

2013 Research institute collaboration agreement

Transport Accident Commission (**TAC**)

Victorian WorkCover Authority (**WorkSafe**)

Monash University (**Monash**)

Research institute collaboration agreement

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Details

Date

Parties

Name **Transport Accident Commission**, a body corporate established under section 10 of the TA Act
ABN 22 033 947 623
Short form name **TAC**
Notice details 60 Brougham Street, Geelong, Victoria 3220
Facsimile: (03) 9656 9594
Attention: Chief Executive Officer

Name **Victorian WorkCover Authority**, a body corporate established under section 18 of the AC Act
ABN 90 296 467 627
Short form name **WorkSafe**
Notice details 222 Exhibition Street, Melbourne, Victoria 3000
Facsimile: (03) 9641 1178
Attention: Chief Executive

Name **Monash University**, a body politic and corporate established under section 3 of *Monash University Act 1958 (Vic)*
ABN 12 377 614 012
Short form name **Monash**
Notice details Clayton Campus, Wellington Rd, Clayton, Victoria 3800
Facsimile: (03) 9905 5011
Attention: Deputy Vice-Chancellor and Vice President (Research)

Background

- A The TAC manages a transport accident compensation scheme that pays the reasonable costs and expenses incurred by persons who are injured in transport accidents and who are entitled to compensation under the TA Act.
- B The TAC's objectives under the TA Act relate to the efficient, effective and economic management of the transport accident compensation scheme with an emphasis on accident prevention and effective rehabilitation. The functions that the TAC may perform under the TA Act to assist it in achieving its objectives include the TAC Functions, which extend to funding research into the design of rehabilitation programs that secure the early and effective medical and vocational rehabilitation of persons injured as a result of transport accidents.
- C WorkSafe manages an accident compensation scheme that pays the reasonable costs and expenses incurred by workers who sustain injuries arising out of or in the course of any employment and who are entitled to compensation under the AC Act.

- D WorkSafe's objectives under the AC Act and the OH&S Act relate to the efficient, effective and economic management of the accident compensation scheme with an emphasis on achieving healthy and safe working environments, effective occupational rehabilitation and appropriate compensation to injured workers. The functions that WorkSafe may perform under the AC Act and the OH&S Act to assist it in achieving its objectives include the WorkSafe Functions, which extend funding research into injury prevention, rehabilitation and compensation delivery.
- E In order to facilitate research and best practice in the areas of injury prevention, rehabilitation and compensation practice and to improve outcomes in those areas in a manner that assists:
- (i) the TAC to achieve the TAC Objectives and perform the TAC Functions; and
 - (ii) WorkSafe to achieve the WorkSafe Objectives and perform the WorkSafe Functions,
- the TAC and WorkSafe entered into the Original Agreement with Monash for the purposes of establishing the Institute and carrying out the Institute Activities.
- F Following the expiration of the Original Agreement, and in accordance with clause 31.1(c) of the Original Agreement, the parties wish to continue to fund the operation of the Institute and carry out the Institute Activities on the terms and conditions contained in this agreement.

Agreed terms

Part A – Transition arrangements and Institute details

1. Term, expiry of Original Agreement and transition arrangements

1.1 Term

This agreement is deemed to have started on the Start Date and ends on the End Date, unless terminated earlier in accordance with clause 30.

1.2 Expiry of Original Agreement

In accordance with the letter from the Institute dated 17 June 2013 (and executed by the parties as a deed), the parties confirm that (subject to clause 1.3) the Original Agreement expires on 31 December 2013. For the avoidance of doubt:

- (a) any rights and remedies of a party under the Original Agreement which accrued prior to the Start Date of this agreement continue notwithstanding the expiry of the Original Agreement;
- (b) existing licences of Intellectual Property Rights granted under the Original Agreement survive expiry of the Original Agreement and continue in full force and effect in accordance with the terms of the Original Agreement; and
- (c) any right or obligation under the Original Agreement which is expressed to or which by its nature survives termination or expiry of the Original Agreement, survives expiry of the Original Agreement.

1.3 Transition arrangements

The parties agree that:

- (a) any Project which commenced prior to 1 July 2013 which is not complete as at the Start Date (an **Original Agreement Project**) will continue to be governed by and subject to the terms and conditions of the Original Agreement until the date that the Original Agreement Project is completed or otherwise terminated in accordance with the terms of the Original Agreement;
- (b) any Project which commenced on or after 1 July 2013 but before the Start Date (**Transition Period**) will be governed by the terms and conditions of this agreement;
- (c) the Neurotrauma Agreement shall continue in accordance with its terms except that a reference to the “RICA” under the Neurotrauma Agreement shall:
 - (i) prior to the Start Date be a reference to the Original Agreement; and
 - (ii) from the Start Date be taken to be a reference to this agreement.
- (d) for the avoidance of doubt, unless otherwise agreed by the parties in writing, any amounts (whether funding, in-kind contributions or otherwise) paid or incurred by a party during the Transition Period will be deemed to have been paid or incurred (as applicable) by that party under the terms of this agreement, except in respect of any Original Agreement Projects (in respect of which payments are deemed to have been made under the Original Agreement).

2. Institute details

2.1 Institute

- (a) The parties established the Institute in accordance with the terms of the Original Agreement and the Institute will continue to operate during the Term, in accordance with terms and conditions of this agreement.
- (b) The Institute is not aligned to any faculty of Monash and administratively will be located within the office of the Deputy Vice Chancellor Research.

2.2 Name of Institute

- (a) The name of the Institute is the “Institute for Safety, Compensation and Recovery Research”, or alternatively, “ISCRR”.
- (b) The Institute Activities must be carried out under the names referred to in clause 2.2(a) and branding of the Institute in accordance with clause 36.

2.3 Institute Objective

- (a) The Institute has been established for the purpose of acting as a centre of excellence to facilitate research and best practice in the areas of injury prevention, rehabilitation and compensation practice and to improve outcomes in those areas (**Institute Objective**).
- (b) If the parties are unable to agree as to the meaning or effect of any provision in this agreement, the interpretation that most promotes the achievement of the Institute Objective will prevail.
- (c) The parties agree that the Institute is not established for the purpose of making a profit, and the parties will generally make the outcomes of the Institute Activities available to the Victorian community rather than Commercialised for profit unless Commercialisation is appropriate to achieve the Institute Objective.

2.4 Management structure

The management structure of the Institute consists of the Board, the CEO and the Committees, in accordance with Part C of this agreement.

3. Operation of the Institute

3.1 Institute Activities

- (a) Each party must, subject to clause 3.1(c), carry out its role and functions in relation to the Institute Activities and observe and perform its respective obligations and commitments set out in this agreement (including by providing the contributions towards the Institute Activities referred to in Part B):
 - (i) in a manner that assists the TAC to achieve the TAC Objectives and perform the TAC Functions;
 - (ii) in a manner that assists WorkSafe to achieve the WorkSafe Objectives and perform the WorkSafe Functions; and
 - (iii) to the extent that it is not inconsistent with paragraphs (i) and (ii), in accordance with the Approved Budget, the Approved Annual Research Plan and the Approved Strategic Plan.
- (b) Without limiting the generality of clause 3.1(a):
 - (i) Monash must:

- (A) actively assist and facilitate the development of strategically aligned research Projects and programs which are consistent with the strategic objectives of the TAC and WorkSafe;
 - (B) include Institute Personnel in its planning processes regarding the Projects; and
 - (C) translate the Project research outcomes into a form that can be readily incorporated into the operations and policy of the TAC and WorkSafe;
- (ii) each party must actively communicate the Institute's capability within their organisations; and
 - (iii) the TAC and WorkSafe must actively pursue the adoption and translation of appropriate research outputs and findings into their operations and policy as appropriate and otherwise support the activities of the Institute.
- (c) The Institute Activities must not replicate:
 - (i) the activities of other research collaborators funded by either or both of the TAC and WorkSafe; or
 - (ii) any research conducted internally by either or both of the TAC and WorkSafe, as notified by the TAC or WorkSafe to Monash from time to time.

3.2 Staff of the Institute

Monash must employ or engage a team of core Personnel to carry out administrative and support functions for the operation of the Institute and will provide as required a sufficient number of suitably qualified and experienced research Personnel to carry out the Institute Activities involving research including the conduct of Projects. Monash agrees that the Personnel employed or engaged under this clause 3.2 are not employees of the TAC or WorkSafe and that Monash will be liable for the acts or omissions of such Personnel as the employer or engager of such Personnel.

3.3 Monash's additional obligations

Monash must:

- (a) actively contribute to the research activities and culture of the TAC and WorkSafe, including by making Personnel available upon reasonable request to make presentations to TAC and WorkSafe personnel;
- (b) develop and maintain links with local, interstate and international research organisations in connection with the Institute Activities; and
- (c) actively facilitate and provide Project and program management support within its faculties and schools, including Project milestone tracking and management, reporting and troubleshooting.

4. Relationship between the parties

4.1 Management of Institute Activities by Monash

- (a) The parties have agreed to appoint Monash as the manager of Institute Activities. Monash will manage, conduct and facilitate the Institute Activities under and on the terms and conditions of this agreement and otherwise as directed by the parties from time to time.
- (b) The appointment made by each of the TAC and WorkSafe under clause 4.1(a) includes, where applicable, the appointment of Monash as manager to carry out the administrative functions in respect of the Institute including administration of all Projects and any

contracts entered into by Monash with a Project Collaborator in connection with the conduct of a Project.

4.2 Relationship non-exclusive

- (a) Subject to clauses 4.2(b) and (c), Monash will be the primary research collaborator of the TAC and WorkSafe in relation to the Institute Activities for the duration of the agreement.
- (b) Nothing in this agreement will prevent either or both of the TAC and WorkSafe from:
 - (i) conducting research independently of Monash; or
 - (ii) identifying or suggesting new research collaborators for introduction under clause 23.1.
- (c) Nothing in this agreement will prevent Monash from conducting research independently of the TAC and WorkSafe and separately from the Institute, provided that the conduct of such research does not relieve Monash from complying with its obligations under this agreement, including under clause 20.1.

4.3 Relationship of the parties

Subject to clauses 4.1 and 4.2 and any other provision explicitly indicating to the contrary, the parties agree that:

- (a) the rights, duties, obligations and liabilities of the parties under this agreement will in every case, be several and not joint or joint and several;
- (b) in relation to the Institute Activities, they do not carry on business in common with a view to joint profit and do not receive income jointly;
- (c) nothing contained in this agreement constitutes any of them as agent, partner or trustee of any other of them, or creates any agency, partnership or trust for any purpose whatsoever; and
- (d) a party does not have any authority or power to act for, or to create or assume any responsibility or obligation on behalf of, any other party.

Part B – Institute funding, contributions and resources

5. Funding and other assistance

Funding and other contributions and resources for the establishment and operation of the Institute will be provided by:

- (a) the TAC and WorkSafe providing the TAC Funding and the WorkSafe Funding respectively in accordance with clauses 6 and 10;
- (b) Monash providing the Monash Cash Contributions in accordance with clause 7;
- (c) additional funding being provided by third parties in accordance with clause 8; and
- (d) each of the TAC, WorkSafe and Monash providing ancillary assistance and resources in accordance with clause 12.

6. Purpose and use of TAC Funding and WorkSafe Funding

6.1 Provision of Funding

Subject to the remainder of this clause 6 and clause 10:

- (a) the TAC agrees to provide the TAC Funding to Monash for use in the Institute Activities; and
- (b) WorkSafe agrees to provide the WorkSafe Funding to Monash for use in the Institute Activities.

6.2 Use of TAC Funding

Monash must only spend the TAC Funding:

- (a) on the Direct Costs of conducting Institute Activities which:
 - (i) are within the scope of the TAC Functions or which the TAC otherwise has the power to fund under the TA Act; and
 - (ii) implement the TAC Objectives and the Institute Objective; and
- (b) in accordance with the Approved Budget, the Approved Annual Research Plan and the Approved Strategic Plan, unless otherwise agreed in writing by the TAC.

6.3 Use of WorkSafe Funding

Monash must only spend the WorkSafe Funding:

- (a) on the Direct Costs of conducting Institute Activities which:
 - (i) are within the scope of the WorkSafe Functions or which WorkSafe otherwise has the power to fund under the AC Act or the OH&S Act; and
 - (ii) implement the WorkSafe Objectives and the Institute Objective; and
- (b) in accordance with the Approved Budget, the Approved Annual Research Plan and the Approved Strategic Plan, unless otherwise agreed in writing by WorkSafe.

6.4 Funding Principles

- (a) Monash acknowledges and agrees that the Institute Activities to which the TAC Funding and the WorkSafe Funding may be applied are limited by the respective powers of the TAC under the TA Act and WorkSafe under the AC Act.
- (b) The Board, in consultation with the TAC, WorkSafe and Monash, must establish funding principles and guidelines (including delegation authorities for decisions about how Funding will be expended) setting out the defined fields of research to which the Funding is able to be applied in accordance with this agreement (**Funding Principles**). The Board may update the Funding Principles from time to time, subject to the prior written approval of any such changes by the TAC, WorkSafe and Monash.
- (c) A key responsibility of the Board is to ensure that the Funding Principles are sufficient to ensure that Funding, if applied in accordance with the Funding Principles, is only applied to Institute Activities which the TAC has the power to fund under the TA Act or which WorkSafe has the power to fund under the AC Act or the OH&S Act (as applicable), and that Funding is only applied in accordance with the Funding Principles.

6.5 Funding provided to third parties

Monash must:

- (a) ensure that any Project Collaborators that are provided with any of the Funding received by Monash under this agreement:
 - (i) use that Funding in accordance with clauses 6.2 and 6.3 (as applicable), the Funding Principles and any advice provided by the Relationship Management Committee; and

- (ii) are obliged to reimburse to Monash any Funding that is used other than in accordance with clause 6.5(a)(i) (**Non-compliant Funding**);
- (b) retain any Non-compliant Funding that is reimbursed by a Project Collaborator for use in accordance with clauses 6.2 and 6.3 (as applicable) or, if required by the TAC or WorkSafe (as applicable), reimburse to the TAC or WorkSafe (as applicable) the full amount or any part of the Non-compliant Funding; and
- (c) if the Project Collaborator fails to reimburse any amount of the Non-compliant Funding, provide an amount equal to the Non-compliant Funding for use in accordance with clauses 6.2 and 6.3 (as applicable) or, if required by the TAC or WorkSafe (as applicable), for reimbursement to the TAC or WorkSafe (as applicable).

7. Monash Cash Contributions

7.1 Provision of Monash Cash Contributions

Monash must provide the Monash Cash Contributions for use in the Institute Activities.

7.2 Use of Monash Cash Contributions

Monash must only spend the Monash Cash Contributions:

- (a) on the Direct Costs of conducting Institute Activities which implement the Institute Objective; and
- (b) in accordance with the Approved Budget, the Approved Annual Research Plan and the Approved Strategic Plan, unless otherwise agreed in writing by the Board.

8. Additional funding

8.1 Obligation to obtain funding other than the Funding

- (a) Monash acknowledges and agrees that any direct costs and expenses in relation to the Institute to which the TAC Funding cannot be applied under clause 6.2 and to which the WorkSafe Funding cannot be applied under clause 6.3 will not be met by the TAC or WorkSafe and must be borne by Monash (including by providing the ancillary assistance and resources required under clause 12.1) or third parties.
- (b) Monash acknowledges and agrees that it is expected to apply for funding from sources other than the TAC and WorkSafe (such as the National Health and Medical Research Council, the Australian Research Council, and other similar organisations nationally and internationally) as appropriate to fund the Institute Activities.
- (c) Monash must ensure that Monash's obligations under this agreement are not detrimentally impacted in any way as a consequence of entering into funding agreements with third party funding agencies pursuant to clause 8.1(b).

8.2 Additional funding from the TAC or WorkSafe

In addition to the Funding, either the TAC or WorkSafe may provide to Monash funds for the performance of services on a fee for service basis where the provision of those services assists the TAC or WorkSafe to achieve the TAC Objectives or the WorkSafe Objectives (as applicable), or to perform the TAC Functions or the WorkSafe Functions (as applicable). The terms on which any such additional funds will be provided will be set out in a separate agreement between Monash and the TAC or WorkSafe (as applicable).

9. Planning and budgeting

9.1 Strategic plan

- (a) Monash must procure that the CEO prepare a five year strategic plan which must set out the proposed strategic direction of the Institute over the Term and submit the strategic plan to the Board for the Board's approval on or before the date required by the Board.
- (b) Once the Board has approved the strategic plan, the Board must provide a copy of that strategic plan to each of the TAC, WorkSafe and Monash.
- (c) The TAC and WorkSafe will review the strategic plan provided by the Board under clause 9.1(b), and will notify the Board within 40 Business Days after receiving the strategic plan whether the TAC and WorkSafe approve the strategic plan.
- (d) If the TAC or WorkSafe decides not to approve the strategic plan provided by the Board under clause 9.1(b), the TAC, WorkSafe and Monash will meet to discuss in good faith and agree the contents of the strategic plan until it is in a form acceptable to the Board, the TAC and WorkSafe.
- (e) The Board must provide a copy of the Approved Strategic Plan to each party promptly after it is approved by the parties.
- (f) The Board may propose updates to the Approved Strategic Plan during the Term as the Board considers necessary and appropriate, and must:
 - (i) provide the proposed updates to the strategic plan to the TAC and WorkSafe for approval in accordance with clause 9.1(c) and 9.1(d) (with references to clause 9.1(b) in those clauses being taken to be references to clause 9.1(f)) ; and
 - (ii) provide a copy of the updated Approved Strategic Plan to each of the TAC, WorkSafe and Monash once approved, in accordance with clause 9.1(e).

9.2 Annual research plan and annual budget

- (a) Monash must procure that the CEO prepares:
 - (i) an annual research plan for that Financial Year which must set out the Institute Activities and any other activities that the Institute will carry out during the Financial Year in accordance with this agreement; and
 - (ii) an annual budget for that Financial Year which must set out:
 - (A) the TAC Funding to be paid by the TAC, and the WorkSafe Funding to be paid by WorkSafe, to Monash in each Financial Year, as determined in consultation between Monash and the TAC and WorkSafe respectively;
 - (B) the Monash Cash Contributions to be provided by Monash for use in the Institute Activities;
 - (C) any additional funding for the Institute to be received or reserved by Monash, including funding applied for or payable by a third party funding agency in accordance with clause 8.1;
 - (D) the ancillary assistance and resources towards the conduct of the Institute Activities to be provided by Monash pursuant to clause 12.1;
 - (E) any ancillary assistance and resources towards the conduct of the Institute Activities to be provided by the TAC or WorkSafe pursuant to clause 12.3, or by any third party; and

- (F) the activities and expenses to which each of the TAC Funding, the WorkSafe Funding, the Monash Cash Contributions, the additional funding, the ancillary assistance and resources to be provided pursuant to clause 12 and any additional ancillary assistance and resources will be applied in accordance with this agreement, in a format and in a manner that is sufficient for the TAC and WorkSafe to determine whether the Board has discharged its responsibility to ensure that the proposed use of the TAC Funding or WorkSafe Funding (as applicable) complies with this agreement, including clause 6,

and on or before the date required by the Board submit such items to the Board for the Board's approval.

- (b) The Board must provide a copy of the annual research plan and annual budgets that it has approved under clause 9.2(a) to each of the TAC, WorkSafe and Monash at least 20 Business Days before the commencement of a Financial Year or, in the case of the Financial Year commencing 1 July 2013, as determined by the Board.
- (c) The TAC and WorkSafe will review the annual research plan and annual budget provided by the Board under clause 9.2(b), and will notify the Board within 40 Business Days after receiving them under clause 9.2(b) whether the TAC and WorkSafe approve the annual research plan and annual budget.
- (d) If the TAC or WorkSafe decides not to approve the annual research plan or annual budget provided by the Board under clause 9.2(b), the TAC, WorkSafe and Monash will meet to discuss in good faith and agree the contents of the annual research plan and annual budget until they are in a form acceptable to the Board, the TAC and WorkSafe.
- (e) The Board must provide a copy of each of the Approved Annual Research Plan and Approved Annual Budget to each party promptly after it is approved by the parties.

9.3 Planning and budgeting for Institute Activities carried out under a Clause 8.2 Agreement

The parties acknowledge and agree that where the TAC or WorkSafe is not a party to a Clause 8.2 Agreement under which:

- (a) the Approved Strategic Plan will be updated reflect the proposed Institute Activities to be carried out under that Clause 8.2 Agreement; or
- (b) details of the Clause 8.2 Funding and other contributions and resources to be made available for, and information in relation to, the Institute Activities to be carried out under the Clause 8.2 Agreement will be included in any annual research plan and annual budget prepared pursuant to clause 9.2,

then the TAC or WorkSafe (as the case may be) is not entitled under clause 9.1(c) or 9.2(c) to withhold approval for any update to the Approved Strategic Plan or annual research plan and annual budget provided by the Board under clause 9.2(b) (as the case may be) to the extent that:

- (c) the update to the Approved Strategic Plan or the content of the annual research plan or annual budget relates to the Institute Activities to be carried out under the Clause 8.2 Agreement, except any such Institute Activities that materially affect the strategy, research planning or budgeting for the other Institute Activities; or
- (d) the annual budget relates to the Clause 8.2 Funding and other contributions and resources provided by the parties to the Clause 8.2 Agreement pursuant to the Clause 8.2 Agreement.

10. Payment of Funding

10.1 Invoicing

As soon as practicable in each Financial Year (but no earlier than 20 Business Days prior to the start of each Financial Year and only after the annual budget of the Institute has been approved by the Board in accordance with clause 9.2 for that Financial Year), Monash may submit a Tax Invoice:

- (a) to TAC for:
 - (i) the TAC Funding payable as a fixed sum for that Financial Year in accordance with the Approved Annual Budget; and
 - (ii) the TAC Funding payable in that Financial Year for a particular Project in accordance with the Approved Annual Budget and the budget set out in the Approved Project Plan for that Project; and
- (b) to WorkSafe for:
 - (i) the WorkSafe Funding payable as a fixed sum for that Financial Year in accordance with the Approved Annual Budget; and
 - (ii) the WorkSafe Funding payable in that Financial Year for a particular Project in accordance with the Approved Annual Budget and the budget set out in the Approved Project Plan for that Project.

10.2 Manner and timing of payments

Except to the extent that a Tax Invoice is in dispute:

- (a) the TAC will pay to Monash the amount of the TAC Funding invoiced in each Tax Invoice validly submitted to the TAC under clause 10.1; and
- (b) WorkSafe will pay to Monash the amount of the WorkSafe Funding invoiced in each Tax Invoice validly submitted to WorkSafe under clause 10.1,

within 20 Business Days of receipt of the Tax Invoice or, in the case of Funding payable as a fixed sum for the relevant Financial Year, on the first day of the relevant Financial Year, whichever is the later.

10.3 Unused Funding

Unless otherwise agreed between Monash and the TAC or WorkSafe (as applicable) and subject to clause 31, all TAC Funding or WorkSafe Funding not used by Monash during a Financial Year may be retained by Monash for use in the following Financial Year.

10.4 Set off

Each of the TAC and WorkSafe is each entitled to set off any amount it owes to Monash under this agreement against any amount payable by Monash to the TAC or WorkSafe (as applicable) under this agreement.

11. Management of Institute funding

11.1 Account for Institute funding

- (a) Monash must establish and maintain separate cost centre accounts within its financial system for:
 - (i) receiving all funds obtained or provided for use for the purpose of the Institute Activities, including the Funding and the Monash Cash Contributions; and

- (ii) receiving all funds obtained or provided for use for each individual Project being conducted or to be conducted under an Approved Project Plan.
- (b) Monash must only spend money from the accounts maintained in accordance with paragraph (a) in accordance with the Approved Annual Budget.
- (c) The funds in the accounts maintained in accordance with paragraph (a) will be invested in accordance with Monash's approved treasury policy. Interest earned will be added to the accounts for expenditure on the Institute Activities or the Project (as applicable) in accordance with the Approved Annual Budget and (if applicable) the Approved Project Plan.

11.2 Audits of accounts

If required by the Board or requested in writing by a party:

- (a) Monash must procure that the accounts maintained under clause 11.1 are audited by an auditor approved by the Board; and
- (b) a copy of such audited accounts must be provided to each member of the Board at the next reasonably practicable meeting of the Board after the audit.

12. Other ancillary assistance and resources towards the Institute Activities

12.1 Monash ancillary assistance and resources

Monash will provide the ancillary assistance and resources towards the conduct of the Institute Activities set out in item 7 of Schedule 3 up to a maximum of \$400,000 per Financial Year, in conformity with the Strategic Plan, the Approved Annual Budget and the Approved Annual Research Plan. For the avoidance of doubt, the amounts payable under this clause by Monash are separate from and in addition to the Monash Cash Contributions payable by Monash under clause 7.1.

12.2 Institute Premises

- (a) Unless otherwise agreed by the parties, the Institute will be located at the Institute Premises. Monash must not relocate the Institute from the Institute Premises except with the prior written consent of the TAC and WorkSafe.
- (b) Monash will at all reasonable times give to the TAC and WorkSafe, their officers, agents or contractors (each, a **Visitor**) access to the Institute Premises provided by Monash for use by the Institute, provided that each Visitor must:
 - (i) comply with Monash's reasonable policies and guidelines notified to the Visitor;
 - (ii) keep Monash's Confidential Information confidential on the terms set out in clause 25; and
 - (iii) comply with his or her obligations under relevant security and workplace health and safety legislation.

12.3 TAC and WorkSafe ancillary assistance and resources

The TAC will provide the ancillary assistance and resources towards the conduct of the Institute Activities set out in item 5 of Schedule 3, and WorkSafe will provide the ancillary assistance and resources towards the conduct of the Institute Activities set out in item 6 of Schedule 3, each in conformity with the Strategic Plan, the Approved Annual Budget and the Approved Annual Research Plan.

12.4 Access to TAC and WorkSafe claims data

- (a) For the purpose of Monash conducting research as part of the Institute Activities, each of the TAC and WorkSafe must:
 - (i) provide Monash with de-identified data from its claims database on at least an annual basis to the extent that the TAC or WorkSafe (as applicable) has the right and is lawfully permitted to grant such access, including under relevant Privacy Laws; and
 - (ii) provide Monash, Monash's Personnel and any Project Collaborators with reasonable assistance to extract and interpret the data provided under paragraph (i).
- (b) Monash must establish data management policy and procedures regarding the use of any data (whether containing Contract Personal Information, de-identified data or otherwise) provided to it by TAC or WorkSafe in connection with this agreement. The data management policy and procedure must be agreed by the parties in writing.
- (c) Monash must, and must ensure that its Personnel and collaborators:
 - (i) use any data provided under clause 12.4(a)(i) only for activities and purposes which are within the scope of the TAC Functions or the WorkSafe Functions (as applicable) and comply with the agreed data management policy and procedures referred to in clause 12.4(b);
 - (ii) comply with Monash's obligations under this agreement, including as applicable clauses 25 and 37 (where the data provided under clause 12.4(a)(i) is to be treated as it if were Contract Personal Information for the purposes of clause 37), and any relevant ethical principles, including approval by the Monash Standing Committee on Ethics and Human Research (SCEHR), in using any databases to which it receives access under clause 12.4(a) or any data obtained from Monash's (and its Personnel's and Project Collaborators') use of such databases;
 - (iii) return (or if requested by WorkSafe or the TAC (as applicable), destroy) any data provided under clause 12.4(a)(i) on termination or expiry of the agreement or otherwise when requested to do so by WorkSafe or the TAC (as applicable);
 - (iv) implement physical and online data security restrictions and procedures in accordance with standard industry practice to prevent unauthorised access to any data provided under clause 12.4(a)(i) which is in its possession; and
 - (v) notify WorkSafe and the TAC immediately and comply with all directions of WorkSafe or the TAC (as applicable) if it becomes aware of any unauthorised access or use of data provided under clause 12.4(a)(i).

12.5 Other contributions

Each of the TAC, WorkSafe and Monash may, at its own discretion and cost, provide ancillary assistance and resources towards the Institute Activities, including by supplying Personnel to provide expert advice or assistance in the conduct of any Institute Activities and by providing ancillary assistance and resources towards a Project in accordance with the Approved Project Plan for that Project.

13. Assets

13.1 Funding Provider Assets

- (a) Any Assets purchased with Funding (**Funding Provider Assets**) will be owned as follows:
 - (i) Monash will be the owner of the legal interest in the Funding Provider Assets;
 - (ii) the beneficial interest in the Funding Provider Assets will be owned by Monash, the TAC and WorkSafe as tenants in common, with each party being entitled to a proportion of that Asset to be determined by agreement in writing on a case-by-case basis, such proportion to reflect the value of the party's contribution up to the time of the determination as a proportion of the value of the contributions of all parties up to that time; and
 - (iii) Monash will hold the interest of the parties in the Funding Provider Assets on trust.
- (b) The parties may use, access and deal with the Funding Provider Assets only for the purpose of the Institute Activities, as set out in the Approved Annual Research Plan and any relevant Approved Project Plan or as otherwise specified by the Board.
- (c) Monash must make available the Funding Provider Assets for the purpose of conducting the Institute Activities.

13.2 Assets made available by parties

- (a) Any Asset owned by a party independently of this agreement and made available for the purposes of the Institute Activities, including Assets made available as part of the assistance and resources provided by Monash pursuant to clauses 12.1 and 12.5, (**Party Assets**) will remain owned by the party making that Party Asset available.
- (b) The parties may use another party's Party Assets only for the Term and in accordance with any terms and conditions agreed between the parties before the Party Asset is made available.

14. New funding providers

14.1 Introduction of new funding provider

The TAC and WorkSafe may request the consent of Monash in writing to introduce an entity as a new provider of funding for the Institute Activities in addition to the TAC and WorkSafe. Monash must not unreasonably withhold or delay its consent to such addition.

14.2 Amendment of agreement to include new funding provider

- (a) If a new funding provider is introduced under clause 14.1, the TAC, WorkSafe and Monash must agree with the new funding provider the terms on which the new funding provider will provide funding for the Institute Activities, including:
 - (i) whether the new funding provider will be made a party to this agreement and provide funding directly to Monash, or will provide funding via the TAC and/or WorkSafe;
 - (ii) the number of additional representatives on the Board to be appointed by the new funding provider;
 - (iii) the rights to be enjoyed by the new funding provider, including in relation to representation on the Committees, receiving of reports on the operation of the Institute, approval of the strategic plans submitted under clause 9.1, approval of

the annual research plans and annual budgets submitted under clause 9.2, audit, Intellectual Property Rights and cessation of funding; and

- (iv) the obligations that the new funding provider must comply with, including in relation to funding and any other contributions towards the Institute Activities,

and Monash must not unreasonably withhold or delay its consent to any such terms agreed between the TAC, WorkSafe and the new funding provider.

- (b) The parties must:

- (i) if the new funding provider will provide funding directly to Monash, enter into an agreement with the new funding provider to amend this agreement to include that new funding provider as a party to this agreement on the terms agreed between the TAC, WorkSafe and the new funding provider under clause 14.2(a); or

- (ii) if the new funding provider will provide funding via the TAC and/or WorkSafe, enter into an agreement to amend this agreement as required to take into account the involvement of the new funding provider, on the terms agreed between the TAC, WorkSafe and the new funding provider under clause 14.2(a),

and Monash must not unreasonably withhold its consent to the form of such an agreement.

15. Records and audit

15.1 Records

Monash must:

- (a) maintain complete and accurate Records of its involvement in the conduct of the Institute Activities under this agreement and its use of the TAC Funding, WorkSafe Funding and other funding provided for the Institute Activities, including a register of Funding Project Assets in respect of which \$10,000 or more of the Funding was used to purchase the Asset;
- (b) retain all Records required under clause 15.1(a) for a period of seven years after the termination or expiry of this agreement; and
- (c) ensure that the CEO maintains a register of Intellectual Property Rights in accordance with clause 24.4.

15.2 Audits by Monash

Monash must ensure that the Records are made reasonably available to the auditor who carries out an audit under clause 11.2 for the purposes of the audit.

15.3 Audits by the TAC and WorkSafe

On the request of the TAC or WorkSafe, Monash must, within 10 Business Days of receiving written notice from the TAC or WorkSafe, give the auditor appointed by the TAC or WorkSafe access to the Records maintained under clause 15.1 to enable the TAC's or WorkSafe's auditor to conduct an audit of the use of the Funding (including as part of an internal audit of the TAC or WorkSafe) and to assess Monash's compliance with its obligations under this agreement.

15.4 Cost of audit

In respect of any audit conducted under clause 15.3:

- (a) each party will bear its own costs except where expressly provided otherwise; and
- (b) the TAC or WorkSafe (as applicable) will pay the costs of the auditor engaged by it to conduct the audit.

15.5 Recovery right

Where, as a result of any audit conducted under clause 15.3, the TAC or WorkSafe determines that any of the Funding has been used otherwise than in accordance with this agreement, including clause 6, the amount of that Funding is a debt due to the TAC or WorkSafe (as applicable) which Monash must reimburse to the TAC or WorkSafe (as applicable) within 10 Business Days of receiving notice from the Institute requiring reimbursement.

Part C – Governance of the Institute

16. Board

16.1 Formation of Board

The Board is responsible for the operation of the Institute. The parties must procure that their respective representatives on the Board act in a manner that allows the Board to perform its functions as set out in this agreement in good faith.

16.2 Composition

(a) The Board will comprise a minimum of three persons and a maximum of seven persons as follows:

- (i) a minimum of one and a maximum of two persons appointed by the TAC as its representatives on the Board;
- (ii) a minimum of one and a maximum of two persons appointed by WorkSafe as its representatives on the Board;
- (iii) a minimum of one and a maximum of two persons appointed by Monash as its representatives on the Board; and
- (iv) up to one person with expertise in a relevant discipline appointed by agreement between the TAC, WorkSafe and Monash,

provided that the parties must procure that the TAC and WorkSafe at all times have a majority of representatives on the Board.

(b) Monash's representatives on the Board must be:

- (i) a senior academic of Monash (for example, the head of a relevant Monash department); and
- (ii) a senior member of Monash's governance (eg, the Deputy Vice Chancellor of Research),

or up to two other appropriately qualified representatives as agreed by WorkSafe and the TAC. The TAC or WorkSafe may, acting reasonably, raise an objection to a representative nominated by Monash. Upon such an objection being raised, the parties must meet and consult with each other in good faith in relation to the objection. To the extent that the parties are unable to resolve the objection to the reasonable satisfaction of the TAC and WorkSafe, Monash will nominate an alternative representative.

16.3 Alternative representatives

A party may appoint alternative persons to act as its representatives on the Board at a meeting, but only if it notifies the other parties at least 24 hours before the relevant meeting.

16.4 Delegation of power to Board

Monash must ensure that:

- (a) the Vice-Chancellor delegates to the Board such powers as are necessary to enable the Board to act for the purposes of the Institute in accordance with the Board Terms of Reference and this agreement (including taking into account the powers that the Board is required to exercise under this agreement and to ensure the efficient operation of the Institute), including the power to sub-delegate its powers to the CEO, as necessary and adequate to enable the Board to act for the purposes of the Institute, in accordance with the principles set out in Schedule 1 unless otherwise agreed by the TAC and WorkSafe;
- (b) all other steps that are necessary to ensure that the delegation of power to the Board in accordance with clause 16.4(a) is valid and enforceable are taken, including the passing of any regulations by Monash;
- (c) the delegation of power to the Board in accordance with this clause 16.4 is irrevocable for the Term; and
- (d) to the extent that any power necessary for the conduct of the Institute in accordance with this agreement is not delegated to the Board under this clause 16.4, Monash will take any action for the purposes of the Institute (such as signing an agreement in relation to the conduct of the Institute Activities or submitting an application for funding) if requested to do so by the Board, provided that such action does not seek to impose upon Monash obligations that are beyond that provided for in this Agreement without Monash's agreement, and will not otherwise take such action.

16.5 Chair

A member of the Board nominated and approved by the TAC and WorkSafe following consultation with Monash will act as chair of the Board.

16.6 Term of office of Board members

Members of the Board will hold office for a period of three years from the date of their appointment. A retiring member will be eligible for re-appointment prior to or at the expiration of their term of appointment.

16.7 Remuneration of Board members

Members of the Board may be paid from the Funding remuneration for their services as determined by agreement between Monash, the TAC and WorkSafe. In determining the remuneration to be paid (if any), the parties will have regard to all relevant Victorian government guidelines.

16.8 Resignation, replacement or removal of Board members

- (a) A member of the Board must give written notice to the chair of the Board if he or she wishes to resign his or her position.
- (b) Each of the TAC, WorkSafe and Monash may replace one or both of its representatives on the Board by giving reasonable prior notice to the other parties, provided that TAC or WorkSafe may, acting reasonably, raise an objection to a replacement nominated by Monash. Upon such an objection being raised, the parties must meet and consult with each other in good faith in relation to the objection. To the extent that the parties are unable to resolve the objection to the reasonable satisfaction of the TAC and WorkSafe, Monash will nominate an alternative replacement representative.

- (c) A member of the Board may be removed by a majority vote of the remaining members of the Board (in accordance with item 2.5 of Schedule 2) if the remaining members of the Board reasonably consider that:
 - (i) the member is unable to perform his or her duties; or
 - (ii) a Conflict of Interest has arisen or will arise in relation to the member that cannot be managed as contemplated by this agreement.

16.9 Functions and responsibilities

- (a) The Board will have the functions set out in, and must act in accordance with, the Board Terms of Reference.
- (b) Each party must procure that its nominees on the Board complies with the relevant policies, legislative and legal framework covering Monash activities, provided that:
 - (i) if there is any inconsistency between any law that is binding on that nominee and this agreement, then the law prevails to the extent of the inconsistency; and
 - (ii) if there is any inconsistency between any policy of Monash and this agreement, then this agreement will prevail to the extent of the inconsistency, but the TAC and WorkSafe will negotiate with Monash in good faith any reasonable request by Monash to amend this agreement to remove that inconsistency.

17. CEO

17.1 Appointment of CEO

- (a) The parties acknowledge that as at the date of the execution of this agreement the role of CEO is occupied by a temporary or acting CEO. Following execution of this agreement, the Board must advertise for and select an appropriate person to be appointed as CEO and recommend to the parties that the selected person be employed by Monash as CEO.
- (b) Monash must not employ a person as the CEO (“**proposed candidate**”) without:
 - (i) the prior written approval of the proposed candidate; and
 - (ii) the prior written approval of the TAC and WorkSafe to the proposed candidate and the agreement under which the proposed candidate will be employed, such consent not to be unreasonably withheld.

17.2 Employment of CEO

Monash must employ the CEO consistent with Monash’s employment policies and procedures, HR policies and registered collective agreement, in each case, as in force and as amended from time to time, and to the extent lawfully possible, Monash must ensure that the CEO’s employment agreement provides that:

- (a) the CEO is to act in the best interests of the Institute; and
- (b) the CEO must operate under the direction of the Board.

The CEO will be employed or engaged exclusively in relation to the management and operation of the Institute and engaged in the operations of the Institute as stipulated in the employment agreement.

17.3 Powers of the CEO

- (a) The Board will delegate to the CEO such powers as are necessary to enable the CEO to exercise the powers of the CEO set out in this agreement.

- (b) The CEO will be responsible for entering into contracts and obligations in accordance with the delegated authority from the Vice Chancellor of Monash, which may be exercised only in accordance with directions from the Board.

17.4 Role of the CEO

Monash must ensure that the CEO:

- (a) provides academic leadership of the Institute and the research priorities of the Institute;
- (b) is responsible for the day to day management and operations of the Institute, subject to his or her overall control by the Board;
- (c) implements the general policy and directions as determined by the Board, including by acting in accordance with the Approved Budget, the Approved Annual Research Plan and the Strategic Plan;
- (d) prepares the Strategic Plan for approval by the Board;
- (e) makes recommendations to the Board on the content of the annual budgets and annual research plans required to be submitted under clause 9.2;
- (f) makes recommendations to the Board on the content of the annual reports required to be submitted under clause 28.1;
- (g) monitors the performance of the Institute against the Institute Objective and the goals and performance indicators set out in the Approved Annual Research Plan and the Approved Strategic Plan;
- (h) maintains the accounts of the Institute in accordance with clause 11 and Records of the Institute in accordance with clause 15.1;
- (i) receives and considers reports on the conduct of each Project from the Project Leader;
- (j) makes recommendations to the Board on any matter which has a significant impact on the operations of the Institute;
- (k) reports regularly to the Board on the finances, operations, and activities of the Institute and on any issues of significance to the Institute; and
- (l) performs the other obligations imposed upon the CEO under this agreement.

17.5 Removal and replacement of CEO

- (a) The Board may require that Monash remove the individual appointed as the CEO from the position if the individual:
 - (i) has materially failed to fulfil his or her duties;
 - (ii) has committed an act of fraud or dishonesty; or
 - (iii) has breached his or her employment agreement with Monash in a manner that entitles Monash to terminate the agreement.
- (b) Monash must remove the CEO on a direction of the Board given under paragraph (a) and in accordance with the CEO's employment agreement with Monash. Monash will ensure that there are sufficient provisions in the employment agreement to enable Monash to remove the CEO from that role upon notice if requested by the Board.
- (c) If the individual appointed as the CEO is removed under this clause 17.5 or if the CEO resigns or his or her employment is terminated for any other reason:

- (i) the Board must advertise for and select an appropriate person to be appointed as the CEO in accordance with clause 17.1; and
- (ii) the candidate recommended by the Board in accordance with clause 17.5(c)(i), if approved by the parties and the position is accepted by the relevant candidate, must be appointed as the new CEO and employed by Monash in accordance with clause 17.2.

17.6 Reporting by CEO

The CEO must report to the Board at each meeting of the Board in relation to:

- (a) the financial status of the Institute (including details of all money received or spent since the last meeting of the Board and the current balance of the accounts maintained under clause 11); and
- (b) the conduct and status of the Institute Activities, including the performance of the Institute against the Institute Objective and the goals and performance indicators set out in the Approved Annual Research Plan and the Approved Strategic Plan.

18. Committees

18.1 Establishment of Committees

- (a) The parties agree to establish and maintain:
 - (i) a relationship management committee with the functions and membership determined by the Board under clause 18.2, including the function of providing advice to the Board on the use of the Funding in accordance with the statutory powers of the TAC and WorkSafe (**Relationship Management Committee**); and
 - (ii) any other committees or groups that the Board or its delegates decides in its discretion should be established and maintained, with the functions and membership determined by the Board or its delegates under clause 18.2.
- (b) Each party must make available to be members of the Committees the number of representatives specified for that party and that Committee in the terms of reference determined by the Board or its delegates under clause 18.2.
- (c) The final decisions as to the representatives nominated for membership of any Committee will be at the discretion of the Board or its delegates.
- (d) The Board or its delegates may remove a member of a Committee and replace that member with another person chosen in the same way as the person removed.

18.2 Committee terms of reference

The Board or its delegates, after consultation with the TAC, WorkSafe and Monash, may determine the terms of reference for each Committee, including the Committee's functions, membership (including appointment, removal, replacement and reimbursement of Committee members) and meeting requirements, and must provide a copy of those terms of reference to each of the TAC, WorkSafe and Monash promptly once the terms of reference are established or after any amendment.

18.3 Reporting and administration

- (a) Each of the Committees will report to the Board, except to the extent a different reporting structure is set out in clause 18.1 or the terms of reference for that Committee determined by the Board under clause 18.2.

- (b) Monash must provide secretariat and administrative support for each Committee (excluding any Committees that the Board requires provide their own secretariat and administrative support) and ensure that any costs of doing so are met in accordance with the Approved Annual Budget.

19. Conflicts of Interest

19.1 TAC and WorkSafe Personnel Conflicts of Interest

- (a) Subject to clause 19.1(c), each of the TAC and WorkSafe must immediately notify the other parties if a Conflict of Interest arises in relation to the conduct of any of its Personnel under this agreement, including its representatives on the Board or any Committee.
- (b) On the other parties receiving a notice under paragraph (a), or another party notifying the TAC or WorkSafe (as applicable) that it is aware of any such Conflict of Interest, the TAC or WorkSafe must, and must ensure that the relevant Personnel, cooperate with the other parties to resolve the Conflict of Interest in a professional and efficient manner so as to minimise any potential harm to the other parties.
- (c) Monash acknowledges and agrees that any of the TAC's or WorkSafe's Personnel will not have a Conflict of Interest due to:
 - (i) any duties of those Personnel to the TAC or WorkSafe; or
 - (ii) any interest of the TAC or WorkSafe in relation to the Funding, the Institute Activities or other activities conducted by the TAC or WorkSafe, including activities similar to the Institute Activities conducted by the TAC or WorkSafe (as applicable) independently of this agreement.

19.2 Monash Personnel Conflicts of Interest

Subject to clause 19.3, if a potential Conflict of Interest arises in relation to the conduct of any of Monash's Personnel under this agreement, including Monash's representatives on the Board or any Committee and any independent members of the Board or any Committee, Monash must ensure that the relevant Personnel complies with Monash's conflict of interest policy (as amended from time to time) in relation to that Conflict of Interest.

19.3 Monash Personnel Conflicts of Interest in relation to choice of collaborators

- (a) Monash acknowledges that compliance with clause 19.2 may not be sufficient to prevent or minimise any potential harm to the TAC and WorkSafe in relation to certain Conflicts of Interest, including any Conflict of Interest that consists of a conflict between:
 - (i) the duties of Monash and its Personnel in relation to identifying research projects set out in clause 20.1; and
 - (ii) the interest of Monash and its Personnel in identifying research projects that can be conducted by Monash rather than a third party, and in determining that research projects should be conducted by Monash rather than a third party.
- (b) Monash must immediately notify the TAC and WorkSafe if a Conflict of Interest of the kind described in clause 19.3(a) arises in relation to the conduct of any of its Personnel under this agreement, including its representatives on the Board or any Committee.
- (c) On the TAC and WorkSafe receiving a notice under clause 19.3(b), or either the TAC or WorkSafe notifying Monash that it is aware of any such Conflict of Interest, Monash must, and must ensure that the relevant Personnel, cooperate with the TAC and WorkSafe

to resolve the Conflict of Interest in a professional and efficient manner so as to minimise any potential harm to the TAC and WorkSafe.

19.4 Committee members Conflicts of Interest and Confidentiality

Each party must ensure that each representative of that party on any Committee complies with this clause 19.

Part D – Projects

20. Projects

20.1 Identification of Projects

- (a) Monash must identify potential Projects, focusing on those research projects that most effectively promote:
 - (i) the Institute Objective, the TAC Objectives and the WorkSafe Objectives; and
 - (ii) Monash's research priorities and objectives, to the extent such priorities and objectives are consistent with the promotion of the objectives referred to in paragraph (i),including by seeking the advice of the Relationship Management Committee regarding what projects would best promote the objectives referred to in paragraph (i).
- (b) Monash acknowledges that, where any of the Funding is intended to be applied to a Project, the paramount concern in designing that Project is the promotion of the TAC Objectives and the WorkSafe Objectives.
- (c) The TAC and WorkSafe may identify potential Projects, focusing on those research projects that most effectively promote the Institute Objective, the TAC Objectives and the WorkSafe Objectives.
- (d) Each party must keep the other parties and the Board informed about any potential research projects identified by that party.
- (e) In determining whether the parties should carry out a Project themselves or whether Monash should collaborate with a third party in carrying out a Project or engage a third party to carry out the Project, the following matters must be taken into account:
 - (i) the relevant expertise of Monash;
 - (ii) the relevant expertise of any other universities or research institutions, whether in Australia or overseas; and
 - (iii) the areas of expertise which would contribute to the most effective conduct of the Project.

20.2 Project Plan requirements

- (a) If it is proposed that:
 - (i) the parties will carry out a Project, including in collaboration with any Project Collaborator; or
 - (ii) Monash will engage a Project Collaborator to carry out any Project, the CEO must develop a plan for that Project (**Project Plan**).

- (b) The initial Project Plan Design Principles are set out in Schedule 4. The Project Plan Design Principles may be updated from time to time during the Term with the approval of the parties.
- (c) Any Project Plan must, as a minimum, include the information required by the Project Plan Design Principles.

20.3 Approval of Projects

- (a) A Project must not be commenced unless and until the Project Plan is approved by the Board in accordance with this clause 20.3.
- (b) The Board must not approve the Project Plan unless and until the Board is satisfied that:
 - (i) the Project as conducted in accordance with the Project Plan will:
 - (A) be conducted in accordance with the Approved Budget, the Approved Annual Research Plan and the Strategic Plan; and
 - (B) promote the Institute Objective;
 - (ii) the persons nominated in the Project Plan to conduct the Project are appropriate in light of the factors set out in clause 20.1(e);
 - (iii) the Project Plan has sufficient merit in terms of science and potential benefits; and
 - (iv) where it is proposed in a Project Plan that any of the Funding will be applied to the Project, the Project is within a field of research to which the TAC Funding and/or WorkSafe Funding (as applicable) can be applied in accordance with the Funding Principles and that the Funding to be used in the Project will only be applied to costs and expenses to which that Funding may be applied in accordance with clauses 6.2 and 6.3 (as applicable).
- (c) The Board may seek advice from the Relationship Management Committee or any other Committee as to whether the condition set out in clause 20.3(b)(iv) is fulfilled in respect of a Project.

21. Conduct of Projects

21.1 Terms on which Projects must be conducted

Each party must make its respective contributions towards each Project, in accordance with this agreement and the Approved Project Plan for that Project.

21.2 Project Leader

Monash must ensure that the Project Leader:

- (a) uses his or her reasonable efforts to ensure the Project is conducted in accordance with the Approved Project Plan and this agreement;
- (b) manages the day to day conduct of the Project; and
- (c) maintains financial, research and technical records in relation to the Project;
- (d) in relation to all Background IP made available for the purposes of the Project and all Project IP developed in the course of the conduct of the Project, provide details of that Background IP or Project IP to the CEO sufficient for the CEO to maintain the intellectual property register under clause 24.4;
- (e) provides to Monash all necessary information to enable Monash to comply with its reporting obligations under this agreement; and

- (f) where relevant, assists WorkSafe and the TAC to transfer Project outcomes into practice and/or policy.

21.3 Contributions to Projects

- (a) Each party must make its contributions to a Project, including in the case of the TAC and WorkSafe any TAC Funding or WorkSafe Funding (as applicable) payable for that Project, available for that Project at the times and in the manner specified in the Approved Project Plan.
- (b) Monash:
 - (i) must use its reasonable endeavours to procure any contributions to the Project required to be made by any Project Collaborator; and
 - (ii) may use the contributions made to a Project:
 - (A) for the purposes of the Project only; and
 - (B) in accordance with the Approved Project Plan for that Project.

21.4 Manner of conduct of Projects

Each party providing contributions towards a Project must use its reasonable endeavours to ensure that its contributions are provided in such a way that the Project is conducted:

- (a) to a high standard with due professional care and skill under the supervision of the Project Leader;
- (b) in accordance with all applicable laws, regulations, relevant ethics codes and guidelines, and any ethics approvals obtained or imposed in relation to the Project;
- (c) so as to achieve the objectives and the milestones set out in the Approved Project Plan for the Project by their required dates;
- (d) so as to provide the deliverables set out in the Approved Project Plan by their required dates; and
- (e) in accordance with the Project Leader's reasonable directions,

provided that the parties acknowledge and agree that a Project may contain elements of risk and that any results cannot be guaranteed.

21.5 Compliance with Funding Principles

The parties must comply with the Funding Principles in carrying out any Project being funded by the TAC Funding or the WorkSafe Funding, including by seeking advice from the Relationship Management Committee as to the application of any TAC Funding or WorkSafe Funding to the costs of carrying out any part of the Project, as appropriate.

21.6 Background IP

- (a) Each party:
 - (i) will make available to each other party all materials comprising the Background IP that the party is making available for the purposes of the Project (whether that Background IP is specified in the Approved Project Plan or is otherwise made available by the party for the purposes of the Project) and which are reasonably necessary for the purpose of that party complying with its obligations in relation to the carrying out of the Project; and
 - (ii) grants to each other party an irrevocable, non-exclusive, royalty-free, worldwide licence to use the Background IP made available by the party for the Project,

including the right of Monash to sub-license the Project Collaborator for that Project (if any) to use that Background IP, solely for the purpose of that party complying with its obligations in relation to the carrying out of the Project, subject to any restrictions on the use of that Background IP:

- (A) under clause 25 of this agreement;
 - (B) specified in the Approved Project Plan; or
 - (C) in the case of any Background IP not specified in the Approved Project Plan, notified in writing to the other parties at the time of offering such Background IP.
- (b) Monash must:
- (i) ensure that it is able to use for the purpose of carrying out a Project all Background IP specified in the Approved Project Plan as being made available by Monash for that Project; and
 - (ii) notify the TAC and WorkSafe in writing of any Background IP not specified in the Approved Project Plan that Monash uses to carry out the Project, including any restrictions on the use of that Background IP that may affect the scope of the licence of that Background IP that Monash may grant under clause 24.2.
- (c) For the avoidance of doubt, nothing in this agreement purports to or requires a Project Collaborator to assign or transfer any of its Background IP to Monash or any other party.

21.7 Reporting

- (a) If interim reports are required to be provided for a Project, Monash must ensure that the Project Leader provides interim reports to the CEO at the times set out in the Approved Project Plan which must set out:
- (i) progress with the Project and its scientific advances, outcomes, key achievements, deliverables and milestones;
 - (ii) any matter which the Project Leader considers will, or may, affect the ability of the Project to meet the objectives, satisfy any milestones, provide any deliverables or be completed within the budget each as set out in the Approved Project Plan, including any failure by a party to provide the contributions required under the Approved Project Plan;
 - (iii) any significant difficulties encountered during the Project and measures taken or plans to resolve them;
 - (iv) any Project IP created (including a description of the Project IP, when it was created, by whom it was created and whether it is Funding Provider IP, Externally Funded IP, Monash IP or Joint IP); and
 - (v) the Background IP used in the Project, including any restrictions on the use of that Background IP referred to in clauses 21.6(a)(ii) and 21.6(b)(ii).
- (b) Monash must ensure that the Project Leader provides a report to the CEO within 20 Business Days after the completion or termination of a Project which must set out:
- (i) the Project's scientific advances, outcomes, key achievements, deliverables and milestones, including to what extent the objectives were met, the milestones achieved and the deliverables provided (each as set out in the Approved Project Plan);

- (ii) any Project IP created (including a description of the Project IP, when it was created, by whom it was created and whether it is Funding Provider IP, Externally Funded IP, Monash IP or Joint IP);
 - (iii) the Background IP used in the Project, including any restrictions on the use of that Background IP referred to in clauses 21.6(a)(ii) and 21.6(b)(ii); and
 - (iv) the implications of the outcomes of the Project for the conduct by the TAC and/or WorkSafe (as applicable) of their operations.
- (c) The CEO must ensure that copies of any reports he or she receives under this clause 21.7 are provided to the Board promptly after being received.

21.8 Changes to Projects

The TAC, WorkSafe or Monash may propose a change to the Approved Project Plan for a Project. Subject to clause 21.9, all proposed changes must be in writing and approved by the Board or its delegate before any change to the Approved Project Plan can be implemented.

21.9 Termination of Projects

- (a) The TAC or WorkSafe may terminate a Project (without terminating this agreement) with immediate effect by giving notice to Monash if the TAC or WorkSafe reasonably believes that the Project will not meet the objectives, achieve the milestones or provide the deliverables set out in the Approved Project Plan within a reasonable time or that completion of the Project is no longer consistent with the Institute Objective.
- (b) Monash may terminate a Project (without terminating this agreement) with immediate effect by giving notice to:
 - (i) where any TAC Funding and/or WorkSafe Funding is to be or has been used for the Project, the TAC and/or WorkSafe (as applicable); or
 - (ii) in other cases, the Board,
 if:
 - (iii) the person acting as Project Leader is no longer able to act in the role of Project Leader and a suitable replacement cannot be found within a reasonable time (such time not to exceed three months); or
 - (iv) Monash reasonably believes that the Project will not achieve the Monash's research objectives.
- (c) The Board may terminate a Project at any time by written notice to the Project Leader.
- (d) On the termination of a Project:
 - (i) each party must use its reasonable endeavours to avoid incurring further costs in relation to the Project; and
 - (ii) any payments due to a party under the Approved Project Plan in relation to any part of the Project conducted up to the date of termination and any costs that could not be avoided under paragraph (i) must be paid promptly.

22. Conduct of Projects by Project Collaborators

Monash:

- (a) must ensure that, in relation to any Project which is to be conducted wholly or partly by a Project Collaborator, the Project Collaborator is bound to comply with obligations at least

equivalent to those imposed on Monash under this agreement, including under clauses 6, 15, 21, 24.1, 24.2, 25, 26, 27 and 37;

- (b) must ensure that, in relation to any Project IP developed in the course of carrying out a Project which a Project Collaborator is conducting, that the Project Collaborator is bound to deal with that Project IP in a manner consistent with clause 24;
- (c) remains fully responsible for the conduct of all Projects (except for any contributions to be made by the TAC or WorkSafe in accordance with the Approved Project Plan) and for all costs incurred with respect to any Project Collaborator;
- (d) is liable for acts and omissions of any Project Collaborator as though they were acts or omissions of Monash itself; and
- (e) must provide to the Board a copy of any contract entered into by Monash with a Project Collaborator in connection with the conduct of a Project.

Part E – Institute outcomes

23. New research collaborators

23.1 Introduction of new research collaborator

An entity may be introduced to carry out Projects and other Institute Activities in addition to Monash by agreement between the TAC, WorkSafe and Monash.

23.2 Amendment of agreement to include new research collaborator

- (a) If a new research collaborator is introduced under clause 23.1, the TAC, WorkSafe and Monash must agree with the new research collaborator the terms on which the new research collaborator will be involved in the conduct of the Institute Activities, including the rights and obligations that the new research collaborator will have under this agreement.
- (b) The parties must enter into an agreement with the new research collaborator to amend this agreement to include the new research collaborator as a party to this agreement on the terms agreed between the TAC, WorkSafe, Monash and the new research collaborator under clause 23.2(a).

24. Intellectual Property Rights

24.1 Background IP

- (a) Each party retains ownership of its own Background IP and nothing in this agreement assigns or transfers a party's Background IP to any other party.
- (b) Each party retains the right to use its own Background IP outside the Project for which it was provided or used and to grant licences of its own Background IP to third parties, except that the grant of any such licence must not prevent that party from granting a licence of the Background IP to another party for the purposes of Commercialising any Joint IP in accordance with clause 24.2.
- (c) Each party is, at its own discretion, responsible for protecting, prosecuting, maintaining and enforcing its own Background IP.
- (d) Each party will give each other party prompt notice of any infringement by a third party of that other party's Background IP which comes to the first-mentioned party's attention,

including any potential impact on the Project and the Project IP that the first-mentioned party considers may be caused by the infringement.

- (e) A party who becomes aware of any claim by a third party that the use of any Background IP used or provided for a Project infringes the Intellectual Property Rights or other legal rights of the third party must notify each other party. The owner of the affected Background IP must use reasonable endeavours to take steps to defend the claim or otherwise ensure that the Project can be completed in accordance with the Approved Project Plan and this agreement, including that the Project IP can be used as contemplated by this agreement.

24.2 Licences of Background IP

- (a) Each of the TAC and WorkSafe grants to Monash an irrevocable, non-exclusive, royalty-free, worldwide licence to use the Background IP made available by the TAC or WorkSafe (as applicable) for a Project solely for the purposes of Monash:
 - (i) Commercialising any Joint IP in accordance with item 6 of Schedule 6; or
 - (ii) exercising its rights in relation to the Monash IP, Joint IP and Externally Funded IP,subject to any restrictions on the use of that Background IP:
 - (iii) under clause 25 of this agreement;
 - (iv) specified in the Approved Project Plan; or
 - (v) in the case of any Background IP not specified in the Approved Project Plan, notified in writing to Monash at the time of offering such Background IP.
- (b) Monash grants to each of the TAC and WorkSafe an irrevocable, non-exclusive, royalty-free, worldwide licence to use the Background IP made available or used by Monash or any Project Collaborator for a Project solely for the purposes of the TAC or WorkSafe (as applicable):
 - (i) Commercialising any Joint IP in accordance with item 6 of Schedule 6;
 - (ii) exercising its rights in relation to the Funding Provider IP, Joint IP and Externally Funded IP,subject to any restrictions on the use of that Background IP:
 - (iii) under clause 25 of this agreement;
 - (iv) specified in the Approved Project Plan; or
 - (v) in the case of any Background IP not specified in the Approved Project Plan, notified in writing to the TAC and WorkSafe at the time of using such Background IP.

24.3 Institute IP

- (a) Upon its creation, Institute IP will be owned as follows:
 - (i) Project IP developed in the course of carrying out a Project where all cash and ancillary assistance and resources towards that Project (other than any contributions, assistance or resources that were incidental or not material to the Project) were provided by the TAC and/or WorkSafe (**Funding Provider IP**) will, as between the parties, be owned by the TAC, by WorkSafe or jointly by both of them (as applicable);

- (ii) Project IP developed in the course of carrying out a Project where that Project was funded, in whole or in part, by any funding provided by a third party (other than any funding that was incidental or not material to the Project) (**Externally Funded IP**) will be owned in accordance with clause 24.6;
 - (iii) Institute IP that is either:
 - (A) Project IP developed in the course of carrying out a Project where all cash and ancillary assistance and resources towards that Project (other than any contributions that were incidental or not material to the Project) were provided by Monash; or
 - (B) Institute IP other than Project IP, (**Monash IP**) will, as between the parties, be owned by Monash; and
 - (iv) Project IP other than Funding Provider IP, Externally Funded IP and Monash IP (**Joint IP**) will, as between the parties, be owned by the parties jointly.
- (b) To facilitate the ownership of Institute IP set out in clause 24.3(a):
- (i) Monash assigns its right, title and interest in and to the Funding Provider IP to the TAC or WorkSafe, or into the joint ownership of the TAC and WorkSafe (as applicable);
 - (ii) each party assigns its right, title and interest in and to the Joint IP into the joint ownership of the parties; and
 - (iii) each of the TAC and WorkSafe assigns its respective right, title and interest in and to the Monash IP to Monash,
- (c) in each case, including by way of an assignment of future Intellectual Property Rights and with effect from the date of creation.

24.4 Register of intellectual property

The CEO must maintain a register of all Background IP made available by the parties for use for the Institute Activities and all Institute IP, which must include:

- (a) a description of that Background IP or Project IP;
- (b) in the case of Institute IP, whether it is Funding Provider IP, Externally Funded IP, Monash IP or Joint IP; and
- (c) in the case of Background IP, any restrictions on the use of that Background IP specified in the Approved Project Plan or in the case of any Background IP not specified in the Approved Project Plan, notified in writing to the other parties at the time of offering such Background IP.

24.5 Licences of Funding Provider IP and Monash IP

- (a) Subject to clause 25, each of the TAC and WorkSafe grant to Monash and to each other a non-exclusive, non-transferable, royalty-free, perpetual, irrevocable licence to exercise the TAC's or WorkSafe's (as applicable) right, title and interest in the Funding Provider IP for:
 - (i) the purpose of conducting the Projects; and
 - (ii) the internal non-commercial research, development and education purposes of the licensee,

and, in the case of the licences granted to Monash, a right to grant sub-licences to any Project Collaborators to exercise the TAC's or WorkSafe's (as applicable) right, title and interest in the Funding Provider IP for the purpose of conducting the Projects.

- (b) Subject to clause 25, Monash grants to each of the TAC and WorkSafe a non-exclusive, non-transferable, royalty-free, perpetual, irrevocable licence to exercise Monash's right, title and interest in the Monash IP for:
 - (i) the purpose of conducting the Projects; and
 - (ii) the research, development and education purposes of the TAC or WorkSafe (as applicable).

24.6 Ownership of and rights to Externally Funded IP

- (a) The ownership of any Externally Funded IP, and any rights of each party to use that Externally Funded IP, will be as agreed between the parties in respect of that Externally Funded IP in the Approved Project Plan, as amended by any subsequent written agreement between the parties.
- (b) The parties agree that, in determining the ownership of, and each party's rights to use, any Externally Funded IP for the purpose of clause 24.6(a):
 - (i) they must take into account:
 - (A) the relative contributions of the parties to the development of the Externally Funded IP; and
 - (B) any requirements of the third party provider of funding in respect of the ownership of the Externally Funded IP; and
 - (ii) each party must be granted rights to use the Externally Funded IP for its research, development and education purposes, except to the extent the granting of such rights is not permitted under the terms on which the third party provides the funding.

24.7 Rights to Joint IP

The provisions in Schedule 6 apply to any Joint IP.

24.8 Grant to TAC and WorkSafe of licence to use annual reports

Subject to the TAC's and WorkSafe's obligations of confidentiality under clause 25, Monash grants to each of the TAC and WorkSafe a non-exclusive, royalty-free, irrevocable licence (including the right to sub-licence to third parties) to use, reproduce, publish, communicate to the public or adapt at any time part or all of any annual report submitted to the TAC or WorkSafe (as applicable) under clause 28.1.

25. Confidential Information

25.1 Use and disclosure of Confidential Information

Each party (**Receiving Party**) must:

- (a) use Confidential Information of the other party (**Disclosing Party**) only for the purposes of this agreement; and
- (b) keep confidential all Confidential Information of the Disclosing Party except:
 - (i) for disclosures permitted under clause 25.2 or, where the Receiving Party is the TAC or WorkSafe, clause 25.3; and

- (ii) to the extent (if any) the Receiving Party is required by law, a lawful requirement of any government or governmental body, authority or agency, for the purpose of any legal or administrative proceedings (including, in the case of the TAC or WorkSafe, in connection with any procedures under the dispute resolution protocol of the TAC or WorkSafe (as applicable)) or for public accountability reasons, to disclose any Confidential Information of the Disclosing Party (including under the *Freedom of Information Act 1982* (Vic), in the course of an investigation under the *Ombudsman Act 1973* (Vic) or in the course of responding to a request for information by parliament or a parliamentary committee).

25.2 Permitted disclosure to officers, employees and subcontractors

The Receiving Party may disclose Confidential Information of the Disclosing Party to the Receiving Party's officers, employees and authorised subcontractors (which is deemed to include the representatives of the Receiving Party on the Board or any Committee and, in the case of Monash, any independent members of the Board or any Committee) who:

- (a) have a need to know for the purposes of this agreement (and only to the extent that each has a need to know); and
- (b) before disclosure, have signed a written undertaking in favour of the Receiving Party to comply with substantially the same obligations in respect of Confidential Information of the Disclosing Party as those imposed on the Receiving Party under this agreement (each, a **Confidentiality Undertaking**).

25.3 Permitted disclosure for public purposes

- (a) Each of the TAC and WorkSafe may provide access to, make available or disclose to the other any materials or information (including Confidential Information of Monash) provided or made available to the TAC or WorkSafe (as applicable) under or in connection with this agreement.
- (b) Each of the TAC and WorkSafe may disclose Confidential Information of Monash to the extent required:
 - (i) for the purpose of reporting any conduct of Monash about which the TAC or WorkSafe is concerned to a regulatory body in accordance with section 131A of the TA Act or section 249B of the AC Act (as applicable); and
 - (ii) for any other reporting requirements of the TAC or WorkSafe as applicable.

25.4 Receiving Party's obligations

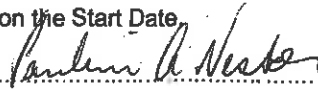
Each Receiving Party must:

- (a) ensure that each person to whom it discloses Confidential Information of a Disclosing Party under clause 25.2 complies with his or her Confidentiality Undertaking; and
- (b) notify the Disclosing Party of, and take all steps to prevent or stop, any suspected or actual breach of a Confidentiality Undertaking.

25.5 Return of Confidential Information

On termination or expiry of this agreement, the Receiving Party must deliver up to the Disclosing Party (or, at the Disclosing Party's election, destroy), all Confidential Information of the Disclosing Party, including any copies of the Confidential Information of the Disclosing Party (stored in any medium) which is in its possession or control, except that the receiving party may retain one copy for record keeping purposes only and provided that at all times the confidentiality of the Confidential Information is preserved.

This is a replacement page with amendments to clause 26. The parties agree that the amendments are deemed to take effect on the Start Date.


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Monash University

TAC


.....
WorkSafe

25.6 Injunctive relief

The Receiving Party acknowledges that damages are not a sufficient remedy for the Disclosing Party for any breach of this clause ~~25~~ and the Disclosing Party is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Receiving Party, in addition to any other remedies available to the Disclosing Party at law or in equity.

25.7 Compliance with secrecy provisions

Monash must comply with, and must ensure that its Personnel comply with, the secrecy provisions in section 131 of the TA Act and section 243 of the AC Act as if Monash and its Personnel were bound by them directly.

26. Publication

26.1 Application of this clause

This clause 26 does not apply to publication and examination of a Student's thesis, which is dealt with under clause 27.2.

26.2 Parties to publish outcomes

Subject to the remainder of this clause 26:

- (a) a party must not publish or disseminate (in any country at any time) any article or material, or make any public presentation, in relation to a Project or other Institute Activity (**Publication**) unless such Publication has been approved in accordance with the Publication Policy. The Publication Policy must reflect the position of each party to the agreement has in relation to consent of information for publication.

26.3 Publication Policy

The Board, in consultation with WorkSafe, the TAC and Monash, must establish and document a process for the review and publication of research findings in relation to Projects and other Institute Activities (**Publication Policy**). The Publication Policy may be updated from time to time during the Term with the approval of the Board.

26.4 Copies of publications to be provided to TAC and WorkSafe

Monash must provide to each of the TAC and WorkSafe, within 20 Business Days of the end of each Financial Year during the Term, copies of all peer-reviewed publications relating to the Institute Activities published in the relevant Financial Year.

27. Student involvement

27.1 Requirements where Student is involved in Institute Activities

If Monash involves a Student in any Institute Activities, then Monash must:

- (a) ensure that the Student complies with clauses 25 and 37 and any ethical principles relevant to the conduct of the Institute Activities;
- (b) ensure that Institute IP developed by the Student is owned in accordance with clause 24.3, provided that the Student will retain ownership of the copyright in his or her thesis; and

~~25.6 Injunctive relief~~

The Receiving Party acknowledges that damages are not a sufficient remedy for the Disclosing Party for any breach of this clause 25 and the Disclosing Party is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Receiving Party, in addition to any other remedies available to the Disclosing Party at law or in equity.

~~25.7 Compliance with secrecy provisions~~

Monash must comply with, and must ensure that its Personnel comply with, the secrecy provisions in section 131 of the TA Act and section 243 of the AC Act as if Monash and its Personnel were bound by them directly.

26. Publication

a.o. M P.W. [Signature]

26.1 Application of this clause

This clause 26 does not apply to publication and examination of a Student's thesis, which is dealt with under clause 27.2.

26.2 Parties to publish outcomes

Subject to the remainder of this clause 26:

- (a) Monash must use reasonable endeavours to publish the outcomes of the Institute Activities;
- (b) a party may publish or disseminate (in any country at any time) any article or material in relation to a Project or other Institute Activity that does not contain Confidential Information of another party (including any Joint IP unless the parties have agreed that the Joint IP will be treated as confidential); and
- (c) a party must not publish or disseminate (in any country at any time) any article or material, or make any public presentation, in relation to a Project or other Institute Activity which may contain Confidential Information of any other party (**Publication**) unless such Publication has been approved in accordance with the Publication Policy.

26.3 Publication Policy

The Board, in consultation with WorkSafe, the TAC and Monash, must establish and document a process for the review and publication of research findings in relation to Projects and other Institute Activities (**Publication Policy**). The Publication Policy may be updated from time to time during the Term with the approval of the Board.

26.4 Copies of publications to be provided to TAC and WorkSafe

Monash must provide to each of the TAC and WorkSafe, within 20 Business Days of the end of each Financial Year during the Term, copies of all peer-reviewed publications relating to the Institute Activities published in the relevant Financial Year.

27. Student involvement

27.1 Requirements where Student is involved in Institute Activities

If Monash involves a Student in any Institute Activities, then Monash must:

- (a) ensure that the Student complies with clauses 25 and 37 and any ethical principles relevant to the conduct of the Institute Activities;
- (b) ensure that Institute IP developed by the Student is owned in accordance with clause 24.3, provided that the Student will retain ownership of the copyright in his or her thesis; and

- (c) enter into a written agreement with the Student setting out the terms on which the Student is involved in the Institute Activities and under which any Institute IP developed by the Student (other than copyright in the Student's thesis) is assigned to Monash so that it can be dealt with in accordance with this agreement, including the provisions of this agreement regarding Confidential Information, Intellectual Property Rights and publication.

27.2 Publication and examination of a Student thesis

- (a) The Institute acknowledges that Monash is required to examine and publish any thesis submitted by the Student to fulfil Monash's requirements for the degree in which the Student is enrolled.
- (b) Before the Student's thesis is submitted for examination, Monash must:
 - (i) notify the Board that the Student's thesis is to be submitted for examination; and
 - (ii) provide a copy of the Student's thesis to the Board.
- (c) Nothing in this deed will inhibit the right of the Student to have their thesis examined but Monash must ensure that, if requested in writing by the Board within 30 Business Days of receipt of the notice of examination, the examiners sign a confidentiality agreement (in a form approved by the parties) to protect Confidential Information of the TAC or WorkSafe.
- (d) If the Board reasonably determines that the publication of the Student's thesis should be delayed in order to protect Confidential Information of the TAC or WorkSafe, the Board may request that Monash place the Student's thesis on restricted access for a period not exceeding 12 months.
- (e) If the Board does not reply to Monash within 30 Business Days of receiving the request to publish, then the consent to publish will be deemed to have been given and Monash may publish the Student's thesis.

Part F – Reviews of arrangements and termination

28. Reporting, meetings and information sharing

28.1 Annual reporting

On or before the date specified by the Board (or otherwise within 60 days of the end of the relevant Financial Year), Monash must provide to each of the TAC and WorkSafe an annual report which must be approved by the Board and which must set out the details specified in Schedule 5.

28.2 Routine reporting

Monash must procure that the CEO provides regular reports to the parties regarding the Institute Activities at the frequency, and containing the information, agreed by the parties from time to time.

28.3 Information sharing

Subject to its obligations under clause 37, any obligations of confidentiality it owes to third parties and its obligations otherwise at law:

- (a) each party must attend meetings on reasonable request by another party to discuss any issues relating to the Institute or this agreement, including:
 - (i) the establishment and operation of the Institute;

- (ii) the progress and outcomes of the Institute Activities including any challenges faced in making further progress and achieving future outcomes, together with any steps taken or proposed to be taken to mitigate those challenges; and
 - (iii) the sharing of strategic plans and information relevant to the Institute Objective, the TAC Objectives and the WorkSafe Objectives;
- (b) each party must ensure that information connected with the Institute Activities is made available to each other party, including by responding promptly to reasonable requests by any other party to provide written or verbal reports concerning the party's role in the conduct of the Institute Activities;
 - (c) Monash must give the TAC or WorkSafe access to information in Monash's possession or control (including any Confidential Information of Monash) which relates to the Institute and which is required for the TAC to carry out its obligations under the TA Act or for WorkSafe to carry out its obligations under the AC Act; and
 - (d) Monash must be available, on the reasonable request of the Institute, to provide the TAC or WorkSafe with any assistance the TAC or WorkSafe requires in legal or administrative proceedings relating to the Institute or the Institute Activities, including by providing access to information, attending court or tribunal hearings or conferences and meeting with the TAC or WorkSafe and its advisors to discuss proceedings.

28.4 Information sharing for public purposes

Each party acknowledges that the each other party may have legal obligations, as a statutory authority, to disclose information, including information about the Funding, the Institute, the Institute Activities or this agreement, in certain circumstances (such as, by way of example, under the *Freedom of Information Act 1982* (Vic) or in the course of an investigation under the *Ombudsman Act 1973* (Vic)). Each party agrees, on the reasonable request of another party, to co-operate with that other party in connection with any request received by that other party for the release of information under the *Freedom of Information Act 1982* (Vic) or the *Ombudsman Act 1973* (Vic).

29. Reviews

29.1 Final year review

The TAC and WorkSafe will conduct a review of the arrangements under this agreement at least 6 months before the End Date for the purpose of considering the ongoing funding of the Institute after the expiry of the Term and any conditions that may be placed on such funding, including a review of:

- (a) the operations of the Institute;
- (b) the strategic direction of the Institute and its degree of alignment with the priorities of the TAC and WorkSafe, including the degree of alignment with the TAC Objectives and the WorkSafe Objectives;
- (c) the status of the Projects;
- (d) the outcomes of the Projects; and
- (e) the contributions towards the Institute Activities made by Monash,

based on the content of the annual reports provided under clause 28.1 and any other information provided by Monash in accordance with clause 29.2.

29.2 Assistance with reviews

Monash must provide reasonable assistance requested by the TAC or WorkSafe for the TAC and WorkSafe to conduct any review under this clause 29, including by meeting with Monash and making available its Records, information and Personnel to the TAC and WorkSafe.

30. Termination

30.1 Termination by Monash

Monash may terminate this agreement by giving 60 Business Days written notice to the TAC and WorkSafe if:

- (a) the TAC or WorkSafe breaches a material provision of this agreement and either fails to remedy the breach within 20 Business Days after receiving notice requiring it to do so or the breach is not capable of remedy;
- (b) an Insolvency Event happens to the TAC or WorkSafe; or
- (c) there is a change in government policy or legislation which, in the opinion of Monash, affects its ability to perform its obligations under this agreement or which, in the opinion of Monash, has the effect of making the conduct of the Institute Activities under this agreement unviable, inappropriate or otherwise unsuitable or unnecessary.

30.2 Cessation of Funding by TAC or WorkSafe

Either the TAC or WorkSafe may cease to provide the TAC Funding or the WorkSafe Funding (as applicable) by giving 60 Business Days written notice to the other parties if:

- (a) Monash breaches a material provision of this agreement and either fails to remedy the breach within 20 Business Days after receiving notice requiring it to do so or the breach is not capable of remedy;
- (b) an Insolvency Event happens to Monash;
- (c) the delegation of power to the Board under clause 16.4 is revoked, becomes unlawful, void or unenforceable (including because any regulation of Monash required to make the delegation lawful is revoked or varied) or is otherwise varied in a way that, in the reasonable opinion of the TAC or WorkSafe (as applicable), materially adversely affects the ongoing operation of the Institute in accordance with this agreement; or
- (d) there is a change in government policy or legislation which, in the opinion of the TAC or WorkSafe (as applicable), affects its ability to perform its obligations under this agreement or which, in the opinion of the TAC or WorkSafe (as applicable), has the effect of making the conduct of the Institute Activities under this agreement unviable, inappropriate or otherwise unsuitable or unnecessary.

For the avoidance of doubt, both the TAC and WorkSafe may cease to provide the Funding for the same event in accordance with this clause 30.2.

30.3 Effect of cessation of Funding

Unless clause 30.4 applies, if either the TAC or WorkSafe cease to provide the TAC Funding or the WorkSafe Funding (as applicable) under clause 30.2:

- (a) subject to paragraph (c), the party that ceases to provide the Funding ceases to be a party to this agreement;
- (b) this agreement continues as an agreement between Monash and the other party; and

- (c) the clauses set out in clause 41.8 continue to apply in respect of the party that has ceased to provide the Funding.

30.4 Termination if both TAC and WorkSafe cease Funding

This agreement automatically terminates 20 Business Days after both the TAC and WorkSafe have ceased to provide the TAC Funding and the WorkSafe Funding under clause 30.2.

30.5 Notification of events

Each party must notify the other parties immediately if an Insolvency Event happens to that party.

31. Arrangements after termination or expiry

31.1 Notification of intentions

- (a) Within a reasonable time after the conduct of the final year review in accordance with clause 29.1, or during the 60 Business Day period of a notice of termination of this agreement given under clause 30, each of the TAC and WorkSafe will notify Monash of its respective intentions as to the ongoing operation of the Institute after the end of the Term, including whether:
 - (i) (except where the agreement was terminated in accordance with clause 30.4) each of the TAC and WorkSafe will continue to provide funding to Monash for the Institute; and
 - (ii) if both the TAC and WorkSafe decide to discontinue the funding, either or both of the TAC and WorkSafe wish to take over the operation of the Institute.
- (b) If the TAC and WorkSafe notify Monash that they have decided not to continue providing funding for the Institute to Monash after the end of the Term, Monash must notify the TAC and WorkSafe whether or not it wishes to continue operating the Institute after the end of the Term, within a reasonable time after receiving notice from the TAC and WorkSafe under clause 31.1(a) (which must be within the 60 Business Day period of a notice of termination of this agreement given under clause 30 if applicable).
- (c) If either or both of the TAC and WorkSafe notify Monash that they have decided to continue providing funding for the Institute to Monash after the end of the Term, the TAC and/or WorkSafe (as applicable) and Monash will promptly proceed to negotiate the terms of an agreement for the ongoing operation and funding of the Institute.
- (d) If neither the TAC nor WorkSafe agree to continue providing funding for the Institute after the end of the Term, either:
 - (i) the TAC and/or WorkSafe may continue the operations of the Institute independently of Monash;
 - (ii) Monash may continue the operations of the Institute without any funding or contributions from the TAC or WorkSafe, if agreed by the TAC and WorkSafe; or
 - (iii) if neither of paragraphs (i) and (ii) apply, the parties will wind up the operations of the Institute,in accordance with clause 31.2.

31.2 Arrangements for continuation or winding up of Institute

The parties must use all reasonable endeavours to continue or wind up the Institute in conformity with the following:

- (a) Monash will assign to the TAC, WorkSafe or a third party nominated by the TAC and WorkSafe the conduct of any ongoing Project or other Institute Activity that the parties agree will be completed by the TAC or WorkSafe (or a third party nominated by the TAC or WorkSafe);
- (b) Monash will complete any ongoing Project or other Institute Activity that the parties agree will be completed by Monash;
- (c) for the purpose of paragraphs (a) and (b), unless agreed otherwise, Monash will complete any ongoing Monash Projects and will, at the direction of the TAC and WorkSafe, assign any ongoing Funding Provider Projects to the TAC, WorkSafe or a third party nominated by the TAC and WorkSafe;
- (d) in respect of any ongoing Institute Activities to be completed by the TAC or WorkSafe, Monash must:
 - (i) return to the TAC or WorkSafe (as applicable) any Funding already received by Monash and unused for that Project, within 30 Business Days after the end of the Term;
 - (ii) cooperate with the TAC and WorkSafe and any other person nominated by the TAC or WorkSafe to ensure the timely and appropriate transition of that Institute Activity, including by providing all information and assistance reasonably required in relation to the Institute Activity and its current status and making available Personnel to respond to any queries relating to that Institute Activity; and
 - (iii) to the extent that it is able to do so, assign to the TAC, WorkSafe or third party nominated by the TAC or WorkSafe all of Monash's rights and obligations under any agreement under which a third party provides funding or other contributions towards the conduct of that Institute Activity, including by using reasonable endeavours to obtain the consent of the third party to the assignment if required;
- (e) in respect of any ongoing Institute Activities to be completed by Monash:
 - (i) Monash must use any Funding already received by Monash for that Institute Activity only for the purposes of conducting that Institute Activity; and
 - (ii) Monash must continue to comply with clause 6 in relation to any TAC Funding or WorkSafe Funding expended by Monash after the end of the Term;
- (f) existing licences of Intellectual Property Rights granted under this agreement will continue, and the arrangements set out in Schedule 6 will continue to apply to existing Joint IP, except to the extent otherwise agreed;
- (g) Monash must not use the Institute Trade Marks or the branding of the Institute after the end of the Term, or any trade marks or branding substantially identical with, or deceptively similar to, the Institute Trade Marks and the Institute branding, except to the extent agreed by the TAC and WorkSafe or allowed under paragraph (h);
- (h) if Monash continues to operate the Institute pursuant to clause 31.1(d)(ii), then Monash may require the TAC and WorkSafe to assign the Institute Trade Marks to Monash;
- (i) if the TAC and/or WorkSafe continue to operate the Institute pursuant to clause 31.1(d)(i), Monash must not represent that either or both of the TAC and WorkSafe have any

involvement in any ongoing Institute Activities which are to be completed by Monash, after the end of the Term;

- (j) if Monash continues to operate the Institute pursuant to clause 31.1(d)(ii) or the operations of the Institute are wound up pursuant to clause 31.1(d)(iii), Monash must not represent that either or both of the TAC and WorkSafe have any involvement in any Institute Activities, other than any ongoing Institute Activities which are to be completed by the TAC or WorkSafe, after the end of the Term;
- (k) the parties will agree on how to deal with any Funding Provider Assets, including by ensuring that they are made available to any party who requires them to complete any ongoing Institute Activities; and
- (l) Monash must ensure that any Party Assets owned by Monash which are required for the conduct of an ongoing Institute Activity to be completed by the TAC or WorkSafe are made available to the TAC or WorkSafe (as applicable) as required for the purpose of conducting the Institute Activity.

31.3 TAC Funding or WorkSafe Funding unused at end of Term

All TAC Funding or WorkSafe Funding received by Monash for any purpose but not yet used by Monash before the termination or expiry of this agreement and not to be used by Monash under clause 31.2(e) must be returned by Monash to the TAC or WorkSafe (as applicable) within 30 Business Days of the termination or expiry.

31.4 Accrued rights and remedies

Termination of this agreement under clause 30 does not affect any accrued rights or remedies of any of the parties.

Part G – Risk

32. Warranties

32.1 Mutual warranties

Each party warrants to each other party that:

- (a) it has the power to enter into this agreement;
- (b) to its actual knowledge or belief, it is the owner of, or is otherwise entitled to provide the Background IP that it makes available for each Project;
- (c) except to the extent:
 - (i) disclosed in the Approved Project Plan for a Project; or
 - (ii) in the case of any Background IP not specified in the Approved Project Plan, notified in writing to the other party at the time of offering the Background IP, it has not entered into any agreement in relation to, or otherwise dealt with, that Background IP in a manner that is inconsistent with the rights granted to the other parties as described in the Approved Project Plan or this agreement;
- (d) it will not enter any agreement in relation to, or otherwise deal with its Background IP in a manner that restricts the exercise of the rights granted to each other party under the Approved Project Plan or this agreement; and
- (e) to its actual knowledge or belief, it is the owner of, or is otherwise entitled to license its interest in the Joint IP to the other parties in accordance with Schedule 6.

32.2 Monash warranties

Monash warrants to each of the TAC and WorkSafe that:

- (a) it has the power to delegate power to the Board and to make that delegation irrevocable for the Term in accordance with clause 16.4; and
- (b) it will not enter any agreement in relation to, or otherwise deal with the Monash IP in a manner that restricts the exercise of the rights granted to the TAC and WorkSafe under this agreement.

33. Exclusion and limitations of liability

33.1 No exclusion or limitation

This clause 33 does not exclude, restrict, modify or limit the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:

- (a) contravene that statute;
- (b) cause any part of this clause 33 to be void,

(Non-excludable Obligation).

33.2 No implied conditions and warranties

Except in relation to Non-excludable Obligations, each party excludes all implied conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute.

33.3 No liability for consequential Loss

A party will not be liable to any other party for any Claim under or in connection with this agreement or the relationship established by it, that relates to:

- (a) any Loss of profits, Loss of income, Loss of business opportunity or goodwill; or
- (b) any indirect, special or consequential Loss,

of any party arising out of one or more breaches by another party of this agreement, or arising in connection with the relationship established by it.

34. Indemnity

34.1 Indemnity

- (a) Each party (**Indemnifying Party**) indemnifies and agrees to keep indemnified each other party (**Indemnified Party**) against all Losses incurred by, and any Claims brought by a third party (including any current or former Personnel or any government agency) against, the Indemnified Party (or any of its officers, employees or agents) arising out of or in connection with this agreement or the relationship established by it, including:

- (i) personal injury to, or the death of, any person; and
- (ii) loss of, or damage to, any property

to the extent that the Loss or Claim was caused by:

- (iii) breach of any applicable law;
- (iv) breach of this agreement; or
- (v) any fraudulent, unlawful, wilfully wrongful or negligent act or omission

by the Indemnifying Party or any of its Personnel, except to the extent that the Loss or Claim was directly caused by the negligence of or breach of this agreement by the Indemnified Party.

- (b) Notwithstanding this clause 34.1, the Indemnifying Party will remain liable to perform all of its obligations under this agreement.

34.2 Indemnity continuing obligation

The indemnity in clause 34.1 is a continuing obligation separate and independent from the other obligations of the Indemnifying Party, and does not limit any other right of the Indemnified Party or require the Indemnified Party to incur a cost or expense or make any payment before enforcing the right of indemnity.

35. Insurance

35.1 Monash's insurance cover

Monash must:

- (a) effect and maintain at its own cost and expense and on terms reasonably acceptable to the TAC and WorkSafe:
 - (i) public liability insurance with cover of at least \$20 million per event;
 - (ii) professional indemnity insurance with cover of at least \$20 million for any one claim;
 - (iii) director's and officer's liability insurance to cover liabilities incurred by its representatives on the Board and any independent members of the Board; and
 - (iv) any other insurance that the TAC and WorkSafe reasonably requests to cover liabilities that may be incurred in relation to this agreement;
- (b) ensure that the interest of each of TAC and WorkSafe in relation to the Institute is noted on the insurance policy in clause 35.1(a)(i); and
- (c) comply with all of its legal obligations in relation to worker's compensation insurance in relation to its Personnel.

35.2 TAC's and WorkSafe's insurance cover

Each of the TAC and WorkSafe must maintain at its own cost and expense and on terms reasonably acceptable to Monash director's and officer's liability insurance to cover liabilities incurred by its representatives on the Board.

35.3 Conditions applying to insurance

Each party must:

- (a) produce to another party on the reasonable demand of that other party satisfactory evidence of the currency of any insurance policies required to be obtained under clause 35.1 or 35.2 (as applicable); and
- (b) maintain the insurance policies referred to in clause 35.1 or 35.2 (as applicable) from 1 July 2013 until:
 - (i) in the case of the insurance policy referred to in clause 35.10(ii), seven years after the termination or expiry of this agreement; and
 - (ii) in the case of the remaining insurance policies, the termination or expiry of this agreement.

Part H – General

36. Branding and publicity

36.1 Branding of Institute

- (a) The Institute's branding must contain equal acknowledgment of each of Monash, the TAC and WorkSafe as the entities supporting the Institute. No party may, in conducting its part of the Institute Activities or its own business, represent that the Institute is an entity owned by that party.
- (b) All Institute Trade Marks agreed between the parties must reflect the status of the Institute as a joint TAC, WorkSafe and Monash initiative.
- (c) Monash is responsible for the branding of the Institute and the marketing and communications activities of the Institute in accordance with this agreement, including clauses 2.2 and 36.1(a) and (b) and the remainder of this clause 36.

36.2 Ownership and use of Institute Trade Marks

- (a) Monash acknowledges and agrees that the TAC and WorkSafe are the sole owners of the Institute Trade Marks.
- (b) Each of the TAC and WorkSafe grant to Monash a non-exclusive, non-transferable licence for the Term to use the Institute Trade Marks in Australia for the sole purpose of conducting the Institute Activities, subject to compliance with the conditions in clause 36.2(c). This licence is limited to the rights expressly granted in this clause 36.2 and does not extend to the grant of any implied rights (including the implied rights available under section 26(1) of the *Trade Marks Act 1995* (Cth)).
- (c) Monash must:
 - (i) observe all reasonable directions notified to it by the TAC or WorkSafe in relation to use of the Institute Trade Marks;
 - (ii) use its best endeavours to preserve the value and validity of the Institute Trade Marks and, in particular, endeavour to create, promote and retain the goodwill in its business;
 - (iii) not use the Institute Trade Marks in any way which is unlawful or is likely to harm or prejudice the rights of the TAC or WorkSafe in the Institute Trade Marks;
 - (iv) ensure that no Trade Mark Materials on which the Institute Trade Marks appear contravene the *Competition and Consumer Act 2010* (Cth) or similar legislation in Australia; and
 - (v) not apply to register anywhere in Australia any trade mark, or apply to register or use any business name, company name or internet domain name that comprises or contains the Institute Trade Marks (or any of them) or any words or images that are substantially identical with, or deceptively similar to, the Institute Trade Marks (or any of them), without the prior written consent of the TAC or WorkSafe.

36.3 Acknowledgement of party support and use of Party Trade Marks

- (a) Each party acknowledges and agrees that:
 - (i) the TAC is the sole owner of the TAC Trade Marks;
 - (ii) WorkSafe is the sole owner of the WorkSafe Trade Marks; and
 - (iii) Monash is the sole owner of the Monash Trade Marks.

- (b) Subject to clause 36.3(c), each party agrees that:
 - (i) the support of each of the TAC, WorkSafe and Monash must be prominently acknowledged in all marketing and communications relating to the Institute Activities; and
 - (ii) the Party Trade Marks may be used on all communications relating to the Institute and the Institute Activities, including in any publications, presentations, public events and similar publicity.
- (c) Subject to clause 36.3(d), a Party Trade Mark may not be used in connection with the Institute Activities unless samples of all relevant Trade Mark Materials and details of when and where those Trade Mark Materials will be used have been submitted to the TAC, WorkSafe or Monash (as applicable), and the TAC, WorkSafe or Monash (as applicable) has not objected to the use of that Party Trade Mark on those Trade Mark Materials.
- (d) The following uses of Party Trade Marks do not require submission to the TAC, WorkSafe or Monash (as applicable) under clause 36.3(c):
 - (i) use of agreed Party Trade Marks on media releases, publicity materials, websites, correspondence and stationery of the Institute; and
 - (ii) use of a Party Trade Mark only on materials in connection with a scientific conference relevant to the Institute Activities or on a scientific presentation or article relating to the Institute Activities.
- (e) Where use of a Party Trade Mark is permitted under clause 36.3(c) or (d), the TAC, WorkSafe or Monash (as applicable) is deemed to have granted to the other parties a non-exclusive, non-transferable licence for the Term to use the Party Trade Mark in Australia on those Trade Mark Materials, subject to compliance with the conditions in clause 36.4. This licence is limited to the rights expressly granted in this clause 36.3 and does not extend to the grant of any implied rights (including the implied rights available under section 26(1) of the *Trade Marks Act 1995* (Cth)).

36.4 Conditions of use of the Party Trade Marks

Each party must:

- (a) observe all reasonable directions notified to it by the TAC in relation to use of the TAC Trade Marks, by WorkSafe in relation to use of the WorkSafe Trade Marks and by Monash in relation to use of the Monash Trade Marks;
- (b) use its best endeavours to preserve the value and validity of any other party's Party Trade Marks;
- (c) not use any other party's Party Trade Marks in any way which is unlawful or is likely to harm or prejudice the rights of the TAC, WorkSafe or Monash (as applicable) in the Party Trade Marks;
- (d) ensure that no Trade Mark Materials contravene the *Competition and Consumer Act 2010* (Cth) or similar legislation in Australia; and
- (e) not apply to register anywhere in Australia any trade mark, or apply to register or use any business name, company name or internet domain name that comprises or contains any other party's Party Trade Marks (or any of them) or any words or images that are substantially identical with, or deceptively similar to, any other party's Party Trade Marks (or any of them), without the prior written consent of the TAC, WorkSafe or Monash (as applicable).

36.5 Publicity and public announcements

- (a) Subject to paragraphs (b), (c) and (d) and clause 26, no party may make any public announcements or publish any statements about the Institute Activities or this agreement without the prior written consent of the other parties.
- (b) The CEO, and in his or her absence the chair of the Board, shall have the authority to make press releases and other public statements relating to the day-to-day operations of the Institute.
- (c) Each of the TAC and WorkSafe may make any public announcements or publish any statements about the Institute Activities or this agreement if the announcement or publication is required by law, including the TA Act or AC Act.
- (d) Monash agrees that each of the TAC and WorkSafe, and each of the TAC and WorkSafe agree that Monash, may publicise the following information (including by posting the information on any website of the TAC, WorkSafe or Monash (as applicable)):
 - (i) the funding of the Institute Activities by the TAC and WorkSafe or by Monash (as applicable);
 - (ii) subject to clause 26, a synopsis of any Institute Activities undertaken and the outcomes of such Institute Activities; and
 - (iii) any other relevant information relating to the Institute Activities as agreed between the parties.

36.6 Reputation

Monash must not do or omit to do anything which may:

- (a) damage, bring into disrepute or ridicule the name, messages or reputation of the TAC or WorkSafe; or
- (b) attract public or media attention which may be prejudicial or otherwise detrimental to the name, messages or reputation of the TAC or WorkSafe.

37. Privacy

- (a) Each party agrees that it will not collect, use, disclose, store, transfer or otherwise handle Personal Information or Health Information that it collects, receives from any other party or which is accessed by it in connection with this agreement (**Contract Personal Information**) except to the extent that is reasonably necessary for the performance of its obligations under this agreement, and only in accordance with any Privacy Laws that apply to that party.
- (b) Each party must:
 - (i) not to do any act or engage in any practice in connection with the Contract Personal Information that would breach a Privacy Law or which would cause any other party to breach a Privacy Law;
 - (ii) immediately notify the other parties if it becomes aware of a breach or possible breach of any Privacy Law in connection with the Contract Personal Information;
 - (iii) ensure that any of its Personnel and sub-contractors who access or deal with Contract Personal Information are made aware of and comply with the obligations under this clause 37;

- (iv) not transfer or disclose the Contract Personal Information outside of Australia, or allow any person who is located outside of Australia to access the Contract Personal Information, without the prior written consent of the other parties; and
- (v) take all necessary steps to ensure that the Contract Personal Information held by it in connection with this agreement is protected against misuse and loss, and from unauthorised access, modification and disclosure, and that only authorised Personnel of a party with a legitimate role in fulfilling that party's obligations under this agreement have access to the Contract Personal Information.

38. Dispute resolution

38.1 No arbitration or court proceedings

Except for any disputes required to be referred to an Independent Expert under item 7 of Schedule 6, if a dispute arises in relation to this agreement (**Dispute**), a party must comply with this clause 38 before starting court proceedings (except proceedings for interlocutory relief or to protect Intellectual Property Rights). The parties agree that a Dispute will not be submitted to arbitration in any circumstances.

38.2 Notice

A party claiming a Dispute has arisen must promptly give the other parties to the Dispute notice setting out details of the Dispute.

38.3 Parties to resolve Dispute

The parties to the Dispute must attempt to resolve all Disputes by escalation through the following process:

- (a) within 10 Business Days of initial notice of the Dispute being given under clause 38.2, referral to an officer nominated by the TAC Chief Executive Officer in the case of the TAC, an officer nominated by the WorkSafe Chief Executive in the case of WorkSafe and an officer nominated by the Deputy Vice Chancellor of Research in the case of Monash for resolution;
- (b) if the Dispute remains unresolved 20 Business Days after the initial notice being given under clause 38.2, referral to the TAC Chief Executive Officer in the case of the TAC, the WorkSafe Chief Executive in the case of WorkSafe and the Deputy Vice Chancellor of Research in the case of Monash (or their nominees) for resolution.

The parties to the Dispute must use their reasonable efforts to resolve the Dispute through the escalation process described in this clause 38.3, including arranging meetings to discuss the Dispute.

38.4 Referral to mediation

If the Dispute remains unresolved 40 Business Days after initial notice being given under clause 38.2, the parties to the Dispute must refer the Dispute to a mediator if one of them requests.

38.5 Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 38.4, the chairman of the LEADR Association of Dispute Resolvers or the chairman's nominee will appoint a mediator.

38.6 Role of mediator

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing.

38.7 Confidentiality

Any information or documents disclosed by a party under this clause 38:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

38.8 Costs

Each party must pay its own costs of complying with this clause 38. The parties to the Dispute must equally pay the costs of any mediator.

38.9 Termination of process

A party may terminate the dispute resolution process by giving notice to each other party to the Dispute after it has complied with clauses 38.1 to 38.4. Clauses 38.7 and 38.8 survive termination of the dispute resolution process.

38.10 Breach of this clause

If a party breaches clauses 38.1 to 38.9, any other party to the Dispute does not have to comply with those clauses in relation to the Dispute.

39. Goods and services tax

39.1 Interpretation

Words or expressions used in this clause 39.1 which are defined in the GST Act or, if not so defined, then which are defined in the *Competition and Consumer Act 2010* (Cth), have the same meaning in this clause.

39.2 Supplies made under this agreement

Under this agreement:

- (a) Monash is making a supply to the TAC of undertaking the Projects and conducting the Institute Activities that are consistent with the TAC Objectives and within the scope of the TAC Functions and the provision by Monash of the Monash Cash Contributions and ancillary assistance and resources pursuant to clauses 7 and 12 is incidental to this supply;
- (b) Monash is making a supply to WorkSafe of undertaking the Projects and conducting the Institute Activities that are consistent with the WorkSafe Objectives and within the scope of the WorkSafe Functions and the provision by Monash of the Monash Cash Contributions and ancillary assistance and resources pursuant to clauses 7 and 12 is incidental to this supply;
- (c) the TAC is making a supply to Monash of the TAC Funding and the provision by the TAC of ancillary assistance and resources pursuant to clause 12 is incidental to this supply; and
- (d) WorkSafe is making a supply to Monash of the WorkSafe Funding and the provision by WorkSafe of ancillary assistance and resources pursuant to clause 12 is incidental to this supply.

39.3 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this agreement, unless specifically described in this agreement as **GST inclusive**, does not include an amount on account of GST.

39.4 Gross up of consideration

Despite any other provision in this agreement, if a party (**Supplier**) makes a supply under or in connection with this agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this agreement as **GST inclusive**):

- (a) the consideration payable or to be provided for that supply under this agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply upon receipt of a tax invoice; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

39.5 Reimbursements (net down)

If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

40. Notices

40.1 Service of notices

A party giving any notice, demand, consent, approval or communication under this agreement (**Notice**) must do so in writing:

- (a) directed to the recipient's address specified in the details of this agreement, as varied by any notice; and
- (b) hand delivered or sent by prepaid post or facsimile to that address.

40.2 Time of service

A Notice given under clause 40.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting; and
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within eight Business Hours after that transmission, the recipient informs the sender that it has not received the entire notice.

41. Miscellaneous

41.1 Governing law

This agreement is governed by the laws of the state of Victoria, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the state of Victoria, Australia and courts entitled to hear appeals from those courts.

41.2 Variations

- (a) Subject to clause 41.2(b), this agreement may only be varied in writing signed by all parties.
- (b) This agreement (other than this clause 41.2) may be amended if:

- (i) a party gives not less than 20 Business Days' prior written notice to all of the other parties setting out the specific terms of the proposed amendment;
 - (ii) no party objects in writing to the change within the 20 Business Day notice period; and
 - (iii) the Board unanimously resolves that it reasonably considers that the amendment:
 - (A) is of an operational and non-material nature; and
 - (B) will not adversely affect the parties' rights.
- (c) The parties will procure that a current version of this agreement (as amended from time to time under this clause 41.2) is maintained and accessible to the parties and members of the Board.

41.3 Assignment

A party must not assign this agreement or any right under this agreement without the prior written consent of the other parties.

41.4 Entire agreement

This agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior representations and agreements in connection with that subject matter.

41.5 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.

41.6 Severability

The parties agree that:

- (a) each provision of this agreement is severable and independent;
- (b) all the provisions of this agreement are reasonable in all the circumstances; and
- (c) if all or any part of a provision is judged invalid or unenforceable in all the circumstances, that part or provision will be deemed to be severed and will not affect the validity or enforceability of the remaining provisions.

41.7 No waiver

A failure of a party at any time to require full or partial performance of any obligation under this agreement will not affect in any way the rights of that party to require that performance subsequently. Any waiver of a breach of this agreement must be in writing signed by the party granting the waiver, and will be effective only to the extent specifically set out in that waiver.

41.8 Survival of obligations

Any term by its nature intended to survive the end of this agreement, survives the end of this agreement, including clauses 15, 24, 25, 26, 27, 31, 32, 33, 34, 35, 37, 41.1, 41.4, 41.6, 41.7, 41.10 and 42, Schedule 6 and Schedule 7 and this clause 41.8.

41.9 Costs

Each party must bear its own costs of preparing and executing this agreement.

41.10 Counterparts

This agreement may be executed in any number of counterparts, including facsimile counterpart.

42. Interpretation

42.1 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) 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;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (i) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (k) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

42.2 Headings

Headings are for ease of reference only and do not affect interpretation.

Schedule 1 – Delegation of power

1. The Board has the functions and responsibilities set out in the Board Terms of Reference in Schedule 2 and the Vice-Chancellor will delegate to the Board all such functions and responsibilities.
2. In relation to Projects involving external funding (other than that referred to in item 3 below) the agreement with the third party funding provider must first be approved by the Board and then will be signed by the CEO (as an employee of Monash University) under a delegation from the Vice-Chancellor of authority to sign on behalf of Monash. This is because Monash is the legal entity authorised to enter into agreements on behalf of the Institute.
3. Where external funding bodies require Monash to be the signatory (and administering body), the funding rules of the external funding body will prevail. The Board must first have approved of the seeking of such funding and requested Monash to execute the agreement or application.

Schedule 2 – Board Terms of Reference

1. Functions and responsibilities of Board

1.1 Role of Board

The role of the Board is to act for the purposes of the Institute in accordance with these Board Terms of Reference and this agreement (including by exercising all powers that the Board is required to exercise under this agreement) and to:

- (a) oversee the conduct of the Institute Activities;
- (b) oversee the conduct of the CEO in carrying out his or her functions;
- (c) in consultation with the TAC, WorkSafe and Monash, establish the Funding Principles;
- (d) approve applications for, and agreements entered into by Monash in relation to, funding for the Institute Activities and operation of the Institute other than the Funding (including, where the power to finally approve such an application or enter into such an agreement is not delegated to the Board under clause 16.4, requesting that an appropriate Monash representative approve and submit the application or execute the agreement);
- (e) review Project Plans and approve them as appropriate in accordance with clause 20.3;
- (f) approve any contracts to be entered into between Monash and any Project Collaborators for the conduct of a Project;
- (g) receive and consider reports from each Committee on the exercise of the Committee's functions, and taking such reports into account in directing the conduct of the Institute Activities;
- (h) approve the annual report provided to the TAC and WorkSafe under clause 28.1;
- (i) approve the Strategic Plan provided to the TAC, WorkSafe and Monash under clause 9.1;
- (j) review and update the Strategic Plan as necessary and appropriate;
- (k) approve the annual research plan and annual budget provided to the TAC and WorkSafe under clause 9.2;
- (l) ensure ethical behaviour by Board members, including by keeping confidential any information provided to the Board and the content of discussions at Board meetings;
- (m) ensure that the functions of the Institute are performed effectively and efficiently and that there are sufficient resources to meet the Institute's objectives; and
- (n) ensure that the Institute is properly managed, and that appropriate delegations of the Board's powers to the CEO and Committees are in place and monitored on a regular basis.

1.2 Reporting

The Board will report to the parties:

- (a) formally, by preparing or approving annual reports in accordance with clause 28.1; and
- (b) informally, through open communication between each party and the individual that party has appointed to the Board.

2. Meetings and voting

2.1 Frequency of meetings

The Board will:

- (a) meet quarterly and more often as needed; and
- (b) have additional meetings if required for the Board to carry out its role.

2.2 Type of meetings

Meetings of the Board may be held in person or by telecommunication link.

2.3 Agenda and minutes

- (a) For each meeting of the Board:
 - (i) where possible, an agenda must be circulated in advance;
 - (ii) minutes must be kept and promptly circulated to all members of the Board; and
 - (iii) minutes of the previous meeting must be considered at each meeting and, if appropriate, approved.
- (b) At a Board meeting, the Board may only resolve matters specifically referred to in the agenda issued for the meeting, except if all members of the Board (whether or not present at the meeting) resolve otherwise.

2.4 Quorum

A quorum for meetings of the Board is three persons, comprising at least one representative of each party.

2.5 Decisions

- (a) Questions arising at a meeting of the Board are to be decided by a majority of Board members present and voting.
- (b) Each member of the Board has one vote.
- (c) The chair of the Board has a casting vote in addition to his or her deliberative vote if there is an equality of votes.

2.6 Resolutions without meeting

Resolutions of the Board may be made without a meeting if all members of the Board sign a document containing a statement that those members are in favour of a resolution on terms set out in the document. The resolution will be taken to have been passed at a duly convened meeting of the Board on the day on which the document was signed or on the day on which the last member of the Board signs the document. Two or more separate documents containing a statement in identical terms, each of which is signed by one or more members of the Board, will be taken to constitute one document.

3. Conflicts of interest

The Board must develop and put in place a conflicts of interest policy that is consistent with clause 19 of this agreement and that provides members of the Board with guidance on the identifying, disclosing and resolving conflicts of interest.

Schedule 3 – Funding and other assistance and resources

1. TAC Funding

Financial Year	TAC Funding
1 July 2013 – 30 June 2014	\$2,722,000
1 July 2014 – 30 June 2015	\$2,722,000
1 July 2015 – 30 June 2016	\$2,722,000
1 July 2016 – 30 June 2017	\$2,722,000
1 July 2017 – 30 June 2018	\$2,722,000
TOTAL - \$13,610,000	

2. WorkSafe Funding

Financial Year	WorkSafe Funding
1 July 2013 – 30 June 2014	\$2,800,000
1 July 2014 – 30 June 2015	\$2,884,000
1 July 2015 – 30 June 2016	\$2,970,520
1 July 2016 – 30 June 2017	\$3,059,636
1 July 2017 – 30 June 2018	\$3,151,425
TOTAL - \$14,865,581	

3. Monash Cash Contributions

Financial Year	Monash Cash Contribution
1 July 2013 – 30 June 2014	\$240,000
1 July 2014 – 30 June 2015	\$240,000
1 July 2015 – 30 June 2016	\$240,000
1 July 2016 – 30 June 2017	\$240,000
1 July 2017 – 30 June 2018	\$240,000
TOTAL - \$1,200,000	

Notes:

A. Funding under Original Agreement Projects and Neurotrauma Agreement

The Tables 1, 2 and 3 above relate to the Funding to be provided by the TAC and WorkSafe and Monash Cash Contributions to be provided by Monash in relation to this agreement. It is acknowledged that the

TAC and WorkSafe will also be providing additional annual funding to cover any relevant, respective and ongoing obligations remaining for Original Agreement Projects already committed and approved under and subject to the Original Agreement and/or the Neurotrauma Agreement. All expenditure on Original Agreement Projects remains subject to annual plan and budget approval processes under the Original Agreement.

B. Overhead charge on Monash employee academic salaries

In calculating the contribution made by, or amount to be paid to, Monash for Monash employed academics involved in research Projects funded under this Agreement, Monash may apply no greater than a 30% overhead charge to the salaries of those Monash academic employees where:

- (a) the overhead charge shall be applied to the pro-rata salary of the Monash employed academic determined based on their time allocated to the particular Project; and
- (b) “salary” means the base salary of the academic staff member as per the Monash approved salary scale amended from time to time plus the applicable prescribed salary on costs.

For clarity, the overhead charge does not apply to the salaries of any academic employees from institutions other than Monash.

Notwithstanding the foregoing, Monash must not apply this 30% overhead charge to:

- (c) the salaries of Institute Personnel, non-academic employees of Monash involved in the Project or other Institute in-house costs;
- (d) any expenditure or salaries (including Monash Personnel salaries) in connection with the Neurotrauma Agreement;
- (e) any expenditure or salaries that relate to any Original Agreement Project or any Project commenced during the Transition Period;
- (f) non-salary related research expenses; or
- (g) the salaries of Monash employees who are not academic staff.

4. Competitive academic partnership grants

Each of the TAC and WorkSafe will retain 10% (“**Withheld Amount**”) of their annual Funding contributions in order to contribute these funds for the purpose of obtaining competitive academic partnership grants, including NHMRC partnership grants and/or ARC Linkage grants (or any successors to such type of grants). To the extent that applications for such grants are unsuccessful, the Withheld Amount will be applied in the same way as the Funding. To the extent that such applications are successful, TAC and WorkSafe will provide the relevant amount of the Withheld Amount for the grants.

5. TAC ancillary assistance and resources

- (a) Provision of access to claims data in accordance with clause 12.4(a)(i).
- (b) Provision of assistance to extract and interpret claims data in accordance with clause 12.4(a)(ii).
- (c) Any other ancillary assistance and resources towards the Institute Activities provided by the TAC in accordance with clause 12.5.

6. WorkSafe ancillary assistance and resources

- (a) Provision of access to claims data in accordance with clause 12.4(a)(i).

- (b) Provision of assistance to extract and interpret claims data in accordance with clause 12.4(a)(ii).
- (c) Any other ancillary assistance and resources towards the Institute Activities provided by WorkSafe in accordance with clause 12.5.

7. Monash ancillary assistance and resources

- (a) Provision of appropriate computing facilities for the Institute staff..
- (b) Provision of appropriate office space for Institute staff in close proximity to the CBD and the Monash School of Public Health and Preventive Medicine, which will initially be located at 499 St Kilda Road, Melbourne (**Institute Premises**) with a node office on the Clayton campus.
- (c) Refurbishment and fitout of the Institute Premises.
- (d) The following support, services, facilities and infrastructure, each as reasonably required to conduct the Institute Activities in accordance with this agreement:
 - (i) library;
 - (ii) commercialisation resources equivalent to the resources given to departments and schools within Monash;
 - (iii) grants management equivalent to the resources given to departments and schools within Monash, as required for all additional funding applied for or received by Monash pursuant to clause 8.1;
 - (iv) assistance with personnel recruitment, including advertising;
 - (v) access to Monash's ethics committee;
 - (vi) separate standalone IT system, including hardware and software components;
 - (vii) human resources management;
 - (viii) accounting and financial services;
 - (ix) legal services; and
 - (x) marketing and communications.
- (e) Payment of all operational costs associated with the Institute including:
 - (i) infrastructure related expenses;
 - (ii) financial and administrative expenses;
 - (iii) student tuition and supervision;
 - (iv) operating expenses;
 - (v) depreciation; and
 - (vi) advertising expenses.
- (f) Any other ancillary assistance and resources towards the Institute Activities provided by Monash in accordance with clause 12.5.

Schedule 4 – Project Plan Design Principles

The Project Plan should include sections addressing the following:

- Project objectives
- Project background and rationale
- Project methodology
- Major project milestones and deliverables
- Proposed communication and translation activities for the project (translation plan)
- Anticipated impact of the project on TAC/WorkSafe
- Anticipated impact of the project beyond TAC/WorkSafe
- Funding source/s for the project
- In-kind or non-financial support required to undertake the project
- Project payment schedule
- Details of project investigators
- Details of WorkSafe and/or TAC staff involved in the project
- Details of whether TAC/WorkSafe clients will need to be recruited for the project
- Details of project collaborators
- Project commencement date and anticipated completion date
- Description of Background IP
- Anticipated Project IP
- Itemised project budget

Schedule 5 – Annual reports

Each annual report must set out:

- (a) the status of the Institute Activities being conducted by the Institute;
- (b) the outcomes of the Institute Activities completed by the Institute, including a comparison of what was achieved against the Approved Annual Research Plan;
- (c) a comparison of the financial performance of the Institute against the Approved Annual Budget, details of the return on investment achieved and the results of any partner satisfaction surveys conducted;
- (d) the contributions towards the Institute made by Monash, including the ancillary assistance and resources provided pursuant to clause 12;
- (e) the contributions towards the Institute made by the TAC, WorkSafe and any third parties, including the assistance and resources provided by the TAC and WorkSafe pursuant to clause 12;
- (f) the amount of the TAC Funding and WorkSafe Funding received by Monash;
- (g) the amount of the Monash Cash Contributions provided by Monash for the Institute Activities;
- (h) any funding for the Institute received by Monash in addition to the Funding and the Monash Cash Contributions, including funding received from a third party funding agency in accordance with clause 8.1;
- (i) the Institute Activities and expenses to which each of the TAC Funding, the WorkSafe Funding and the additional funding were applied;
- (j) all amounts received into and expended from, and a balance for, the account maintained by Monash in accordance with clause 11; and
- (k) a complete and accurate statement of the Institute's assets and liabilities as at the end of that Financial Year.

Schedule 6 – Joint IP

1. Application of Schedule 6 to the TAC and WorkSafe

- (a) If any Joint IP was developed in the course of conducting a Project to which no TAC Funding was applied, this Schedule 6 (other than item 3 of this Schedule 6) does not apply to the TAC in respect of that Joint IP and this Schedule 6 (other than item 3) applies as though the parties are Monash and WorkSafe only.
- (b) If any Joint IP was developed in the course of conducting a Project to which no WorkSafe Funding was applied, this Schedule 6 (other than item 3 of this Schedule 6) does not apply to WorkSafe in respect of that Joint IP and this Schedule 6 (other than item 3) applies as though the parties are Monash and the TAC only.

2. Dealing with Joint IP

2.1 Notification of Joint IP

Each party:

- (a) must provide to the Project Leader information in its possession regarding Joint IP that has been developed or is under development; and
- (b) must use its reasonable efforts to ensure that it and its employees, agents, contractors, or other persons participating in the Project (including any Students):
 - (i) identify Joint IP generated or developed by them;
 - (ii) promptly communicate details of the Joint IP to the Project Leader; and
 - (iii) do not prejudice protection of Joint IP.

2.2 Assignment of Joint IP

No party may assign, transfer, dispose of, encumber or otherwise deal with or enter any agreement in relation to any interest that such party might hold in Joint IP, except with the prior written consent of the other parties.

3. Licences of Joint IP

Subject to clause 25, each party grants to each other party a non-exclusive, non-transferable, royalty-free, perpetual, irrevocable licence to exercise the first-mentioned party's right, title and interest in the Joint IP for the purpose of conducting the Projects and for the other party's internal research, development and education purposes and, in the case of the licences granted to Monash, a right to grant sub-licences to any Project Collaborators to exercise the first-mentioned party's right, title and interest in the Joint IP for the purpose of conducting the Projects.

4. Protection of Joint IP

4.1 Decisions about protection

The parties will determine what is, if any, the most appropriate method of protection for any Joint IP.

4.2 Agreement to obtain protection

If the parties agree to obtain patent or other protection for any Joint IP, then:

- (a) the parties will be named as joint applicants on any application for a grant, registration, renewal or extension of any protection; and
- (b) the parties will share equally the costs of obtaining and maintaining that protection.

4.3 Agreement to delay application for protection

If the parties agree that protection should not be sought for the reason that it would be advantageous to delay filing of an application in respect of that Joint IP until further data is obtained, then the parties agree to:

- (a) keep the Joint IP confidential for an agreed delay period; and
- (b) reassess whether an application should be filed at the end of the agreed delay period, at which time this item 4 will again apply to a party's decision to file, to not file or to delay filing.

4.4 Agreement to not apply for protection

If the parties agree that protection should not be sought in respect of Joint IP for the reason that the balance of costs and benefits does not justify the filing, the parties will not apply for protection but will keep the Joint IP confidential in accordance with the confidentiality provisions set out in clause 25, unless the parties agree in writing that the Joint IP need not be kept confidential.

4.5 One party wishes to delay application for protection

If one party wishes to apply for protection but another party (the **Objector**) does not because it is of the reasonable view that, having regard to the likely scope of valid protection obtainable in respect of the Joint IP, it would be inappropriate to proceed with filing until further data was obtained in respect of the Joint IP, then the Objector may require the proposed application for protection in respect of the Joint IP to be delayed for a period of three months (**Delay Period**) and the parties will:

- (a) keep the Joint IP confidential during the Delay Period; and
- (b) reassess whether an application for protection should be filed at the end of the Delay Period, at which time this item 4 will again apply to the decision to file, to not file or to delay filing, subject to a maximum number of three Delay Periods under this item 4.5.

4.6 One party wishes to apply for protection

- (a) If one or more parties wish to apply for protection in respect of Joint IP and another party or parties does not wish to do so, then, subject to paragraph (b), the first-mentioned party or parties may file and prosecute the application at its (or their) own cost.
- (b) If one or more parties wish to file an application for protection in respect of Joint IP and another party or parties does not wish to do so on the grounds that it does not wish certain aspects of its (or their) Confidential Information (other than the Joint IP) to be disclosed in an application, then the first-mentioned party or parties must not file an application that includes the Confidential Information in question.

5. Infringement

5.1 Notification of infringement or claim

Each party must notify the other parties in writing within three Business Days if it becomes aware of:

- (a) any actual, suspected, anticipated or threatened infringement by a third party of any of a party's rights in relation to the Joint IP;
- (b) any claim by a third party that the carrying out of the Project or the dissemination, Commercialisation or other use of the Joint IP by a party infringes the Intellectual Property Rights or other legal rights of the third party; or
- (c) any actual, suspected, anticipated or threatened infringement by a third party of any of a party's Background IP.

5.2 Enforcement of Intellectual Property Rights

- (a) Upon notification of any actual, suspected, anticipated or threatened infringement by a third party under item 5.1(a) or 5.1(c), the parties will confer as to what steps, if any, are to be taken against the third party and must use reasonable efforts to take any steps against the third party agreed between them.
- (b) If one or more parties decide not to commence legal action but another party or parties wishes to do so, then the party or parties wishing to do so (**Enforcing Party**) may do so (if legally entitled) at its own expense and in its own name.
- (c) At the expense of the Enforcing Party, the other parties must provide all reasonable assistance to the Enforcing Party in relation to the legal action, including the giving of evidence and production of documents.
- (d) The Enforcing Party is not entitled to take legal action in the name of another party without the consent of that other party which may be withheld in that other party's absolute discretion.
- (e) The Enforcing Party is not entitled to make any admissions or agree to any settlement without the consent of each other party which must not be unreasonably withheld. It will be unreasonable for a party to withhold consent if the proposed admission or settlement would not cause material detriment to that other party's own legal or commercial position.
- (f) The Enforcing Party will be entitled to all damages, settlement proceeds and other compensation recovered from the third party.
- (g) The Enforcing Party indemnifies each other party against any claim, loss, damage or expense (net of any GST input tax credits to which the other party is entitled) which that other party pays, suffers, incurs or is liable for (in the case of legal costs, limited to party-party costs) arising from the legal action commenced by the Enforcing Party.

5.3 Defence of infringement claims

- (a) Upon notification of any claim under item 5.1(b), the parties will confer as to what steps, if any, are to be taken to defend the claim and must use reasonable efforts to take any steps to defend the claim agreed between them.
- (b) If one or more parties decide not to defend the claim but another party or parties wishes to do so, then the party or parties wishing to do so (**Defending Party**) may do so (if legally entitled) at its own expense and in its own name.

- (c) At the expense of the Defending Party, the other parties must provide all reasonable assistance to the Defending Party in relation to the defence, including the giving of evidence and production of documents.
- (d) The Defending Party is not entitled to take legal action in the name of any other party without that other party's consent which may be withheld in its absolute discretion.
- (e) The Defending Party is not entitled to make any admissions or agree to any settlement without the consent of each other party which must not be unreasonably withheld. It will be unreasonable for a party to withhold consent if the proposed admission or settlement would not cause material detriment to that party's legal or commercial position.
- (f) Unless agreed otherwise by another party in giving consent under item 5.3(e), the Defending Party and not that other party will be liable for any settlement it agrees to pay to the third party.
- (g) The Defending Party indemnifies each other party against any claim, loss, damage or expense (net of any GST input tax credits to which that other party is entitled) which that other party pays, suffers, incurs or is liable for (in the case of legal costs, limited to party-party costs) arising from the defence by the Defending Party, not including any damages or other amount awarded by a court against the other party in favour of the third party.

6. Commercialisation of Joint IP

6.1 Acknowledgment

The parties' intention is not to develop Joint IP for Commercialisation; however, if any Joint IP is appropriate for Commercialisation, one or more parties may Commercialise the Joint IP in accordance with this item 6.

6.2 Appointment of Commercialisation Party

If one or more of the parties considers that any of the Joint IP should be Commercialised, the parties must agree on which party will be nominated to Commercialise that Joint IP (**Commercialisation Party**). A party must not unreasonably withhold its consent to Commercialisation of the Joint IP.

6.3 Right to Commercialise

- (a) The Commercialisation Party has the exclusive right to Commercialise the Joint IP at its discretion (including a right to sublicense), provided that it complies with all obligations under this agreement and the applicable Approved Project Plan regarding Commercialisation.
- (b) Each party acknowledges and agrees that the Commercialisation Party exercises its rights to Commercialise the Joint IP at its own risk.

6.4 Commercialisation revenue

The parties will enter into a separate agreement setting out the share of revenue from Commercialisation of Joint IP received by the Commercialisation Party, if any, that the Commercialisation Party must pay to the other parties. If the parties do not agree on the percentage for distribution of Net Commercialisation Revenue, an independent valuer will be engaged to decide the percentage in accordance with item 7.

7. Independent Expert

7.1 Decision by Independent Expert

If the parties are unable to agree under item 6.4, any party may refer the outstanding issue to a person experienced in the valuation of IP rights agreed by the parties to the dispute or, if no person is agreed, to a person appointed by the President or acting President of Institute of Chartered Accountants in Australia (**Independent Expert**). The Independent Expert must, after consideration of all relevant information, determine the outstanding issues. The decision of the Independent Expert will be final and binding upon the parties unless there is a manifest error or an irrelevant consideration taken into account by the Independent Expert in the course of his or her determination.

7.2 Provision of information to the Independent Expert

If requested by the Independent Expert, the parties must provide such information as the Independent Expert may reasonably require to enable the Independent Expert to make the determination provided that:

- (a) the information requested by the Independent Expert can reasonably be considered relevant to the matter being determined; and
- (b) the parties agree to treat such information as confidential and use such information only for the purpose of resolving the dispute.

If any party fails to provide information reasonably requested by the Independent Expert within the reasonable period specified by the Independent Expert and the Independent Expert considers that without such information he or she cannot make a final determination, the Independent Expert may determine the issue in the way proposed by the parties that have not failed to provide the information.

7.3 Costs of the Independent Expert

The parties must bear the costs of the Independent Expert equally.

Schedule 7 – Defined terms

In this agreement:

AC Act means the *Accident Compensation Act 1985* (Vic).

Approved Annual Budget means an annual budget submitted by the Board and approved by the TAC, WorkSafe and Monash under clause 9.2.

Approved Annual Research Plan means an annual research plan submitted by the Board and approved by the TAC, WorkSafe and Monash under clause 9.2.

Approved Project Plan means a Project Plan approved by the Board in accordance with clause 20.3.

Approved Strategic Plan means the five year strategic plan submitted by the Board and approved by the TAC, WorkSafe and Monash under clause 9.1, as amended in accordance with clause 9.1(f).

Asset means an item of real or personal property, but does not include Intellectual Property Rights or any assets made available to a Project as a contribution of resources.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as amended or replaced from time to time.

Background IP means:

- (a) any Intellectual Property Rights created or otherwise acquired or licensed by the TAC or WorkSafe independently of this agreement and which are made available to Monash for the purposes of conducting a Project;
- (b) any Intellectual Property Rights created or otherwise acquired or licensed by Monash independently of this agreement and which are used by Monash for the purposes of conducting a Project; and
- (c) any Intellectual Property Rights created or otherwise acquired or licensed by a Project Collaborator independently of the Project Collaborator's involvement in a Project and which are made available or used by the Project Collaborator for the purposes of conducting a Project.

Board means the board of management of the Institute established under clause 16.1.

Board Terms of Reference means the terms of reference for the Board set out in Schedule 2.

Business Day means:

- (a) for receiving a notice under clause 40, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in Melbourne, Australia.

Business Hours means from 9.00am to 5.00pm on a Business Day.

CEO means the chief executive officer for the Institute as appointed from time to time in accordance with clause 17.

Claim means any cause of action, allegation, claim, demand, debt, liability, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, at law (including negligence), in equity, under statute or otherwise.

Clause 8.2 Agreement means an agreement entered into by the TAC or WorkSafe and Monash pursuant to clause 8.2.

Clause 8.2 Funding means the funding provided by the TAC or WorkSafe (as the case may be) to Monash under a Clause 8.2 Agreement.

Commercialisation, in relation to Intellectual Property Rights, means exploitation and includes the manufacture, distribution, registration, marketing, branding and selling of products or services that incorporate or are based on those Intellectual Property Rights.

Commercialisation Party has the meaning given to it in item 6.2 of Schedule 6.

Committee means the Relationship Management Committee or any other committee or group established and maintained under clause 18.1 (as applicable).

Confidential Information of a party (**Disclosing Party**) means all information (whether or not in a material form):

- (a) treated by the Disclosing Party as confidential; and
- (b) disclosed by the Disclosing Party to the other party (**Receiving Party**) pursuant to this agreement, or of which the Receiving Party becomes aware pursuant to this agreement;

including:

- (c) in the case of the TAC:
 - (i) the Background IP of the TAC and the Funding Provider IP to the extent owned by the TAC in accordance with clause 24.3;
 - (ii) the terms and existence of this agreement;
 - (iii) information relating to the TAC or any employee of the TAC;
 - (iv) any data and Personal Information and Health Information about a person entitled to compensation under the TA Act; and
 - (v) information about the financial position and assets or liabilities of the TAC and any other matter that does or may affect the financial position or reputation of the TAC;
- (d) in the case of WorkSafe:
 - (i) the Background IP of WorkSafe and the Funding Provider IP to the extent owned by WorkSafe in accordance with clause 24.3;
 - (ii) the terms and existence of this agreement;
 - (iii) information relating to the WorkSafe or any employee of WorkSafe;
 - (iv) any data and Personal Information and Health Information about a person entitled to compensation under the AC Act; and
 - (v) information about the financial position and assets or liabilities of WorkSafe and any other matter that does or may affect the financial position or reputation of WorkSafe;
- (e) in the case of Monash, the Background IP of Monash and Monash IP; and
- (f) in the case of each of the parties, the Joint IP, unless the parties agree in writing not to treat the Joint IP as confidential,

but does not include information that is public knowledge (otherwise than as a result of a breach of confidentiality by the Receiving Party or any of its permitted discloses).

Conflict of Interest, in relation to a party, includes any perceived or actual conflict, whether actual or potential, between:

- (a) the duties of the party or any of the party's Personnel under this agreement; and
- (b) any:
 - (i) duties of the party or any of the party's Personnel to any third party; or
 - (ii) any personal, business, financial or other interest that the party or any of the party's Personnel may have in or in relation to any of the Institute Activities.

Contract Personal Information has the meaning given to it in clause 37(a).

Direct Costs in relation to the conduct of Institute Activities include remuneration, salaries and related on-costs and equipment and consumables but exclude:

- (a) overheads and other costs not directly connected with the conduct of Projects; and
- (b) the costs of or in connection with anything that Monash is required to provide as ancillary assistance and resources under clause 12.1.

End Date means 30 June 2018.

Externally Funded IP has the meaning given to it in clause 24.3(a)(ii).

Financial Year means a period starting on 1 July and ending on 30 June of the following calendar year.

Funding means the TAC Funding, the WorkSafe Funding or both of them, as applicable.

Funding Principles has the meaning given to it in clause 6.4(b).

Funding Provider Asset has the meaning given to it in clause 13.1(a), and includes any "Funding Provider Asset" under the Original Agreement.

Funding Provider IP has the meaning given to it in clause 24.3(a)(i).

Funding Provider Project means a Project that is designated as a 'Funding Provider Project' in the Approved Project Plan for that Project.

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

Health Information has the same meaning as in the *Health Records Act 2001* (Vic).

Independent Expert has the meaning given to it in item 7 of Schedule 6.

Insolvency Event, in respect of a party, means:

- (a) that party ceases to be able to pay its debts as they become due;
- (b) any step is taken by a mortgagee to take possession or dispose of the whole or part of that party's assets, operations or business;
- (c) any step is taken to enter into any arrangement between that party and its creditors;
- (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person of the whole or part of that party's assets, operations or business;

- (e) a petition is presented against that party (that is not discharged or withdrawn within 10 Business Days of its presentation), an order made, a resolution passed or a meeting summoned or convened to consider a resolution for the winding up of that party; or
- (f) having regard to the varying corporate and legislative structures of the parties, any event analogous to any of the events set out in paragraphs (a) to (e) occurs.

Institute means the research institute to be operated by Monash in accordance with this agreement.

Institute Activities means the activities conducted or to be conducted by or on behalf of the Institute to further the Institute Objective, including:

- (a) research activities directed towards the reduction of injury, illness and disability in the workforce and amongst transport accident victims in Victoria, including the Projects;
- (b) knowledge transfer and exchange activities with relevant stakeholders in Victoria, including the TAC, WorkSafe, WorkSafe agents, employers, healthcare providers, unions and other key stakeholder groups; and
- (c) maintenance of a close affiliation with appropriate faculties, research organisations and health care professionals throughout Victoria for the purpose of providing leadership in the health, compensation and injury prevention communities and to facilitate the carrying out of knowledge transfer and exchange activities.

Institute IP means Intellectual Property Rights developed in the course of carrying out any of the Institute Activities, and includes the Project IP but excludes any Institute Trade Marks.

Institute Objective means to act as a centre of excellence to facilitate research and best practice in the areas of injury prevention, rehabilitation and compensation practice and to improve outcomes in those areas.

Institute Premises has the meaning given to it in item 7(b) of Schedule 3.

Institute Trade Marks means the trade marks agreed between the TAC, WorkSafe and Monash as trade marks to be used in connection with the Institute Activities.

Intellectual Property Rights means all intellectual property rights (whether or not such rights are capable of registration) including copyright, trademarks and trademark applications, designs and design applications, patents and patent applications and the right to have confidential information (including trade secrets and Know How) kept confidential.

Joint IP has the meaning given to it in clause 24.3(a)(iv).

Know How means all information not in the public domain including drawings, designs, diagrams, computer programs, data, formulae, specifications, procedures for experiments and tests, results of experiments and tests, techniques and information.

Loss means any loss, damage, liability, cost or expense (including legal expenses on a full indemnity basis) of any kind suffered or incurred by a party or its officers, employees or agents or agreed to be paid by way of settlement or compromise.

Monash Cash Contributions means the cash contributions to be made by Monash towards the Institute Activities, as set out in item 3 of Schedule 3.

Monash IP has the meaning given to it in clause 24.3(a)(iii).

Monash Project means a Project that is designated as a 'Monash Project' in the Approved Project Plan for that Project.

Monash Trade Marks means the words 'Monash University' (unregistered trade mark, application pending in Australian Trade Mark Application No. 1235935) either with or without the Ancora Imparo shield logo (Australian registered Trade Mark No.1235934).

Neurotrauma Agreement means the 'Funding agreement' between the TAC and Monash dated 6 June 2012.

Non-compliant Funding has the meaning given to it in clause 6.5(a)(ii).

OH&S Act means the *Occupational Health and Safety Act 2004* (Vic).

Original Agreement means the 'Research institute collaboration agreement' between WorkSafe, the TAC and Monash dated 1 April 2009, as amended by the deed of amendment and restatement dated 6 June 2012 and extended pursuant to the letter from the Institute dated 17 June 2013.

Original Agreement Project has the meaning given to it in clause 1.3(a).

Party Asset has the meaning given to it in clause 13.2(a).

Party Trade Marks means the TAC Trade Marks, the WorkSafe Trade Marks and the Monash Trade Marks.

Personal Information has the same meaning given in the Privacy Laws, and for the purposes of this agreement, includes any "sensitive information" as defined in the Privacy Laws.

Personnel, in relation to a party, includes all directors, employees, agents, contractors, sub-contractors and other personnel of that party engaged to be involved in the Institute Activities or any part of them or the relationship between the parties under this agreement.

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth) and the Privacy Principles contained in that Act;
 - (b) the *Information Privacy Act 2000* (Vic) and the Privacy Principles contained in that Act; and
 - (c) the *Health Records Act 2001* (Vic) and the Privacy Principles contained in that Act,
- and any approved privacy code that applies to any of the parties.

Project means a research project to be conducted as part of the Institute Activities.

Project Collaborator means any third party that Monash either carries out a Project in collaboration with, or engages to carry out a Project.

Project IP means Intellectual Property Rights developed in the course of carrying out a Project.

Project Leader, in relation to a Project, means a member of staff of Monash or a Project Collaborator who is nominated to act as the project leader for that Project.

Project Plan has the meaning given to it in clause 20.2(a).

Project Plan Design Principles means the principles and guidelines setting out the minimum details in respect of a Project to be included in a Project Plan.

Publication has the meaning given to it in clause 26.2(c).

Publication Policy has the meaning given to it in clause 26.3.

Records means all original and copy records, documents, books, files, reports, accounts, plans, correspondence, letters and papers of every description and other material regardless of their form or medium and whether coming into existence before, on or after the date of this agreement, belonging or relating to or used by Monash in relation to the Institute Activities, including

certificates, minute books, statutory books and registers, books of account, tax returns, title deeds and other documents of title, and trading and financial records.

Relationship Management Committee has the meaning given to it in clause 18.1(a)(i).

Start Date means 1 January 2014.

Student means a student enrolled at a tertiary institution and engaged as either a full time or part time student.

TA Act means the *Transport Accident Act 1986* (Vic).

TAC Functions means the TAC's functions under the TA Act, including:

- (a) to provide funds for a program designed to secure the early and effective medical and vocational rehabilitation of persons injured as a result of transport accidents and who are or may become entitled to compensation under the TA Act and other rehabilitation programs for persons injured in transport accidents; and
- (b) to collect and assess data and statistics in relation to transport accidents.

TAC Funding means the funding to be provided to the Institute by the TAC under this agreement, as set out in item 1 of Schedule 3.

TAC Objectives means the TAC's objectives, including the following:

- (a) to manage the transport accident compensation scheme as effectively, efficiently and economically as possible;
- (b) to ensure that appropriate compensation is delivered in the most socially and economically appropriate manner and as expeditiously as possible; and
- (c) to ensure that the transport accident scheme emphasises accident prevention and effective rehabilitation.

TAC Trade Marks means any registered trade marks or trade mark applications owned by the TAC from time to time, but excluding the Institute Trade Marks.

Term means the term of this agreement as set out in clause 1.

Trade Mark Materials means all materials on which one or several of the Party Trade Marks or Institute Trade Marks appear or are proposed to appear, including but not limited to printed materials, notices, advertising and promotional materials and documents and materials in electronic format.

Transition Period has the meaning given to it in clause 1.3(b).

Visitor has the meaning given to it in clause 12.2(b).

WorkSafe Functions means WorkSafe's functions under the AC Act and the OH&S Act, including:

- (a) to undertake and provide funds for the undertaking of research and educational programs for the purpose of assisting the Authority in achieving its objectives or performing its functions; and
- (b) to initiate and encourage research to identify efficient and effective strategies for improving occupational health, safety and welfare, for the prevention of occupational injury and disease and for the rehabilitation of persons who suffer any such injury of disease;

- (c) to develop equitable and effective programs to identify areas of unnecessarily high cost to the workers compensation system and, as far as practicable, to reduce those costs;
- (d) to identify (and as far as practicable minimise or remove) disincentives for injured workers to return to work or for employers to employ injured workers;
- (e) to develop programs to meet the special needs of target groups, including workers who suffer severe injuries, and injured workers who are unable to return to their pre-injury occupation;
- (f) to monitor the operation of occupational health and safety, rehabilitation and workers compensation arrangements;
- (g) to collect and publish statistics, including relating to occupational health, safety and welfare; and
- (h) to conduct statistical analysis of occupational injuries and diseases.

WorkSafe Funding means the funding to be provided to the Institute by WorkSafe under this agreement, as set out in item 2 of Schedule 3.

WorkSafe Objectives means the objectives of WorkSafe, including the following:


- (a) to manage the accident compensation scheme as effectively and efficiently and economically as is possible;
- (b) to assist employers and workers in achieving healthy and safe working environments;
- (c) to promote the effective occupational rehabilitation of injured workers and their early return to work; and
- (d) to ensure that appropriate compensation is paid to injured workers in the most socially and economically appropriate manner and as expeditiously as possible.

WorkSafe Trade Marks means any registered trade marks or trade mark applications owned by WorkSafe from time to time, but excluding the Institute Trade Marks.

Signing page

EXECUTED as an agreement.

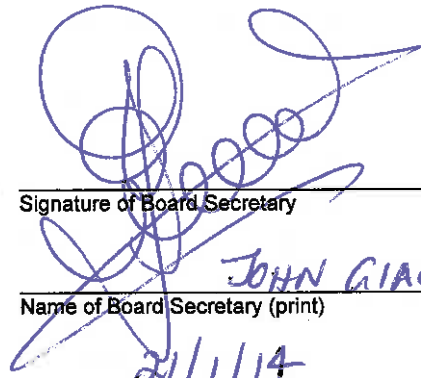
Executed by the **Transport Accident Commission** in accordance with section 10(3) of the *Transport Accident Act 1986* (Vic)



Signature of Chair
ANDREW DIER

Name of Chair (print)
21/1/14

Date

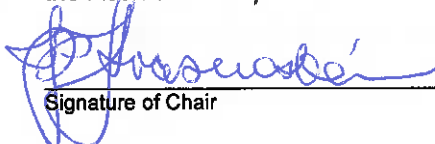


Signature of Board Secretary
JOHN GIACCHI

Name of Board Secretary (print)
21/1/14

Date


Executed by the **Victorian WorkCover Authority** in accordance with section 18 of the *Accident Compensation Act 1985* (Vic)



Signature of Chair
DAVID KRASNOSTEIN

Name of Chair (print)
20/3/14

Date




Signature of Board Secretary
ANALIA MAYLAN

Name of Board Secretary (print)
20/3/14

Date

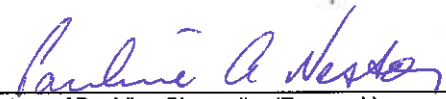
Signed for and on behalf of **Monash University** by its duly authorised officer
In the presence of:



Signature of witness
Diana Ferwerda

Name of witness (print)
9 December 2013

Date



Signature of Pro Vice-Chancellor (Research)
PAULINE A NESTOR

Name of Pro Vice-Chancellor (Research)
9/12/2013

Date