more of the following:
		1. require the Recipient to repay any portion of the Funding Amount paid but not properly expended at the time of termination;
		2. pursue any legal rights or remedies which may be available to JTSI; and
		3. terminate this agreement by giving thirty (30) days written notice.
	2. JTSI may review any decision made pursuant to clause 6.1 if the Recipient is able to satisfy JTSI that the Recipient complies with the conditions of the agreement.

## INSURANCE

The Recipient must comply with any insurance obligations specified in the Schedule.

## GST

* 1. **Definitions**

In this clause:

**Additional Amount, Recipient** and **Supplier** have the meanings given in clause 8.3.

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

Any terms used in this clause 8 that are defined in the GST Act have the same meanings as in the GST Act.

* 1. **Prices do not include GST**

All prices or other amounts fixed or determined under, or referred to in, this Agreement are exclusive of GST except where expressly provided to the contrary in a particular provision of this Agreement;

* 1. **Recipient must pay GST**

Subject to clause 8.4, if GST is or becomes payable by a Party (**Supplier**) in relation to any supply that it makes under, in connection with, or resulting from this Agreement, the Parties agree that, in addition to any consideration provided by a Party (**Recipient**) for that supply, the Recipient must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (**Additional Amount**) at the earlier of:

* + 1. the same time as the relevant consideration or any part of it is provided; or
		2. If the Supplier is required under the GST Act to pay GST prior to receiving the relevant consideration for the supply, within two Business Days of the Supplier’s due date for payment of the GST liability as notified by the Supplier to the Recipient in writing.
	1. **Tax invoice**

The obligation to pay the Additional Amount only arises once the Supplier has issued a tax invoice (and any adjustment note) to the Recipient in respect of the Additional Amount.

* 1. **Reimbursements**

If, under this Agreement, one Party is required to pay an amount to reimburse or compensate the other Party for any cost or liability incurred by that other Party, the amount to be reimbursed or compensated excludes any GST component of that cost or liability for which that other Party is entitled to claim an input tax credit.

## AUDIT

* 1. JTSI may direct the Recipient to arrange for the financial accounts relating to the Funding to be audited at the Recipient’s expense;
	2. JTSI may specify the minimum qualifications to be held by a person appointed to conduct the audit.

## ASSIGNMENT

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

## PUBLICITY

* 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 JTSI’s consent, which may not be unreasonably withheld and which will not be required if the public announcement is required by law;
	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.

## CONSENT

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

## ENTIRE AGREEMENT

* 1. This Agreement incorporates any schedules and annexures;
	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.

## INTELLECTUAL PROPERTY

* 1. The Recipient shall retain all intellectual property rights in relation to the project, unless it has also received project funding from the Commonwealth Defence Science and Technology Group;
	2. If the Commonwealth Defence Science and Technology Group contributes towards the grant Funds paid to the Recipient, then the Recipient must execute an Intellectual Property License Deed with the Commonwealth Defence Science and Technology Group.

## PROPER LAW

 The laws in force in Western Australia apply to this Agreement.

## JURISDICTION OF COURTS

* 1. The courts of Western Australia will have exclusive jurisdiction to determine any proceeding in relation to this Agreement;
	2. Any proceeding brought in a Federal Court must be instituted in the Western Australia Registry of that Federal Court.

## 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.

## NOTICES

* 1. A “**notice**” means a notice in writing or a consent, approval or other communication required to be in writing under this agreement;
	2. Addresses for notices are set out in the Schedule;
	3. A notice must be signed by or on behalf of the sender addressed to the Recipient and:
		1. delivered to the Recipient’s address;
		2. sent by pre-paid mail to the Recipient’s address; or
		3. transmitted by email to the Recipient’s address.
	4. A notice given to a person in accordance with this clause is treated as having been given and received:
		1. on the day of delivery if delivered before 5.00 pm on a business day, otherwise on the next business day;
		2. if sent by pre-paid mail, on the third business day after posting; or
		3. if transmitted by email:
1. 18.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.
	1. A party may from time to time notify its change of its contact details by written notice to the other party.

## WAIVER

* 1. Any waiver of any provision of this Agreement is ineffective unless it is in writing and signed by the party waiving its rights;
	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;
	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.

## MODIFICATION

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

## SEVERANCE

* 1. Each word, phrase, sentence, paragraph and clause of this Agreement is severable;
	2. If a court determines that a part of this Agreement is unenforceable, invalid, illegal or void, that part may be severed;
	3. Severance of a part of this Agreement will not affect any other part of it.

## 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.

## AUDITOR GENERAL

* 1. Nothing in this Agreement derogates from the powers of the Auditor General.

## PUBLIC DISCLOSURE

* 1. JTSI 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.

## DISPUTE RESOLUTION

* 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.
	2. Any dispute or difference will be resolved in accordance with the following procedure:
1. Any one or more of the Parties claiming that a dispute exists will notify the other Parties that a dispute exists;
2. 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;
3. 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
4. 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.
	1. 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 JTSI and under this Agreement as far as practicable and insofar as those obligations are not the subject matter of the dispute.

## ACKNOWLEDGEMENTS AND PUBLICATIONS

* 1. The Recipient must make reasonable efforts to publicly acknowledge the support of JTSI, as represented by the Defence Science Centre, 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.
	2. The Recipient must, within one week of the end of the **Term**, deliver to JTSI 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. JTSI may, at its option:

24.2.1 accept the Release; or

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

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

**EXECUTED AS AN AGREEMENT**

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

by

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

**Rebecca Brown**

**Director General, Science and Innovation**

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

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

Date

**SIGNED for and on behalf of [XXX]**

by

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

**XXXXXXX**

**XXXXXXXXXXXXXXXXXXXXXXXXXX**

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

Date

# SCHEDULE

1. **THE TERM**

The period commencing on the date of execution of this agreement and ending **12 months** after that date.

1. **THE ACTIVITY**

Insert details

1. **THE PURPOSE**

Insert details

1. **KEY PERFORMANCE INDICATORS**

The Key Performance Indicators are the achievement of Major Milestones as outlined in Item 6 of this schedule.

1. **THE FUNDING**

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

Payment 1 90% **($XXX)** on signing of this agreement and provision of a tax invoice for this amount.

Payment 2 10% **($XXX)** on provision of a Completion Report at the end of the Term and provision of a tax invoice for this amount.

## SPECIAL CONDITIONS

NIL

## REPORTS

Milestone Reports

Within two weeks of either of the following events:

1. An activity milestone as detailed within the Funding Agreement is achieved, or
2. It is realised that an activity milestone as detailed within the Funding Agreement cannot be met.

 the Recipient will provide JTSI with a Milestone Report.

A Milestone Report should be limited to one page and contain (at least) the following information:

1. Activity name;
2. Lead participant details;
3. Title of milestone;
4. Statement of key activities and/or outcomes achieved;
5. In the case where an activity milestone cannot be met, include details of the reason why the milestone can’t be met and details of proposed changes to scope, schedule or budget;
6. Indication of any additional risks identified (can be in relation to scope, schedule or resources) and risk mitigation or controls put in place; and
7. Confirm scope and schedule for the next phase of the activity.

 Completion Report

 Within two weeks of completing the term the Recipient must:

1. Submit a Completion Report to JTSI, and
2. Support the preparation by JTSI 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 benefits or opportunities identified, either potential or realised, including opportunities for additional collaboration, further development or alternate funding;
5. Details of any recommendations resulting from the activity;
6. Signed copy of the Income and Expenditure Statement (see Annexure B for template); and

Financial Report

A report in the form provided at Annexure B to be submitted with the Completion Report.

1. **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

dsc@jtsi.wa.gov.au

**Recipient** Name:

Position:

Address:

Telephone:

Email:

# 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 JTSI 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 Minister’s 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:

# Annexure B

## STATEMENT OF INCOME AND EXPENDITURE

FOR THE PERIOD

Project Title

Program

|  |  |  |
| --- | --- | --- |
| **INCOME** | **COMMENTARY** | **AMOUNT $** |
| **Total Project Cost** |  |  |
|  |  |  |
| **DSC Grant Expenditure** |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| **Other Expenditure** |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| **Total Expenditure of Grant Funds for the reporting period** |  |  |
| **Surplus / Deficit for the reporting period** |  |  |
| **BALANCE OF FUNDS as at 30 June** |  |  |