

DSI Grant Agreements – Key Points

- Granting body/contracting party is the University of Melbourne, as the administrating organisation for DSI.
- IP is owned by the grant recipient.
- If there is any IP included in the project reports, University of Melbourne is granted a licence to use it only to fulfil obligations under the DSI funding agreement ie in reporting to the State Government and Participants. Grant recipients are encouraged to **not** include any IP in their reports.
- Recipients are responsible for any other agreements that might be needed for the project (eg with collaborators). University of Melbourne will **not** need to be a party to the agreement.
- Reporting requirements include a post-grant (1 year) report. Guidelines are included for the completion of reports which should be brief and focused on leverage, opportunity and relationship outcomes rather than technical ones.
- Reasonable efforts are to be made to acknowledge DSI support. A suggested acknowledgement is provided.
- Copies of publications that come out of the work are to be provided to DSI
- Standard confidentiality clauses apply for both sides.

In addition, for RHD Student grants

- Grant is to be used for a student scholarship
- Grant agreement is to have no effect on rights to examination, copyright ownership etc
- If not already enrolled, student has to be identified and enrolled within six months of the agreement date.
- DSI needs to be notified within 30 days if the student discontinues or is subject to unsatisfactory progress.
- Payments are tied to enrolment and confirmation.

For University of Melbourne grant applicants,

- As the University cannot make a legal agreement with itself, grants will be awarded using an interdepartmental Memorandum of Understanding.
- Under the Memorandum of Understanding University of Melbourne applicants are awarded the grant with the same conditions and obligations as other applicants.

**DEFENCE SCIENCE INSTITUTE
RESEARCH GRANT AGREEMENT**

DATED the _____ day of _____ 20

PARTIES

THE UNIVERSITY OF MELBOURNE [ABN 84 002 705 224] of Parkville, Victoria 3010, a body politic and corporate established in 1853 and constituted under the *University of Melbourne Act 2009 (Vic)*

(**"the University"**)

THE PARTY NAMED IN SCHEDULE 1

(**"the Recipient"**)

INTRODUCTION

- A. The University is the administering organisation of the Defence Science Institute (**DSI**) in accordance with the terms of both the DSDBI Grant Agreement and the DSI Participation Agreement.
- B. The Recipient has applied for the Grant to support the Project.
- C. The University has agreed to provide the Grant for the Project, subject to the terms of this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires:
 - 1.1.1 **Agreement** means this agreement together with any schedules or annexures and any amendments made in accordance with this agreement.
 - 1.1.2 **Background Intellectual Property** means Intellectual Property owned or controlled by a Party, including but not limited to Intellectual Property developed prior to or independently of this Agreement.
 - 1.1.3 **Business Day** means a day that is not a Saturday, Sunday or a University holiday as indicated on the University calendar as amended from time to time.
 - 1.1.4 **Confidential Information** of a Party (**Disclosing Party**) means and includes all unpatented inventions, ideas, know-how, concepts, trade secrets, processes, techniques, software, products and all other unregistered or unpatented intellectual property, financial and business information and all other commercially valuable information of the Disclosing Party, in any form, which is designated in writing by the Disclosing Party as confidential to it and all copies, notes and records and all related information generated by using

such information. Confidential Information excludes or, as the case requires, ceases to include, information that is or becomes:

- (i) after the date of its disclosure by the Disclosing Party to the other Party (**Receiving Party**), properly available to the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party;
- (ii) at the date of its disclosure by the Disclosing Party to the Receiving Party, already properly in the possession of the Receiving Party in written form otherwise than by prior confidential disclosure from the Disclosing Party;
- (iii) available to the public other than as a result of a breach of confidentiality by the Receiving Party or its permitted disclosees; or
- (iv) demonstrated by the Receiving Party to be independently developed by an employee or agent of the Receiving Party having no knowledge of such information the subject of the disclosure.

- 1.1.5 **Disclosing Party** has the meaning given to it in the definition of Confidential Information.
- 1.1.6 **Dispute** has the meaning given to it in clause 11.1.
- 1.1.7 **DSDBI Grant Agreement** means the grant agreement dated 17 October 2014 between the University and the State of Victoria, as represented by the Department of State Development, Business and Innovation (**DSDBI**).
- 1.1.8 **DSI Participation Agreement** means the participation agreement entered into between the University, the Commonwealth of Australia as represented by the Defence Science Technology Office (**DSTO**) and various other parties for the purpose of conducting the DSI.
- 1.1.9 **End Date** means the date specified in Item 3 of Schedule 1.
- 1.1.10 **Grant** means the amount specified in Item 4 of Schedule 1.
- 1.1.11 **Intellectual Property** means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity and including copyright, discoveries, inventions, patent rights, trade marks, design rights, circuit layouts and plant varieties and all rights and interests of a like nature including but not limited to methods and techniques, together with any documentation relating to such rights and interests whether registered or unregistered and existing in Australia or elsewhere in the world and whether created before or after the date of this Agreement.
- 1.1.12 **Notice** means any notice, demand, consent or other communication whatsoever given or made under this Agreement and must be in writing.
- 1.1.13 **Parties** means the parties to this Agreement and their respective successors and permitted assigns, and **Party** means any one of them.
- 1.1.14 **Project** means the business development activities as detailed in the Project Specification.
- 1.1.15 **Project Intellectual Property** means the Intellectual Property which is created, developed or discovered in the course of conducting the Project.
- 1.1.16 **Project Specification** refers to the details of the Project set out in Schedule 2.
- 1.1.17 **Receiving Party** has the meaning given to it in the definition of "Confidential Information".

- 1.1.18 **Reporting Obligations** means the reporting obligations specified in Item 5 of Schedule 1.
- 1.1.19 **Start Date** means the date specified in Item 2 of Schedule 1.
- 1.1.20 **Term** means the period from the Start Date to the End Date, subject to clause 10.
- 1.2 In this Agreement, except where the context otherwise requires:
- 1.2.1 headings are for convenience only and do not affect interpretation;
- 1.2.2 another grammatical form of a defined word or expression has a corresponding meaning;
- 1.2.3 a reference to a person includes a natural person, partnership, body corporate, association, trust, unincorporated body, governmental or local authority or agency or other entity;
- 1.2.4 a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- 1.2.5 a reference to A\$, \$A, dollar, or \$ is to Australian currency;
- 1.2.6 a reference to an agreement or document is to the agreement or document as amended, replaced or otherwise varied, except to the extent prohibited by this Agreement or that other agreement or document;
- 1.2.7 a reference to "writing" includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form; and
- 1.2.8 a reference to "GST", "input tax credit", "supply", "tax invoice" and "taxable supply" have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

2. TERM

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

3. GRANT

- 3.1 The University must pay the Grant to the Recipient. Unless specified to the contrary in Item 4 of Schedule 1, the University must make such payments within 30 days of receipt by the University of a valid tax invoice from the Recipient.
- 3.2 The Recipient must only use the Grant for the Project.
- 3.3 For the purposes of this clause 3, the value of supplies made by each Party under this Agreement is as follows:
- 3.3.1 unless expressly stated to the contrary, the consideration to be provided for any taxable supply made by one Party to the other under this Agreement has been calculated without regard to, and is exclusive of, GST;
- 3.3.2 the consideration referred to in sub-clause 3.3.1 shall be increased by the amount of any GST;
- 3.3.3 the Party receiving any payment for a taxable supply under this Agreement must provide to the Party making a payment for a taxable supply a tax invoice in respect of that payment; and
- 3.3.4 the Party receiving any payment under this Agreement for a taxable supply must do all things necessary (including, without limitation, registering with any required Government authority) to enable the party making a payment for a

taxable supply to claim any credits or other benefits under the relevant law relating to GST.

4. CONDUCT OF THE PROJECT

4.1 The Recipient must:

- 4.1.1 carry out the Project in accordance with the Project Specification and with all reasonable professional, scientific and ethical principles and standards;
- 4.1.2 comply with the Reporting Obligations;
- 4.1.3 enter into any third party agreements as may be necessary to carry out the project; and
- 4.1.4 provide to the University, at its reasonable request, all information, documents and assistance relevant to the Project as may be necessary for the University to satisfy its obligations under the DSDBI Grant Agreement and the DSI Participation Agreement.

5. INTELLECTUAL PROPERTY

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

6. ACKNOWLEDGEMENTS AND PUBLICATIONS

- 6.1 The Recipient must make reasonable efforts to publicly acknowledge the support of the DSI 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 Institute, an initiative of the State Government of Victoria*" or similar.
- 6.2 The Recipient must, within one week of the End Date, deliver to the University a document suitable for public release which outlines the outcomes of the Project ("**Release**"). The Recipient is responsible for ensuring the proposed release does not contain any unprotected Intellectual Property or Confidential Information. The University may, at its option
 - 6.2.1 accept the Release; or
 - 6.2.2 require that the Recipient make reasonable amendments to the Release. The Recipient must make such amendments in a timely manner.

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

7. CONFIDENTIALITY

- 7.1 When receiving Confidential Information, the Receiving Party must:
- 7.1.1 keep all Confidential Information of the Disclosing Party confidential unless strictly required otherwise by law;
 - 7.1.2 limit access to those of its employees or agents reasonably requiring the Confidential Information on a strictly need to know basis;
 - 7.1.3 not use the Confidential Information in any way other than as contemplated by this Agreement without the prior written permission of the Disclosing Party;
 - 7.1.4 ensure that all employees, students or agents to whom the Confidential Information is disclosed are bound to keep the Confidential Information confidential and not to use the Confidential Information except for the Project; and
 - 7.1.5 immediately notify the Disclosing Party of any disclosure required by law.
- 7.2 At any time upon the written request of the Disclosing Party, the Receiving Party must, at its own expense, promptly destroy or return to the Disclosing Party any documents which embody the Disclosing Party's Confidential Information. The Receiving Party may retain:
- 7.2.1 one copy of the foregoing documents in a secure location for record-keeping purposes only; and
 - 7.2.2 copies of the foregoing documents to the extent required by any applicable laws.

The Receiving Party shall not be required to delete or destroy any electronic back-up tapes or other electronic back-up files that have been created solely by their automatic or routine archiving and back-up procedures, to the extent created and retained in a manner consistent with its or their standard archiving and back-up procedures.

8. WARRANTIES

- 8.1 The Recipient warrants that:
- 8.1.1 it will not use, nor allow, explicitly or implicitly, the use by third parties, of the University name and logo in any manner, unless the University has expressly agreed in writing; and
 - 8.1.2 except where due to a breach of this Agreement, it will not institute any proceedings against the University or join in any legal proceedings against the University brought by another person with respect to the Project or Project Intellectual Property.

9. LIMITATION OF LIABILITY

- 9.1 The University does not make any warranties regarding the Project, Project Intellectual Property or any part thereof. To the extent permitted by law, the University has no liability whatsoever in respect of the Project or the Project Intellectual Property.

10. TERMINATION

- 10.1 The University may terminate this Agreement immediately upon the giving of Notice to the Recipient if:
- 10.1.1 the Recipient is insolvent within the meaning of the *Corporations Act 2001* (Cth);

- 10.1.2 an application or order is made, or other steps are taken for the Recipient's winding up or dissolution, or the Recipient enters into an arrangement, for the benefit of its creditors or any of them; or
- 10.1.3 an administrator is appointed over all or any of the Recipient's assets or undertakings, or a controller within the meaning of section 9 of the *Corporations Act 2001* or similar officer is appointed to all or any of the Recipient's assets or undertakings.
- 10.2 Either the Recipient or the University may terminate this Agreement:
- 10.2.1 if the other Party is in default of the terms and conditions of this Agreement and fails to remedy the default within twenty (20) Business Days after Notice requiring the remedy of the default is received; or
- 10.2.2 on giving ninety (90) days Notice without cause.
- 10.3 Termination of this Agreement for whatever cause shall be without prejudice to any rights or obligations that have accrued and are owing prior to such termination, including but not limited to payments of money.
- 10.4 Clauses 5 and 7 survive the expiration or termination of this Agreement along with any other provision which by its nature survives termination or expiration of this Agreement.

11. DISPUTE RESOLUTION

- 11.1 A Party claiming that a dispute has arisen under this Agreement (**Dispute**) must notify the other Party giving written details of the Dispute. The Parties agree to negotiate in good faith on a commercially realistic basis to resolve the Dispute and will refer resolution of the Dispute to officers within each Party who are authorised to hear the dispute before commencing any legal proceedings in relation to the Dispute.
- 11.2 Any Dispute which cannot be settled under clause 11.1 within thirty (30) days of commencement of negotiation under clause 11.1 must be referred for determination by a person appointed for that purpose by the Parties, and failing agreement, appointed by the President of the Institute of Arbitrators and Mediators Australia (Victorian Division).
- 11.3 Any determination made under clause 11.2 is binding on the Parties and the *Commercial Arbitration Act 2011* (Vic) applies to the determination except to the extent otherwise agreed by the Parties.
- 11.4 Nothing in this clause 11 will prevent a Party from seeking urgent interlocutory relief.

12. GENERAL

- 12.1 **Governing law.** This Agreement is governed by the laws of the State of Victoria, Australia. The Parties submit to the jurisdiction of the courts of the State of Victoria and any courts which may hear appeals from those courts.
- 12.2 **Entire agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the Grant and Project, and supersedes all prior oral or written representations and agreements with respect to the Grant and Project.
- 12.3 **Amendment.** This Agreement may only be amended in writing signed by the Parties.
- 12.4 **Assignment.** A Party may not assign its rights or obligations arising under this Agreement without the prior written consent of the other Party.
- 12.5 **Waiver.** A Party's failure to exercise or delay in exercising a right, power or remedy does not operate as a waiver of that right, power or remedy and does not preclude the future exercise of that right, power or remedy. To be effective, a waiver of a right, power or remedy must be in writing and signed by the Party granting the waiver.

- 12.6 **Severance.** If any provision or part provision of this Agreement is invalid or unenforceable, such provision shall be deemed deleted but only to the extent necessary and the remaining provisions of this Agreement shall remain in full force and effect.
- 12.7 **Notices.** Notices must be in writing and signed by a duly authorised person. Notices to or by a Party delivered in person are deemed to be given by the sender and received by the addressee when delivered to the addressee:
- 12.7.1 if by domestic post, 3 Business Days from and including the date of postage;
 - 12.7.2 if by international post, 10 Business Days from and including the date of postage;
 - 12.7.3 if by email, when an emailed Notice is acknowledged by the recipient personally (that is, not by any automatically generated system email); or
 - 12.7.4 or if by facsimile, when transmitted to the addressee;
- provided that if transmission is on a day which is not a Business Day or is after 5.00pm (addressee's time) on the next Business Day.
- 12.8 **Relationship of the Parties.** The Parties are independent contracting parties, and nothing in this Agreement shall make any Party the agent, partner or legal representative of the other Party for any purpose whatsoever, nor does it grant either Party any authority to assume or to create any obligation on behalf of or in the name of the other Party.
- 12.9 **Privacy.** Each Party must comply with its obligations under all applicable laws in relation to the collection, storage, use and disclosure of any personal or health information which it provides to the other Party or to which it becomes privy as a result of this Agreement.
- 12.10 **Force Majeure.** No Party is liable for any failure to perform or delay in performing its obligations under this Agreement if that failure or delay is due to anything beyond that party's reasonable control (including acts of God, natural disasters or any change in laws or regulations) (**Force Majeure Event**), provided that the party affected by the Force Majeure Event uses its reasonable endeavours to mitigate the impact of the Force Majeure Event. If a Force Majeure Event occurs, the affected Party must Notify the other Party as soon as practicable thereafter.
- 12.11 **Counterparts.** This Agreement may be executed in counterparts. All executed counterparts constitute one document.

EXECUTED AS AN AGREEMENT

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

.....
Signature of Witness)
Office held

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

.....
Date

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

.....
Signature of Witness)
Office held

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

.....
Date

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

SCHEDULE 1: AGREEMENT DETAILS**ITEM 1 THE PARTIES**

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

ITEM 2 START DATE The date upon which this Agreement is signed by both Parties
 Or
 [specified date]

ITEM 3 END DATE XXX (X) months commencing from the Start Date
 [maximum 18 months]
 Or
 [specified date]

ITEM 4 GRANT

XXXX (ex GST) as follows:

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

Or

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

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

ITEM 5 REPORTING OBLIGATIONS

The Recipient must provide the following reports:

- Within thirty (30) days of the End Date, the Recipient must provide DSI with a written Final Report detailing the outcomes of the project
- Six (6) monthly progress reports for the duration of the project
- At the end of the project, the Recipient must provide DSI with a short report on the project and outcomes suitable for public release and publicity purposes (eg website, reports)
- 12 months after the end of the project, the Recipient must provide DSI with a short, post-grant report on further outcomes from the project (eg grants applied for and received, further or new collaborations, ongoing relationships)
- The Recipient must provide DSI with a copy of any research publications arising from the project.

ITEM 6 OTHER OBLIGATIONS

A representative of the Project must attend at least one (1) DSI Annual Conference

SCHEDULE 2: PROJECT SPECIFICATION

Project title	
Project Manager	
Project Collaborators	
Project description	

Project Personnel	
Activities	
Other	

SCHEDULE 3: GRANT APPLICATION

[to be attached]

SCHEDULE 4: DSI GRANT REPORTING GUIDELINES

This sheet provides guidance on the reporting requirements for projects and/or investigators that have accepted DSI research or RHD funding. These guidelines apply except where the agreement covering the provision of DSI funding specifically excludes specific clauses as defined in this document.

As a general principle, reports provided to DSI should not contain any intellectual property or confidential information related to or arising from the project activities.

Status Updates

A project should provide a status update to the Director of the Defence Science Institute within a week of any one of the following conditions being met:

1. Achievement of a milestone as set out in the funding agreement with DSI
2. Slippage in the date of delivery of a milestone as set out in the funding agreement with DSI

A **Status Update** should be limited to one page and should contain the following:

- I. Project Name
- II. Investigator and/or RHD Student
- III. Agreement Number
- IV. Statement of milestone achieved
- V. Statement of significant publications submitted or presentations given to that milestone date
- VI. Statement of other significant outcomes for the any collaborative partners involved in the project
- VII. Statement of significant leverage resulting from the project, either potential or realised (this can include submitted and successful grant applications, etc)

Project Completion Reporting

Within 1 month of completion of a project, the lead/chief investigator named on the DSI funding agreement must:

1. Complete a Project Completion Summary
2. Prepare, if required, a short (15 minute) presentation on the project and its research and stakeholder outcomes for presentation to the DSI

The **Project Completion Summary** should be limited to one page and should contain the following:

- I. Project Name
- II. Agreement Number
- III. Investigator and/or RHD Student
- IV. Statement of major outcomes from project
- V. Statement of significant publications submitted or presentations given to date
- VI. Statement of other significant outcomes for collaborative partners involved in the project
- VII. Statement of future opportunities/recommendations arising from the project
- VIII. Statement of significant leverage resulting from the project, either potential or realised (this can include submitted and successful grant applications, etc)

Project Follow-up Reporting

No less than 12 months and no more than 15 months within months of completion of a project, the lead/chief investigator named on the DSI funding agreement must:

1. Complete a Project Outcomes Summary

The **Project Outcomes Summary** should be limited to one page and should contain the following:

- I. Project Name
- II. Agreement Number
- III. Investigator and/or RHD Student
- IV. Statement of opportunities that have been realised from the project
- V. Statement of significant leverage resulting from the project