**PARTIES**

**UNIVERSITY OF OTAGO,**a body corporate established under the University of Otago Ordinance 1869, the University of Otago Amendment Act 1961 and the Education Act 1989,of 362 Leith Street, Dunedin (“University”)

**[Insert name of external examiner, institution and job title]** (“Recipient”)

**INTRODUCTION**

The University has agreed to disclose Confidential Information to the Recipient on the terms set out in this Agreement.

**Part A: Thesis Overview**

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| --- | --- |
| **Thesis** | Thesis title |
| **Research candidate** | Name of student |
| **Student ID** | Student ID |
| **Purpose** | To allow the Recipient to be able to examine University student theses and other such types of examination as requested by the University. |
| **Exam Start Date (approximate)** | Enter date |

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| --- | --- | --- | --- |
| **University of Otago’s Authorised Signatory (Dean, GRS or Associate Dean Postgraduate)** | | **Recipient/Examiner’s Authorised Signatory** | |
| **Signature** |  | **Signature** |  |
| **Name and Position** |  | **Name and Position** |  |
| **Date** |  | **Date** |  |

**Part B: Contact Details**

|  |  |  |
| --- | --- | --- |
| **Contact Details for Notices** | **University:** | **Recipient/Examiner:** |
| **Dean, Graduate Research School**  [**dean.grs@otago.ac.nz**](mailto:dean.grs@otago.ac.nz)  **Ph: 64(3) 4795655** | Enter Examiner contact details |

**Part C: Variations**

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| **Variations to the Terms and Conditions** |
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**AGREEMENT**

1. **DEFINITIONS** 
   1. In this Agreement unless the context otherwise requires:

**“Agreement”** means this agreement including Section 1: Schedule together with this Section 2: Terms and Conditions;

**“Confidential Information”** means:

* + 1. all information of whatever kind or form provided by or on behalf of the University in connection with the Purpose whether or not It is marked or identified as being proprietary to or under the control of the University;
    2. the fact that discussions are taking place between the parties;
  1. Other capitalised terms have the meaning set out in the Schedule.

1. **RECIPIENT’S OBLIGATIONS**
   1. **Undertakings:** The Recipient will:
      1. hold and maintain all Confidential Information in strict confidence and as a trade secret of the University;
      2. use the Confidential Information solely for the Purpose and will not permit the Confidential Information to be used for any other purpose or use the Confidential Information to procure any commercial advantage over the University;
      3. not disclose or distribute the Confidential Information to any person;
      4. not copy, reproduce or electronically store Confidential Information or permit any Confidential Information to be copied, reproduced or electronically stored except to the extent necessary for the Purpose; and
      5. take all steps to prevent any unauthorised use or disclosure of the Confidential Information.
   2. **Continuing obligations:** The Recipient’s obligations under this Agreement will commence on the Start Date and continue in full force and effect until the Confidential Information enters the public domain other than as a result of breach or non- performance of any obligations owing to the University by the Recipient under this Agreement. The release of part of the Confidential Information by the University will not of itself cause the Recipient’s undertakings under this Agreement to cease.
   3. **Exceptions to obligations:** The provisions of clause 2.1 shall not apply to Confidential Information that the Recipient can demonstrate:
      1. was in its possession before the Confidential Information was provided by or on behalf of the University;
      2. was developed independently by the Recipient without reference to the Confidential Information provided by or on behalf of the University;
      3. was disclosed to the Recipient on a non confidential basis by a third party who has the lawful right to disclose the information to the Recipient;
      4. is or becomes generally available to the public through no act or default of the Recipient; or
      5. is required to be disclosed by law or financial authority, provided that the Recipient shall:
         1. immediately inform the University of such requirement prior to making any disclosure;
         2. comply with any reasonable directions by the University to resist the requirement to disclose; and
         3. only disclose the Confidential Information which it is legally required to disclose, and take all reasonable endeavours to ensure that such Confidential Information disclosed by the Recipient will otherwise be treated confidentially.
2. **OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS**
   1. The Recipient agrees that all Confidential Information and any intellectual property rights in it, is the absolute property of the University and shall at all times remain the absolute property of the University.
3. **RETURN OF CONFIDENTIAL INFORMATION**

The Recipient will return to the University or, at the University's option, destroy and confirm in writing the destruction of all records and copies of the Confidential Information held by the Recipient (in any form) immediately on the University's request, provided that the Recipient will not have to return or destroy Confidential Information that the Recipient is required to retain by law. This clause shall apply to the extent information is retained in the Recipient's electronic data back-up or disaster recovery system in the ordinary course of business so long as it is deleted from the Recipient's local hard drives.

1. **INDEMNITY** 
   1. The Recipient indemnifies the University against all actions, proceedings, calls, claims, demands, losses, damages, costs, expenses or liabilities of any kind which the University may suffer or incur as a result of any breach of this Agreement by the Recipient.
2. **NO IMPLIED RIGHTS**
   1. Nothing in this Agreement shall require the University to disclose any Confidential Information to the Recipient. No warranty or representation (express or implied) is given as to the accuracy, efficacy, completeness or capabilities of the Confidential Information.
3. **REMEDY**
   1. The parties acknowledge that monetary damages alone may be an inadequate remedy for breach of the Recipient’s obligations under this Agreement. In addition to any other remedy, which may be available in law or equity, the University may be entitled to interlocutory injunctive relief to prevent a breach of this Agreement and to compel specific performance of this Agreement.
4. **GENERAL**
   1. **No assignment:** The Recipient shall not directly or indirectly transfer, assign, novate, subcontract, charge, pledge or otherwise dispose of or encumber any of its rights, interests or obligations under this Agreement without the University's prior written consent. Any change in the Recipient's effective ownership or control shall be deemed an assignment for the purpose of this clause.
   2. **No waiver:** No failure or delay by a party in insisting on the strict performance of this Agreement or to exercise any right under this Agreement shall operate as a waiver of those matters. A waiver shall not be effective unless it is in writing and a waiver of any single breach shall not be a waiver of any other breach (including any continuing or re-occurring breach).
   3. **Entire agreement:** This Agreement contains the entire contract and understanding between the parties in relation to the matters covered by it and replaces all prior written and verbal representations, agreements, arrangements and understandings between the parties in relation to such matters.
   4. **Governing law:** This Agreement shall be governed by New Zealand law. The parties submit to the non-exclusive jurisdiction of the New Zealand courts.
   5. **Counterpart execution:** This Agreement may be executed in counterparts (which may include scanned pdf, fax or other electronic copies) all of which together shall constitute one agreement. A party may enter into this Agreement by signing any such counterpart.
   6. **Variations**: No variation to this Agreement is effective unless it is made in writing and signed by both parties.
   7. **Further acts:** Each party shall execute and deliver all further documents and do all further acts in its power as may be reasonably required to carry out the purposes and intent of this Agreement.
   8. **Survival:** To avoid doubt, the confidentiality obligations in this Agreement continue indefinitely from the Start Date.
   9. In the event of any conflict between these Terms and Conditions and the Schedule, the conflicting terms in the Schedule (including any variations set out in Part C of the Schedule) shall apply.