

'Visualise Your Thesis' Licence

Parties

The University of Melbourne, a body politic and corporate established pursuant to the *University of Melbourne Act 2009* (Vic) of Parkville, Victoria 3010 (**University**)

and

Your institution (Licensee)

Introduction

- A The University is the owner of a competition format and associated materials entitled 'Visualise Your Thesis'.
- B The Licensee wishes to obtain a licence to conduct a 'Visualise Your Thesis' competition.
- C The University wishes to grant a licence to the Licensee on the terms set out in this Licence.

Agreed terms

1. Power to bind your institution

- 1.1 By completing the Registration Process, you warrant that you have the power and authority to bind the Licensee to the terms of this Licence.
- 1.2 The Licensee agrees to be immediately bound by the terms of the Licence upon completion of the Registration Process.
- 1.3 The Licensee acknowledges that the University accepts the warranty given in clause 1.1 and that the University is not required to consider its veracity.

2. Defined terms & interpretation

2.1 Defined terms

In this document:

Approved Purpose means the Licensee using the Licensed Materials to conduct the Competition in accordance with the Licence terms.

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.

Business Day means a day that is not a Saturday, Sunday, or a University of Melbourne holiday as indicated on The University of Melbourne calendar (as amended from time to time).

Business Hours means between the hours of 9.00 am and 5.00 pm Melbourne (Australia) time, on a Business Day.

Commencement Date means the date on which the Licensee completes the Registration Process.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by the University as confidential; or
- (c) the Licensee knows or ought to know is confidential,

and includes without limitation the terms of this Licence and all information about the University, its employees, students, agents, research, property, policies and operations which is made available or which becomes known during the term of this Licence or as a result of completing the Registration Process by which the Licensee agrees to be bound by the terms of this Licence but does not include information which:

- (a) was in the public domain at the time of its provision by the University; or
- (b) became part of the public domain after its provision by the University or its creation by the University of the Licensee under this Licence, otherwise than through a disclosure by the Licensee or any person to whom it has disclosed Confidential Information.

Competition means the 'Visualise Your Thesis' competition as described in the Competition Kit.

Competition Kit means the Competition materials which includes Competition guidelines, Competition Terms, Poster Template, Submission Checklist, recommended judging criteria, instructions and resources.

Competition Terms means the template terms to regulate the Competition, and which is contained in the Competition Kit.

Content means any materials submitted by a Student via the Competition including but not limited to presentations, comments, recordings and images.

Intellectual Property Rights or **IPR** means all intellectual property rights, including but not limited to, the following rights:

- (a) copyright, discoveries, inventions, patents, rights in circuit layouts, designs, moral rights, trade and service marks (including goodwill in those marks), domain names and trade names;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist anywhere in the world (including Australia),

whether or not such rights are registered or capable of being registered.

Licence means this Visualise Your Thesis Licence and includes any schedules and annexures to it, or documents incorporated by reference.

Licensed Materials means the Competition format and the Competition Kit.

National Competition means the proposed national 'Visualise Your Thesis' competition to be conducted by The University of Melbourne.

Permit means any permission or document required by regulatory bodies in order for the Licensee to conduct the Competition.

Poster Template means the PowerPoint template that the Students must use to generate their Competition entry submitted to the Licensee, and which template is contained in the Competition Kit.

Registration Process means the steps that the Licensee must complete including submitting a registration form and accepting the terms of the Licence by ticking the box marked 'Acceptance of Visualise Your Thesis competition licence terms'.

Submission Checklist means the recommended checklist for Students and the Licensee to use to ensure entry compliance with the Competition requirements, and which is contained in the Competition Kit.

Students means the Licensee's currently-enrolled graduate researchers undertaking Higher Degree by Research (HDR) programs.

Taxes means any taxes, imports, deduction, notice, charges including transportation and delivery charges (with holdings and duties imposed by any government agency) including customs, and transactions duties (arising in connection with fees agreement, together with any penalties, fines expenses or interest arising in connection with those amounts).

Term means the term of this licence which ends on 1 September 2018.

Website means the Licensee's website containing details, instructions and resources about the Competition.

3. Licence

3.1 Grant of Licence

- (a) The University grants to the Licensee for the Term a fee-free, royalty-free, non-exclusive, non-transferable, non-commercial licence to reproduce and use the Licensed Materials to enable the Licensee to conduct the Competition in accordance with the Approved Purpose.
- (b) The licence provided under 3.1(a) to the Licensee:
 - (i) is granted to the Licensee free of charge, with the exception of any obligations under clause 6;
 - (ii) excludes the right for the Licensee to make any modifications to the Licensed Materials;
 - (iii) is subject to the conditions set out in clause 4.2 and any other restrictions set out in this Licence; and
 - (iv) prohibits the Licensee from charging a fee for access to the Licenced Materials.
- (c) The Licensee must conduct the Competition as specified in the Competition Kit including, without limitation:
 - (i) permitting only the Students to enter the Competition;
 - (ii) providing appropriate guidance and instructional material to the Students;

- (iii) requiring the Competition entrants to use the Poster Template to generate their Competition entry (in compliance with the specifications detailed in the Submission Checklist);
 - (iv) judging the Competition; and
 - (v) completing the Competition process by 1 September 2018, so that the University has time to develop a showcase about the National Competition.
- (d) The Licensee must:
- (i) not state or imply that the University is responsible for conducting the Competition;
 - (ii) obtain any Permits at its own cost which it may require to conduct the Competition;
 - (iii) ensure that Students who enter the Competition agree to the Competition Terms or terms which are substantially similar to the Competition Terms; and
 - (iv) ensure that Students grant a licence to the University as set out in clause 3.2 and provide permission for the University to use their personal information as set out in clause 3.3.
- (e) The Licensee permits the University to:
- (i) advertise the Licensee's involvement in the Competition; and
 - (ii) provide the Licensee's contact details to individuals who contact the University seeking information about the Competition.

3.2 **Licence to use Student Competition Content**

- (a) The Licensee grants to the University, its affiliates and sub-licensees a non-exclusive, fee-free, royalty-free, perpetual, world-wide, irrevocable and sub-licensable right to use and display the first-placed winner's entry (including Content) for all the University's ongoing promotional purposes in relation to the Competition and University's ongoing promotion and showcase of the National Competition.
- (b) The University will not enter into commercial arrangements or directly profit from the licence.

3.3 **Use of Student Personal Information**

The Licensee must obtain the Competition's first-placed winner's permission for:

- (a) the Licensee to provide the Competition's first-placed winner's name and image to the University; and
- (b) the University to publish the Competition's first-placed winner's name and image on the University's website and in other forums promoting the Competition and the University's ongoing promotion and showcase of the National Competition.

4. Licensee's obligations

4.1 **Ownership**

The Licensee acknowledges and agrees that the licence granted in clause 3 does not imply the transfer to the Licensee of any proprietary rights in the Licensed Materials. All rights in the Licensed Materials (including without limitation the Competition), including any rights in any modifications made by or on behalf of the Licensee (whether such modifications are authorised or unauthorised) will reside with the University.

4.2 Restrictions on use

Other than as provided by clause 3, the Licensee must:

- (a) ensure that no unauthorised copying or use is made of the Licensed Materials;
- (b) not adapt, alter or modify the Licenced Materials, unless expressly permitted to do so in writing by the University;
- (c) not disclose, communicate or reproduce the Licensed Materials other than for the Approved Purpose;
- (d) not allow any other person aside from its Students, and officers, employees, representatives of the Licensee who are authorised to use and access the Licensed Materials in accordance with this Licence;
- (e) not alter, change, remove any other notices, including copyright notices relating to the ownership of the Licensed Materials;
- (f) advise its Students and officers, employees, representatives of the Licensee who are authorised to access the Licensed Materials about the Approved Purpose and limitations of use of the Licensed Materials;
- (g) include the following copyright notice of the University on the Website or copies of the Licensed Materials:

The material presented on this site is provided for the express purpose of the 2018 Visualise Your Thesis competition conducted by <name of Licensee>. All copyright in text, data, images, audio, video and other such material on the site is protected by copyright held by The University of Melbourne and is made available for use by <name of Licensee> and competition entrants. In using the Visualise Your Thesis competition materials you agree that you must not reproduce, distribute, modify, transmit, reuse or adapt the material contained in this site without the prior written permission of The University of Melbourne;

- (h) not sell, rent, lease, sub-license, assign or otherwise transfer the Licensed Materials to a third party, unless explicitly permitted under this Licence;
- (i) not copy the form, structure or layout of the Licenced Materials (including without limitation the Competition) for the purpose of devising its own version of the Licenced Materials; and
- (j) not use any data generated from the administration of any of the Licensed Materials for any purposes, unless expressly permitted to do so in writing by the University.

4.3 Naming rights

During the Term of this Licence, the University grants the Licensee a non-exclusive right to refer to the Licensed Materials as "Visualise Your Thesis competition". The naming rights set out under this clause 4.3 do not in any way restrict or prevent the University from naming the Licensed Material or change ownership in the Licensed Material from the University.

5. The University's obligations

5.1 Delivery

- (a) To the extent it has not done so already, the University will deliver to the Licensee one copy of the Licensed Materials as soon as practicable after the Commencement Date of this Licence.

- (b) Notwithstanding the format in which the Licensed Materials is delivered for the purposes of 5.1(a), the Licensee may only reproduce the Licensed Materials in accordance with the format specified in clause 3.

6. Taxes

- 6.1 If the University is required by law to pay any other Taxes in respect of this Licence, the Licensee must reimburse the University for that amount.

7. Confidentiality and privacy

7.1 **Obligation to keep confidential**

The Licensee must:

- (a) keep confidential all Confidential Information disclosed to the Licensee by the University;
- (b) not use any such Confidential Information for any purpose other than the Approved Purpose in accordance with this Licence; and
- (c) not disclose the Confidential Information (or any part of it) to any person (except the Licensee's employees or contractors who have a need to know for the purposes of this Licence) without the written consent of the University.

7.2 **Employees and contractors**

The Licensee must take all reasonable steps to ensure that the Licensee's employees and contractors are instructed to keep, and actually keep, strictly confidential all Confidential Information.

7.3 **Disclosure required by law**

If the Licensee is required by law to disclose any Confidential Information to a third person (including any government, regulatory body or stock exchange) the Licensee must:

- (a) before doing so, when reasonably possible:
 - (i) notify the University; and
 - (ii) give the University a reasonable opportunity to take any steps that the University considers necessary to protect the confidentiality of that information; and
- (b) notify the third person that the information is Confidential Information of the University.

7.4 **Privacy and personal information**

The Licensee agrees to comply with:

- (a) the *Privacy and Data Protection Act 2014* (Vic) or its applicable equivalent privacy law; and
- (b) the University's Privacy Policy as amended from time to time in respect to any personal or health information collected, handled, held, managed, used, disclosed in connection with this Licence. The University's Privacy Policy can be located at:
<http://www.unimelb.edu.au/governance/compliance/privacy>

8. Infringement

8.1 Notification

The Licensee must notify the University immediately if:

- (a) it becomes aware of any unauthorised copying or use of Licensed Materials;
- (b) it becomes aware of any breach of confidence by any person to whom the Licensee has disclosed part or all of the University's Confidential Information; or
- (b) a claim is made against the Licensee claiming that the Licensee's use of the Licensed Materials in accordance with this Licence infringes the Intellectual Property Rights of any person (**Claim**).

8.2 Assistance

The Licensee must supply reasonable assistance to the University in defending or settling any Claim.

9. Warranties and limitation of liability

9.1 The University warrants that as at the date of this Licence, it has the rights, power and authority to enter into this Licence and to grant the Licensee the rights to use the Licensed Materials in accordance with the terms of this Licence.

9.2 To the extent permitted by law and subject to clause 9.1, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied by statute, custom or the common law are excluded from this Licence. If a supply under this Licence is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law, nothing contained in this Licence excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law, provided that, to the extent that the Australian Consumer Law permits the University to limit its liability, then the University's liability is limited to:

- (a) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
- (b) in the case of goods, the cost of revising or replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

9.3 The Licensee agrees to indemnify the University from and against liability and all loss and damage of any kind whatsoever caused directly or indirectly by any claim or action against the University arising directly or indirectly out of the Licensee's use of the Licensed Materials or any breach by the Licensee of the terms and conditions of this Licence.

9.4 The Licensee's liability to indemnify the University under this clause 9.3 will be reduced proportionately to the extent that the University contributed to the relevant expense, loss, damage, or costs.

9.5 The Licensee agrees to ensure that the Licensed Materials are protected from access or use by any unauthorised person.

9.6 The Licensee agrees the University is not responsible for the quality of the Licensed Materials, including but not limited to, file corruption and that the Licensee agrees to use and sub-license the Licensed Materials at its own risk.

10. Term and termination

10.1 Term

This Licence will commence on the Commencement Date and, unless terminated earlier in accordance with clause 10.2 or 10.3, will continue for the Term.

10.2 Termination by University

The University may terminate this Licence with immediate effect by giving written notice to the Licensee if the Licensee:

- (a) commits a material breach of this Licence and either that breach is incapable of remedy or the Licensee shall have failed to remedy that breach within 14 days after receiving written notice requiring it to remedy that breach;
- (b) becomes unable to pay its debts when they become due;
- (c) enters into any arrangement between itself and its (or any class of its) creditors;
- (d) ceases to carry on business;
- (e) has a mortgagee enter into possession or dispose of the whole or any part of its assets or business;
- (f) enters into liquidation or any form of insolvency administration; or
- (g) has a receiver, receiver and manager, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator or other like person appointed to the whole or any part of its assets or business.

10.3 Termination for convenience

Either party may terminate this Licence at any time without cause by giving the other party 90 days' written notice.

10.4 Consequences of termination

At the end of the Term, or if otherwise terminated in accordance with clause 10.2 or 10.3, the Licensee must immediately:

- (a) stop using the Licensed Materials; and
- (b) remove the Licensed Materials from its Website, destroy all copies of the Licensed Materials or return to the University all copies of Licensed Materials in its possession or control.

10.5 Accrued rights of action

Expiration or termination of this Licence (for whatever cause) will not affect any right or cause of action which has accrued to the party which terminates this Licence at or prior to the date of termination.

10.6 Survival

Clauses 7, 9 and 10 and will continue after termination or expiry of this Licence to the extent necessary to give them their intended effect.

11. Dispute resolution

11.1 Notification of dispute

A party claiming that a dispute has arisen under this Licence must notify the other party giving details of the dispute. The parties agree to attempt to resolve the dispute in the spirit of good faith on a commercially realistic basis by negotiation or mediation for at least 14 days from the date of the notice giving details of the dispute, before commencing any legal proceedings in relation to the dispute.

11.2 Arbitration

Any dispute which cannot be settled by negotiation between the parties must be referred for determination by a person appointed for that purpose by the parties and failing agreement, appointed by the President of the Institute of Arbitrators and Mediators Australia (Victorian Division).

11.3 Determination binding

Any determination made under the above clause is binding on the parties and the *Commercial Arbitration Act 2011 (Vic)* applies to the determination except to the extent otherwise agreed by the parties.

11.4 Interlocutory relief and continuing obligations during a Dispute

- (a) Nothing in this clause 11 will prevent a party from seeking interlocutory relief.
- (b) Despite the existence of a dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform their respective obligations under this Licence provided it is practicably and reasonably possible.

12. Governing Law

This Licence is governed by the laws of the State of Victoria, Australia and each party submits to the non-exclusive jurisdiction of the courts of that state.

13. Notices

13.1 Notice requirements

A notice, demand, consent, approval or communication under this Licence must be:

- (a) in writing, in English and signed by a person authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address specified in the details as set out at the start of this Licence and marked to the attention of the contact person specified in the details, as varied by any notice given by the recipient to the sender.

13.2 Effect of notice

A notice given in accordance with clause 13.1 takes effect when taken to be received (or at a later time specified in it), and 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 (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

14. Miscellaneous

14.1 Alteration

This Licence may be altered only in writing signed by each party.

14.2 Assignment

The Licensee may only assign this Licence or a right under this Licence with the prior written consent of the University acting in its absolute discretion.

14.3 Entire agreement

This Licence constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

14.4 Further action

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

14.5 Severability

A term or part of a term of this Licence that is illegal or unenforceable may be severed from this Licence and the remaining terms or parts of the term of this Licence continue in force.

14.6 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

15. Interpretation

In this Licence, unless the contrary intention appears:

- 15.1 headings are for ease of reference only and do not affect the meaning of the Licence;
- 15.2 the singular includes the plural and vice versa and words importing a gender include other genders;
- 15.3 other grammatical forms of defined words or expressions have corresponding meanings;
- 15.4 a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Licence which includes any schedules and annexures;

- 15.5 a reference to a document or agreement, including this Licence, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- 15.6 a reference to 'A\$', '\$A', 'dollar' or '\$' is a reference to Australian currency;
- 15.7 a reference to a specific time for the performance of an obligation is a reference to that time in the state, territory or other place where that obligation is to be performed;
- 15.8 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 15.9 words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- 15.10 a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent state legislation, as applicable;
- 15.11 a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form; and
- 15.12 a reference to the word 'includes' or 'including' is to be construed without limitation to the proceeding words, unless it is expressly stated otherwise.