



Higher Education Research Commercialisation IP Framework

Standard Research Agreement

The Standard Research Agreement is for research and development projects between a collaborator and a university where it is not appropriate to use the Accelerated Research Agreement.

When should it be used?

- The collaborator and university wish to undertake a specific research project using the university's expertise
- The collaborator is funding the project (in full or in part)
- The collaborator is either a private sector entity or a Commonwealth Entity
- The project is agreed by the parties as higher risk

The template assumes both parties are Australian entities and it can also be used when one party is a foreign entity. If you wish to use the template for a research project with a foreign entity, you should seek legal advice as to any changes that may be needed.

When should it not be used?

- For low/medium risk projects where the [Accelerated Research Agreement](#) is more appropriate
- For projects where there are multiple academic and/or commercial partners, use the [Multi-party Collaboration Agreement](#) instead
- For projects where the University is leasing equipment or providing contract technical (consulting) services, which do not involve basic research (please refer to the [Providing Services and Equipment](#) guidance)
- For commercialisation of any results
- Where the university already has an over-arching agreement with the collaborator as part of a long-term strategic partnership

When is a project higher risk?

The factors the parties should consider when deciding to use this template and not the [Accelerated Research Agreement](#) template include:

- **Is the value of the project more than \$250,000?** If so, then this would generally be considered higher risk
- **What has your internal risk assessment returned?** Before starting a research project, each party should carry out their own risk assessment. Factors to consider include:
 - what is the potential legal exposure the project may create?
 - could this project lead to a breach of intellectual property rights, including patent or copyrights?
 - will this project involve significant physical or environmental risks?
 - is one party a foreign entity?
 - is the project complex (for example, in terms of the technical work being performed)?
 - does the project involve licences to significant Pre-existing IP owned by either party and/or Third Party IP?
 - is the proposed liability cap higher than \$250,000?

If the risk assessment indicates a higher risk, then the Standard Research Agreement should be used.

- **Are indemnity or warranty provisions needed?** If one or both parties require indemnity and/or warranty provisions, then a Standard Research Agreement is recommended

Key considerations when completing the template

The following table is provided as a guide to help the parties appreciate the key considerations that each party will have when negotiating a Standard Research Agreement.

Discussing and understanding each party's needs and concerns up front will help you reach an agreement more quickly and will help you apply the template to reach a fair agreement. A research agreement may take up to three months to negotiate and sign, often longer, depending on the complexity of the proposed project. It is, therefore, important the parties start these discussions as early as possible.

For organisations, particularly SMEs, that do not have any experience of working with universities, this table will help you understand what the key provisions of a research collaboration are and what you need to discuss and agree in order to finalise the agreement from the template.

Additional plain English guidance on the meaning of key clauses is provided in a separate annotated version of the template.

This table sets out the key points each party needs to consider when using the Standard Research Agreement. Understanding your own key considerations, as well as those of the other party, will help you to negotiate a fair and reasonable agreement that works for both parties

Standard Research Agreement Provision	University	Collaborator
Details of the Project		
<ul style="list-style-type: none"> • A clear plan for the research project describing the aims, what work will be undertaken, by whom, and the expected results, including any reports (defined as Project IP) • The template does not envision that the Collaborator will be carrying out research as part of the Project beyond the provision of ideas, information and materials for use by the University. If outputs from the Project will be further researched by the Collaborator, a Material Transfer Agreement can be used • Where milestones are agreed to be included, a clear definition of what these are and what is needed to meet each milestone and the associated timelines. Careful consideration also needs to be given to the Project’s governance and how decisions are made • Who the key personnel are that will manage and deliver the Project • What confidential information will be exchanged • The frequency for meetings 	<ul style="list-style-type: none"> • Be clear and realistic in what can be achieved, when and what the expected Project IP is • Ensure that any risks and uncertainties are clearly articulated • Ensure any agreed milestones are realistic and achievable, particularly if continued funding is contingent on achieving these milestones. For higher-risk research projects, technical development milestones linked to progress may be appropriate • Ensure the governance arrangements for the project are clear, particularly how decisions will be made • Be clear on what information is considered confidential to each party • Ensure the collaborator is kept appropriately informed of progress and involved in all major decisions relating to the Project, without this becoming over burdensome 	<ul style="list-style-type: none"> • Ensure you know what will be delivered through the Project and what the risks and uncertainties are • Ensure that continued funding is linked to suitable progress with the research and there are stop/go decision points if these are required • Be clear on what information is considered confidential to each party • Ensure you are kept appropriately informed of progress and involved in all major decisions relating to the Project, whilst not becoming unnecessarily over burdensome to the academic party • Ensure the governance arrangements for the project are clear, particularly how decisions will be made

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Standard Research Agreement Provision	University	Collaborator
Project Funding		
<ul style="list-style-type: none"> • A detailed breakdown of the funding that will be provided by the Collaborator and when payments will be made, and if these future payments are contingent on meeting earlier milestones • Details of any in-kind contributions • The parties will need to take their own tax advice with respect to the tax status of the funding 	<ul style="list-style-type: none"> • Ensure all costs and contingencies in the research are covered through the funding • Be clear on your funding position if an agreed milestone is not delivered • Ensure all in-kind contributions are documented and you can deliver these 	<ul style="list-style-type: none"> • Be clear on your financial liability and when payments will be due • Ensure all in-kind contributions are documented and you can deliver these • Understand what your financial responsibilities may be if the project terminates earlier than anticipated

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Standard Research Agreement Provision	University	Collaborator
Ownership of IP Rights (IPRs) in the Project IP		
<ul style="list-style-type: none"> Who will own the Project IP generated by the Project How these results will be protected and who is responsible for this 	<ul style="list-style-type: none"> You should expect to retain ownership of the Project IP from the Project if the research plan is directed by the University and/or builds on significant Pre-existing IPR owned by the University If the Project IP incorporate significant Pre-existing IPR owned by the Collaborator, and/or the Collaborator has directed the research plan and the Collaborator is fully funding the Project at a commercial rate, it would be reasonable for the parties to agree that the Collaborator owns and protects the Project IP Agree and document how any Project IP will be protected if formal registration (e.g., via a patent application) is expected. For example, who is responsible for filing the applications and who will pay the costs. Generally, the owner would expect to do this. It may be appropriate for the Collaborator to contribute to the costs, especially if they have a right to negotiate commercialisation rights 	<ul style="list-style-type: none"> Be confident the Project IP will be properly managed and protected when these are owned by the University Ensure the industry partner secures all the rights it needs to use the Project IP, either through the default right to negotiate a commercialisation licence, or through ownership of the Project IP if the circumstances indicate this is reasonable and/or the parties agree that the industry partner is better placed to manage this process

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Standard Research Agreement Provision	University	Collaborator
Use of the Project IP (for internal use)		
<ul style="list-style-type: none"> Defining the scope of the internal uses the Collaborator or the University has rights to the Project IP for (defined as the Purpose in Schedule 3) Where the University is the owner, the Collaborator will have a non-exclusive, free licence to use the Project IP internally for the activities that fall within the Purpose 	<ul style="list-style-type: none"> When the University is the owner, be clear on what rights the Collaborator will have to use the Project IP of the Project internally Ensure any restrictions to your Pre-existing IPR and the rights you can grant to them are clear to the Collaborator before the Project starts If it is agreed that the Collaborator owns the Project IP, ensure it takes agreed steps to commercialise the Project IP and that the University is granted the rights to use the Project IP for research and teaching purposes 	<ul style="list-style-type: none"> Ensure the industry partner has the rights it needs to fully use the Project IP internally Ensure the industry partner is aware of any restrictions to this use

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Standard Research Agreement Provision	University	Collaborator
Use of the Project IP (for commercialisation)		
<ul style="list-style-type: none"> Where the University owns the Project IP, the Collaborator would expect to have a first right to negotiate a licence to commercialise the Project IP in addition to its licence to use the Project IP internally Where the Collaborator is the owner, the University will have a right to take over commercialisation via a licence subject to any agreements the Collaborator has signed that are on an arms-length basis i.e. agreements at market rates and not on favourable terms, for example to a connected company or affiliate 	<ul style="list-style-type: none"> Be clear whether the Collaborator will have a right to negotiate further rights to commercialise the Project IP you own and how this will be negotiated If the Collaborator owns the Project IP, ensure it takes adequate steps to commercialise the Project IP and decide if it is appropriate that you take over commercialisation via a licence 	<ul style="list-style-type: none"> Ensure the industry partner has a right to negotiate further commercialisation rights if these are likely to be needed Ensure you understand the University's rights to negotiate a licence to commercialise the Project IP you own should you not commercialise these in an agreed period of time

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Standard Research Agreement Provision	University	Collaborator
<p>Use of Pre-existing IPR</p> <ul style="list-style-type: none"> • Details of any IPR owned by either party before the project starts (called Pre-existing IPR) that will be used in the Project • Whether there are any restrictions on its use (if this IP will be needed to make use of the Project IP internally for the Purpose). Rights to this Pre-existing IPR are otherwise assumed within the internal licence granted to the Collaborator for the Purpose 	<ul style="list-style-type: none"> • Ensure the Collaborator is aware of your Pre-existing IPR that you will be using in the Project • Ensure you do not introduce any Pre-existing IPR into the Project if you are unwilling or unable to grant the Collaborator a licence for them to use the Project IP. This should be listed in the Agreement. This is very important as the Collaborator otherwise could have a free licence to your Pre-existing IPR for it to use the Project IP internally • If the Collaborator is providing access to its Pre-existing IPR, be clear that you will only be able to use this for the specified Project, and not for any future independent research 	<ul style="list-style-type: none"> • Ensure the industry partner knows what restrictions might impact on its freedom to use the Project IP and what additional licences might be needed either for internal research use or for commercialisation
<p>Use of Research Tools</p> <ul style="list-style-type: none"> • The template provides an opportunity to list Research Tools that will be used in the Project. These are general scientific methods, know-how etc whose use would not be required for the Collaborator to gain rights to the Project IP • No rights are granted to Research Tools 	<ul style="list-style-type: none"> • Ensure you list any important Research Tools that the Project will use so that it is clear to the Collaborator that it will have no rights to these 	<ul style="list-style-type: none"> • Ensure the industry partner knows what Research Tools are planned to be used in the Project and that you will not have rights to these

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Standard Research Agreement Provision	University	Collaborator	
Use of Third Party IPR	<ul style="list-style-type: none"> • Details of any IPR owned by third parties that will be used within the Project • The restrictions that apply to the third party IPR 	<ul style="list-style-type: none"> • Ensure the Collaborator is aware of any restrictions that might apply to the outputs from the Research if you are using Third Party IPR and that you are aware of any restrictions from Third Party IPR made available by the Collaborator 	<ul style="list-style-type: none"> • Ensure the industry partner knows what restrictions might impact on its freedom to use the Project IP before the Project starts
Liability	<ul style="list-style-type: none"> • The financial limit of liability that each party will have arising from the Project, except for those situations that specifically uncapped or cannot be limited by law 	<ul style="list-style-type: none"> • Generally, this should be limited to the level of project funding received or a multiple of that funding – or it might be agreed to align with the organisation’s insurance limits • The limit will usually be the same for both parties unless it is agreed that one party is taking on a higher risk than the other 	<ul style="list-style-type: none"> • Generally, this should be limited to the level of project funding received or a multiple of that funding – or another agreed limit in accordance with the organisation’s insurance limits • The limit will usually be the same for both parties unless it is agreed that one party is taking on a higher risk than the other
Indemnity	<ul style="list-style-type: none"> • The template includes an indemnity from the University that the Collaborator’s use of the Project IP for the Purpose will not infringe any IPR of a third party • The parties may agree to remove this indemnity or agree alternative indemnities 	<ul style="list-style-type: none"> • Very carefully consider whether the University can give an indemnity to cover the industry partner’s use of the Project IP. For many projects this will not be fair or reasonable given the uncertainties of what the research project may generate as Project IP • If the Collaborator owns the Project IP and is commercialising this, it is reasonable to ask that they indemnify the University from liabilities that arise from these activities 	<ul style="list-style-type: none"> • If the Project IP and your use of the Project IP can be clearly defined and are known prior to the Project starting, and the industry partner is fully funding the Project at a commercial rate, then asking for an indemnity from the University may be fair and reasonable • You should be prepared to indemnify the University where you own the Project IP and you are undertaking the commercialisation

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Standard Research Agreement Provision	University	Collaborator
Dispute Resolution	<ul style="list-style-type: none"> • Select the approach that works best for both parties. Most organisations will have a preferred approach • Be aware that some dispute resolution mechanisms may not be enforceable with a foreign entity • In the absence of agreement, escalation to court proceedings should be the default 	<ul style="list-style-type: none"> • Select the approach that works best for both parties. Most organisations will have a preferred approach • In the absence of agreement, escalation to court proceedings should be the default
Insurance	<ul style="list-style-type: none"> • Ensure your insurance levels meet the proposed levels • A lower level of insurance, particularly for professional indemnity may be appropriate if the company is a SME 	<ul style="list-style-type: none"> • Ensure your insurance levels meet the proposed levels • You may need to ask for the limits to be lowered

Standard Research Agreement

[Insert name of University]

University

[Insert name of Collaborator]

Collaborator

[Insert Project title]

For guidance only

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For guidance only

Agreement

Date [Insert date of Agreement]

Parties [Insert name of University] ([Insert ABN of University]) (University)
[Insert name of Collaborator] ([Insert ABN of Collaborator]) (Collaborator)

Background

- A. The Collaborator wishes to engage the University to undertake a research project [Insert Project title] (the **Project**).
- B. The parties agree that the University will undertake the Project in accordance with the terms of this Agreement.

Operative provisions

1. Definitions and interpretations

1.1 Definitions

In this Agreement, the following definitions apply unless the context requires otherwise.

Affiliate means any corporation, partnership, or other entity Controlling, Controlled by or under common Control with a party to this Agreement.

Agreement means this standard research agreement, and any Schedules, annexures and attachments to it.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the notice is received.

Chief Investigator means the person appointed in accordance with clause 7.1(a).

Collaborator means the party to this Agreement identified in item 2 of the Details Schedule.

Collaborator Material means the Material made available by the Collaborator for the Project including that which is identified in section 6 of Schedule 3.

Commencement Date means the date on which this Agreement commences, as specified in item 4 of the Details Schedule.

Commercialise means in relation to IPR, to:

- (a) manufacture, sell or hire out goods or provide a service, incorporating that IPR;
- (b) otherwise 'exploit' or exercise the rights of the owner of the IPR, as defined in any applicable legislation establishing the owner's rights to the IPR, in connection with the supply of goods or a service; or
- (c) license any third party to do any of those things mentioned in paragraph (a) or (b),

but does not include the other actions specified in the definition of Use. **Commercialisation** has the same meaning.

Commonwealth Entity means any government body which is subject to the *Public Governance, Performance and Accountability Act 2013* (Cth).

Confidential Information means information that is by its nature confidential and:

- (a) is designated by a party as confidential in section 8 of Schedule 3; or
- (b) a party knows or ought to know is confidential, unless the parties have specified otherwise in section 8 of the Schedule 3,

but does not include information that is:

- (c) publicly available other than as a result of unauthorised disclosure by a party;
- (d) independently known by or lawfully in the possession of the receiving party; or
- (e) independently created by the receiving party without access to the other party's Confidential Information.

Control of a corporation, partnership or other entity means:

- (a) direct or indirect beneficial ownership of more than 50% of its voting power, or 50% of the interest in its income;
- (b) the power to appoint the majority of its directors; or
- (c) the power otherwise to direct its business activities.

Details Schedule means Schedule 1 of this Agreement which details the particulars of the arrangement between the parties.

Fees means the amounts payable by the Collaborator under this Agreement as specified in the Project Plan.

Guidance Note for the definition of

Commercialise: This definition sets out the actions that are considered to be commercialisation.

This Agreement does not cover the Commercialisation of Project IP, but does provide for the parties to agree a first right to Commercialise the IPR in the Project IP (see clause 11.2). Any agreement to Commercialise the Project IP will be the subject of a separate agreement between the parties.

Guidance Note for the definition of Confidential

Information: A party's Confidential Information includes information identified as being confidential in the Details Schedule and - unless clearly stated otherwise in section 8 of Schedule 3 - any other information a party knows or ought to know is confidential.

In-kind Contribution means services, equipment and facilities made available by either party for the purposes of the Project as specified in the Project Plan.

Intellectual Property Rights or IPR means patents, rights to exploit inventions, trade marks, service marks, registered designs, plant breeder's rights, copyrights and related rights, database rights, design rights, circuit layout rights, in each case whether registered or unregistered, including rights to apply for and be granted and applications for any of the above and any continuations, continuations-in-part, divisional applications, renewals or extensions of, and rights to claim priority from, those rights, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above, but does not include Moral Rights and similar personal rights, which by law are non-assignable.

Key Personnel means the Personnel specified as 'Key Personnel' in item 8 of the Details Schedule or any replacement for those Personnel approved in accordance with the Agreement. **Key Person** has a corresponding meaning.

Material means samples, materials, chemical or biological reagents, biological materials, prototypes, equipment, software, firmware, documented methodology or process, information, data and documentation and includes the material set out at Schedule 3.

Milestone means a key performance obligation to be met by the University under this Agreement, as specified in the Project Plan.

Milestone Date means any fixed date to be met by the University in performing any of its obligations under this Agreement, as specified in the Project Plan.

Moral Rights has the same meaning in Part IX of the *Copyright Act 1968* (Cth) or any similar foreign legislation as applicable.

Personnel means a party's officers, employees and contractors and in the case of the University, includes Students. Personnel includes the Personnel of a contractor.

Pre-existing IPR means any IPR that is in existence at the Commencement Date or created or developed independently of the Project (other than as a result of the performance of this Agreement) that is:

- (a) provided by one party to another party for use in the Project, including as identified in Schedule 3;
- (b) incorporated into the Project IP; or
- (c) otherwise required in order for the other party to exercise their rights to the Project IP under this Agreement,

Guidance Note for the definition of Milestone and Milestone Date: Milestones are key achievements the University must meet during the Project. For example, a Milestone may be the submission of a Project report, or completion of a particular stage of an experiment. The Fees payable to the University may be contingent on the University completing certain Milestones. This should be specified in the Project Plan.

but does not include:

- (a) a Research Tool; or
- (b) IPR that is specified in Schedule 3 as excluded Pre-existing IPR.

Project means the program of work (research and/or development activity) described in the Project Plan.

Project End Date means the date on which this Agreement ends, as specified in item 5 of the Details Schedule, unless terminated earlier.

Project IP means all information, data, techniques, know-how, results, inventions, software, discoveries and materials (regardless of the form or medium in which they are disclosed or stored):

- (a) created or developed by the University in the course of and as a result of carrying out the Project; and
- (b) that is delivered or required to be delivered to the Collaborator in accordance with this Agreement,

including any Project IP specified in section 3 of the Project Plan, but excluding Research Tools.

Project Plan means the plan for conducting the Project, as set out in Schedule 2.

Purpose means the purpose for which a party is permitted to use the Project IP, as set out in Schedule 3.

Research Tool means scientific research skills, methodology, know-how, software, hardware, equipment, data and experience which may be used by the University in carrying out the Project, that are not required for the to exercise its rights to the Project IP under this Agreement and includes the items identified as a Research Tool in Schedule 3.

Guidance Note for the definition of Research Tool:

This concept is intended to differentiate the tools used by the University in developing the Project IP, but do not form part of the Project IP. For example, the University may have a data set that informs the Project, but is not incorporated into the Project IP.

Schedule means a schedule to this Agreement.

Student means a student enrolled at a university and involved in the Project.

Student Work means course work or a thesis, or any other original work (including articles) utilising Project information, confidential or otherwise, created specifically by the Student for assessment purposes.

Term means the term of this Agreement, as described in clause 2.

Third Party IPR means any IPR which are owned by a party other than the parties to this Agreement existing in information, data, techniques, know-how, results, inventions, software, discoveries and materials (regardless of the form or medium in which they are disclosed or stored), that is:

- (a) provided by one party to another party for use in the Project;
- (b) incorporated into the Project IP; or
- (c) otherwise required in order for the other party to exercise their rights to the Project IP under this Agreement,

but does not include a Research Tool.

Unexpected Event means in relation to a party:

- (d) any act or omission of a third party (other than that party's subcontractors or suppliers) that is beyond the reasonable control of that party;
- (e) fire, flood, earthquake, elements of nature or act of God;
- (f) war, riot, civil disorder, rebellion, revolution or, a terrorist act as defined in section 100.1 of the *Criminal Code Act 1995* (Cth); or
- (g) pandemic,

but in each case only if, and to the extent that, the non-performing party is without fault in causing the event and the event or its effects could not have been prevented by:

- (e) invoking any relevant business continuity plan or disaster recovery plan;
- (f) appropriate workload management practices; and
- (g) any other prudent back-up or recovery procedures.

University means the party to this Agreement identified in item 1 of the Details Schedule.

University Material means the Material made available by the University for the Project, including that which is identified in section 5 of Schedule 3 and includes any Research Tools.

Use unless otherwise set out in section 2 of Schedule 3, means to use, reproduce, adapt, modify, communicate, broadcast, distribute or publish in each case solely within the party's own organisation and any of its Affiliates and includes sublicensing such rights for Use within the party's own organisation and any of its Affiliates, and excludes Commercialisation or publication outside of the party and its Affiliates.

Guidance Note for the definition of Use: The definition of Use specifies how the relevant party may use the Project IP or Pre-existing Material, as set out in clause 10.

The parties may limit the 'Use' rights by specifying limitations in section 2 of Schedule 3 (for example, the parties may agree that the Licensee of the Project IP cannot modify the Project IP).

The parties are permitted to Use the Project IP or Pre-existing Material provided it is for the Purpose (set out in section 3 of Schedule 3).

The definition of Use excludes Commercialisation of the Project IP, but permits communication of the IPR within the party's own organisation and its Affiliates. However, the Licensee has the first right to negotiate an agreement with the Owner to Commercialise the Project IP under clause 11.2.

1.2 Interpretation

The following rules apply unless the context requires otherwise:

- (a) the headings are for convenience only and do not affect interpretation;
- (b) a recital, Schedule, annexure or a description of the parties forms part of this Agreement;
- (c) a reference to:
 - (i) dollars or \$ is to an amount in Australian currency;
 - (ii) a singular word includes the plural, and vice versa;
 - (iii) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (iv) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (v) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator and successor in law of the person and permitted assigns;
 - (vi) a word which suggests one gender includes each other gender; and
 - (vii) a clause, section or schedule is a reference to a clause or section of or a Schedule to this Agreement;
- (d) the meaning of general words is not limited by specific examples introduced by 'including', 'for example', or similar expressions;
- (e) no provision of this Agreement will be construed adversely to a party on the ground that such party was responsible for the preparation of this Agreement or that provision of this Agreement; and
- (f) if the day on or by which a party must do something under this Agreement is not a Business Day, the person must do it by the next Business Day.

Guidance Note for clause 1.2: This clause sets out the rules for how to interpret the Agreement (including the Project Plan). For example, the term 'including' is not intended to be limited to the examples provided (see clause 1.2(d)). Accordingly, the parties do not need to include statements such as 'including, but not limited to' in the Agreement (including the Project Plan).

1.3 Inconsistency

- (a) No confirmation, shipment or delivery docket, invoice, terms and conditions of supply or other document issued by or on behalf of a party about or related to the Project will amend this Agreement, except where such amendment is expressly agreed by the parties in accordance with clause 24.6.
- (b) To the extent of any inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority:
 - (i) the clauses of this Agreement;
 - (ii) the Details Schedule;
 - (iii) the Schedules in order;
 - (iv) any annexures or attachments to the Schedules; and
 - (v) any documents incorporated by reference in this Agreement.

Guidance Note for clause 1.3(b): This clause assists the parties in interpreting this Agreement. If inconsistency arises between Agreement documents (i.e. the Details Schedule and an attachment), the interpretation of the higher priority document is to be applied.

2. Term of Agreement

- (a) This Agreement will begin on the Commencement Date and will continue until the Project End Date unless terminated earlier in accordance with this Agreement.
- (b) The Term of this Agreement may be extended by the parties, on the terms and conditions then in effect, if expressly agreed by the parties in accordance with clause 24.6.

Guidance Note for clause 2: This Agreement commences as specified in item 4 of the Details Schedule and will end as specified in item 5 of the Details Schedule (unless terminated earlier).

The parties may extend the Term of the Agreement by written agreement signed by an authorised representative of each party.

3. Conduct of the Project

3.1 Project responsibilities

- (a) The University must, and must ensure that its Personnel:
 - (i) perform the Project:
 - A. with due care and skill in a professional manner;
 - B. using the Key Personnel; and
 - C. in accordance with all applicable laws and any policies, standards or laws set out in item 6 of the Details Schedule;

Guidance Note for clause 3: This clause sets out the broad obligations for both parties in undertaking the Project.

- (ii) obtain and maintain all regulatory and ethical licences, consents and approvals necessary to carry out the Project, including as relevant for a Personnel's role;
- (iii) use reasonable efforts to perform the Project so as to:
- A. complete the tasks set out in the Project Plan;
 - B. achieve the Milestones (if any); and
 - C. provide the Project IP, by the applicable dates set out in the Project Plan and where no applicable dates are specified, promptly and without delay.
- (b) The Collaborator must, and must ensure its Personnel:
- (i) undertake its role in the Project (if any): in accordance with:
 - A. the Project Plan; and
 - B. any policies, standards or laws set out in item 6 of the Details Schedule
 - (ii) provide any Collaborator Materials in accordance with clause 5; and
 - (iii) cooperate with the University and provide all information reasonably requested by the University,
- so as to enable the University to carry out the Project in accordance with this Agreement.

- (c) Both parties acknowledge that research can be unpredictable and that it may not be reasonable (or possible) for some aspects of the Project (including Milestones) to be performed as set out in this Agreement (including in the Project Plan). The parties agree to work together collaboratively and in good faith to ensure they are aware of any likely delays, or other circumstances occurring that may result in a party proposing to review the Project (in accordance with clause 8) or vary the Project Plan or other aspects of this Agreement. Any variation to this Agreement (including the Project Plan) must be in accordance with clause 24.6.

Guidance Note for clause 3.1(c): This clause is intended to acknowledge the uncertain nature of research and the collaborative manner in which the parties agree to work with each other.

3.2 Access to premises

- (a) Where required in the Project Plan, the relevant party will ensure that the Personnel of the other party are provided with access to their premises for the conduct of the Project.
- (b) Each party will ensure that any Personnel of the other party that accesses their premises for the purposes of the Project are:
- (i) provided with a healthy and safe working environment and are properly supervised; and
 - (ii) informed of that party's health, safety and security policies and undertake relevant training and induction, as reasonably required by that party.
- (c) Each party must ensure its Personnel comply with:
- (i) all reasonable directions given by the other party as to health, safety and security; and
 - (ii) all relevant obligations under this Agreement, including with respect to Confidential Information,
- while on the other party's premises.

Guidance Note for clause 3.2: This clause applies if the Project Plan requires Personnel of a party to attend the other party's premises (for example, the Collaborator's Personnel visits the University's premises to observe an experiment).

3.3 Use of University Material

- (a) Except as agreed otherwise in the Project Plan, the University may use University Material (including associated University Pre-existing IPR), in its sole discretion as it considers necessary or convenient in order to carry out the Project.
- (b) Except as expressly set out in this Agreement, the University retains ownership of University Material (including associated University Pre-existing IPR). The Collaborator's only rights to University Material (including associated University Pre-existing IPR) are set out expressly in this Agreement.

Guidance Note for clause 3.3: This clause sets out the rights and obligations with respect to any University Material provided under the Agreement.

The parties should specify any University Material in section 5 of Schedule 3. The parties can specify the storage or destruction obligations of the University Material in the Project Plan (for example, that a biological material must be stored in a particular manner and at a particular temperature).

- (c) Except for any University Material incorporated into the Project IP and subject to clause 3.3(d), the Collaborator must store, dispose of, destroy or return University Material (including associated University Pre-existing IPR) in its possession or control on termination or expiry of the Agreement, if specified in the Project Plan or directed by the University (at the University's cost).
- (d) Notwithstanding clause 3.3(c), the University is entitled to keep a copy of the University Material (including associated University Pre-existing IPR) for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. The University must continue to treat any such copy in accordance with the terms of this Agreement.

4. Acceptance of a Milestone

4.1 Acceptance

- (a) The parties acknowledge that the outcomes of the Project may not be able to be predicted.
- (b) Notwithstanding clause 4.1(a), the parties may agree Milestones for the delivery of specific Project IP (including reports and other Material) to the Collaborator or the performance of specific activities by the University.
- (c) If the parties have agreed Milestones, in order to achieve a Milestone by the applicable Milestone Date, that Milestone and any associated Project IP are subject to acceptance by the Collaborator, unless otherwise specified in the Project Plan.
- (d) The Collaborator, acting reasonably, will assess within five Business Days of notification or request by the University, whether the University has achieved each Milestone by the applicable Milestone Date in accordance with this Agreement.
- (e) If the Collaborator's assessment reveals that a Milestone:
 - (i) has been achieved, the Collaborator will issue a written notice to that effect to the University; or
 - (ii) has not been achieved, the Collaborator will notify the University.

Guidance Note for clause 4: This clause applies if Milestones are set out in the Project Plan. Milestones may not be suitable for all Projects.

The parties can specify that the University is required to provide certain deliverables or undertake certain tasks by a particular date. This can also include setting out criteria for the University to achieve in meeting a Milestone. These details should be specified in section 3 of Schedule 2.

Specifying Milestones and Milestone Dates can assist in clearly describing the deliverables, tasks and activities for a Project. It can also assist to keep the University accountable for the delivery of elements of the Project in a timely manner.

This clause also sets out a process to assess the achievement of Milestone and how the parties are to manage the Agreement if the Milestone is not achieved.

- (f) If the University has not achieved the Milestone, then the parties must work together collaboratively and in good faith to:
 - (i) understand the circumstances occurring that are resulting in the Milestone not being achieved;
 - (ii) seek to agree alternative steps to be undertaken by both parties in order to achieve or mitigate the non-achievement of the Milestone; and
 - (iii) where agreed as being reasonable in the circumstances, vary the Project Plan or other aspects of this Agreement. Any variation to this Agreement (including the Project Plan) must be in accordance with clause 24.6.
- (g) The parties must work collaboratively and in good faith to adjust the Milestone Dates where there is a delay to the Project as a result of the University stopping work in accordance with clause 6(b)(i).
- (h) The Collaborator is not required to pay any Fees associated with a Milestone until the relevant Milestone is achieved or the parties vary this Agreement, in accordance with clause 24.6.

5. Collaborator Material

5.1 Collaborator Material

The Collaborator:

- (a) must provide the Collaborator Material (if any) to the University:
 - (i) as set out in the Project Plan or as agreed with the University in writing, so as to enable the University to carry out the Project; and
 - (ii) in a safe and suitable manner for the purposes of the Project;
- (b) must organise and pay the costs of transport of the Collaborator Material to and from the University's premises, unless otherwise specified in the Project Plan;
- (c) must advise the University of any hazardous or otherwise dangerous components or properties of the Collaborator Material that it is aware of, and where applicable, instructions for safe use and operation of the Collaborator Material; and

Guidance Note for clauses 5.1 to 5.3: These clauses set out the rights and obligations of the parties with respect to any Collaborator Material provided under the Agreement. The parties should specify any Collaborator Material in section 6 of Schedule 3. The parties may agree how the Collaborator Material will be provided in the Project Plan or in writing.

- (d) is responsible for insuring, maintaining and, if necessary, repairing and replacing the Collaborator Material if required for the Project, unless otherwise specified in the Project Plan.

5.2 University's receipt and use of Collaborator Material

- (a) Where the Collaborator is required to provide Collaborator Material for the conduct of the Project, the University is not obliged to commence or continue the part of the Project for which the relevant Contribution Material relates until:
 - (i) the Collaborator has provided the relevant Collaborator Material; and
 - (ii) the University has completed an assessment to confirm the Collaborator Material is safe and suitable for the purposes of the Project.
- (b) The Collaborator must at its own cost replace any of the Collaborator Material that the University reasonably determines to be unsafe or unsuitable for the purposes of the Project.
- (c) The Collaborator grants the University a non-transferable, non-exclusive, royalty free licence to Use the Collaborator Material (including any IPR in the Collaborator Material) for the purposes of carrying out the Project.

Guidance Note for clause 5.2: This clause clarifies that if the Collaborator is required to provide Collaborator Material for the Project, the University does not need to commence or continue a part of the Project until the Collaborator provides the Material needed for that part. The Material provided by the Collaborator must be safe and suitable for the Project.

5.3 Destruction or return of Collaborator Material

- (a) The Collaborator acknowledges that Collaborator Material may be altered, damaged or destroyed during the conduct of the Project as an anticipated and necessary part of the Project.
- (b) Except for any Collaborator Material incorporated into the Project IP and subject to clause 5.3(c), the University must store, dispose of, destroy or return Collaborator Material in its possession or control on termination or expiry of the Agreement, if specified in the Project Plan or as directed by the Collaborator (at the Collaborator's cost).
- (c) Notwithstanding clause 5.3(b), the University is entitled to keep a copy of the Collaborator Material for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. The Collaborator must continue to treat any such copy in accordance with the terms of this Agreement.

Guidance Note for clause 5.3: At the end of the Agreement, the University must destroy or return Collaborator Material either as specified in the Project Plan or as directed by the Collaborator. In providing Material, the Collaborator should be aware that this Material may be altered, damaged or destroyed as a result of the Project.

6. In-kind Contributions

- (a) Each party must contribute to the Project the In-kind Contributions as set out in the Project Plan.
- (b) If:
 - (i) the Collaborator does not contribute its In-kind Contribution, the University may stop work (and will not be in breach of the University's obligations under this Agreement) until a reasonable adjustment to the Fees is agreed; or
 - (ii) the University does not contribute its In-kind Contribution, the University remains obligated to carry out the Project.

Guidance Note for clause 6: In-kind Contributions can be provided by either party and are separate from (and do not include) the Fees. In-kind Contributions should be specified in section 4 of the Project Plan and may include items such as resources, facilities or loaned equipment.

This clause allows the University to stop work and seek an adjustment to the Fees (which may be an increase to the Fees) if the Collaborator does not provide the In-kind Contribution(s) that it promised to provide.

As the University is undertaking the Project, the University is required to continue, regardless of whether it provides the In-kind Contributions that it promised to provide.

7. Project management

7.1 Chief Investigator

- (a) The University appoints as its Chief Investigator the person named in item 7 of the Details Schedule or if no person is named in the Details Schedule, the person notified by the University to the Collaborator in writing.
- (b) The University must ensure that the Chief Investigator:
 - (i) is suitably experienced to act as Chief Investigator;
 - (ii) manages the day to day conduct of those tasks allocated to the University in the Project Plan; and
 - (iii) maintains full and accurate records of the performance of the Project.
- (c) Except where required otherwise under clause 7.2, the University may replace the Chief Investigator by giving written notice to the Collaborator. The University must ensure that the replacement Chief Investigator is suitably experienced to act as Chief Investigator.
- (d) The Chief Investigator will have no power to agree to vary the Project Plan or the terms of this Agreement and must refer any variations to the responsible persons appointed by each party to approve any such variations in accordance with clause 24.6.

Guidance Note for clause 7.1: The University must appoint a suitably qualified Chief Investigator. This clause sets out the expectations of the Chief Investigator role and the process for replacing a Chief Investigator.

The Chief Investigator and principal investigator may be the same person. If they are not the same person, the person filling the role of principal investigator should be identified as a Key Person under the Agreement (see clause 7.2).

7.2 Key Personnel

- (a) Each party must:
- (i) undertake the Project or any part of the Project to which its particular expertise relates, with the active involvement of, and using the expertise of, its Key Personnel;
 - (ii) not replace any Key Personnel without the prior written approval of the other party, which will not be unreasonably withheld; and
 - (iii) except if clause 7.2(b) applies, before replacing any Key Person, give the other party at least 20 Business Days prior written notice and provide information about the proposed replacement and any other implications that are likely to result from the replacement of its Key Person.
- (b) If a Key Person is unable to perform the Project in connection with this Agreement due to:
- (i) ill health or incapacity; or
 - (ii) that person having left the employ of a party (including if the person's employment with a party has been terminated for cause),
- the party must give the other party as much notice as possible and provide information about the proposed replacement and any other implications that are likely to result from the removal or replacement of its Key Person.

Guidance Note for clause 7.2: This clause acknowledges that the Collaborator may be seeking the expertise of specific University Personnel to perform the Project. Any such person must be specified in item 8 of the Details Schedule.

Guidance Note for clause 7.2(b): If a Key Person becomes unavailable due to illness or change of employment, this clause requires the affected party to find a suitable replacement and address the impact this change in Key Person may have on the Project.

(c) A party (the **Requesting Party**) may give a notice:

- (i) directing the other party to immediately remove a Key Person from the Project, if the Key Person has breached the law or engaged in serious misconduct; and
- (ii) in any other case, requesting that the other party replace a Key Person, in which case:
 - A. within 10 Business Days after receipt of the notice, the other party must investigate the reasons stated in the notice, consult with the Requesting Party to discuss its findings (including any ramifications of replacing the Key Person) and attempt to resolve any problems with the Key Person; and
 - B. if the Requesting Party still requires the replacement of the Key Person after the Requesting Party has consulted with the University, must promptly replace that Key Person.

(d) If a Key Person becomes unavailable or is removed from the Project, the party that provided the Key Person must:

- (i) immediately implement a temporary workaround so as to prevent or minimise any interruption to the Project;
- (ii) as soon as reasonably practicable, replace the Key Person with another appropriately qualified, competent and experienced person; and
- (iii) keep the other party informed as to the progress of the process to replace the Key Person.

(e) If, after a reasonable period of time, the party that provided the Key Person is, after taking all reasonable steps, unable to provide a satisfactory replacement for the Key Person:

- (i) the parties may agree to terminate the Agreement; or
- (ii) if the University provided the Key Person, the University may elect to terminate the Agreement; and

Guidance Note for clause 7.2(c): This clause allows the parties to direct the removal of a Key Person from a Project in limited circumstances. These circumstances are if a Key Person breaks the law or engages in serious misconduct (for example, intoxication on the Collaborator's premises).

The party employing the Key Person has 10 Business Days from the other party's written request to investigate the conduct of the Key Person and resolve the problems. Despite this, the other party may still require the replacement of the Key Person after 10 Business Days.

These obligations reflect the importance of the Key Person to the Project and the need to resolve specific issues with Key Personnel quickly.

Guidance Note for clause 7.2(d): If a Key Person becomes unavailable or is removed, the party providing the Key Person must straightaway implement a process to minimise the impact of the Key Person not being available (for example, proposing a temporary replacement) and find a suitable long term replacement.

If the party providing the Key Person cannot find a satisfactory replacement, the parties may agree to terminate the Project (and consequently the Agreement) under clause 7.2(e).

- (iii) unless otherwise agreed, each party will bear their own costs incurred in terminating the Agreement.

7.3 Reporting

- (a) The University must provide the Collaborator with reports and information in accordance with the Project Plan.
- (b) On or before the Project End Date or within 30 Business Days following termination of this Agreement, the University must provide the Collaborator with a final report:
 - (i) specifying all tasks performed during the Project; and
 - (ii) providing a summary of the Project IP generated.

Guidance Note for clause 7.3: The parties can agree the reports to be provided during the Project. At a minimum, the University must provide the Collaborator with a final report 20 Business Days after the Project End Date.

This gives the Collaborator greater oversight of the Project and its progress. The parties should specify any reporting requirements in section 3 of Schedule 2.

7.4 Progress meetings

The parties will meet at the times set out in the Project Plan (or otherwise as agreed in writing between the parties) to discuss the progress of the Project, including any issues or risks arising.

Guidance Note for clause 7.4: The parties can agree to attend specific meetings throughout the Project. Regular meetings can give the Collaborator greater oversight of the Project and provides an opportunity for the parties to discuss any issues or next steps in the Project. The parties should specify any meeting requirements in section 6 of Schedule 2.

8. Project review

- (a) If during the Project a party (**Reviewer**) forms the reasonable opinion that some aspects of the Project should be varied, then the Reviewer must promptly send the other party (**Receiver**) a notice giving details of the basis for its opinion and a proposal as to how the Project (and including the Project Plan if applicable) should be varied (**Review Notice**).
- (b) Within 20 Business Days of receiving a Review Notice, if the Receiver is not prepared to accept the Review Notice, the parties must meet and negotiate in good faith variations to the Project Plan to address the concerns raised in the Review Notice.
- (c) If the parties agree to vary the Project Plan, they will execute a written variation in accordance with clause 24.6.
- (d) If the parties are unable to agree to a variation to the Project Plan then the parties must continue working in accordance with the unaltered Project Plan and this Agreement.

Guidance Note for clause 8: This clause sets out the process for the parties to review and if required, vary the Project (including the Project Plan), and what happens if a variation cannot be agreed.

Setting out a clear process gives the parties certainty and mitigates the risk of disagreement.

9. Payment

9.1 Fees

Subject to the University meeting the requirements of the Project Plan, the Collaborator must pay to the University instalments of the Fees at the times and in the amounts set out in the Project Plan.

9.2 Payment terms

- (a) The Collaborator must pay an invoice issued by the University for Fees that are due and payable within 20 Business Days after the date of the invoice. For GST purposes all invoices or receipts issued by the University are tax invoices.
- (b) Where the Collaborator disputes an amount set out in an invoice, it must notify the University within 10 Business Days of receipt of the invoice.
- (c) Late payments may be subject to an additional charge at the discretion of the University, calculated daily from the due date until the date the outstanding amount is paid at:
 - (i) in respect of the period from 1 January to 30 June in any year – the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced; and
 - (ii) in respect of the period from 1 July to 31 December in any year – the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced.
- (d) If the Collaborator is more than 30 Business Days late paying an invoice:
 - (i) the University may stop working on the Project (and will not be in breach of the University's obligations under this Agreement) until the date the outstanding amount is paid; and
 - (ii) the relevant Milestone Dates will be amended to reflect the period the University stops work in accordance with this clause.

9.3 No deduction

The Fees must be paid without deduction or deferment for any demand, withholding, set-off, counter claim or other dispute and free and clear of any taxes imposed by or under the authority of any government or public authority.

Guidance Note for clause 9: This clause sets out the Collaborator's obligation to pay the Fees in accordance with the Project Plan.

This clause also sets out the applicable payment terms (including requirements for invoicing and late payments).

This Agreement does not address the management of future royalties, as it does not cover obligations or rights to Commercialise the Project IP. The Commercialisation of Project IP will be the right of the Owner, or subject to a separate licence agreement.

Guidance Note for clause 9.2(c): The cash rate for the calculation of the additional charge is published by the Reserve Bank of Australia and can be found on its website: <https://www.rba.gov.au/statistics/cash-rate/>.

9.4 GST

Guidance Note for clause 9.4: This clause sets out the treatment of GST, which depends on whether the Collaborator is an Australian entity or not.

- (a) In this clause 9, words and expressions which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the same meaning as in the GST Act.
- (b) If the Collaborator is an Australian entity:
- (i) all Fees payable under this Agreement are exclusive of GST;
 - (ii) if GST is payable by a supplier on any supply made under this Agreement, the recipient, upon receiving a tax invoice from the supplier, will pay to the supplier an amount equal to the GST payable on the supply; and
 - (iii) this amount will be paid in addition to, and at the same time, that the consideration for the supply is to be provided.
- (c) If the Collaborator is a foreign entity:
- (i) any supply made by the University under this Agreement to the Collaborator will be treated by the University as GST-free under the GST Act in reliance on the following representations made by the Collaborator that:
 - A. it is a non-resident for Australian Income Tax purposes;
 - B. it will not be in Australia when the thing to be supplied is so supplied;
 - C. it will acquire the supply in carrying on its enterprise; and
 - D. it is not registered or required to be registered in Australia for GST purposes; and
 - (ii) if any supply made under this Agreement is classified as a taxable supply for GST purposes because any of the representations in clause 9.4(c) are incorrect, the Collaborator will on demand pay the University the GST payable on that supply together with any interest, fine, penalty or other amount imposed as a consequence of the incorrect representation.

9.5 Pre-payment for the Project

If the Collaborator pays any Fees in advance to the University in consideration for the University performing all or part of the Project, and the University does not perform the Project or the relevant part of the Project, then:

- (a) the Fees paid in advance to the University by the Collaborator will become a debt due to the Collaborator; and
- (b) the University must refund the Fees (in full or in part, depending on the portion of the Project that was not performed) to the Collaborator within 20 Business Days of receiving a notice from the Collaborator to do so.

Guidance Note for clause 9.5: This clause contemplates the pre-payment of Fees and requires that the University repay the pre-paid Fees to the Collaborator if the University does not perform the Project.

10. Intellectual property

10.1 Licence rights for Pre-existing IPR and Third Party IPR

This clause 10 does not affect the ownership of any IPR in:

- (a) any Pre-existing IPR;
- (b) any Third Party IPR; or
- (c) any other information, data, techniques, know-how, results, inventions, software, discoveries, materials and Research Tools, that is not Project IP.

Guidance Note for clause 10: This clause sets out the IPR arrangements for the Project.

The Agreement does not provide a licence for Commercialisation or an assignment of IPRs, but there is nothing to stop the parties negotiating a separate arrangement for a Commercialisation licence or assignment of IPRs if this is what both parties require.

Guidance Note for clause 10.1: The ownership of all other IPR used in performing the Project, including Pre-existing IPR and Third Party IPR, is not affected by this Agreement. For example, nothing in this Agreement changes that the Collaborator or University owns its Pre-existing IPR.

10.2 Right to use the Collaborator's Pre-existing IPR

- (a) The Collaborator grants to the University a royalty-free, world-wide, non-transferable, non-exclusive licence to Use the Collaborator Pre-existing IPR for the sole purpose of and only to the extent necessary to exercise the University's rights to the Project IP for the Purpose.
- (b) Subject to clause 10.2(d), the Collaborator warrants that:
 - (i) it owns or is otherwise entitled to grant to the University the right to Use Collaborator Pre-existing IPR (and any other information provided to the University) in accordance with this Agreement; and

Guidance Note for clause 10.2: The University may Use the Collaborator's Pre-existing IPR to perform the Project.

If the University's Use of the Collaborator's Pre-existing IPR is to be subject to certain conditions (for example, the Pre-existing IPR can only be used in Australia), these should be specified in section 2 of Schedule 3.

(ii) to the best of its knowledge and belief (having made reasonable enquiry of those of its Personnel involved in the Project or likely to have relevant knowledge), the University's use of Collaborator Pre-existing IPR to carry out the Project (in accordance with this Agreement) as at the time such material is provided to the University by the Collaborator, will not infringe any third party's rights (including IPR).

(c) The Collaborator warrants that there are no actions, claims or proceedings pending or threatened against the Collaborator in respect of its Collaborator Pre-existing IPR.

(d) Unless otherwise specified in Schedule 3, the Collaborator does not make any representation or warranty, express or implied, that Use of the Collaborator Pre-existing IPR, will not require additional licences, or will not infringe the IPR of third parties, to the extent such Use is not expressly set out in the description of the Purpose.

Guidance Note for clauses 10.2(c) and 10.2(d):

These clauses require the Collaborator to promise that no entity or person has started or is intending to start a law suit against the Collaborator, in relation to the Collaborator's Pre-existing IPR.

However, the Collaborator's legal exposure is limited by clause 10.2(d). If the University uses the Collaborator's Pre-existing IPR in a way that is not expressly permitted by the Project Plan, then the Collaborator does not promise that the University's use of the Pre-existing IPR is lawful.

10.3 Right to use the University's Pre-existing IPR

(a) The University grants to the Collaborator a royalty-free, world-wide, non-transferable, non-exclusive licence to Use any University Pre-existing IPR in the Project IP for the sole purpose of and only to the extent necessary to exercise the Collaborator's rights to the Project IP for the Purpose.

(b) Subject to clause 10.3(d), the University warrants that:

(i) it owns or is otherwise entitled to grant to the Collaborator the right to Use University Pre-existing IPR in accordance with this Agreement; and

(ii) to the best of its knowledge and belief (having made reasonable enquiry of those of its Personnel involved in the Project or likely to have relevant knowledge), the Collaborator's use of University Pre-existing IPR in accordance with this Agreement will, as at the time such material is provided to the Collaborator by the University, not infringe any third party's rights (including IPR).

(c) The University warrants that there are no actions, claims or proceedings pending or threatened against the University in respect of its University Pre-existing IPR.

Guidance Note for clause 10.3: This clause set out that the Collaborator may Use the University's Pre-existing IPR that is included in the Project IP for the Purpose (refer to section 3 of Schedule 3).

If the Collaborator's Use of the University's Pre-existing IPR is to be subject to certain conditions (for example, the Pre-existing IPR can only be used in Australia), these should be specified in section 2 of Schedule 3.

Guidance Note for clauses 10.3(c) and 10.3(d):

These clauses require the University to promise that no entity or person has started or is intending to start a law suit against the University, in relation to the University's Pre-existing IPR.

However, the University's legal exposure is limited by clause 10.3(d). The University does not provide any assurance if the Collaborator uses the University's Pre-existing IPR in a way that is not expressly permitted by the description of the Purpose or if the Collaborator combines the University's Pre-existing IPR with other methods or components (for example, the Collaborator incorporates an existing University method into its manufacturing line and this has not been expressly permitted by the Agreement or Project Plan).

- (d) The University does not make any representation or warranty, express or implied, that Use of the University Pre-existing IPR, will not require additional licences, or will not infringe the IPR of third parties, to the extent:
- (i) such Use is not expressly set out in the description of the Purpose; and
 - (ii) arising as a result of the Collaborator's specific Use:
 - A. in conjunction with other enabling technology components;
 - B. in accordance with a particular method of treatment; or
 - C. in accordance with a particular method of manufacture.

10.4 Right to use Third Party IPR

- (a) Unless agreed otherwise by the parties in Schedule 3, if a party proposes to use Third Party IPR in its performance of the Project (the **Proposing Party**), and the Proposing Party is aware that such use may restrict the other party's exercise of their rights to IPR in the Project IP, the Proposing Party must:
- (i) notify the other party; and
 - (ii) not use the Third Party IPR unless it grants or procures (as required) for the other party a licence to Use the Third Party IPR, on the same terms as clause 10.2(a) or 10.3(a), as relevant.
- (b) If the Proposing Party cannot obtain the licence as described in clause 10.4(a) (including because the Third Party IPR is only licenced on standard terms or because an individual license is required), the Proposing Party must:
- (i) notify the other party of the best alternative licence terms for that Third Party IPR and not use that Third Party IPR unless the other party approves those terms; and

Guidance Note for clause 10.4: This clause applies if a party proposes to use Third Party IPR for the Project.

Third Party IPR will likely have licensing arrangements that are different (and typically more limited) compared to the licensing arrangements for the Project IP under the Agreement. For example, the Licensee can modify or adapt the Project IP, which is often prohibited for Third Party IPR.

If Third Party IPR will be used, the Third Party IPR must be listed in section 7 of Schedule 3, together with any restrictions on the use of that Third Party IPR. The party proposing to use the Third Party IPR must purchase the necessary licence for the other party.

If during the Project, the parties need to use Third Party IPR that is not identified in section 7 of Schedule 3, the parties can amend this section, in accordance with clause 24.6 of this Agreement.

- (ii) if the other party does not approve the terms under clause 10.4(b)(i), notify the other party of any comparable Third Party IPR (if available) and comply with its obligations under this clause 10.4 in respect of such comparable Third Party IPR.

10.5 University ownership of Intellectual Property Rights in the Project IP

- (a) This clause 10.5 applies if the University is the party identified in section 1.1 of Schedule 3. If this clause 10.5 applies, then clause 10.6 does not apply.
- (b) Subject to clause 10.1, all IPR in the Project IP vest in the University (the '**Owner**') on creation and the Collaborator hereby assigns and agrees to assign all such IPR to the Owner.
- (c) The Owner grants (or will procure for) the Collaborator (the '**Licensee**') a perpetual, irrevocable (except for material breach), world-wide, royalty-free, non-exclusive licence to Use the Project IP (other than Pre-existing IPR and Third Party IPR) for the Purpose.

Guidance Note for clauses 10.5 and 10.6: This clause 10.5 and clause 10.6 set out alternative approaches to ownership of the IPR in the Project IP. The parties should identify either the University or the Collaborator as the Owner in section 1.1 of Schedule 3.

The licences granted under these clauses allow the Licensee to Use the Project IP for the Purpose (refer to clause 1.1 definition of 'Use' and section 3 of Schedule 3).

10.6 Collaborator ownership of Intellectual Property Rights in the Project IP

- (a) This clause 10.6 applies if the Collaborator is the party identified in section 1.1 of Schedule 3. If this clause 10.6 applies, then clause 10.5 does not apply.
- (b) Subject to clause 10.1, all IPR in the Project IP vest in the Collaborator (the '**Owner**') on creation and the University hereby assigns and agrees to assign all such IPR to the Owner.
- (c) The Owner grants (or will procure for) the University (the '**Licensee**') a perpetual, irrevocable (except for material breach), world-wide, royalty-free, non-exclusive licence to Use the Project IP (other than Pre-existing IPR and Third Party IPR) for the Purpose.

10.7 Further action

Each party will execute such documents or instruments, and do all other things reasonably required by the other party, in order to give effect to the parties' agreement and the rights in this clause 10.

Guidance Note for clause 10.7: This clause requires both parties to complete documents that are needed to give effect to the IPR licences. For example, if an assignment deed is required to be completed by a party to provide the Owner ownership of the IPR in the Project IP.

10.8 Use of the party's name and acknowledgement

- (a) Except with a party's prior written consent, the other party must not use that party's name:
 - (i) in a manner that suggests that the party endorses or is associated with the other party's business, products or services; or
 - (ii) in any publication or promotional material.
- (b) A party must not use the other party's logo or branding without prior written consent of an authorised representative of the other party.
- (c) Each party must acknowledge the other party's contribution in any publication that refers to the Project IP in accordance with any requirements or restrictions specified in item 9 of the Details Schedule.

Guidance Note for clause 10.8: This clause prevents either party from using the other party's name or logo without the other party's consent. For example, the Collaborator cannot use the University's logo on its website without the University's prior written consent.

11. Intellectual Property Rights management

11.1 General

- (a) The Owner will be responsible for (and for decisions related to) the registration and protection of the IPR that it owns in the Project IP, unless otherwise specified in section 4.1 of Schedule 3.
- (b) Except as specified in section 4.2 of Schedule 3, under this Agreement there is no obligation on the Owner, or rights for the Licensee, to register, or to institute or defend any infringement actions, in respect of IPR in the Project IP or the other party's Pre-existing IPR.
- (c) The parties acknowledge and agree that each party's Personnel:
 - (i) may develop knowledge and skills while performing the Project that may not form part of the IPR in the Project IP; and
 - (ii) may use such knowledge and skills for performing other projects.

Guidance Note for clause 11.2: This clause provides an initial position in relation to Commercialisation of IPR in Project IP that places obligations on the Owner of the Project IP. This approach is intended to balance the respective contributions of the parties to the Project, despite one party being the Owner of the Project IP.

The University should be aware that where it owns the IPR in the Project IP, during the Commercialisation Option Period it will be prohibited from Commercialising the Project IP and, if requested by the Collaborator, the University must negotiate a reasonable commercial licence for the Collaborator to Commercialise the Project IP and any incorporated Pre-existing IPR.

If the Collaborator is the Owner of the Project IP, the University may seek to negotiate a reasonable commercial licence to Commercialise the Project IP (and any incorporated Pre-existing IPR) following the expiry of the Commercialisation Option Period.

If both parties consider that this approach is not appropriate for their particular Project, the parties can agree an alternative approach and specify it in item 10 of the Details Schedule.

11.2 Commercialisation of IPR in Project IP

- (a) Unless otherwise set out in item 10 of the Details Schedule:
 - (i) the Collaborator has during the Term, and any further period specified in item 11 of the Details Schedule (**Commercialisation Option Period**), the first right to Commercialise the IPR in the Project IP in accordance with this clause 11.2;

- (ii) where the Owner is the University, the University must:
 - A. not during the Term and any Commercialisation Option Period, without the written consent of the Collaborator, Commercialise the IPR or any relevant part of it, in the Project IP; and
 - B. on the Collaborator's request prior to expiry of the Commercialisation Option Period, negotiate in good faith the terms of a further licence of the IPR in the Project IP to the Collaborator, for the Collaborator to Commercialise the IPR in the Project IP, on reasonable commercial terms; and
 - (iii) where the Owner is the Collaborator, on request of the University at any time following expiry of the Commercialisation Option Period and subject to any other arms-length commercial agreements that have been entered into by the Collaborator, negotiate in good faith the terms of a further licence of the IPR in the Project IP to the University, for the University to Commercialise the IPR or any relevant part of it, in the Project IP, on reasonable commercial terms.
- (b) If the party Commercialising the IPR in the Project IP requires a licence to Commercialise Pre-existing IPR in conjunction with, or as part of, Commercialising the IPR in the Project IP, the parties will negotiate in good faith to agree the reasonable commercial terms of that licence.
- (c) Any reference in this clause 11.2 and the Details Schedule to reasonable commercial terms requires regard to be given both to the value of the applicable IPRs and the respective contributions of the parties to the Project.

11.3 Infringement and enforcement of IPR

- (a) Each party must promptly notify the other party in writing if it becomes aware of:
 - (i) any actual, suspected or threatened infringement by a third party of the other party's Pre-existing IPR, Confidential Information or IPR in the Project IP;
 - (ii) any claim by a third party that the carrying out of the Project infringes the IPR or other legal rights of that third party; or
 - (iii) any claim by a third party that the use of a party's Pre-existing IPR, Confidential Information or Project IP infringes the IPR or other legal rights of the third party.
- (b) Upon notification under clause 11.3(a), the parties will confer as to what steps, if any, are to be taken. Each party will cooperate in good faith to discuss and seek to agree the steps required to be taken.
- (c) Nothing in this Agreement requires a party to obtain approval from the other party prior to taking action to defend an action by a third party against it, or except as identified in section 4 of Schedule 3, initiate infringement proceedings in respect of IPR owned by the party.

Guidance Note for clause 11.3: This clause sets out the process to be undertaken in the unlikely event that a party becomes aware that any IPRs relevant to the Project are being infringed by a third party or a third party claims its IPRs are being infringed.

Any potential or claimed infringements that a party becomes aware of must be reported to the other party and the parties will discuss and agree the steps, if any, to be taken.

This clause survives the termination or expiry of the Agreement (see clause 24.12).

12. Right to publish

- (a) Notwithstanding any other obligation in this Agreement, the parties are permitted to publish the Project IP (including any Pre-existing IPR or Third Party IPR incorporated into the Project IP) in accordance with this clause 12.
- (b) The parties will ensure that all publications and presentations in respect of the Project comply with the authorship and publication requirements of the *Australian Code for the Responsible Conduct of Research*, as amended from time to time.
- (c) In addition to clause 12(a), each party (a '**Publishing Party**') may only proceed with publishing or submitting for publication, or presenting, anything in relation to the Project that discloses any Confidential Information of the other party or the Project IP ('**Publication**'), provided that it has complied with the process set out in clauses 12(d) and 12(e) and is permitted to proceed in accordance with clause 12(h).

Guidance Note for clause 12: This clause sets out a process for the University to publish the Project IP without disclosing the Collaborator's Confidential Information or impacting the potential commerciality of the Project IP.

Guidance Note for clause 12(a): The purpose of this clause is to clarify that publishing Project IP in accordance with this clause is not Commercialising the Project IP.

- (d) The Publishing Party must provide a copy of the proposed Publication to the other party (the '**Reviewing Party**') for review and response in accordance with clause 12(e).
- (e) Within 30 Business Days of the Publishing Party providing the Publication to the Reviewing Party for review, the Reviewing Party must notify the Publishing Party in writing that it:
- (i) gives unconditional consent;
 - (ii) gives consent subject to certain amendments being made (including, if required, the removal of the Reviewing Party's Confidential Information) which are in the reasonable opinion of the Reviewing Party necessary to ensure its Confidential Information is not disclosed and its privacy obligations are met; or
 - (iii) requires the Publication to be delayed for up to 3 months so as to not prejudice its ability to protect and/or Commercialise its IPR in the Project IP, Confidential Information or Pre-existing IPR.
- (f) Notwithstanding clause 12(e)(ii), the Reviewing Party will not have editorial rights over the content of the Publication.
- (g) If the Publishing Party does not receive a response in accordance with clause 12(e) within 20 Business Days of the Reviewing Party receiving the Publication for review, the Publishing Party may provide the Reviewing Party with a further notice in writing requiring confirmation that it has no objections to the Publication. The Reviewing Party will be deemed to have given unconditional consent to the Publication if it does not respond to such further notice within 5 Business Days of receipt, notifying of any required amendments or a delay in accordance with clause 12(e).
- (h) The Publishing Party may proceed with the Publication:
- (i) upon unconditional consent being given by the Reviewing Party; or
 - (ii) if amendments are required under clause 12(e)(ii), upon all reasonable amendments being made; and
 - (iii) if a period of delay is required under clause 12(e)(iii), upon the expiry of that period.

Guidance Note for clause 12(g): The purpose of this clause is to permit the Publishing Party to proceed with Publication if the Reviewing Party (commonly the Collaborator) does not respond to the Publishing Party's requests for Publication. If the Reviewing Party has any concerns with the Publication, it's important that the Reviewing Party responds to the Publishing Party in accordance with clause 12(e).

- (i) This clause 12 does not apply to the non-public presentation or submission of Student Work for assessment or examination and instead clause 13 applies in such circumstances.

13. Students' right to publish

- (a) Notwithstanding any other provision of this Agreement, the parties agree that Students:
 - (i) may include Project IP in their Student Work, which may be made publicly available in accordance with the University's policies and procedures and any statutes and regulations, subject to the provisions of clause 12; and
 - (ii) will retain copyright in their Student Work.
- (b) Nothing in this clause 13 prevents a Student from submitting their Student Work for assessment and the University will ensure each person to whom Student Work is presented or submitted for assessment purposes is legally bound by obligations of confidentiality that ensure that any Confidential Information contained in the Student Work is not disclosed to others, or used for purposes other than assessing the Student's Work (unless it is a use or disclosure permitted under clause 16).
- (c) At the Collaborator's request, the University must promptly provide written evidence of its compliance with clause 13(b).
- (d) Student Work submitted for a higher degree may be deposited in the library of the University, subject to any reasonable conditions agreed to by both parties, including the removal of any Confidential Information.

Guidance Note for clause 13: This clause sets out a Student's right to publish. However, the University must obtain all rights to assign the IPR in Project IP, even where a Student from another university performs work on the Project.

14. Privacy

In performing this Agreement, both parties agree to comply with their respective obligations under any applicable laws protecting the privacy of individuals. To the extent that the Project IP include personal information, the parties will agree and comply with appropriate protocols for handling the Project IP, consistent with applicable laws and ethics approvals obtained for the Project.

Guidance Note for clause 14: The parties are required to comply with applicable privacy laws, which may include the *Privacy Act 1988* (Cth) and other State and Territory privacy legislation.

15. Moral Rights

15.1 Compliance

- (a) This clause 15.1 applies if specified in item 12 of the Details Schedule. If this clause 15.1 applies, then clause 15.2 does not apply.
- (b) Each party must respect the Moral Rights of the Personnel of the other party as required by law.

15.2 Consent

- (a) This clause 15.2 applies if specified in item 12 of the Details Schedule. If this clause 15.2 applies, then clause 15.1 does not apply.
- (b) Except as set out in clause 15.2(c), each party must use its best endeavours to obtain from its Personnel who, in the performance of the Project, are or may be engaged in the creation of the Project IP in which copyright subsists, a genuine consent in writing to the use of the Project IP for the purposes contemplated by this Agreement, even if such use would otherwise be an infringement of their Moral Rights.
- (c) Each party is not required to obtain consent from its Personnel, who are engaged in the creation of the Project IP in which copyright subsists, to have authorship of their work falsely attributed.
- (d) If a party is unable to obtain a consent described in clause 15.2(b), the party must promptly notify the other party in writing.

Guidance Note for clause 15: Moral rights are personal rights that connect a creator to the work (for example, an author of a paper has the moral rights in the paper). These rights are separate to the ownership rights in the IPR.

The parties can select an approach to Moral Rights in item 12 of the Details Schedule. The parties can either choose to respect Moral Rights or obtain consent from Personnel engaged in the creation of the Project IP to use such Project IP for purposes contemplated by this Agreement, even if such use would otherwise be an infringement of Moral Rights.

16. Confidential Information

16.1 Confidentiality of Project IP

The parties acknowledge and agree that:

- (a) the Project IP is the Confidential Information of both parties for the Term and any Commercialisation Option Period; and
- (b) following the expiry of both the Term and any Commercialisation Option Period, the Project IP is the Confidential Information of the Owner of the IPR in the Project IP.

Guidance Note for clause 16.1: This clause sets out the position with respect to the confidentiality of the Project IP. This clause has the consequence that neither party can disclose the Project IP without the consent of the other party during the Term and any Commercialisation Option Period.

Following the expiry of the Term and any Commercialisation Option Period, it is open to the Owner of the Project IP to disclose the Project IP.

16.2 Use of Confidential Information

- (a) Except as set out in this clause 16.2 or in clause 12, for the period that Confidential Information is to remain confidential as set out in section 8 of Schedule 3, each party when receiving Confidential Information of the other party must:
- (i) only use the Confidential Information for the purpose of performing this Agreement; and
 - (ii) keep confidential and not further disclose the Confidential Information.
- (b) A party may only disclose Confidential Information to its Personnel for the purpose of performing this Agreement. Where Confidential Information of the other party is disclosed to a party's Personnel for the purpose of performing this Agreement, that party must ensure those Personnel are subject to equivalent (legally binding) obligations to those set out in this Agreement.
- (c) Each party may disclose Confidential Information of the other party:
- (i) with that other party's prior written consent;
 - (ii) to a professional adviser in order to comply with obligations, or to exercise rights, under this Agreement, provided that the adviser is subject to equivalent (legally binding) obligations to those set out in this Agreement; or
 - (iii) if required by law or the rules of a securities exchange, but only to the extent of the legal requirement and after appropriate action is taken to protect the form and content of the disclosure. If a party is required to disclose any Confidential Information of the other party pursuant to this clause, that party must promptly notify the other party (to the extent notification is permitted by law).
- (d) Without limiting its obligations, each party:
- (i) undertakes to implement appropriate security practices to prevent any unauthorised copying, use or disclosure of the other party's Confidential Information; and
 - (ii) must promptly notify the other if the party becomes aware of any actual or suspected unauthorised use or disclosure of the other party's Confidential Information.

Guidance Note for clause 16.2(a): This clause restricts further disclosure of Confidential Information and requires that any use of the Confidential Information be only for the purpose of performing this Agreement.

Exceptions (where disclosure or other uses are permitted) are set out in the remainder of clause 16.2.

Guidance Note for clause 16.2(b): Any Personnel that the Confidential Information is disclosed to are also subject to the obligations set out in this Agreement. These Personnel are not required to enter into a separate confidentiality agreement, but the recipient party must ensure that the Personnel are legally bound to comply with equivalent obligations (for example, pursuant to their employment agreement).

Guidance Note for clause 16.2(d): The party receiving the Confidential Information is required to implement appropriate security practices and promptly notify the disclosing party of any actual or suspected unauthorised use or disclosure.

- (e) Notwithstanding any other provision of this Agreement, if a party is a Commonwealth Entity, or a State or Territory government entity, that party will not be in breach of this clause 16.2 if it is required to disclose information to a Minister or a House or Committee of Parliament.
- (f) This Agreement does not limit any other agreement between the parties that provides authority for a party to disclose or use Confidential Information, where received or created under that other agreement.

Guidance Note for clause 16.2(e): Government entities may be required, for public accountability reasons, to disclose Confidential Information in specific circumstances as set out in this clause.

16.3 Return or destruction of Confidential Information

- (a) At any time a party may request return or destruction of any or all copies of its Confidential Information (unless comprised in the Project IP required by law to be retained). The other party must promptly comply with such request. On receipt of any such request the other party's right to use that Confidential Information ceases.
- (b) Notwithstanding clause 16.3(a), a party is entitled to keep a copy of Confidential Information of the other party for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. A party must continue to treat any such copy as Confidential Information of the other party which is subject to the terms of this Agreement.
- (c) The obligations under this clause 16 survive the return or destruction of any Confidential Information and the termination or expiry of this Agreement for the period of confidentiality specified in respect of that Confidential Information in section 8 of Schedule 3.

Guidance Note for clause 16.3: Either party may, at any time, request return or destruction of all copies of their Confidential Information. The other party cannot then continue to use or retain the Confidential Information unless required by law, to manage legal obligations, or where stored in a back-up of an IT system.

The return or destruction of Confidential Information does not affect the parties' obligations under this Agreement, which continue for the period specified in section 8 of Schedule 3.

17. Intellectual Property Rights indemnity

17.1 General

This clause 17 applies unless otherwise set out in item 13 of the Details Schedule.

17.2 Indemnity by the University

The University will indemnify the Collaborator, and its Personnel, against any loss or liability arising out of or in connection with any claim that the Collaborator's Use of any IPR provided by the University for the Purpose infringes any IPR of a third party.

Guidance Note for clause 17: An indemnity is a promise by one party to defend and compensate the other party with respect to loss or damage suffered by the other party for a specified event.

This clause provides for an indemnity from the University in favour of the Collaborator. This is because the University is being paid to undertake the Project (and create the Project IP) and should therefore be legally responsible for and compensate the Collaborator in the event that the Collaborator is, as a result of using IPR provided by the University in accordance with the Agreement, sued by a third party for IP infringement.

However, if both parties consider that the indemnity is not appropriate for their particular Project, the parties can agree not to require an indemnity or to an alternative approach, and specify this in item 13 of the Details Schedule.

Parties are encouraged to consider which party is best placed to manage risk under the Agreement and agree a risk management framework that takes into consideration the principles provided in the

17.3 Obligations

- (a) Where the Collaborator wishes to enforce an indemnity under clauses 17.2, it must:
- (i) give written notice to the University as soon as practical;
 - (ii) make reasonable efforts to mitigate the relevant loss;
 - (iii) subject to the University agreeing to comply at all times with clause 17.3(b), permit the University, at the University's expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any settlement negotiation or litigation that may follow; and
 - (iv) in the event that the University is permitted to handle negotiations or conduct litigation on behalf of the Collaborator under clause 17.3(a)(iii), provide all reasonable assistance to the University in the handling of any negotiations and litigation.
- (b) The requirements referred to in clause 17.3(a)(iii) are that the University must:
- (i) if the Collaborator is a Commonwealth Entity, comply with government policy and obligations, as if the University were the Collaborator, relevant to the conduct of the litigation and any settlement negotiation (including the *Legal Services Directions 2017*) and any direction issued by the Attorney General to the Commonwealth or delegate; and
 - (ii) keep the Collaborator informed of any significant developments relating to the conduct of the defence or settlement of any claim.

Guidance Note for clause 17.3: This clause sets out the steps that should be taken by both parties in the event that the Collaborator seeks to enforce the indemnity in clause 17.2.

Guidance Note for clause 17.3(b): This clause acknowledges that if the Collaborator is a Commonwealth Entity, the University must comply with government policies and obligations in respect of defending and managing the claim.

18. Warranties and liability

18.1 General warranties

Each party represents and warrants to the other party that to its actual knowledge at the Commencement Date it has:

- (a) full power and authority to enter into and perform its obligations under this Agreement;
- (b) has taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into this Agreement and perform the Project.

Guidance Note for clause 18.1: This clause sets out the general representations and warranties that the parties make to each other with respect to entering into the Agreement and performing the Project. For example, this warranty would require a party to secure the relevant licences to Pre-existing IPR, or ethics approvals.

18.2 University warranties

- (a) The University represents and warrants to the Collaborator that it will undertake the Project in accordance with the requirements of clause 3.1(a).
- (b) This clause 18.2 does not require the University to make any representations or warranties to the Collaborator in respect of the outcome of the Project or ability to use the Project IP.

Guidance note to clause 18.2: The University promises to comply with the requirements in clause 3.1(a) while performing the Project.

However, the University does not make any promises regarding the likely outcome of the Project or the Project IP.

18.3 Warranties repeated

The warranties given under the Agreement are deemed to be repeated by each party on the Commencement Date and on each day during the Term that a party provides Pre-existing IPR, Third Party IP or Project IP to the other party.

18.4 Project IP "as is"

The parties agree that:

- (a) the Project is speculative and that the outcomes of the Project and its ability to produce commercially useful results are not guaranteed; and
- (b) the Project IP are the result of experimental research and as such, each party must use its own judgement as to the applicability and fitness for purpose of the Project IP for that party's intended use of the Project IP.

Guidance Note for clause 18.4: This clause acknowledges the speculative and experimental nature of research projects.

18.5 Exclusions

- (a) Each party excludes all terms, conditions and warranties implied by custom, the general law or statute into this Agreement except for any statutory guarantees, the exclusion of which would contravene any statute or which would cause this clause to be void or unenforceable (**Non-Excludable Condition**).
- (b) A party's liability to the other party for breach of any Non-Excludable Condition is limited, at the first party's option, to:
 - (i) for services:
 - A. providing those services again; or
 - B. paying the cost of having those services provided again;
 - (ii) for goods:
 - A. replacing the goods; or

Guidance Note for clause 18.5: To the extent permitted by law, this clause excludes any additional warranties, terms or conditions that may otherwise be implied by law into the Agreement.

However some terms, such as those implied by legislation, cannot be excluded by this clause. This will include statutory guarantees about goods and services under the Australian Consumer Law.

For any warranties, terms or conditions which cannot be excluded, and which are breached by a party, the other party's remedies are limited to providing the goods/services again, or paying for the goods/services to be provided again.

- B. paying the cost of replacing the goods.

18.6 Liability

- (a) Except as specified in this Agreement, each party's use of any Pre-existing IPR and Project IP licensed or made available to it under this Agreement is at its own risk.
- (b) Each party's liability, including under an indemnity, under this Agreement is reduced proportionately to the extent that any damage, liability, loss or cost arises from, or is attributable to, any negligent, unlawful or reckless act or omission of, or breach of this Agreement by, the other party or its Personnel.
- (c) 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.

Guidance Note for clause 18.6(a): The use of Pre-existing IPR and the Project IP is at each party's own risk, except to the extent that another party has provided a warranty in relation to the IPR under this Agreement.

Guidance Note for clause 18.6(b): Where Party A is liable to Party B under this Agreement, Party A's liability is reduced to the extent that Party B contributed to any loss it suffered. For example, Party B may have been negligent and contributed to its loss.

18.7 Liability cap

- (a) The aggregate liability of each party for loss suffered or incurred by the other party arising out of or in connection with this Agreement (including under an indemnity) however caused whether in tort (including negligence), contract, statute, equity or otherwise is, to the full extent permitted by law:
 - (i) subject to clause 18.7(b), limited to the amount specified in item 14 of the Details Schedule; and
 - (ii) excluded for any loss of anticipated profits or savings, business interruption, loss of revenue or loss of goodwill.
- (b) Any limit on the liability of each party under clause 18.7(a)(i) does not apply in relation to liability for:
 - (i) personal injury (including sickness or death);
 - (ii) an infringement of third party IPR;
 - (iii) a breach of any obligation of confidentiality; or
 - (iv) wilful default or fraud.

Guidance Note for clause 18.7(a): This clause limits the amount of financial exposure each party faces in the event a lawsuit is filed or a claim is made by the other party.

The parties can agree to cap the total amount that a party may be liable to pay to the other party for loss suffered in relation to this Agreement. This cap should be set out in item 14 of the Details Schedule.

Guidance Note for clause 18.7(b): The liability cap specified in item 14 does not apply to the types of liability listed in clause 18.7(b). This means that the liability of each party for these types of claims is unlimited. These types of liability are typically unlimited in commercial arrangements because it is difficult to quantify (for the purposes of determining a liability cap) the losses that can arise from such claims.

19. Insurance

19.1 Required insurance

- (a) Each party must take out, maintain and keep current during the Term and, in the case of insurance policies where claims must be made during the currency of the policy, for 7 years after expiration or earlier termination of this Agreement, the insurances set out in item 15 of the Details Schedule.
- (b) Each party must take out, maintain and keep current during the Term and, in the case of insurance policies where claims must be made during the currency of the policy, for 7 years after expiration or earlier termination of this Agreement, workers compensation and employer's liability insurance as required by law.
- (c) The parties acknowledge and agree that proof of adequate levels of self-insurance or other appropriate protection by a party are acceptable as an alternative to the insurance required under this clause 19.1.

19.2 Insurance details

- (a) The insurance policies specified in clause 19.1 must:
 - (i) if held with an insurer (or equivalent), be with a sound and reputable insurer (or equivalent); and
 - (ii) comply with all applicable laws.
- (b) Each party will produce evidence of the currency of the insurance policies it is required to hold under clause 19.1 within 10 Business Days of receipt of a written request from the other party.
- (c) Each party will all times comply with the terms of the insurance policies it is required to hold under clause 19.1.
- (d) Nothing in this clause 19 limits the other obligations and liabilities of either party under this Agreement or at law.

Guidance Note for clause 19: Each party is required to maintain for the duration of the Agreement and 7 years following expiration or termination, the types of insurance, and for the values, specified in item 15 of the Details Schedule. Refer to the HERC IP Framework Practical Guide for further guidance.

20. Dispute resolution

20.1 Application of this provision

Any dispute, controversy, difference or claim arising out of or in connection with this Agreement or the subject matter of this Agreement, including any question concerning its formation, validity, interpretation, performance, breach or termination (a **Dispute**) must be dealt with in accordance with this clause 20.

Guidance Note for clause 20: This clause sets out a process to manage disputes related to the Agreement.

The party initiating the Dispute must issue a notice to the other party (clause 20.3) detailing the Dispute. Within 20 Business Days of the notice, the senior representatives of the parties must attempt to resolve the dispute (clause 20.4). If the senior representatives cannot resolve the Dispute, the parties may undertake mediation.

20.2 Interlocutory relief and claim for debt

Nothing in this clause 20:

- (a) prevents either party from seeking urgent injunctive or similar interim relief from a court of competent jurisdiction; or
- (b) prevents the University from taking any step (including, but not limited to, commencing a proceeding) in relation to a claim for monies owing to the University under clause 9.

Guidance Note for clause 20.2: A party may go to court and urgently seek an order for injunctive or interim relief (for example, to prevent disclosure or use of Confidential Information), including prior to following the Dispute process. This is permitted because the value of the Confidential Information is lost once it is disclosed.

20.3 Notice of Dispute

The party claiming that a Dispute exists ("**the Initiating Party**") must give the other party ("**the Receiving Party**") written details of the nature of the Dispute ("**Notice of Dispute**"). The Notice of Dispute must state that it is a Notice of Dispute prepared in accordance with this clause 20.

20.4 Meeting of senior representatives

Within 20 Business Days of the service of the Notice of Dispute by the Initiating Party on the Receiving Party, in the case of the University, the Deputy Vice-Chancellor Research (or equivalent) or their delegate and in the case of the Collaborator, its Chief Executive Officer, or their delegates who have appropriate authority to resolve the Dispute, will meet (in person or by telephone or video conference) and attempt to resolve the Dispute in good faith.

20.5 Mediation

If the Dispute is not resolved within 20 Business Days of the Notice of Dispute (or longer period agreed by the parties) the parties will endeavour to settle the Dispute by mediation administered by the Australian Disputes Centre (**ADC**). The mediation must be conducted in accordance with the *ADC Guidelines for Commercial Mediation* operating at the time the matter is referred to ADC.

Guidance Note for clause 20.5: The ADC Guidance for Commercial Mediation is available on the ADC website at: <https://disputescentre.com.au/adr-guidelines/>.

20.6 Escalation to court proceedings

- (a) This clause 20.6 applies if specified in item 16 of the Details Schedule. If this clause 20.6 applies, then clauses 20.7 and 20.8 do not apply.
- (b) If the Dispute is not resolved within 30 Business Days of the service of the Notice of Dispute, either party may initiate proceedings in a court of competent jurisdiction.

20.7 Escalation to arbitral proceedings

- (a) This clause 20.7 applies if specified in item 16 of the Details Schedule. If this clause 20.7 applies, then clauses 20.6 and 20.8 do not apply.
- (b) If the Dispute has not resolved within 30 Business Days of the service of the Notice of Dispute, it must be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. The seat of arbitration must be the capital city of the State or Territory of the location of the University set out in item 1 of the Details Schedule. The language to be used in the arbitral proceedings must be English. The Dispute must be decided in accordance with the laws of the State or Territory of the location of the University set out in item 1 of the Details Schedule.

20.8 Escalation to arbitral proceedings

- (a) This clause 20.8 applies if specified in item 16 of the Details Schedule. If this clause 20.8 applies, then clauses 20.6 and 20.7 do not apply.
- (b) If the Dispute has not resolved within 20 Business Days of the service of the Notice of Dispute, it must be referred to and finally determined by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration must be the capital city of the State or Territory of the location of the University set out in item 1 of the Details Schedule. The language to be used in the arbitral proceedings must be English. The Dispute must be decided in accordance with the laws of the State or Territory of the location of the University set out in item 1 of the Details Schedule.

Guidance Note for clauses 20.6, 20.7 and 20.8: If mediation is unsuccessful or if the Dispute is not resolved after 30 Business Days of the notice, the parties may escalate the Dispute. The parties must specify in item 16 of the Details Schedule whether a Dispute will be escalated to:

- court proceedings (typically used when both parties are Australian and litigation is chosen over arbitration);
- WIPO arbitral proceedings (typically used where one party is outside of Australia and arbitration is chosen over litigation - this variant uses the WIPO Arbitration Rules (available [here](#))); or
- ACICA arbitral proceedings (typically used where one party is outside of Australia and arbitration is chosen over litigation - this variant uses the ACICA Arbitration Rules (available [here](#))).

Depending on which escalation process is specified in item 16 of the Details Schedule, will dictate whether clause 20.6, clause 20.7 or clause 20.8 will be operative in the Agreement.

20.9 Confidentiality

Each party must treat as confidential and not disclose to a third party without the other party's prior written consent all matters relating to the dispute resolution process, including the details of the Dispute and the subject matter of the Dispute, except:

- (a) for the purpose of making an application to any competent court in accordance with this clause 20;
- (b) if necessary to obtain legal or financial advice;
- (c) if required by law; or
- (d) in the case of a party that is a Commonwealth Entity or a State or Territory government entity, disclosure to its responsible government Minister or in response to a request by a House or Committee of Parliament.

Guidance Note for clause 20.9: This clause requires the parties to keep information relating to the Dispute confidential, and not disclose information relating to the Dispute unless approved by each other party to the Dispute.

Clause 20.9(a) to (d) sets out a number of exceptions to the obligation of confidentiality.

21. Termination

21.1 Termination by agreement

The parties may terminate or reduce the scope of this Agreement at any time by written agreement. Any amendment to the Agreement must be in accordance with clause 24.6.

21.2 Termination for default

- (a) Either party may immediately terminate this Agreement by written notice to the other party if that other party:
 - (i) breaches a material term of this Agreement, where that breach is not capable of remedy; or
 - (ii) breaches any term of this Agreement which is not remedied within 20 Business Days' written notice to do so by the first party.
- (b) Without limitation, for the purposes of clause 21.2(a)(i), each of the following constitutes a breach of a material term of this Agreement:
 - (i) a failure to comply with clause 7.2 (Key Personnel);
 - (ii) a failure to comply with clause 9 (Payment);
 - (iii) a failure to comply with clause 10 (Intellectual property);

Guidance Note for clause 21.2: This Agreement may be terminated where a party has not complied with a material obligation. Examples of material obligations are set out in clause 21.2(b). This is not an exhaustive list of material obligations.

If the breach of the material obligation can be fixed by the party in breach, the other party must issue a notice requiring the breach to be remedied within 20 Business Days (clause 21.2(a)(ii)).

If the breach of the material obligation cannot be fixed by the breaching party, the Agreement may be terminated with immediate effect by the other party. The other party should carefully consider whether the breach can be fixed before terminating with immediate effect. Otherwise, the other party may be considered to have itself breached the Agreement and exercised its termination rights wrongfully.

- (iv) failure to comply with clause 11 (Intellectual Property Rights management);
- (v) a failure to comply with clause 12 (Right to publish); or
- (vi) a failure to comply with clause 16 (Confidential Information).

21.3 Termination for convenience

- (a) Either party may terminate this Agreement for convenience at any time by giving the other party 30 Business Days' written notice, subject to the payment of:
 - (i) the amounts due under this Agreement on or before the effective date of termination; and
 - (ii) any reasonable costs (including any committed costs as at the date of termination that cannot reasonably be avoided), incurred by the other party as a result of the termination (excluding loss of profits or savings, business interruption, loss of revenue or loss of goodwill).
- (b) The total of any payments made by a party under 21.3(a) must not exceed the Fees.

Guidance Note for clause 21.3: This Agreement may be terminated at any time, provided that the terminating party gives the other party 30 Business Days' written notice. The terminating party will also be required to pay certain costs, as described in clause 21.3(a).

21.4 Consequences of termination or expiry

- (a) Upon termination of this Agreement for any reason or expiry of this Agreement:
 - (i) the parties' rights to IPR in the Project IP continue in accordance with this Agreement;
 - (ii) the parties must store, dispose of, destroy or return any Collaborator Material or University Material (as relevant) not incorporated into the Project IP in accordance with clauses 3.3(c) and 5.3(b) (as directed by the other party), except that a party is entitled to keep a copy of any Material of the other party for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. A party must continue to treat any such copy as Confidential Information of the other party which is subject to the terms of this Agreement;

Guidance Note for clause 21.4: If the Owner terminates this Agreement for any reason or the Licensee terminates the Agreement for the Owner's breach, the Licensee may Use the IPR in the Project IP to complete the Project. This mitigates the Licensee's (which is typically the Collaborator) risk that the Owner does not want to continue with the Project or breaches the Agreement.

- (iii) the University will (subject to payment of any outstanding Fees) be required to deliver to the Collaborator copies of all Project IP in their current state at the date of termination or expiry; and
 - (iv) except where clause 21.3 applies, if the Collaborator has paid any of the Fees in advance, the University must refund any portion that was not required to have been paid by or at the time of termination or expiry.
- (b) Where the Owner of the IPR in the Project IP has terminated the Agreement under clause 21.3(a), or the Licensee has terminated the Agreement under clause 21.2(a), in addition to Use of the IPR in the Project IP for the Purpose, the Licensee may Use the IPR in the Project IP (but not the Owner's Pre-existing IPR or Third Party IPR) to otherwise complete the Project itself or to engage a third party to complete the Project.

22. Unexpected Events

- (a) If an Unexpected Event prevents or delays a party (**Affected Party**) from performing any obligation under this Agreement (other than payment of amounts due):
- (i) as soon as is reasonably practicable, but no later than three Business Days after the commencement of the Unexpected Event, the Affected Party must give a notice to the other party:
 - A. describing the Unexpected Event;
 - B. specifying the impacted obligations and the extent to which the Affected Party cannot perform those obligations;
 - C. if possible, estimating the period of delay due to the Unexpected Event; and
 - D. specifying the measures proposed to be adopted to remedy or minimise the disruption caused by the Unexpected Event,

and those obligations will be suspended for so long as the Unexpected Event continues; and

Guidance Note for clause 22: This clause sets out how specific unexpected events that prevent a party from fulfilling its obligations should be managed (for example a war being declared in Australia).

The affected party must give the other party notice of the Unexpected Event and its impact. If the Unexpected Event continues for 30 Business Days or more, either party can consider taking further action, such as varying or terminating this Agreement.

- (ii) the Affected Party must use reasonable efforts to mitigate the effects of the Unexpected Event.
- (b) If the Unexpected Event continues for a period of 30 Business Days or more, either party may (without affecting the accrued rights and obligations of each party as at that date) terminate this Agreement immediately by notice to the other party and the provisions of clause 21.4 will apply.
- (c) If this Agreement is terminated under clause 22(b), each party will bear its own costs associated with ceasing performance of this Agreement.

23. Notices

23.1 Obligation for notices

Each notice under this Agreement must be:

- (a) in writing;
- (b) addressed to the recipient at the applicable address for notices set out in item 1 or 2 of the Details Schedule (as applicable), until changed by written notice; and
- (c) left at, or sent by pre-paid express post, or email to, that address.

23.2 Deemed receipt

- (a) Notices given in accordance with clause 23.1 will be deemed to be received:
 - (i) if delivered by hand - upon delivery to the relevant address;
 - (ii) if sent by pre-paid express post - on the second Business Day after the date of posting; or
 - (iii) if transmitted by email - at the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered.
- (b) A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

Guidance Note for clause 23: For any formal notices and communications, the parties should follow the requirements of clause 23.1 to ensure it is valid.

A notice will be deemed to be received upon delivery, as set out in clause 23.2.

While there are several ways to send notices, the most common approach (and the fastest) is via email. An email sent before 5pm on a Business Day in the place of receipt is deemed delivered at the time sent, unless an automated message is received that an email has not been delivered. There is no requirement to also post or hand deliver a copy of a notice once sent via email.

24. General

24.1 Relationship

This Agreement does not create a relationship of employment, agency, joint venture or partnership between the parties. A party must not represent itself, and must ensure its Personnel do not represent themselves, as:

- (a) being an employee, partner, joint venturer or agent of the other party; or
- (b) having any authority to act on behalf of the other party or to bind the other party to any course of action.

Guidance Note for clause 24.1: This clause clarifies that this Agreement (and the undertaking of the Project) does not create an employment relationship, agency, joint venture or partnership between the parties.

24.2 No constraints

- (a) Each party acknowledges and agrees that (subject to the scope of the assignment of, and licences to, IPR in this Agreement) the other party's research, development, Commercialisation and consulting are not constrained or restricted by this Agreement.
- (b) Each party acknowledges that the other party's activities may be in competition with its own business or activities.

Guidance Note for clause 24.2: This clause clarifies that this Agreement does not restrict the parties from undertaking any research, development or Commercialisation, subject to any licences it has granted or received under this Agreement. For example, a party may use its Pre-existing IPR to undertake another project.

24.3 No assignment

Except in relation to the Owner's rights to IPR in the Project IP, a party must not assign or novate its rights or obligations under this Agreement unless it has the prior written consent of the other party.

Guidance Note for clause 24.3: Assigning any rights will need written consent of the other party. Novation replaces a party with a new party and requires a deed to be **agreed** by all parties.

24.4 Further assurances

Each party must take all steps, execute all documents and do everything reasonably required by the other party to give effect to any of the transactions contemplated by this Agreement.

Guidance Note for clause 24.4: The steps contemplated by this clause may include completing documents to give effect to registration of IPR or entering into a separate assignment deed to give effect to the assignment of IPR.

24.5 Entire agreement

This Agreement contains the entire agreement of the parties as to its subject matter. It sets out the only representations and warranties relied on by the parties when entering into this Agreement.

Guidance Note for clause 24.5: The purpose of this clause is to make clear that this Agreement is the entire agreement between the parties with respect to the conduct of the Project.

24.6 Variation

No variation or amendment of this Agreement will be effective unless it is made in writing and signed by an authorised representative of each party.

Guidance Note for clause 24.6: Despite the requirement for changes to be agreed and in writing, if the parties or their Personnel verbally agree changes or act as if the Agreement has been varied, this can become legally binding on them. The parties need to manage their conduct to ensure it is consistent with the agreed terms.

24.7 No waiver

No failure to exercise or delay in exercising any right, power or remedy under this Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

Guidance Note for clause 24.7: The purpose of this clause is to protect a party that has failed to (or has only partially) exercised, or delayed to exercise, its rights.

24.8 Remedies cumulative

The rights, powers and remedies provided to a party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or any other agreement.

Guidance Note for clause 24.8: This clause clarifies that the parties' rights under the Agreement are in addition to any rights provided under law and do not exclude any rights that a party may have under law.

24.9 Severance

- (a) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be severed to the extent necessary to make this Agreement valid and enforceable. The severance of a provision will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- (b) If the severance of a provision would materially change the substance of this Agreement then the parties must negotiate in good faith to seek agreement on a replacement provision that:
 - (i) is valid and enforceable; and
 - (ii) will as far as possible, give effect to the intention of the parties as expressed in this Agreement at the date of execution.

Guidance Note for clause 24.9: If a provision of this Agreement is determined to be invalid at law (for example, as a consequence of a judgement of a court or a change in legislation), it will not affect the enforceability of the other provisions in this Agreement.

If the provision severed from the Agreement is essential, the parties must negotiate in good faith a replacement provision.

24.10 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts will collectively be taken to constitute one instrument.

Guidance Note for clause 24.10: The purpose of this clause is to make it clear that the parties can sign separate copies of this Agreement (called 'counterparts') and the Agreement will be binding. The parties should ensure that the counterpart documents are exactly the same.

24.11 Governing law

- (a) This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation are governed by the laws of the State or Territory of the location of the University set out in item 1 of the Details Schedule. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State or Territory
- (b) If a party is a foreign entity, the *United Nations Convention on Contracts for the International Sale of Goods* does not apply for the purpose of this Agreement.

Guidance Note for clause 24.11: The location of the University specified in item 1 of the Details Schedule determines applicable law and jurisdiction of this Agreement.

The *United Nations Convention on Contracts for the International Sale of Goods* applies under applicable State and Territory legislation where one party is a foreign entity. It is similar to sale of goods legislation, implying terms into contracts unless otherwise agreed. The parties agree that it does not apply under this template because this Agreement (and other laws) cover the relevant matters.

24.12 Survival

Guidance Note for clause 24.12: This clause sets out the provisions of this Agreement that continue in effect following the termination or expiry of this Agreement.

- (a) Any provisions which by their nature are intended to survive the termination or expiration of this Agreement will so survive, including:
- (i) clause 10 (Intellectual property);
 - (ii) clause 11 (Intellectual Property Rights management);
 - (iii) clause 12 (Right to publish);
 - (iv) clause 14 (Privacy);
 - (v) clause 15 (Moral Rights);
 - (vi) clause 16 (Confidential Information);
 - (vii) clause 18 (Warranties and liability);
 - (viii) clause 19 (Insurance); and
 - (ix) clause 21.4 (Consequences of termination or expiry).
- (b) Termination or expiry of this Agreement does not affect the rights and remedies of the parties that accrued before the date of termination or expiry.

Schedule 1 - Details Schedule

Item	Related clause	Subject	Description	
1	Clause 1.1	University	University Name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i>	
2	Clause 1.1	Collaborator	Collaborator Name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i>	
3	N/A	Project Title	<i>[Insert title and summary details of Project]</i>	
4	Clause 1.1	Commencement Date	<i>[Insert the date this Agreement commences.]</i>	
5	Clause 1.1	Project End Date	<i>[Insert date Agreement is to end eg, dd/mm/yy]</i>	
6	Clause 3.1	Policies, standards or laws	<i>[insert any specific policies, standards or law that the University, or the Collaborator or both parties must comply with in delivering the Project.]</i>	
7	Clause 7.1(a)	Chief Investigator	<i>[Insert the name of the individual that will be responsible for managing the Project.]</i>	
8	Clause 7.2	Key Personnel	Collaborator Key Personnel	University Key Personnel
			<i>[Insert any specific</i>	<i>[Insert any</i>

Guidance Note for items 1 and 2 : These items set out the parties' representatives for disputes and receipt of notices under the Agreement and can only be changed in writing.

The location of the University is also the governing law and jurisdiction of the Agreement (see clause 24.11).

Guidance Note for item 4: The date the Agreement commences should be specified here. This would normally be on or after signing of the Agreement, but can be earlier if both parties agree.

Guidance Note for item 5: This item should set out the expected date the Project would end. This date should be a short time after the last activity or deliverable is due to enable the parties to close out the Project.

Guidance Note for item 6: This item should set out any policies, standards or laws that will apply to the Project. For example, the parties may specify that the Project will be undertaken in accordance with the AIATSIS – Code of Ethics for Aboriginal and/or Torres Strait Islander Research.

Guidance Note for item 7: The individual identified by the University to be the Chief Investigator should be identified in this item.

The principal investigator and the Chief Investigator may be the same person.

Guidance Note for item 8: Each party is obliged to perform the Project utilising any Key Personnel listed in Item 8 (see clause 7.2).

List any Key Personnel that each party must utilise in the performance of the Project.

Item	Related clause	Subject	Description
			<p><i>Personnel that are required to support the Project.]</i></p> <p><i>specific Personnel that are required to undertake the Project.]</i></p>
9	Clause 10.8	Acknowledgement	<i>[Insert any requirements or restrictions for a party to acknowledge in publications (including the form of acknowledgement) the contribution of the other party.]</i>
10	Clause 11.2(a)	Right to Commercialise	<i>[Specify here if the Owner of the Project IP will not have the first right to Commercialise the IPR in the Project IP and include details of any other approach to Commercialisation. Otherwise insert 'Clause 11.2 does not apply']</i>
11	Clause 11.2(a)(i)	Period for Commercialisation	<i>[Insert the period for which the Owner of the Project IP has the first right to Commercialise or insert 'N/A'.]</i>
12	Clause 15	Moral Rights	<p><i>[Tick which Moral Rights provision applies.]</i></p> <p>Clause 15.1 (Compliance)</p> <p>Clause 15.2 (Consent)</p>
13	Clause 17.1	Indemnity	<p><i>[insert:</i></p> <ul style="list-style-type: none"> <i>'N/A' if the indemnity in clause 17 is to apply; or</i> <p><i>if the indemnity in clause 17 is not to apply, either:</i></p>

Guidance Note for item 9: If a party would like to be acknowledged in any of the other party's publications that relate to the Project IP (for example, journal papers or articles), the details of the form of acknowledgement should be specified in item 9. For example, the Collaborator may specify that its contribution be acknowledged in any abstract of a journal paper.

Alternatively, the parties can specify restrictions on acknowledgements. For example, prohibiting public acknowledgement of a party's contribution.

Guidance Note for item 10: Clause 11.2 provides an initial position in relation to Commercialisation of IPR in Project IP. However, if both parties consider that the approach in clause 11.2 is not appropriate for their particular Project, the parties can agree an alternative approach and set it out in this item.

Guidance Note for item 11: This item allows the parties to specify the period for which the Owner of the Project IP has the first right to Commercialise.

If the parties agree that there is no right to Commercialise, insert 'N/A'.

Guidance Note for item 12: This item allow the parties to select whether Moral Rights in the creators will be respected (clause 15.1) or Moral Rights consents will be obtained from the creators (clause 15.2).

Guidance Note for item 13: If an alternative indemnity is agreed or no indemnity is to apply to the Agreement, it should be set out in this item. The HERC IP Framework Practical Guide provides further guidance regarding indemnities.

Item	Related clause	Subject	Description
			<ul style="list-style-type: none"> • an alternative indemnity agreed by the parties; or • if no indemnity is to be included, 'Neither party indemnifies the other party under this Agreement.!.']
14	Clause 18.7(a)(i)	Liability cap	[Insert liability cap amount]
15	Clause 19.1(a)	Insurance	<p>[insurance types and amounts. For example:</p> <p>Public and product liability insurance with a limit of liability of not less than \$10 million for each and every event.</p> <p>Professional indemnity insurance with a limit of liability of not less than \$5 million for each and every event.]</p>
16	Clause 20	Dispute resolution	<p>[Tick which dispute resolution provision applies.]</p> <p>Clause 20.6 (Escalation to court proceedings)</p> <p>Clause 20.7 (Escalation to arbitral proceedings - WIPO)</p> <p>Clause 20.8 (Escalation to arbitral proceedings - ACICA)</p>

Guidance Note for item 14: This item sets out the agreed maximum liability of a party for loss suffered by the other party.

The liability cap should be based on a risk assessment (refer to the HERC IP Framework Practical Guide) and can be expressed as a monetary value, or linked to the Fees paid under this Agreement.

This liability cap does not apply to losses arising from the acts set out in clause 18.7(b).

Guidance Note for item 15: This item sets out proposed insurance types and amounts. The parties should consider the types of insurance and the values required based on the nature of the Project.

Guidance Note for item 16: This item allows the parties to select whether to escalate to court proceedings or a form of arbitration (either WIPO or ACICA), if a dispute cannot be resolved after 30 Business Days from the Dispute Notice.

Schedule 2 - Project Plan

1. Objectives

[Insert a description of the objectives and key requirements for the Project.]

2. Project methodology

[Insert description of Project methodology (attach additional pages if required)]

3. Project IP

	Milestone	Project IP	Milestone Date
1.	[Describe the work that the University is required to do]	[Reports? Physical items? Is the University required to make improvements to the Collaborator's Pre-existing IPR?]	[insert]
2.			
3.			

4. Fees

\$(insert) (excluding GST) to be paid [monthly / quarterly] in [advance / arrears]

OR

[insert the Milestone payments, which are to be paid by the Collaborator on the University's achievement of each Milestone by the applicable Milestone Date.]

	Milestone	Milestone Date	Milestone payment (excl GST)
1.			
1.			
TOTAL			

Guidance Note for section 1 of Schedule 2: This section should set out a brief summary of the:

- objectives of the Project; and
- key requirements of the Project.

The objectives can assist in focusing the parties and understanding the expected outcomes sought by the parties.

Guidance Note for section 2 of Schedule 2: The parties should insert details of the Project methodology (including details of the key tasks and activities to be undertaken by the University) for the Project.

It is important that this item is drafted carefully, as this is the process that the University will be accountable for undertaking under this Agreement (see clause 3).

The parties can amend this section during the Project as necessary, in accordance with clause 24.6 of this Agreement.

Guidance Note for section 3 of Schedule 2: The Milestones and Milestone Dates for the Project IP should be set out here. However, Milestones may not be suitable for all Projects.

Milestones are intended to identify key achievements for a Project (for example the completion of a significant report or completion of an experiment) and may be linked to specific payments.

The Project IP to be identified should be any deliverable / output (such as any reports or a prototype) that the parties expect to be developed during the Project.

To assist both parties it is preferable to complete this section to reflect all Project IP to be developed under the Agreement. However, the Project IP is defined to include any information or materials developed in the course of the Project.

Guidance Note for section 4 of Schedule 2: This Item should set out any Fees (exclusive of GST) payable by the Collaborator.

The agreed Fee should reflect compensation for use of the University's Pre-existing IPR as well as the effort in undertaking the Project.

Although this section includes the option for the Fees to be payable on achievement of Milestones, payments linked to Milestones may not be appropriate for all Projects.

5. In-kind Contributions (clause 6)

5.1 University In-kind Contributions

	In-kind Contribution	Use in Project	Value (\$) of In-kind Contribution
1.			
2.			
3.			
4.			

Guidance Note for section 5 of Schedule 2: This item should detail any resources (including personnel), facilities and loaned equipment, including the estimated value of the contributions that have been committed by the parties to the Project. Any contribution specified in this item must be provided by the relevant party.

5.2 Collaborator In-kind Contributions

	In-kind Contribution	Use in Project	Value (\$) of In-kind Contribution
1.			
2.			
3.			
4.			

6. Progress meetings (clause 7.4)

	Meeting	Attendees	Frequency	Place
1.				
2.				
3.				

Guidance Note for section 6 of Schedule 2: The parties should specify here any requirements for the parties to meet. This may include, for example, monthly status meetings.

The parties should specify the details and requirements of the meetings, to ensure that both parties have the same expectations of the required meetings.

Any progress reports should be specified in section 3 of this Schedule.

Schedule 3 - Project IP, Research Tools, Pre-existing IPR, Material and Confidential Information

1. Ownership of Project IP

1.1 Owner of IPR in the Project IP

The University [or where appropriate in accordance with the HERC IP Framework Practical Guide, the parties may agree that the Collaborator should be the owner.]

1.2 Licensee of IPR in the Project IP

The Collaborator [or where appropriate in accordance with the HERC IP Framework Practical Guide, the parties may agree that the Collaborator should be the owner, in which case the University should be the Licensee.]

Guidance Note for section 1 of Schedule 3 Please refer to the HERC IP Framework Practical Guide for information to assist parties to determine the Owner of the Project IP. The Owner is usually responsible for the registration and protection of the IPR in the Project IP, unless otherwise specified in section 4 of this Schedule (see clauses 10.5 and 10.6).

If the Collaborator is the Owner of the IPR in the Project IP, this section 1.1 should be updated and section 1.2 should specify the University as the Licensee.

The party that is not the Owner of the Project IP is granted a licence to Use the Project IP (see clauses 10.5 and 10.6 and section 1.2 of this Schedule).

2. Use

IPR	Limitations on Use
Project IP	[Insert any limitation on the right to Use the Project IP or insert N/A.]
University's Pre-existing IPR	[If limitations apply include 'Limitations on Use are set out in section 5.2 of this Schedule.' or insert 'N/A'.]
Collaborator's Pre-existing IPR	[If limitations apply include 'Limitations on Use are set out in section 6.1 of this Schedule.' or insert 'N/A'.]
Third Party IPR	[If limitations apply include 'Limitations on Use are set out in section 7 of this Schedule.' or insert 'N/A'.]

Guidance Note for section 2 of Schedule 3: This section provides flexibility to allow the parties to set out any limitations on Use that apply to the different forms of IPR that will be licensed to the other party. For example, any limitations specified in this section to the Project IP will limit the Licensee's rights to use the Project IP.

If the limitations for the Use differ for particular IPR, the parties should set out the relevant limitations in the relevant sections below.

If no limitations are set out here, the definition of 'Use' will apply and the parties will be able to perform the actions specified in that definition (such as adapt and modify). However, the parties will be prohibited from Commercialising the IPR.

Guidance Note for section 3 of Schedule 3: The Owner grants the Licensee a licence to Use the Project IP for the 'Purpose' (see clauses 10.5 and 10.6). This Purpose restricts the scope of the Licensee's licence (for example, to specific fields of use or activities). 'Use' is also a defined term and limits what the Licensee can do with the Project IP for the Purpose (see section 2 of this Schedule).

If the University is the Licensee, the 'Purpose' can include, for example, rights for research and teaching use following the completion of the Project. However, the confidentiality terms and publication requirements in this Agreement will apply to any such rights.

Parties should note that the definition of 'Use' permits 'Use' by Affiliates. If this is not acceptable to the parties, 'Use' by Affiliates should be restricted in section 3 of this Schedule.

The scope of the Purpose will not restrict the Owner's use of the Project IP by the Owner, but it will still be restricted by the scope of the Owner's licence to any of the Licensee's Pre-existing IPR or Third Party IPR incorporated into the Project IP.

3. Purpose

[Insert the purpose for which the Licensee is permitted to use the Project IP of the Project.]

4. Registration and protection of the IPR

4.1 Party responsible for registration and protection of IPR

[identify the Collaborator or University as responsible for the registration and protection of IPR.]

4.2 Process for registration and protection of IPR

[insert details of any registration process/assessment or protection of IPR in the Project IP required following the conclusion of the Project or insert 'not applicable'.]

Guidance Note for section 4 of Schedule 3: If the parties agree that the IPR created by the Project in the Project IP will be subject to a registration process/assessment at the conclusion of the Project or there should be any obligations in relation to defending an infringement action, the details (including the party responsible) and process should be detailed here.

If the Collaborator is the Licensee, but responsible for the registration and protection of the IPR in the Project IP, this should be specified in section 4.1 of this Schedule.

5. University Material and Pre-existing IPR

5.1 University Research Tools

Description	Use in the Project

Guidance Note for section 5 of Schedule 3: This section is not intended to be exhaustive, but allows the University to specify its Materials/ Research Tools for clarity. No rights are granted to the Collaborator in relation to the Research Tools (as Research Tools are excluded from the definition of Pre-existing IPR).

5.2 University Pre-existing IPR

(a) Patents and patent applications

Title	Application number	Filing date	Country of registration	Use in the Project	Limitations on use

Guidance Note for section 5.2 of Schedule 3: The Collaborator provides a licence to the University to Use its Pre-existing IPR (see section 2 of this Schedule and clause 10.3).

If the University wants to impose restrictions on the Collaborator's use of Pre-existing IPR, the restrictions should be set out in this section.

If the Pre-existing IPR is likely to be incorporated into the Project IP or be used by the Collaborator as part of its role in the Project, any restrictions should be carefully considered to avoid restricting the Collaborator in using the Project IP or participating in the Project.

(b) Other IPR

Description	Publication number	Form of IP (copyright, patent, registered design etc)	Use in the Project	Limitations on use

5.3 University's excluded Pre-existing IPR

Description	Publication number	Form of IP (copyright, patent, registered design, etc)	Use in the Project

Guidance Note for section 5.3 of Schedule 3: The parties should carefully consider any Pre-existing IPR that is identified in this section. Any Pre-existing IPR identified in this section will need to be licensed separately to the Collaborator if incorporated into the Project IP.

6. Collaborator Material and Pre-existing IPR

Guidance Note for section 6 of Schedule 3: This section is not intended to be exhaustive, but allows the Collaborator to specify its Materials/ Research Tools for clarity.

6.1 Collaborator Pre-existing IPR

(c) Patents and patent applications

Guidance Note for section 6.1 of Schedule 3: The Collaborator provides a licence to the University to Use its Pre-existing IPR (see section 2 of this Schedule and clause 10.2)

Title	Application number	Filing date	Country of registration	Use in the Project	Limitations on use

If the Collaborator wants to impose restrictions on the University's use of Pre-existing IPR, the restrictions should be set out in this section.

If the Pre-existing IPR is likely to be incorporated into the Project IP or be used by the University as part of its role in the Project, any restrictions should be carefully considered to avoid restricting the University in using the Project IP or undertaking the Project.

(d) Other IPR

Description	Publication number	Form of IP (copyright, patent, registered design etc)	Use in the Project	Limitations on use

6.2 Collaborator's excluded Pre-existing IPR

Description	Publication number	Form of IP (copyright, patent, registered design, etc)	Use in the Project

Guidance Note for section 6.2 of Schedule 3: The parties should carefully consider any Pre-existing IPR that is identified in this section. Any Pre-existing IPR identified in this section will need to be licensed separately to the University if incorporated into the Project IP.

7. Third Party IPR

Owner / licensor of associated IP	Description	Publication number	Form of IP (copyright, patent, registered design etc)	Use in the Project	Limitations on use

Guidance Note for section 7 of Schedule 3: If the parties expect to use Third Party IPR (for example, third party software) in the Project, the details of the Third Party IPR and any restrictions imposed by the third party must be specified in section 7 of this Schedule (see also clause 10.4).

If during the Project, the parties need to use Third Party IPR that is not identified in section 7 of this Schedule, the parties can amend this item in accordance with clause 24.6 of this Agreement.

8. Confidential Information

8.1 University Confidential Information

Description of Confidential Information	Period of confidentiality
<i>[Insert description of Confidential Information. If the parties agree to limit Confidential Information to the specific information described here, clearly state that only the information listed here is Confidential Information. If more space is required an attachment can be added.]</i>	<i>[Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]</i>

Guidance Note for section 8 of Schedule 3:

Information of a confidential nature will be protected as Confidential Information if it is **either** described here, **or** where a party knows or ought to know it is confidential.

If the parties agree to limit Confidential Information to only the specific information described here, this item needs to clearly state that **only** the information listed here is Confidential Information.

The parties may wish to list all information exchanged in relation to a particular project as Confidential Information, or they may wish to limit it to specific information, meetings or documents. Parties should be careful to consider the implications of this.

Unless there is a good reason to specify otherwise, the period of confidentiality will ordinarily be the same for each party's Confidential Information.

8.2 Collaborator Confidential Information

Description of Confidential Information	Period of confidentiality
<i>[Insert description of Confidential Information. If the parties agree to limit Confidential Information to the specific information described here, clearly state that only the information listed here is Confidential Information. If more space is required an attachment can be added.]</i>	<i>[Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]</i>

Signing page

Signed as an agreement.

Signed for and on behalf of the **[Insert University Name and ABN]** by its duly authorised representative:

Signature of authorised representative

Full name of authorised representative

Date

Executed by **[Insert Collaborator Name and ABN]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Full name of director who states that they are a director of **[Insert Collaborator Name]**

Date

Signature of witness

Full name of witness

Signature of company secretary/director

Full name of company secretary/director who states that they are a company secretary/director of **[Insert Collaborator Name]**

Date

Guidance Note for execution: The default execution blocks provided require:

- in the case of the University, to be signed by an authorised representative and a witness; and
- in the case of the Collaborator to be signed in accordance with section 127 of the *Corporations Act 2001* (Cth) (that is, by two directors, or a director and a company secretary).

However, the parties should amend these execution blocks if they are not appropriate for a party (for example, if the Collaborator is not a company).

The parties may execute the Agreement either electronically or in wet ink. Where a party is a company signing under section 127 of the *Corporations Act 2001* (Cth), the default execution block satisfies the requirements for electronic signature set out in that Act.

Each party is responsible for satisfying itself that the other party has validly signed the Agreement.

Once signed, there is no requirement to exchange physical versions of the Agreement with the other party and a PDF (of the whole signed document) could be exchanged if agreed by the parties.

Standard Research Agreement

[Insert name of University]

University

[Insert name of Collaborator]

Collaborator

[Insert Project title]

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Agreement

Date **[Insert date of Agreement]**

Parties **[Insert name of University] ([Insert ABN of University]) (University)**
[Insert name of Collaborator] ([Insert ABN of Collaborator]) (Collaborator)

Background

- C. The Collaborator wishes to engage the University to undertake a research project **[Insert Project title]** (the **Project**).
- D. The parties agree that the University will undertake the Project in accordance with the terms of this Agreement.

Operative provisions

1. Definitions and interpretations

1.1 Definitions

In this Agreement, the following definitions apply unless the context requires otherwise.

Affiliate means any corporation, partnership, or other entity Controlling, Controlled by or under common Control with a party to this Agreement.

Agreement means this standard research agreement, and any Schedules, annexures and attachments to it.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the notice is received.

Chief Investigator means the person appointed in accordance with clause 7.1(a).

Collaborator means the party to this Agreement identified in item 2 of the Details Schedule.

Collaborator Material means the Material made available by the Collaborator for the Project including that which is identified in section 6 of Schedule 3.

Commencement Date means the date on which this Agreement commences, as specified in item of the Details Schedule.

Commercialise means in relation to IPR, to:

- (a) manufacture, sell or hire out goods or provide a service, incorporating that IPR;
- (b) otherwise 'exploit' or exercise the rights of the owner of the IPR, as defined in any applicable legislation establishing the owner's rights to the IPR, in connection with the supply of goods or a service; or
- (c) license any third party to do any of those things mentioned in paragraph (a) or (b),

but does not include the other actions specified in the definition of Use. **Commercialisation** has the same meaning.

Commonwealth Entity means any government body which is subject to the *Public Governance, Performance and Accountability Act 2013* (Cth).

Confidential Information means information that is by its nature confidential and:

- (a) is designated by a party as confidential in section 8 of Schedule 3; or
- (b) a party knows or ought to know is confidential, unless the parties have specified otherwise in section 8 of Schedule 3,

but does not include information that is:

- (a) publicly available other than as a result of unauthorised disclosure by a party;
- (b) independently known by or lawfully in the possession of the receiving party; or
- (c) independently created by the receiving party without access to the other party's Confidential Information.

Control of a corporation, partnership or other entity means:

- (a) direct or indirect beneficial ownership of more than 50% of its voting power, or 50% of the interest in its income;
- (b) the power to appoint the majority of its directors; or
- (c) the power otherwise to direct its business activities.

Details Schedule means Schedule 1 of this Agreement which details the particulars of the arrangement between the parties.

Fees means the amounts payable by the Collaborator under this Agreement as specified in the Project Plan.

In-kind Contribution means services, equipment and facilities made available by either party for the purposes of the Project as specified in the Project Plan.

Intellectual Property Rights or **IPR** means patents, rights to exploit inventions, trade marks, service marks, registered designs, plant breeder's rights, copyrights and related rights, database rights, design rights, circuit layout rights, in each case whether registered or unregistered, including rights to apply for and be granted and applications for any of the above and any continuations, continuations-in-part, divisional applications, renewals or extensions of, and rights to claim priority from, those rights, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above, but does not include Moral Rights and similar personal rights, which by law are non-assignable.

Key Personnel means the Personnel specified as 'Key Personnel' in item 8 of the Details Schedule or any replacement for those Personnel approved in accordance with the Agreement. **Key Person** has a corresponding meaning.

Material means samples, materials, chemical or biological reagents, biological materials, prototypes, equipment, software, firmware, documented methodology or process, information, data and documentation and includes the material set out at Schedule 3.

Milestone means a key performance obligation to be met by the University under this Agreement, as specified in the Project Plan.

Milestone Date means any fixed date to be met by the University in performing any of its obligations under this Agreement, as specified in the Project Plan.

Moral Rights has the same meaning in Part IX of the *Copyright Act 1968* (Cth) or any similar foreign legislation as applicable.

Personnel means a party's officers, employees and contractors and in the case of the University, includes Students. Personnel includes the Personnel of a contractor.

Pre-existing IPR means any IPR that is in existence at the Commencement Date or created or developed independently of the Project (other than as a result of the performance of this Agreement) that is:

- (a) provided by one party to another party for use in the Project, including as identified in Schedule 3;
- (b) incorporated into the Project IP; or
- (c) otherwise required in order for the other party to exercise their rights to the Project IP under this Agreement,

but does not include:

- (a) a Research Tool; or
- (b) IPR that is specified in Schedule 3 as excluded Pre-existing IPR.

Project means the program of work (research and/or development activity) described in the Project Plan.

Project End Date means the date on which this Agreement ends, as specified in item 5 of the Details Schedule, unless terminated earlier.

Project IP means all information, data, techniques, know-how, results, inventions, software, discoveries and materials (regardless of the form or medium in which they are disclosed or stored):

- (a) created or developed by the University in the course of and as a result of carrying out the Project; and
- (b) that is delivered or required to be delivered to the Collaborator in accordance with this Agreement,

including any Project IP specified in section 3 of the Project Plan, but excluding Research Tools.

Project Plan means the plan for conducting the Project, as set out in Schedule 2.

Purpose means the purpose for which a party is permitted to use the Project IP, as set out in Schedule 3.

Research Tool means scientific research skills, methodology, know-how, software, hardware, equipment, data and experience which may be used by the University in carrying out the Project, that are not required for the to exercise its rights to the Project IP under this Agreement and includes the items identified as a Research Tool in Schedule 3.

Schedule means a schedule to this Agreement.

Student means a student enrolled at a university and involved in the Project.

Student Work means course work or a thesis, or any other original work (including articles) utilising Project information, confidential or otherwise, created specifically by the Student for assessment purposes.

Term means the term of this Agreement, as described in clause 2.

Third Party IPR means any IPR which are owned by a party other than the parties to this Agreement existing in information, data, techniques, know-how, results, inventions, software, discoveries and materials (regardless of the form or medium in which they are disclosed or stored), that is:

- (a) provided by one party to another party for use in the Project;
- (b) incorporated into the Project IP; or
- (c) otherwise required in order for the other party to exercise their rights to the Project IP under this Agreement,

but does not include a Research Tool.

Unexpected Event means in relation to a party:

- (d) any act or omission of a third party (other than that party's subcontractors or suppliers) that is beyond the reasonable control of that party;
- (e) fire, flood, earthquake, elements of nature or act of God;
- (f) war, riot, civil disorder, rebellion, revolution or, a terrorist act as defined in section 100.1 of the *Criminal Code Act 1995* (Cth); or
- (g) pandemic,

but in each case only if, and to the extent that, the non-performing party is without fault in causing the event and the event or its effects could not have been prevented by:

- (a) invoking any relevant business continuity plan or disaster recovery plan;
- (b) appropriate workload management practices; and
- (c) any other prudent back-up or recovery procedures.

University means the party to this Agreement identified in item 1 of the Details Schedule.

University Material means the Material made available by the University for the Project, including that which is identified in section 5 of Schedule 3 and includes any Research Tools.

Use unless otherwise set out in section 2 of Schedule 3, means to use, reproduce, adapt, modify, communicate, broadcast, distribute or publish in each case solely within the party's own organisation and any of its Affiliates and includes sublicensing such rights for Use within the party's own organisation and any of its Affiliates, and excludes Commercialisation or publication outside of the party and its Affiliates.

1.2 Interpretation

The following rules apply unless the context requires otherwise:

- (a) the headings are for convenience only and do not affect interpretation;
- (b) a recital, Schedule, annexure or a description of the parties forms part of this Agreement;

- (c) a reference to:
 - (i) dollars or \$ is to an amount in Australian currency;
 - (ii) a singular word includes the plural, and vice versa;
 - (iii) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (iv) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (v) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator and successor in law of the person and permitted assigns;
 - (vi) a word which suggests one gender includes each other gender; and
 - (vii) a clause, section or schedule is a reference to a clause or section of or a Schedule to this Agreement;
- (d) the meaning of general words is not limited by specific examples introduced by 'including', 'for example', or similar expressions;
- (e) no provision of this Agreement will be construed adversely to a party on the ground that such party was responsible for the preparation of this Agreement or that provision of this Agreement; and
- (f) if the day on or by which a party must do something under this Agreement is not a Business Day, the person must do it by the next Business Day.

1.3 Inconsistency

- (a) No confirmation, shipment or delivery docket, invoice, terms and conditions of supply or other document issued by or on behalf of a party about or related to the Project will amend this Agreement, except where such amendment is expressly agreed by the parties in accordance with clause 24.6.
- (b) To the extent of any inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority:
 - (i) the clauses of this Agreement;
 - (ii) the Details Schedule;
 - (iii) the Schedules in order;
 - (iv) any annexures or attachments to the Schedules; and
 - (v) any documents incorporated by reference in this Agreement.

2. Term of Agreement

- (a) This Agreement will begin on the Commencement Date and will continue until the Project End Date unless terminated earlier in accordance with this Agreement.
- (b) The Term of this Agreement may be extended by the parties, on the terms and conditions then in effect, if expressly agreed by the parties in accordance with clause 24.6.

3. Conduct of the Project

3.1 Project responsibilities

- (a) The University must, and must ensure that its Personnel:
 - (i) perform the Project:
 - A. with due care and skill in a professional manner;
 - B. using the Key Personnel; and
 - C. in accordance with all applicable laws and any policies, standards or laws set out in item 6 of the Details Schedule;
 - (ii) obtain and maintain all regulatory and ethical licences, consents and approvals necessary to carry out the Project, including as relevant for a Personnel's role;
 - (iii) use reasonable efforts to perform the Project so as to:
 - A. complete the tasks set out in the Project Plan;
 - B. achieve the Milestones (if any); and
 - C. provide the Project IP,by the applicable dates set out in the Project Plan and where no applicable dates are specified, promptly and without delay.
- (b) The Collaborator must, and must ensure its Personnel:
 - (i) undertake its role in the Project (if any): in accordance with:
 - A. the Project Plan; and
 - B. any policies, standards or laws set out in item 6 of the Details Schedule
 - (ii) provide any Collaborator Materials in accordance with clause 5; and
 - (iii) cooperate with the University and provide all information reasonably requested by the University,so as to enable the University to carry out the Project in accordance with this Agreement.

- (c) Both parties acknowledge that research can be unpredictable and that it may not be reasonable (or possible) for some aspects of the Project (including Milestones) to be performed as set out in this Agreement (including in the Project Plan). The parties agree to work together collaboratively and in good faith to ensure they are aware of any likely delays, or other circumstances occurring that may result in a party proposing to review the Project (in accordance with clause 8) or vary the Project Plan or other aspects of this Agreement. Any variation to this Agreement (including the Project Plan) must be in accordance with clause 24.6.

3.2 Access to premises

- (a) Where required in the Project Plan, the relevant party will ensure that the Personnel of the other party are provided with access to their premises for the conduct of the Project.
- (b) Each party will ensure that any Personnel of the other party that accesses their premises for the purposes of the Project are:
 - (i) provided with a healthy and safe working environment and are properly supervised; and
 - (ii) informed of that party's health, safety and security policies and undertake relevant training and induction, as reasonably required by that party.
- (c) Each party must ensure its Personnel comply with:
 - (i) all reasonable directions given by the other party as to health, safety and security; and
 - (ii) all relevant obligations under this Agreement, including with respect to Confidential Information,while on the other party's premises.

3.3 Use of University Material

- (a) Except as agreed otherwise in the Project Plan, the University may use University Material (including associated University Pre-existing IPR), in its sole discretion as it considers necessary or convenient in order to carry out the Project.
- (b) Except as expressly set out in this Agreement, the University retains ownership of University Material (including associated University Pre-existing IPR). The Collaborator's only rights to University Material (including associated University Pre-existing IPR) are set out expressly in this Agreement.
- (c) Except for any University Material incorporated into the Project IP and subject to clause 3.3(d), the Collaborator must store, dispose of, destroy or return University Material (including associated University Pre-existing IPR) in its possession or control on termination or expiry of the Agreement, if specified in the Project Plan or directed by the University (at the University's cost).
- (d) Notwithstanding clause 3.3(c), the University is entitled to keep a copy of the University Material (including associated University Pre-existing IPR) for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. The University must continue to treat any such copy in accordance with the terms of this Agreement.

4. Acceptance of a Milestone

4.1 Acceptance

- (a) The parties acknowledge that the outcomes of the Project may not be able to be predicted.
- (b) Notwithstanding clause 4.1(a), the parties may agree Milestones for the delivery of specific Project IP (including reports and other Material) to the Collaborator or the performance of specific activities by the University.
- (c) If the parties have agreed Milestones, in order to achieve a Milestone by the applicable Milestone Date, that Milestone and any associated Project IP are subject to acceptance by the Collaborator, unless otherwise specified in the Project Plan.
- (d) The Collaborator, acting reasonably, will assess within five Business Days of notification or request by the University, whether the University has achieved each Milestone by the applicable Milestone Date in accordance with this Agreement.
- (e) If the Collaborator's assessment reveals that a Milestone:
 - (i) has been achieved, the Collaborator will issue a written notice to that effect to the University; or
 - (ii) has not been achieved, the Collaborator will notify the University.
- (f) If the University has not achieved the Milestone, then the parties must work together collaboratively and in good faith to:
 - (i) understand the circumstances occurring that are resulting in the Milestone not being achieved;
 - (ii) seek to agree alternative steps to be undertaken by both parties in order to achieve or mitigate the non-achievement of the Milestone; and
 - (iii) where agreed as being reasonable in the circumstances, vary the Project Plan or other aspects of this Agreement. Any variation to this Agreement (including the Project Plan) must be in accordance with clause 24.6.
- (g) The parties must work collaboratively and in good faith to adjust the Milestone Dates where there is a delay to the Project as a result of the University stopping work in accordance with clause 6(b)(i).
- (h) The Collaborator is not required to pay any Fees associated with a Milestone until the relevant Milestone is achieved or the parties vary this Agreement, in accordance with clause 24.6.

5. Collaborator Material

5.1 Collaborator Material

The Collaborator:

- (a) must provide the Collaborator Material (if any) to the University:
 - (i) as set out in the Project Plan or as agreed with the University in writing, so as to enable the University to carry out the Project; and
 - (ii) in a safe and suitable manner for the purposes of the Project;

- (b) must organise and pay the costs of transport of the Collaborator Material to and from the University's premises, unless otherwise specified in the Project Plan;
- (c) must advise the University of any hazardous or otherwise dangerous components or properties of the Collaborator Material that it is aware of, and where applicable, instructions for safe use and operation of the Collaborator Material; and
- (d) is responsible for insuring, maintaining and, if necessary, repairing and replacing the Collaborator Material if required for the Project, unless otherwise specified in the Project Plan.

5.2 University's receipt and use of Collaborator Material

- (a) Where the Collaborator is required to provide Collaborator Material for the conduct of the Project, the University is not obliged to commence or continue the part of the Project for which the relevant Contribution Material relates until:
 - (i) the Collaborator has provided the relevant Collaborator Material; and
 - (ii) the University has completed an assessment to confirm the Collaborator Material is safe and suitable for the purposes of the Project.
- (b) The Collaborator must at its own cost replace any of the Collaborator Material that the University reasonably determines to be unsafe or unsuitable for the purposes of the Project.
- (c) The Collaborator grants the University a non-transferable, non-exclusive, royalty free licence to Use the Collaborator Material (including any IPR in the Collaborator Material) for the purposes of carrying out the Project.

5.3 Destruction or return of Collaborator Material

- (a) The Collaborator acknowledges that Collaborator Material may be altered, damaged or destroyed during the conduct of the Project as an anticipated and necessary part of the Project.
- (b) Except for any Collaborator Material incorporated into the Project IP and subject to clause 5.3(c), the University must store, dispose of, destroy or return Collaborator Material in its possession or control on termination or expiry of the Agreement, if specified in the Project Plan or as directed by the Collaborator (at the Collaborator's cost).
- (c) Notwithstanding clause 5.3(b), the University is entitled to keep a copy of the Collaborator Material for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. The Collaborator must continue to treat any such copy in accordance with the terms of this Agreement.

6. In-kind Contributions

- (a) Each party must contribute to the Project the In-kind Contributions as set out in the Project Plan.
- (b) If:
 - (i) the Collaborator does not contribute its In-kind Contribution, the University may stop work (and will not be in breach of the University's obligations under this Agreement) until a reasonable adjustment to the Fees is agreed; or

- (ii) the University does not contribute its In-kind Contribution, the University remains obligated to carry out the Project.

7. Project management

7.1 Chief Investigator

- (a) The University appoints as its Chief Investigator the person named in item 7 of the Details Schedule or if no person is named in the Details Schedule, the person notified by the University to the Collaborator in writing.
- (b) The University must ensure that the Chief Investigator:
 - (i) is suitably experienced to act as Chief Investigator;
 - (ii) manages the day to day conduct of those tasks allocated to the University in the Project Plan; and
 - (iii) maintains full and accurate records of the performance of the Project.
- (c) Except where required otherwise under clause 7.2, the University may replace the Chief Investigator by giving written notice to the Collaborator. The University must ensure that the replacement Chief Investigator is suitably experienced to act as Chief Investigator.
- (d) The Chief Investigator will have no power to agree to vary the Project Plan or the terms of this Agreement and must refer any variations to the responsible persons appointed by each party to approve any such variations in accordance with clause 24.6.

7.2 Key Personnel

- (a) Each party must:
 - (i) undertake the Project or any part of the Project to which its particular expertise relates, with the active involvement of, and using the expertise of, its Key Personnel;
 - (ii) not replace any Key Personnel without the prior written approval of the other party, which will not be unreasonably withheld; and
 - (iii) except if clause 7.2(b) applies, before replacing any Key Person, give the other party at least 20 Business Days prior written notice and provide information about the proposed replacement and any other implications that are likely to result from the replacement of its Key Person.
- (b) If a Key Person is unable to perform the Project in connection with this Agreement due to:
 - (iii) ill health or incapacity; or
 - (iv) that person having left the employ of a party (including if the person's employment with a party has been terminated for cause),

the party must give the other party as much notice as possible and provide information about the proposed replacement and any other implications that are likely to result from the removal or replacement of its Key Person.

- (c) A party (the **Requesting Party**) may give a notice:
 - (i) directing the other party to immediately remove a Key Person from the Project, if the Key Person has breached the law or engaged in serious misconduct; and
 - (ii) in any other case, requesting that the other party replace a Key Person, in which case:
 - A. within 10 Business Days after receipt of the notice, the other party must investigate the reasons stated in the notice, consult with the Requesting Party to discuss its findings (including any ramifications of replacing the Key Person) and attempt to resolve any problems with the Key Person; and
 - B. if the Requesting Party still requires the replacement of the Key Person after the Requesting Party has consulted with the University, must promptly replace that Key Person.
- (d) If a Key Person becomes unavailable or is removed from the Project, the party that provided the Key Person must:
 - (i) immediately implement a temporary workaround so as to prevent or minimise any interruption to the Project;
 - (ii) as soon as reasonably practicable, replace the Key Person with another appropriately qualified, competent and experienced person; and
 - (iii) keep the other party informed as to the progress of the process to replace the Key Person.
- (e) If, after a reasonable period of time, the party that provided the Key Person is, after taking all reasonable steps, unable to provide a satisfactory replacement for the Key Person:
 - (i) the parties may agree to terminate the Agreement; or
 - (ii) if the University provided the Key Person, the University may elect to terminate the Agreement; and
 - (iii) unless otherwise agreed, each party will bear their own costs incurred in terminating the Agreement.

7.3 Reporting

- (a) The University must provide the Collaborator with reports and information in accordance with the Project Plan.
- (b) On or before the Project End Date or within 30 Business Days following termination of this Agreement, the University must provide the Collaborator with a final report:
 - (i) specifying all tasks performed during the Project; and
 - (ii) providing a summary of the Project IP generated.

7.4 Progress meetings

The parties will meet at the times set out in the Project Plan (or otherwise as agreed in writing between the parties) to discuss the progress of the Project, including any issues or risks arising.

8. Project review

- (a) If during the Project a party (**Reviewer**) forms the reasonable opinion that some aspects of the Project should be varied, then the Reviewer must promptly send the other party (**Receiver**) a notice giving details of the basis for its opinion and a proposal as to how the Project (and including the Project Plan if applicable) should be varied (**Review Notice**).
- (b) Within 20 Business Days of receiving a Review Notice, if the Receiver is not prepared to accept the Review Notice, the parties must meet and negotiate in good faith variations to the Project Plan to address the concerns raised in the Review Notice.
- (c) If the parties agree to vary the Project Plan, they will execute a written variation in accordance with clause 24.6.
- (d) If the parties are unable to agree to a variation to the Project Plan then the parties must continue working in accordance with the unaltered Project Plan and this Agreement.

9. Payment

9.1 Fees

Subject to the University meeting the requirements of the Project Plan, the Collaborator must pay to the University instalments of the Fees at the times and in the amounts set out in the Project Plan.

9.2 Payment terms

- (a) The Collaborator must pay an invoice issued by the University for Fees that are due and payable within 20 Business Days after the date of the invoice. For GST purposes all invoices or receipts issued by the University are tax invoices.
- (b) Where the Collaborator disputes an amount set out in an invoice, it must notify the University within 10 Business Days of receipt of the invoice.
- (c) Late payments may be subject to an additional charge at the discretion of the University, calculated daily from the due date until the date the outstanding amount is paid at:
 - (i) in respect of the period from 1 January to 30 June in any year – the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced; and
 - (ii) in respect of the period from 1 July to 31 December in any year – the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced.
- (d) If the Collaborator is more than 30 Business Days late paying an invoice:
 - (i) the University may stop working on the Project (and will not be in breach of the University's obligations under this Agreement) until the date the outstanding amount is paid; and
 - (ii) the relevant Milestone Dates will be amended to reflect the period the University stops work in accordance with this clause.

9.3 No deduction

The Fees must be paid without deduction or deferment for any demand, withholding, set-off, counter claim or other dispute and free and clear of any taxes imposed by or under the authority of any government or public authority.

9.4 GST

- (a) In this clause 9, words and expressions which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the same meaning as in the GST Act.
- (b) If the Collaborator is an Australian entity:
 - (i) all Fees payable under this Agreement are exclusive of GST;
 - (ii) if GST is payable by a supplier on any supply made under this Agreement, the recipient, upon receiving a tax invoice from the supplier, will pay to the supplier an amount equal to the GST payable on the supply; and
 - (iii) this amount will be paid in addition to, and at the same time, that the consideration for the supply is to be provided.
- (c) If the Collaborator is a foreign entity:
 - (i) any supply made by the University under this Agreement to the Collaborator will be treated by the University as GST-free under the GST Act in reliance on the following representations made by the Collaborator that:
 - A. it is a non-resident for Australian Income Tax purposes;
 - B. it will not be in Australia when the thing to be supplied is so supplied;
 - C. it will acquire the supply in carrying on its enterprise; and
 - D. it is not registered or required to be registered in Australia for GST purposes; and
 - (ii) if any supply made under this Agreement is classified as a taxable supply for GST purposes because any of the representations in clause 9.4(c) are incorrect, the Collaborator will on demand pay the University the GST payable on that supply together with any interest, fine, penalty or other amount imposed as a consequence of the incorrect representation.

9.5 Pre-payment for the Project

If the Collaborator pays any Fees in advance to the University in consideration for the University performing all or part of the Project, and the University does not perform the Project or the relevant part of the Project, then:

- (a) the Fees paid in advance to the University by the Collaborator will become a debt due to the Collaborator; and
- (b) the University must refund the Fees (in full or in part, depending on the portion of the Project that was not performed) to the Collaborator within 20 Business Days of receiving a notice from the Collaborator to do so.

10. Intellectual property

10.1 Licence rights for Pre-existing IPR and Third Party IPR

This clause 10 does not affect the ownership of any IPR in:

- (a) any Pre-existing IPR;
- (b) any Third Party IPR; or
- (c) any other information, data, techniques, know-how, results, inventions, software, discoveries, materials and Research Tools, that is not Project IP.

10.2 Right to use the Collaborator's Pre-existing IPR

- (a) The Collaborator grants to the University a royalty-free, world-wide, non-transferable, non-exclusive licence to Use the Collaborator Pre-existing IPR for the sole purpose of and only to the extent necessary to exercise the University's rights to the Project IP for the Purpose.
- (b) Subject to clause 10.2(d), the Collaborator warrants that:
 - (i) it owns or is otherwise entitled to grant to the University the right to Use Collaborator Pre-existing IPR (and any other information provided to the University) in accordance with this Agreement; and
 - (ii) to the best of its knowledge and belief (having made reasonable enquiry of those of its Personnel involved in the Project or likely to have relevant knowledge), the University's use of Collaborator Pre-existing IPR to carry out the Project (in accordance with this Agreement) as at the time such material is provided to the University by the Collaborator, will not infringe any third party's rights (including IPR).
- (c) The Collaborator warrants that there are no actions, claims or proceedings pending or threatened against the Collaborator in respect of its Collaborator Pre-existing IPR.
- (d) Unless otherwise specified in Schedule 3, the Collaborator does not make any representation or warranty, express or implied, that Use of the Collaborator Pre-existing IPR, will not require additional licences, or will not infringe the IPR of third parties, to the extent such Use is not expressly set out in the description of the Purpose.

10.3 Right to use the University's Pre-existing IPR

- (a) The University grants to the Collaborator a royalty-free, world-wide, non-transferable, non-exclusive licence to Use any University Pre-existing IPR in the Project IP for the sole purpose of and only to the extent necessary to exercise the Collaborator's rights to the Project IP for the Purpose.
- (b) Subject to clause 10.3(d), the University warrants that:
 - (i) it owns or is otherwise entitled to grant to the Collaborator the right to Use University Pre-existing IPR in accordance with this Agreement; and

- (ii) to the best of its knowledge and belief (having made reasonable enquiry of those of its Personnel involved in the Project or likely to have relevant knowledge), the Collaborator's use of University Pre-existing IPR in accordance with this Agreement will, as at the time such material is provided to the Collaborator by the University, not infringe any third party's rights (including IPR).
- (c) The University warrants that there are no actions, claims or proceedings pending or threatened against the University in respect of its University Pre-existing IPR.
- (d) The University does not make any representation or warranty, express or implied, that Use of the University Pre-existing IPR, will not require additional licences, or will not infringe the IPR of third parties, to the extent:
 - (i) such Use is not expressly set out in the description of the Purpose; and
 - (ii) arising as a result of the Collaborator's specific Use:
 - A. in conjunction with other enabling technology components;
 - B. in accordance with a particular method of treatment; or
 - C. in accordance with a particular method of manufacture.

10.4 Right to use Third Party IPR

- (a) Unless agreed otherwise by the parties in Schedule 3, if a party proposes to use Third Party IPR in its performance of the Project (the **Proposing Party**), and the Proposing Party is aware that such use may restrict the other party's exercise of their rights to IPR in the Project IP, the Proposing Party must:
 - (i) notify the other party; and
 - (ii) not use the Third Party IPR unless it grants or procures (as required) for the other party a licence to Use the Third Party IPR, on the same terms as clause 10.2(a) or 10.3(a), as relevant.
- (b) If the Proposing Party cannot obtain the licence as described in clause 10.4(a) (including because the Third Party IPR is only licenced on standard terms or because an individual license is required), the Proposing Party must:
 - (i) notify the other party of the best alternative licence terms for that Third Party IPR and not use that Third Party IPR unless the other party approves those terms; and
 - (ii) if the other party does not approve the terms under clause 10.4(b)(i), notify the other party of any comparable Third Party IPR (if available) and comply with its obligations under this clause 10.4 in respect of such comparable Third Party IPR.

10.5 University ownership of Intellectual Property Rights in the Project IP

- (a) This clause 10.5 applies if the University is the party identified in section 1.1 of Schedule 3. If this clause 10.5 applies, then clause 10.6 does not apply.
- (b) Subject to clause 10.1, all IPR in the Project IP vest in the University (the '**Owner**') on creation and the Collaborator hereby assigns and agrees to assign all such IPR to the Owner.

- (c) The Owner grants (or will procure for) the Collaborator (the '**Licensee**') a perpetual, irrevocable (except for material breach), world-wide, royalty-free, non-exclusive licence to Use the Project IP (other than Pre-existing IPR and Third Party IPR) for the Purpose.

10.6 Collaborator ownership of Intellectual Property Rights in the Project IP

- (a) This clause 10.6 applies if the Collaborator is the party identified in section 1.1 of Schedule 3. If this clause 10.6 applies, then clause 10.5 does not apply.
- (b) Subject to clause 10.1, all IPR in the Project IP vest in the Collaborator (the '**Owner**') on creation and the University hereby assigns and agrees to assign all such IPR to the Owner.
- (c) The Owner grants (or will procure for) the University (the '**Licensee**') a perpetual, irrevocable (except for material breach), world-wide, royalty-free, non-exclusive licence to Use the Project IP (other than Pre-existing IPR and Third Party IPR) for the Purpose.

10.7 Further action

Each party will execute such documents or instruments, and do all other things reasonably required by the other party, in order to give effect to the parties' agreement and the rights in this clause 10.

10.8 Use of the party's name and acknowledgement

- (a) Except with a party's prior written consent, the other party must not use that party's name:
 - (i) in a manner that suggests that the party endorses or is associated with the other party's business, products or services; or
 - (ii) in any publication or promotional material.
- (b) A party must not use the other party's logo or branding without prior written consent of an authorised representative of the other party.
- (c) Each party must acknowledge the other party's contribution in any publication that refers to the Project IP in accordance with any requirements or restrictions specified in item 9 of the Details Schedule.

11. Intellectual Property Rights management

11.1 General

- (a) The Owner will be responsible for (and for decisions related to) the registration and protection of the IPR that it owns in the Project IP, unless otherwise specified in section 4.1 of Schedule 3.
- (b) Except as specified in section 4.2 of Schedule 3, under this Agreement there is no obligation on the Owner, or rights for the Licensee, to register, or to institute or defend any infringement actions, in respect of IPR in the Project IP or the other party's Pre-existing IPR.

- (c) The parties acknowledge and agree that each party's Personnel:
 - (i) may develop knowledge and skills while performing the Project that may not form part of the IPR in the Project IP; and
 - (ii) may use such knowledge and skills for performing other projects.

11.2 Commercialisation of IPR in Project IP

- (a) Unless otherwise set out in item 10 of the Details Schedule:
 - (i) the Collaborator has during the Term, and any further period specified in item 11 of the Details Schedule (**Commercialisation Option Period**), the first right to Commercialise the IPR in the Project IP in accordance with this clause 11.2;
 - (ii) where the Owner is the University, the University must:
 - A. not during the Term and any Commercialisation Option Period, without the written consent of the Collaborator, Commercialise the IPR or any relevant part of it, in the Project IP; and
 - B. on the Collaborator's request prior to expiry of the Commercialisation Option Period, negotiate in good faith the terms of a further licence of the IPR in the Project IP to the Collaborator, for the Collaborator to Commercialise the IPR in the Project IP, on reasonable commercial terms; and
 - (iii) where the Owner is the Collaborator, on request of the University at any time following expiry of the Commercialisation Option Period and subject to any other arms-length commercial agreements that have been entered into by the Collaborator, negotiate in good faith the terms of a further licence of the IPR in the Project IP to the University, for the University to Commercialise the IPR or any relevant part of it, in the Project IP, on reasonable commercial terms.
- (b) If the party Commercialising the IPR in the Project IP requires a licence to Commercialise Pre-existing IPR in conjunction with, or as part of, Commercialising the IPR in the Project IP, the parties will negotiate in good faith to agree the reasonable commercial terms of that licence.
- (c) Any reference in this clause 11.2 and the Details Schedule to reasonable commercial terms requires regard to be given both to the value of the applicable IPRs and the respective contributions of the parties to the Project.

11.3 Infringement and enforcement of IPR

- (a) Each party must promptly notify the other party in writing if it becomes aware of:
 - (i) any actual, suspected or threatened infringement by a third party of the other party's Pre-existing IPR, Confidential Information or IPR in the Project IP;
 - (ii) any claim by a third party that the carrying out of the Project infringes the IPR or other legal rights of that third party; or
 - (iii) any claim by a third party that the use of a party's Pre-existing IPR, Confidential Information or Project IP infringes the IPR or other legal rights of the third party.

- (b) Upon notification under clause 11.3(a), the parties will confer as to what steps, if any, are to be taken. Each party will cooperate in good faith to discuss and seek to agree the steps required to be taken.
- (c) Nothing in this Agreement requires a party to obtain approval from the other party prior to taking action to defend an action by a third party against it, or except as identified in section 4 of Schedule 3, initiate infringement proceedings in respect of IPR owned by the party.

12. Right to publish

- (a) Notwithstanding any other obligation in this Agreement, the parties are permitted to publish the Project IP (including any Pre-existing IPR or Third Party IPR incorporated into the Project IP) in accordance with this clause 12.
- (b) The parties will ensure that all publications and presentations in respect of the Project comply with the authorship and publication requirements of the *Australian Code for the Responsible Conduct of Research*, as amended from time to time.
- (c) In addition to clause 12(a), each party (a '**Publishing Party**') may only proceed with publishing or submitting for publication, or presenting, anything in relation to the Project that discloses any Confidential Information of the other party or the Project IP ('**Publication**'), provided that it has complied with the process set out in clauses 12(d) and 12(e) and is permitted to proceed in accordance with clause 12(h).
- (d) The Publishing Party must provide a copy of the proposed Publication to the other party (the '**Reviewing Party**') for review and response in accordance with clause 12(e).
- (e) Within 30 Business Days of the Publishing Party providing the Publication to the Reviewing Party for review, the Reviewing Party must notify the Publishing Party in writing that it:
 - (i) gives unconditional consent;
 - (ii) gives consent subject to certain amendments being made (including, if required, the removal of the Reviewing Party's Confidential Information) which are in the reasonable opinion of the Reviewing Party necessary to ensure its Confidential Information is not disclosed and its privacy obligations are met; or
 - (iii) requires the Publication to be delayed for up to 3 months so as to not prejudice its ability to protect and/or Commercialise its IPR in the Project IP, Confidential Information or Pre-existing IPR.
- (f) Notwithstanding clause 12(e)(ii), the Reviewing Party will not have editorial rights over the content of the Publication.
- (g) If the Publishing Party does not receive a response in accordance with clause 12(e) within 20 Business Days of the Reviewing Party receiving the Publication for review, the Publishing Party may provide the Reviewing Party with a further notice in writing requiring confirmation that it has no objections to the Publication. The Reviewing Party will be deemed to have given unconditional consent to the Publication if it does not respond to such further notice within 5 Business Days of receipt, notifying of any required amendments or a delay in accordance with clause 12(e).
- (h) The Publishing Party may proceed with the Publication:
 - (i) upon unconditional consent being given by the Reviewing Party; or

- (ii) if amendments are required under clause 12(e)(ii), upon all reasonable amendments being made; and
 - (iii) if a period of delay is required under clause 12(e)(iii), upon the expiry of that period.
- (i) This clause 12 does not apply to the non-public presentation or submission of Student Work for assessment or examination and instead clause 13 applies in such circumstances.

13. Students' right to publish

- (a) Notwithstanding any other provision of this Agreement, the parties agree that Students:
- (i) may include Project IP in their Student Work, which may be made publicly available in accordance with the University's policies and procedures and any statutes and regulations, subject to the provisions of clause 12; and
 - (ii) will retain copyright in their Student Work.
- (b) Nothing in this clause 13 prevents a Student from submitting their Student Work for assessment and the University will ensure each person to whom Student Work is presented or submitted for assessment purposes is legally bound by obligations of confidentiality that ensure that any Confidential Information contained in the Student Work is not disclosed to others, or used for purposes other than assessing the Student's Work (unless it is a use or disclosure permitted under clause 16).
- (c) At the Collaborator's request, the University must promptly provide written evidence of its compliance with clause 13(b).
- (d) Student Work submitted for a higher degree may be deposited in the library of the University, subject to any reasonable conditions agreed to by both parties, including the removal of any Confidential Information.

14. Privacy

In performing this Agreement, both parties agree to comply with their respective obligations under any applicable laws protecting the privacy of individuals. To the extent that the Project IP include personal information, the parties will agree and comply with appropriate protocols for handling the Project IP, consistent with applicable laws and ethics approvals obtained for the Project.

15. Moral Rights

15.1 Compliance

- (a) This clause 15.1 applies if specified in item 12 of the Details Schedule. If this clause 15.1 applies, then clause 15.2 does not apply.
- (b) Each party must respect the Moral Rights of the Personnel of the other party as required by law.

15.2 Consent

- (a) This clause 15.2 applies if specified in item 12 of the Details Schedule. If this clause 15.2 applies, then clause 15.1 does not apply.

- (b) Except as set out in clause 15.2(c), each party must use its best endeavours to obtain from its Personnel who, in the performance of the Project, are or may be engaged in the creation of the Project IP in which copyright subsists, a genuine consent in writing to the use of the Project IP for the purposes contemplated by this Agreement, even if such use would otherwise be an infringement of their Moral Rights.
- (c) Each party is not required to obtain consent from its Personnel, who are engaged in the creation of the Project IP in which copyright subsists, to have authorship of their work falsely attributed.
- (d) If a party is unable to obtain a consent described in clause 15.2(b), the party must promptly notify the other party in writing.

16. Confidential Information

16.1 Confidentiality of Project IP

The parties acknowledge and agree that:

- (a) the Project IP is the Confidential Information of both parties for the Term and any Commercialisation Option Period; and
- (b) following the expiry of both the Term and any Commercialisation Option Period, the Project IP is the Confidential Information of the Owner of the IPR in the Project IP.

16.2 Use of Confidential Information

- (a) Except as set out in this clause 16.2 or in clause 12, for the period that Confidential Information is to remain confidential as set out in section 8 of Schedule 3, each party when receiving Confidential Information of the other party must:
 - (i) only use the Confidential Information for the purpose of performing this Agreement; and
 - (ii) keep confidential and not further disclose the Confidential Information.
- (b) A party may only disclose Confidential Information to its Personnel for the purpose of performing this Agreement. Where Confidential Information of the other party is disclosed to a party's Personnel for the purpose of performing this Agreement, that party must ensure those Personnel are subject to equivalent (legally binding) obligations to those set out in this Agreement.
- (c) Each party may disclose Confidential Information of the other party:
 - (i) with that other party's prior written consent;
 - (ii) to a professional adviser in order to comply with obligations, or to exercise rights, under this Agreement, provided that the adviser is subject to equivalent (legally binding) obligations to those set out in this Agreement; or
 - (iii) if required by law or the rules of a securities exchange, but only to the extent of the legal requirement and after appropriate action is taken to protect the form and content of the disclosure. If a party is required to disclose any Confidential Information of the other party pursuant to this clause, that party must promptly notify the other party (to the extent notification is permitted by law).

- (d) Without limiting its obligations, each party:
 - (i) undertakes to implement appropriate security practices to prevent any unauthorised copying, use or disclosure of the other party's Confidential Information; and
 - (ii) must promptly notify the other if the party becomes aware of any actual or suspected unauthorised use or disclosure of the other party's Confidential Information.
- (e) Notwithstanding any other provision of this Agreement, if a party is a Commonwealth Entity, or a State or Territory government entity, that party will not be in breach of this clause 16.2 if it is required to disclose information to a Minister or a House or Committee of Parliament.
- (f) This Agreement does not limit any other agreement between the parties that provides authority for a party to disclose or use Confidential Information, where received or created under that other agreement.

16.3 Return or destruction of Confidential Information

- (a) At any time a party may request return or destruction of any or all copies of its Confidential Information (unless comprised in the Project IP required by law to be retained). The other party must promptly comply with such request. On receipt of any such request the other party's right to use that Confidential Information ceases.
- (b) Notwithstanding clause 16.3(a), a party is entitled to keep a copy of Confidential Information of the other party for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. A party must continue to treat any such copy as Confidential Information of the other party which is subject to the terms of this Agreement.
- (c) The obligations under this clause 16 survive the return or destruction of any Confidential Information and the termination or expiry of this Agreement for the period of confidentiality specified in respect of that Confidential Information in section 8 of Schedule 3.

17. Intellectual Property Rights indemnity

17.1 General

This clause 17 applies unless otherwise set out in item 13 of the Details Schedule.

17.2 Indemnity by the University

The University will indemnify the Collaborator, and its Personnel, against any loss or liability arising out of or in connection with any claim that the Collaborator's Use of any IPR provided by the University for the Purpose infringes any IPR of a third party.

17.3 Obligations

- (a) Where the Collaborator wishes to enforce an indemnity under clauses 17.2, it must:
 - (i) give written notice to the University as soon as practical;
 - (ii) make reasonable efforts to mitigate the relevant loss;
 - (iii) subject to the University agreeing to comply at all times with clause 17.3(b), permit the University, at the University's expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any settlement negotiation or litigation that may follow; and

- (iv) in the event that the University is permitted to handle negotiations or conduct litigation on behalf of the Collaborator under clause 17.3(a)(ii), provide all reasonable assistance to the University in the handling of any negotiations and litigation.
- (b) The requirements referred to in clause 17.3(a)(iii) are that the University must:
 - (i) if the Collaborator is a Commonwealth Entity, comply with government policy and obligations, as if the University were the Collaborator, relevant to the conduct of the litigation and any settlement negotiation (including the *Legal Services Directions 2017*) and any direction issued by the Attorney General to the Commonwealth or delegate; and
 - (ii) keep the Collaborator informed of any significant developments relating to the conduct of the defence or settlement of any claim.

18. Warranties and liability

18.1 General warranties

Each party represents and warrants to the other party that to its actual knowledge at the Commencement Date it has:

- (a) full power and authority to enter into and perform its obligations under this Agreement;
- (b) has taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into this Agreement and perform the Project.

18.2 University warranties

- (a) The University represents and warrants to the Collaborator that it will undertake the Project in accordance with the requirements of clause 3.1(a).
- (b) This clause 18.2 does not require the University to make any representations or warranties to the Collaborator in respect of the outcome of the Project or ability to use the Project IP.

18.3 Warranties repeated

The warranties given under the Agreement are deemed to be repeated by each party on the Commencement Date and on each day during the Term that a party provides Pre-existing IPR, Third Party IP or Project IP to the other party.

18.4 Project IP "as is"

The parties agree that:

- (a) the Project is speculative and that the outcomes of the Project and its ability to produce commercially useful results are not guaranteed; and
- (b) the Project IP are the result of experimental research and as such, each party must use its own judgement as to the applicability and fitness for purpose of the Project IP for that party's intended use of the Project IP.

18.5 Exclusions

- (a) Each party excludes all terms, conditions and warranties implied by custom, the general law or statute into this Agreement except for any statutory guarantees, the exclusion of which would contravene any statute or which would cause this clause to be void or unenforceable (**Non-Excludable Condition**).
- (b) A party's liability to the other party for breach of any Non-Excludable Condition is limited, at the first party's option, to:
 - (i) for services:
 - A. providing those services again; or
 - B. paying the cost of having those services provided again;
 - (ii) for goods:
 - A. replacing the goods; or
 - B. paying the cost of replacing the goods.

18.6 Liability

- (a) Except as specified in this Agreement, each party's use of any Pre-existing IPR and Project IP licensed or made available to it under this Agreement is at its own risk.
- (b) Each party's liability, including under an indemnity, under this Agreement is reduced proportionately to the extent that any damage, liability, loss or cost arises from, or is attributable to, any negligent, unlawful or reckless act or omission of, or breach of this Agreement by, the other party or its Personnel.
- (c) 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.

18.7 Liability cap

- (a) The aggregate liability of each party for loss suffered or incurred by the other party arising out of or in connection with this Agreement (including under an indemnity) however caused whether in tort (including negligence), contract, statute, equity or otherwise is, to the full extent permitted by law:
 - (i) subject to clause 18.7(b), limited to the amount specified in item 14 of the Details Schedule; and
 - (ii) excluded for any loss of anticipated profits or savings, business interruption, loss of revenue or loss of goodwill.
- (b) Any limit on the liability of each party under clause 18.7(a)(i) does not apply in relation to liability for:
 - (i) personal injury (including sickness or death);
 - (ii) an infringement of third party IPR;
 - (iii) a breach of any obligation of confidentiality; or
 - (iv) wilful default or fraud.

19. Insurance

19.1 Required insurance

- (a) Each party must take out, maintain and keep current during the Term and, in the case of insurance policies where claims must be made during the currency of the policy, for 7 years after expiration or earlier termination of this Agreement, the insurances set out in item 15 of the Details Schedule.
- (b) Each party must take out, maintain and keep current during the Term and, in the case of insurance policies where claims must be made during the currency of the policy, for 7 years after expiration or earlier termination of this Agreement, workers compensation and employer's liability insurance as required by law.
- (c) The parties acknowledge and agree that proof of adequate levels of self-insurance or other appropriate protection by a party are acceptable as an alternative to the insurance required under this clause 19.1.

19.2 Insurance details

- (a) The insurance policies specified in clause 19.1 must:
 - (i) if held with an insurer (or equivalent), be with a sound and reputable insurer (or equivalent); and
 - (ii) comply with all applicable laws.
- (b) Each party will produce evidence of the currency of the insurance policies it is required to hold under clause 19.1 within 10 Business Days of receipt of a written request from the other party.
- (c) Each party will all times comply with the terms of the insurance policies it is required to hold under clause 19.1.
- (d) Nothing in this clause 19 limits the other obligations and liabilities of either party under this Agreement or at law.

20. Dispute resolution

20.1 Application of this provision

Any dispute, controversy, difference or claim arising out of or in connection with this Agreement or the subject matter of this Agreement, including any question concerning its formation, validity, interpretation, performance, breach or termination (a **Dispute**) must be dealt with in accordance with this clause 20.

20.2 Interlocutory relief and claim for debt

Nothing in this clause 20:

- (a) prevents either party from seeking urgent injunctive or similar interim relief from a court of competent jurisdiction; or
- (b) prevents the University from taking any step (including, but not limited to, commencing a proceeding) in relation to a claim for monies owing to the University under clause 9.

20.3 Notice of Dispute

The party claiming that a Dispute exists ("**the Initiating Party**") must give the other party ("**the Receiving Party**") written details of the nature of the Dispute ("**Notice of Dispute**"). The Notice of Dispute must state that it is a Notice of Dispute prepared in accordance with this clause 20.

20.4 Meeting of senior representatives

Within 20 Business Days of the service of the Notice of Dispute by the Initiating Party on the Receiving Party, in the case of the University, the Deputy Vice-Chancellor Research (or equivalent) or their delegate and in the case of the Collaborator, its Chief Executive Officer, or their delegates who have appropriate authority to resolve the Dispute, will meet (in person or by telephone or video conference) and attempt to resolve the Dispute in good faith.

20.5 Mediation

If the Dispute is not resolved within 20 Business Days of the Notice of Dispute (or longer period agreed by the parties) the parties will endeavour to settle the Dispute by mediation administered by the Australian Disputes Centre (**ADC**). The mediation must be conducted in accordance with the *ADC Guidelines for Commercial Mediation* operating at the time the matter is referred to ADC.

20.6 Escalation to court proceedings

- (a) This clause 20.6 applies if specified in item 16 of the Details Schedule. If this clause 20.6 applies, then clauses 20.7 and 20.8 do not apply.
- (b) If the Dispute is not resolved within 30 Business Days of the service of the Notice of Dispute, either party may initiate proceedings in a court of competent jurisdiction.

20.7 Escalation to arbitral proceedings

- (a) This clause 20.7 applies if specified in item 16 of the Details Schedule. If this clause 20.7 applies, then clauses 20.6 and 20.8 do not apply.
- (b) If the Dispute has not resolved within 30 Business Days of the service of the Notice of Dispute, it must be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. The seat of arbitration must be the capital city of the State or Territory of the location of the University set out in item 1 of the Details Schedule. The language to be used in the arbitral proceedings must be English. The Dispute must be decided in accordance with the laws of the State or Territory of the location of the University set out in item 1 of the Details Schedule.

20.8 Escalation to arbitral proceedings

- (a) This clause 20.7 applies if specified in item 16 of the Details Schedule. If this clause 20.7 applies, then clauses 20.6 and 20.8 do not apply.
- (b) If the Dispute has not resolved within 20 Business Days of the service of the Notice of Dispute, it must be referred to and finally determined by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration must be the capital city of the State or Territory of the location of the University set out in item 1 of the Details Schedule. The language to be used in the arbitral proceedings must be English. The Dispute must be decided in accordance with the laws of the State or Territory of the location of the University set out in item 1 of the Details Schedule.

20.9 Confidentiality

Each party must treat as confidential and not disclose to a third party without the other party's prior written consent all matters relating to the dispute resolution process, including the details of the Dispute and the subject matter of the Dispute, except:

- (a) for the purpose of making an application to any competent court in accordance with this clause 20;
- (b) if necessary to obtain legal or financial advice;
- (c) if required by law; or
- (d) in the case of a party that is a Commonwealth Entity or a State or Territory government entity, disclosure to its responsible government Minister or in response to a request by a House or Committee of Parliament.

21. Termination

21.1 Termination by agreement

The parties may terminate or reduce the scope of this Agreement at any time by written agreement. Any amendment to the Agreement must be in accordance with clause 24.6.

21.2 Termination for default

- (a) Either party may immediately terminate this Agreement by written notice to the other party if that other party:
 - (i) breaches a material term of this Agreement, where that breach is not capable of remedy; or
 - (ii) breaches any term of this Agreement which is not remedied within 20 Business Days' written notice to do so by the first party.
- (b) Without limitation, for the purposes of clause 21.2(a)(i), each of the following constitutes a breach of a material term of this Agreement:
 - (i) a failure to comply with clause 7.2 (Key Personnel);
 - (ii) a failure to comply with clause 9 (Payment);
 - (iii) a failure to comply with clause 10 (Intellectual property);
 - (iv) failure to comply with clause 11 (Intellectual Property Rights management);
 - (v) a failure to comply with clause 12 (Right to publish); or
 - (vi) a failure to comply with clause 16 (Confidential Information).

21.3 Termination for convenience

- (a) Either party may terminate this Agreement for convenience at any time by giving the other party 30 Business Days' written notice, subject to the payment of:
 - (i) the amounts due under this Agreement on or before the effective date of termination; and
 - (ii) any reasonable costs (including any committed costs as at the date of termination that cannot reasonably be avoided), incurred by the other party as a result of the termination (excluding loss of profits or savings, business interruption, loss of revenue or loss of goodwill).
- (b) The total of any payments made by a party under 21.3(a) must not exceed the Fees.

21.4 Consequences of termination or expiry

- (a) Upon termination of this Agreement for any reason or expiry of this Agreement:
 - (i) the parties' rights to IPR in the Project IP continue in accordance with this Agreement;
 - (ii) the parties must store, dispose of, destroy or return any Collaborator Material or University Material (as relevant) not incorporated into the Project IP in accordance with clauses 3.3(c) and 5.3(b) (as directed by the other party), except that a party is entitled to keep a copy of any Material of the other party for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. A party must continue to treat any such copy as Confidential Information of the other party which is subject to the terms of this Agreement;
 - (iii) the University will (subject to payment of any outstanding Fees) be required to deliver to the Collaborator copies of all Project IP in their current state at the date of termination or expiry; and
 - (iv) except where clause 21.3 applies, if the Collaborator has paid any of the Fees in advance, the University must refund any portion that was not required to have been paid by or at the time of termination or expiry.
- (b) Where the Owner of the IPR in the Project IP has terminated the Agreement under clause 21.3(a), or the Licensee has terminated the Agreement under clause 21.2(a), in addition to Use of the IPR in the Project IP for the Purpose, the Licensee may Use the IPR in the Project IP (but not the Owner's Pre-existing IPR or Third Party IPR) to otherwise complete the Project itself or to engage a third party to complete the Project.

22. Unexpected Events

- (a) If an Unexpected Event prevents or delays a party (**Affected Party**) from performing any obligation under this Agreement (other than payment of amounts due):
 - (i) as soon as is reasonably practicable, but no later than three Business Days after the commencement of the Unexpected Event, the Affected Party must give a notice to the other party:
 - A. describing the Unexpected Event;

- B. specifying the impacted obligations and the extent to which the Affected Party cannot perform those obligations;
 - C. if possible, estimating the period of delay due to the Unexpected Event; and
 - D. specifying the measures proposed to be adopted to remedy or minimise the disruption caused by the Unexpected Event, and those obligations will be suspended for so long as the Unexpected Event continues; and
- (ii) the Affected Party must use reasonable efforts to mitigate the effects of the Unexpected Event.
- (b) If the Unexpected Event continues for a period of 30 Business Days or more, either party may (without affecting the accrued rights and obligations of each party as at that date) terminate this Agreement immediately by notice to the other party and the provisions of clause 21.4 will apply.
 - (c) If this Agreement is terminated under clause 22(b), each party will bear its own costs associated with ceasing performance of this Agreement.

23. Notices

23.1 Obligation for notices

Each notice under this Agreement must be:

- (a) in writing;
- (b) addressed to the recipient at the applicable address for notices set out in item 1 or 2 of the Details Schedule (as applicable), until changed by written notice; and
- (c) left at, or sent by pre-paid express post, or email to, that address.

23.2 Deemed receipt

- (a) Notices given in accordance with clause 23.1 will be deemed to be received:
 - (i) if delivered by hand - upon delivery to the relevant address;
 - (ii) if sent by pre-paid express post - on the second Business Day after the date of posting; or
 - (iii) if transmitted by email - at the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered.
- (b) A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

24. General

24.1 Relationship

This Agreement does not create a relationship of employment, agency, joint venture or partnership between the parties. A party must not represent itself, and must ensure its Personnel do not represent themselves, as:

- (a) being an employee, partner, joint venturer or agent of the other party; or
- (b) having any authority to act on behalf of the other party or to bind the other party to any course of action.

24.2 No constraints

- (a) Each party acknowledges and agrees that (subject to the scope of the assignment of, and licences to, IPR in this Agreement) the other party's research, development, Commercialisation and consulting are not constrained or restricted by this Agreement.
- (b) Each party acknowledges that the other party's activities may be in competition with its own business or activities.

24.3 No assignment

Except in relation to the Owner's rights to IPR in the Project IP, a party must not assign or novate its rights or obligations under this Agreement unless it has the prior written consent of the other party.

24.4 Further assurances

Each party must take all steps, execute all documents and do everything reasonably required by the other party to give effect to any of the transactions contemplated by this Agreement.

24.5 Entire agreement

This Agreement contains the entire agreement of the parties as to its subject matter. It sets out the only representations and warranties relied on by the parties when entering into this Agreement.

24.6 Variation

No variation or amendment of this Agreement will be effective unless it is made in writing and signed by an authorised representative of each party.

24.7 No waiver

No failure to exercise or delay in exercising any right, power or remedy under this Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

24.8 Remedies cumulative

The rights, powers and remedies provided to a party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or any other agreement.

24.9 Severance

- (a) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be severed to the extent necessary to make this Agreement valid and enforceable. The severance of a provision will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- (b) If the severance of a provision would materially change the substance of this Agreement then the parties must negotiate in good faith to seek agreement on a replacement provision that:
 - (i) is valid and enforceable; and
 - (ii) will as far as possible, give effect to the intention of the parties as expressed in this Agreement at the date of execution.

24.10 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts will collectively be taken to constitute one instrument.

24.11 Governing law

- (a) This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation are governed by the laws of the State or Territory of the location of the University set out in item 1 of the Details Schedule. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State or Territory
- (b) If a party is a foreign entity, the *United Nations Convention on Contracts for the International Sale of Goods* does not apply for the purpose of this Agreement.

24.12 Survival

- (a) Any provisions which by their nature are intended to survive the termination or expiration of this Agreement will so survive, including:
 - (i) clause 10 (Intellectual property);
 - (ii) clause 11 (Intellectual Property Rights management);
 - (iii) clause 12 (Right to publish);
 - (iv) clause 14 (Privacy);
 - (v) clause 15 (Moral Rights);
 - (vi) clause 16 (Confidential Information);
 - (vii) clause 18 (Warranties and liability);
 - (viii) clause 19 (Insurance); and
 - (ix) clause 21.4 (Consequences of termination or expiry).
- (b) Termination or expiry of this Agreement does not affect the rights and remedies of the parties that accrued before the date of termination or expiry.

Schedule 1 - Details Schedule

Item	Related clause	Subject	Description	
1	Clause 1.1	University	University Name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i>	
2	Clause 1.1	Collaborator	Collaborator Name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i>	
3	N/A	Project Title	<i>[Insert title and summary details of Project]</i>	
4	Clause 1.1	Commencement Date	<i>[Insert the date this Agreement commences.]</i>	
5	Clause 1.1	Project End Date	<i>[Insert date Agreement is to end eg, dd/mm/yy]</i>	
6	Clause 3.1	Policies, standards or laws	<i>[insert any specific policies, standards or law that the University, or the Collaborator or both parties must comply with in delivering the Project.]</i>	
7	Clause 7.1(a)	Chief Investigator	<i>[Insert the name of the individual that will be responsible for managing the Project.]</i>	
8	Clause 7.2	Key Personnel	Collaborator Key Personnel	University Key Personnel
			<i>[Insert any specific Personnel that are required to support the Project.]</i>	<i>[Insert any specific Personnel that are required to undertake the Project.]</i>
9	Clause 10.8	Acknowledgement	<i>[Insert any requirements or restrictions for a party to acknowledge in publications (including the form of acknowledgement) the contribution of the other party.]</i>	
10	Clause 11.2(a)	Right to Commercialise	<i>[Specify here if the Owner of the Project IP will not have the first right to Commercialise the IPR in the Project IP and include details of any other approach to Commercialisation. Otherwise insert 'Clause 11.2 does not apply']</i>	
11	Clause 11.2(a)(i)	Period for Commercialisation	<i>[Insert the period for which the Owner of the Project IP has the first right to Commercialise or insert 'N/A'.]</i>	

Item	Related clause	Subject	Description
12	Clause 15	Moral Rights	<p>[Tick which Moral Rights provision applies.]</p> <p>Clause 15.1 (Compliance)</p> <p>Clause 15.2 (Consent)</p>
13	Clause 17.1	Indemnity	<p>[insert:</p> <ul style="list-style-type: none"> • 'N/A' if the indemnity in clause 17 is to apply; or <p>if the indemnity in clause 17 is not to apply, either:</p> <ul style="list-style-type: none"> • an alternative indemnity agreed by the parties; or • if no indemnity is to be included, 'Neither party indemnifies the other party under this Agreement.'.]
14	Clause 18.7(a)(i)	Liability cap	[Insert liability cap amount]
15	Clause 19.1(a)	Insurance	<p>[insurance types and amounts. For example:</p> <p>Public and product liability insurance with a limit of liability of not less than \$10 million for each and every event.</p> <p>Professional indemnity insurance with a limit of liability of not less than \$5 million for each and every event.]</p>
16	Clause 20	Dispute resolution	<p>[Tick which dispute resolution provision applies.]</p> <p>Clause 20.6 (Escalation to court proceedings)</p> <p>Clause 20.7 (Escalation to arbitral proceedings - WIPO)</p> <p>Clause 20.8 (Escalation to arbitral proceedings - ACICA)</p>

Schedule 2 - Project Plan

1. Objectives

[Insert a description of the objectives and key requirements for the Project.]

2. Project methodology

[Insert description of Project methodology (attach additional pages if required)]

3. Project IP

	Milestone	Project IP	Milestone Date
1.	[Describe the work that the University is required to do]	[Reports? Physical items? Is the University required to make improvements to the Collaborator's Pre-existing IPR?]	[insert]
2.			
3.			

4. Fees

\$(insert) (excluding GST) to be paid [monthly / quarterly] in [advance / arrears]

OR

[insert the Milestone payments, which are to be paid by the Collaborator on the University's achievement of each Milestone by the applicable Milestone Date.]

	Milestone	Milestone Date	Milestone payment (excl GST)
1.			
2.			
TOTAL			

5. In-kind Contributions (clause 6)

5.1 University In-kind Contributions

	In-kind Contribution	Use in Project	Value (\$) of In-kind Contribution
1.			
2.			
3.			
4.			

5.2 Collaborator In-kind Contributions

	In-kind Contribution	Use in Project	Value (\$) of In-kind Contribution
5.			
6.			
7.			
8.			

6. Progress meetings (clause 7.4)

	Meeting	Attendees	Frequency	Place
4.				
5.				
6.				

Schedule 3 - Project IP, Research Tools, Pre-existing IPR, Material and Confidential Information

1. Ownership of Project IP

1.1 Owner of IPR in the Project IP

The University [or where appropriate in accordance with the HERC IP Framework Practical Guide, the parties may agree that the Collaborator should be the owner.]

1.2 Licensee of IPR in the Project IP

The Collaborator [or where appropriate in accordance with the HERC IP Framework Practical Guide, the parties may agree that the Collaborator should be the owner, in which case the University should be the Licensee.]

2. Use

IPR	Limitations on Use
Project IP	[Insert any limitation on the right to Use the Project IP or insert N/A.]
University's Pre-existing IPR	[If limitations apply include 'Limitations on Use are set out in section 5.2 of this Schedule.' or insert 'N/A'.]
Collaborator's Pre-existing IPR	[If limitations apply include 'Limitations on Use are set out in section 6.1 of this Schedule.' or insert 'N/A'.]
Third Party IPR	[If limitations apply include 'Limitations on Use are set out in section 7 of this Schedule.' or insert 'N/A'.]

3. Purpose

[Insert the purpose for which the Licensee is permitted to use the Project IP of the Project.]

4. Registration and protection of the IPR

4.1 Party responsible for registration and protection of IPR

[Identify the Collaborator or University as responsible for the registration and protection of IPR.]

4.2 Process for registration and protection of IPR

[Insert details of any registration process/assessment or protection of IPR in the Project IP required following the conclusion of the Project or insert 'not applicable'.]

5. University Material and Pre-existing IPR

5.1 University Research Tools

Description	Use in the Project

5.2 University Pre-existing IPR

(a) Patents and patent applications

Title	Application number	Filing date	Country of registration	Use in the Project	Limitations on use

(b) Other IPR

Description	Publication number	Form of IP (copyright, patent, registered design etc)	Use in the Project	Limitations on use

5.3 University's excluded Pre-existing IPR

Description	Publication number	Form of IP (copyright, patent, registered design, etc)	Use in the Project

Description	Publication number	Form of IP (copyright, patent, registered design, etc)	Use in the Project

6. Collaborator Material and Pre-existing IPR

6.1 Collaborator Pre-existing IPR

(a) Patents and patent applications

Title	Application number	Filing date	Country of registration	Use in the Project	Limitations on use

(b) Other IPR

Description	Publication number	Form of IP (copyright, patent, registered design etc)	Use in the Project	Limitations on use

6.2 Collaborator's excluded Pre-existing IPR

Description	Publication number	Form of IP (copyright, patent, registered design, etc)	Use in the Project

Description	Publication number	Form of IP (copyright, patent, registered design, etc)	Use in the Project

7. Third Party IPR

Owner / licensor of associated IP	Description	Publication number	Form of IP (copyright, patent, registered design etc)	Use in the Project	Limitations on use

8. Confidential Information

8.1 University Confidential Information

Description of Confidential Information	Period of confidentiality
<i>[Insert description of Confidential Information. If the parties agree to limit Confidential Information to the specific information described here, clearly state that only the information listed here is Confidential Information. If more space is required an attachment can be added.]</i>	<i>[Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]</i>

8.2 Collaborator Confidential Information

Description of Confidential Information	Period of confidentiality
<p><i>[Insert description of Confidential Information. If the parties agree to limit Confidential Information to the specific information described here, clearly state that only the information listed here is Confidential Information. If more space is required an attachment can be added.]</i></p>	<p><i>[Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]</i></p>

Signing page

Signed as an agreement.

Signed for and on behalf of the **[Insert University Name and ABN]** by its duly authorised representative:

Signature of authorised representative

Full name of authorised representative

Date

Signature of witness

Full name of witness

Executed by **[Insert Collaborator Name and ABN]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Full name of director who states that they are a director of **[Insert Collaborator Name]**

Date

Signature of company secretary/director

Full name of company secretary/director who states that they are a company secretary/director of **[Insert Collaborator Name]**

Date