



Higher Education Research Commercialisation IP Framework

Multi-Party Collaboration Agreement

The Multi-party Collaboration Agreement is for multi-party research and development projects between universities and companies.

When should it be used?

- For research and development projects of any value or risk between multiple (three or more) collaborators and universities
- Where one or more parties are providing funding for the project
- Where one or more parties are either private sector entities or Commonwealth Entities

When should it not be used?

- For research collaborations between only two parties – either the [Accelerated Research Agreement](#) or the [Standard Research Agreement](#) should be used
- 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

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 Multi-party Collaboration 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 multi-party research agreement may take at least three months to negotiate and sign, often longer, depending on the complexity of the proposed project and the number of parties. 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 Multi-party Collaboration Agreement. Understanding your own key considerations, as well as those of the other parties, will help you to negotiate a fair and reasonable agreement that works for all parties

Multi-party Collaboration Agreement Provision	University/Universities	Collaborator/Collaborators
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 Project IP (including any reports) • Where milestones are included, a clear definition of what these are and what is needed to meet each milestone and the associated timelines • What confidential information will be exchanged 	<ul style="list-style-type: none"> • Be clear and realistic in what can be achieved, when and what the expected results are • Ensure that any risks and uncertainties are clearly articulated • Ensure any milestones are realistic and achievable, particularly if funding is contingent on achieving these milestones. • Be clear on what information is considered confidential to each party 	<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 the funding is linked to suitable progress with the research • Be clear on what information is considered confidential to each party
Project Funding		
<ul style="list-style-type: none"> • A detailed breakdown of the funding that will be provided by the parties and when payments will be made, and if these future payments are contingent on meeting earlier milestones • Details of any in-kind contributions • Identify any third party funding being used for the Project and any associated obligations 	<ul style="list-style-type: none"> • Ensure all costs and contingencies in the research are covered through the funding • Be clear on your liabilities if a 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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Multi-party Collaboration Agreement Provision	University/Universities	Collaborator/Collaborators
Project Management		
<ul style="list-style-type: none"> • Having a clear project management structure is critical in multi-party research projects • A Governance Committee structure is used in the template to ensure all appropriate parties have the ability to direct the project and be kept informed of progress • Check that any third party funding terms that relate to the project are reflected in the project's governance to ensure that this complies with those funding obligations • Unless specified in the Project Plan, decisions by the Governance Committee need to be unanimous (other than when one party is in default) 	<ul style="list-style-type: none"> • Ensure the membership and remit of the Governance Committee is clear and that you understand how decisions relating to the project and reporting will work • The aim should be to keep all parties 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 the membership and remit of the Governance Committee is clear and that you understand how decisions relating to the project and reporting will work • The aim should be to keep all parties appropriately informed of progress and involved in all major decisions relating to the Project, without this becoming over-burdensome

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Multi-party Collaboration Agreement Provision

University/Universities

Collaborator/Collaborators

Ownership of IP Rights (IPRs) in the Project IP

- Who will own the Project IP generated by the Project
- How these results will be protected and who is responsible for this
- **The agreement provides two models for IP ownership:**
 - **Model 1 – one party owns all Project IP generated** or selected parties own specific components of the Project IP generated
 - **Model 2 – all parties own the Project IP they generate. This may give rise to joint IP if more than one party** works to create the same component of the Project IP. It is recommended that Model 1 be used in most instances, in order to identify the owner(s) of the IPRs in the Project IP.

- Each of the proposed models for IP ownership has their advantages and disadvantages and each party should carefully consider which model works best and will best support commercialisation of the Project IP
- If one party is agreed to be best placed to lead commercialisation then that party owning the Project IP would be the preferred option

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Multi-party Collaboration Agreement Provision	University/Universities	Collaborator/Collaborators
Use of the Project IP (for internal use)		
<ul style="list-style-type: none"> Defining the scope of the internal uses the Collaborators have rights to the Project IP for (defined as the Purpose in Schedule 3). As a default position, each party will have a non-exclusive, free licence to use the Project IP internally for the activities that fall within their specific Purpose Different collaborators may have different Purposes 	<ul style="list-style-type: none"> Be clear on a suitable field of use for each of the Collaborators to use the Project IP of the Project in their respective internal research. This is usually confined to their active or expected research areas and may be different for different Collaborators Ensure any restrictions to your Pre-existing IPR and the rights that you can grant to them are clear to the other parties before the Project starts 	<ul style="list-style-type: none"> Ensure you have the rights you need to fully use the Project IP internally Ensure any restrictions to your Pre-existing IPR and the rights that you can grant to them are clear to the other parties before the Project starts
Use of the Project IP (commercialisation)		
<ul style="list-style-type: none"> As a default, each party has the first right to commercialise the Project IP that it owns unless the parties agree otherwise The parties have an option to negotiate a licence to commercialise Project IP owned by another party(ies) 	<ul style="list-style-type: none"> Be clear that the agreed IP ownership model and the mechanism to commercialise the Project IP will ensure that the University's Project IP is commercialised through the most appropriate party(ies), including through licensing to third parties if required If a Collaborator owns the Project IP, ensure it takes adequate steps to commercialise the Project IP 	<ul style="list-style-type: none"> Ensure you have a right to negotiate further commercialisation rights if these are likely to be needed to commercialise Project IP owned by other parties

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<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 each party for the Purpose 	<ul style="list-style-type: none"> • Ensure the Collaborators are 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 Collaborators a licence for them to use the Project IP. This should be listed in the table in Schedule 3, section 5.3. This is very important as the Collaborators otherwise could have a free licence to your Pre-existing IPR for them to use the Project IP internally • If a 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 you know what restrictions might impact on your freedom to use the Project and what additional licences might be needed either for internal research use or for commercialisation • Ensure the Collaborators are aware of your Pre-existing IPR that you will be using in the Project
<p>Use of Third Party IPR</p> <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 all parties are 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 Collaborators 	<ul style="list-style-type: none"> • Ensure you know what restrictions might impact on your freedom to use the Project IP before the Project starts
<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- 	<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 other parties that it will have no rights to these 	<ul style="list-style-type: none"> • Ensure you know what Research Tools are planned to be used in the Project and that you will not have rights to these

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<p>how etc whose use would not be required to gain rights to the Project IP</p> <ul style="list-style-type: none"> No rights are granted to Research Tools 		
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 are specifically uncapped or cannot be limited by law 	<ul style="list-style-type: none"> Generally, this should be a multiple of the Fee paid – for example twice the Fee – or might be agreed to align with the organisation’s insurance limits The limit may be different for different parties 	<ul style="list-style-type: none"> Generally, this should be a multiple of the Fee paid – for example twice the Fee – or might be agreed to align with the organisation’s insurance limits The limit may be different for different parties
Indemnity		
<ul style="list-style-type: none"> The template includes an indemnity from each party to the other parties that use of their IPR for the Project and/or 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 you can give an indemnity to cover the other parties’ use of your IPR or your 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 	<ul style="list-style-type: none"> Very carefully consider whether you can give an indemnity to cover the other parties’ use of your IPR or your 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
Dispute Resolution		
<ul style="list-style-type: none"> The agreement includes a number of alternative standard approaches to dispute resolution 	<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 	<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

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Insurance		
<ul style="list-style-type: none"> The agreement includes standard levels of insurance that are appropriate for most situations 	<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
Governing law State or Territory		
<ul style="list-style-type: none"> The agreement allows the parties to decide on the most appropriate governing law and also the venue for any alternative dispute resolution This recognises that different parties may be in different States 	<ul style="list-style-type: none"> If the choice of governing law is not your home State/Territory, ensure you are aware of any additional costs/obligations that agreeing to another State or Territory law may impose 	<ul style="list-style-type: none"> If the choice of governing law is not your home State/Territory, ensure you are aware of any additional costs/obligations that agreeing to another State or Territory law may impose

Multi-Party Collaboration Agreement

[Insert name of University A]

University A

[Insert name of University B]

University B

[Insert name of Collaborator A]

Collaborator A

[Insert name of Collaborator B]

Collaborator B

[Insert Project title]

For guidance only

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For guidance only

Agreement

Date *[Insert date of Agreement]*

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

[Insert name of University B] ([Insert ABN of University B]) (University B)

[Insert name of Collaborator A] ([Insert ABN of Collaborator A]) (Collaborator A)

[Insert name of Collaborator B] ([Insert ABN of Collaborator B]) (Collaborator B)

Background

- A. The parties wish to engage collaboratively to undertake a research project *[Insert Project title]* (the **Project**).
- B. The parties agree that they will each 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 multi-party collaboration 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 6.3.

Collaborator means a party to this Agreement identified as a Collaborator in item 2 of the Details Schedule. **Collaborators** means all such parties.

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 7 of Schedule 3; or
- (b) a party knows or ought to know is confidential, unless the parties have specified otherwise in section 7 of 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 any other party's Confidential Information.

Contribution means the Contribution Material, Funding, services, equipment and facilities being provided by a party for the Project, including that which is identified in Schedule 2.

Contribution Material means the Material made available by a party for the Project, including that which is identified in Schedule 2 and includes any Research Tools.

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.

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 10.2). Any agreement to Commercialise the Project IP will be the subject of a separate agreement between the parties.

Guidance Note to 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 the section 7 of Schedule 3 - any other information a party knows or ought to know is confidential.

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

Funding means the amounts payable by a party to one or more other parties under this Agreement as specified in the Project Plan.

Governance Committee means the committee established in accordance with clause 6.2 and includes the individuals specified in item 7 of the Details Schedule.

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 9 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 Contribution Material.

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

Milestone Date means any fixed date to be met by a party 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 a University, includes Students. Personnel includes the Personnel of a contractor.

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

- (a) provided by one party to any other party for use in the Project, including as identified in Schedule 3;
- (b) incorporated into the Project IP; or

Guidance Note for the definition of Milestone and Milestone Date: Milestones are key achievements a party 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. Funding payable to a party may be contingent on that party completing certain Milestones. This should be specified in the Project Plan.

- (c) otherwise required in order for any other party to exercise their rights to the Project IP under this Agreement,

but does not include:

- (d) a Research Tool; or
- (e) 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 a party in the course of and as a result of carrying out the Project; and
- (b) that is delivered or required to be delivered to a party 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 the parties are 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 a party in carrying out the Project, that are not required for another party to carry out the Project or exercise its rights to the Project IP under this Agreement, and includes the items identified as a Research Tool in section 5 of Schedule 3.

Guidance Note for the definition of Research Tool:
This concept is intended to differentiate the tools used by a party in developing the Project IP but do not form part of the Project IP. For example, a 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 any 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:

- (a) 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;
- (b) fire, flood, earthquake, elements of nature or act of God;
- (c) war, riot, civil disorder, rebellion, revolution, or a terrorist act as defined in section 100.1 of the *Criminal Code Act 1995* (Cth); or
- (d) 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 a party to this Agreement identified as a University in item 1 of the Details Schedule. **Universities** means all such parties.

Use 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, unless otherwise set out in section 2 of Schedule 3, 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 IPR, as set out in clause 9.

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 relevant parties are permitted to Use the Project IP or Pre-existing IPR provided it is for the Purpose (set out in section 2 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 parties listed in item 10 of the Details Schedule have the first right to negotiate an agreement with the Owner to Commercialise the Project IP under clause 10.2.

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;
- (f) this Agreement is to be interpreted as a separate agreement between each party and each other party. Any reference to termination includes in relation to a party that is the subject of withdrawal or expulsion, termination of the Agreement as between that party and each other party; and

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).

- (g) 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 23.6.
- (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 23.6.

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) Each party must, and must ensure that its Personnel:
 - (i) perform their role in the Project:
 - A. with due care and skill in a professional manner;
 - B. using the Key Personnel; and

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

- 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 their role in the Project so as to:
 - A. complete the tasks allocated to them in the Project Plan; and
 - B. achieve the Milestones (if any) they are responsible for, by the applicable dates set out in the Project Plan and where no applicable dates are specified, promptly and without delay.
- (b) Each party must enable each other party to carry out their role in the Project in accordance with this Agreement, including by:
 - (i) providing any Contribution they have committed to the Project; and
 - (ii) cooperating with each other party and providing all information reasonably requested by each other party.
- (c) The 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 7) or vary the Project Plan or other aspects of this Agreement. Any variation to this Agreement must be in accordance with clause 23.6.

Guidance Note for clause 3.2: This clause prohibits a party from subcontracting any of its obligations under this Agreement or any part of the Project, without the approval of the Governance Committee.

A party is not required to seek approval if it is subcontracting to an Affiliate, unless otherwise set out in the Project Plan or agreed by the Governance Committee.

Where a party receives approval from the Governance Committee or is subcontracting to an Affiliate, it must enter into an agreement with the subcontractor, prior to the subcontractor starting work. The agreement must include any terms required by the Governance Committee (for example compliance with privacy laws) and be consistent with this Agreement.

Each party remains responsible for ensuring that the performance of its subcontractors meets the requirements of this Agreement.

3.2 Subcontracting

- (a) A party must not, unless approved in the Project Plan or by the Governance Committee, subcontract the performance of any of its obligations under this Agreement.

- (b) Notwithstanding clause 3.2(a), unless otherwise set out in the Project Plan or agreed by the Governance Committee, each party may subcontract its obligations under this Agreement to an Affiliate without approval.
- (c) Each party is fully responsible for the performance of all of its obligations under this Agreement, including for the performance of any of its subcontractors.
- (d) Despite any approval given under this clause 3.2:
- (i) each party is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Agreement; and
 - (ii) a party must enter into an agreement with the subcontractor prior to the subcontractor conducting any work in relation to this Agreement. The subcontract agreement must, unless approved by the Governance Committee:
 - A. be consistent with the terms of this Agreement, including, without limitation, the confidentiality provisions set out in clause 15;
 - B. be in a form and include any standard terms that may be required by the Governance Committee;
 - C. include a right to terminate and other provisions consistent with clause 20; and
 - D. assign or grant licences to the party to IPR to enable the party to perform its obligations under this Agreement (as if the subcontractor were the party under this Agreement).

3.3 Access to premises

- (a) Where required in the Project Plan, the relevant party will ensure that the Personnel of another party are provided with access to their premises required for the conduct of the Project.

Guidance Note for clause 3.3: This clause applies if the Project Plan requires Personnel of one party to attend another party's premises (for example, the Personnel of a Collaborator visits a University's premises to observe an experiment).

- (b) Each party will ensure that any Personnel of any 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 another 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.

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), or the performance of specific activities, by one or more parties.
- (c) If the parties have agreed Milestones, unless otherwise specified in the Project Plan, the Governance Committee will assess, acting reasonably (including at its next meeting when requested by a party submitting a claim for achievement of a Milestone) whether a Milestone has been achieved by the applicable Milestone Date in accordance with this Agreement.
- (d) If the Governance Committee's assessment reveals that a Milestone:
 - (i) has been achieved, the Governance Committee will record that in the minutes of its meeting; or
 - (ii) has not been achieved, the Governance Committee will record in its minutes the actions that must be completed by any relevant party to rectify the deficiency and the Governance Committee will then repeat the assessment.

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 a party is required to provide certain deliverables or undertake certain tasks by a particular date. This can also include setting out criteria for a party 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 parties accountable for the delivery of elements of the Project in a timely manner.

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

- (e) If the Governance Committee is unable to decide on the achievement of a Milestone, the parties must work together collaboratively and in good faith to:
 - (i) understand the circumstances occurring that are resulting in the Milestone potentially not being achieved;
 - (ii) seek to agree alternative steps as applicable to be undertaken by the 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 must be in accordance with clause 23.6.
- (f) Where Funding is payable to a party following achievement of a Milestone, no amounts are payable until the Governance Committee has unanimously assessed that the relevant Milestone is achieved or the parties vary this Agreement in accordance with clause 23.6.

5. Contribution Material

5.1 Provision of Contribution Material

- (a) In respect of any Contribution Material, each party:
 - (i) must provide the Contribution Material to any other party that requires it (if any):
 - A. as set out in the Project Plan or as agreed by the Governance Committee, so as to enable the parties to carry out the Project; and
 - B. in a safe and suitable manner for the purposes of the Project;
 - (ii) must organise and pay the costs of transport of the Contribution Material it provides (if required for the Project), to and from any relevant other party's premises, unless otherwise specified in the Project Plan;
 - (iii) must advise each receiving party of any hazardous or otherwise dangerous components or properties of the Contribution Material that it is aware of, and where applicable, instructions for safe use and operation of the Contribution Material; and

Guidance Note for clause 5: This clause sets out the rights and obligations of the parties with respect to providing any Contribution Material provided under the Agreement.

The parties should specify any Contribution Material in section 5 of Schedule 2. The parties may agree how the Contribution Material will be provided in the Project Plan or via the Governance Committee.

- (iv) is responsible for insuring, maintaining and, if necessary, repairing and replacing any Contribution Material it provides, if required for the Project, unless otherwise specified in the Project Plan.
- (b) Each party acknowledges that Contribution Material may be altered, damaged or destroyed during the conduct of the Project as an anticipated and necessary part of the Project or as set out in the Project Plan.

5.2 Receipt and use of Contribution Material

- (a) Where a party is required to provide Contribution Material to another party for the conduct of the Project, a receiving party is not obliged to commence or continue the part of the Project for which the relevant Contribution Material relates until:
 - (i) the party has provided the relevant Contribution Material; and
 - (ii) the receiving party has completed an assessment to confirm the Contribution Material is safe and suitable for the purposes of the Project.
- (b) The party providing Contribution Material must at its own cost replace any of the Contribution Material that a receiving party reasonably determines to be unsafe or unsuitable for the purposes of the Project.
- (c) A party providing Contribution Material grants each receiving party a non-transferable, non-exclusive, royalty free licence (including a right to sublicense to those subcontractors approved under clause 3.2) to Use the Contribution Material (including any IPR in the Contribution Material, but subject to any restrictions specified in the Project Plan) for the purposes of carrying out the Project.
- (d) Except as expressly set out in this Agreement, nothing in this Agreement affects the ownership of Contribution Materials (including associated Pre-existing IPR).

5.3 Destruction or return of Contribution Material

- (a) Each party contributing Contribution Material acknowledges that Contribution 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 Contribution Material incorporated into the Project IP and subject to clause 5.3(c), each recipient of Contribution Material must store, dispose of, destroy or return Contribution Material in its possession or control on termination or expiry of the Agreement, if specified in the Project Plan or as directed by the relevant providing party (at the cost of the providing party).
- (c) Notwithstanding clause 5.3(b), each party is entitled to keep a copy of any Contribution Material for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. Each party must continue to treat any such copy in accordance with the terms of this Agreement.

6. Project management

6.1 Representation on the Governance Committee

- (a) Each party appoints as its representative on the Governance Committee the person named in item 7 of the Details Schedule, or such replacement person notified by that party in writing to the other parties.
- (b) Each party must ensure that their representative:
 - (i) is suitably experienced to act as a representative for that party;
 - (ii) manages the day to day conduct of those tasks allocated to the party in the Project Plan; and
 - (iii) maintains full and accurate records of the performance of the Project.
- (c) Except where required otherwise under clause 6.4, a party may replace its representative by giving written notice to the other parties. The party must ensure that its replacement representative is suitably experienced to act as that party's representative.

Guidance Note for clause 6.1(a): The individuals who will represent the parties on the Governance Committee should be set out in item 7 of the Details Schedule. The parties should consider if smaller contributors or those only contributing financial amounts need to sit on the Governance Committee.

6.2 Governance Committee

- (a) The Governance Committee will:
 - (i) meet at the times set out in the Project Plan (or otherwise as agreed by the Governance Committee) to discuss the progress of the Project, including any issues or risks arising;
 - (ii) endorse, at the frequency set out in the Project Plan, a written summary and report on the progress of the Project;

Guidance Note for clause 6.2: This clause sets out the membership and procedures of the Governance Committee, which oversees the Project.

- (iii) discuss any variations to any aspect of the Project proposed by a party;
 - (iv) carry out any other tasks set out in this Agreement or as otherwise agreed by the parties from time to time;
 - (v) record minutes of its meetings for distribution to all parties prior to its next meeting; and
 - (vi) as required, amend the Project Plan in accordance with clause 7.
- (b) The Governance Committee may develop and approve further terms of reference and meeting protocols that are consistent with this Agreement.
- (c) The Governance Committee is not authorised to amend this Agreement (except for the Project Plan), but may make decisions or grant approvals where specified under this Agreement or the Project Plan.
- (d) Unless otherwise set out in the Project Plan, all decisions of the Governance Committee must be unanimous, except that a party's representative must not participate in a decision of the Governance Committee:
- (i) to approve achievement of a Milestone under clause 4.1 that the party is required to achieve;
 - (ii) to remove their Key Personnel from the Project under clause 6.4(c); or
 - (iii) in relation to their expulsion under clause 20.2.
- (e) Where the Governance Committee cannot reach a decision, any party (including a party not represented on the Governance Committee) may raise a Dispute.

Guidance Note for clauses 6.2(c) to (e): Any proposed amendments to the Project Plan should be discussed and approved by the Governance Committee in accordance with clause 7. The Governance Committee does not have the right to vary the terms of the Agreement other than the Project Plan.

Decisions of the Governance Committee are required to be unanimous (unless set out in the Project Plan) and a party is not permitted to engage in discussions that relate to their performance.

If the Governance Committee is unable to reach a decision, any party may raise a Dispute and follow the Dispute resolution mechanisms set out in clause 19.

6.3 Chief Investigator

- (a) Where specified in item 8 of the Details Schedule, a Chief Investigator is appointed to manage and coordinate the conduct of the Project in accordance with the Project Plan.
- (b) The Governance Committee will determine the scope of responsibility for the Chief Investigator, including the delegation of any authority or administrative responsibilities of the Governance Committee. The Chief Investigator is not authorised to amend this Agreement, or exercise any rights of another party.

Guidance Note for clause 6.3: A Chief Investigator may be a single individual appointed by the parties to oversee the Project as a whole. The scope of the Chief Investigator's duties will be determined by the Governance Committee.

The details of any Chief Investigator should be set out in item 8 of the Details Schedule.

6.4 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 Governance Committee, which will not be unreasonably withheld; and
 - (iii) except if clause 6.4(b) applies, before replacing any Key Person, give the Governance Committee 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 Governance Committee 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) The Governance Committee may decide to give a notice to a party:
- (i) directing the party to immediately remove a Key Person from the Project, if the Key Person has breached the law or engaged in serious misconduct; or
 - (ii) in any other case, requesting that the party replace a Key Person, in which case:
 - A. unless otherwise agreed by the parties, prior to the next meeting of the Governance Committee, the party must investigate the reasons stated in the notice, report its findings to the Governance Committee (including any

Guidance Note for clause 6.4: This clause acknowledges that a party may be seeking the expertise of specific Personnel of another party to perform the Project. Any such person must be specified in item 9 of the Details Schedule.

Guidance Note for clause 6.4(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.

Guidance Note for clause 6.4(c): This clause allows the Governance Committee to direct the removal of a Key Person from the Project in limited circumstances. These circumstances are if a Key Person breaks the law or engages in serious misconduct (for example, intoxication on another party's premises).

The party employing the Key Person has until the Governance Committee's next meeting to investigate the conduct of the Key Person and resolve the problems. Despite this, the Governance Committee may still require the replacement of the Key Person.

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

If a Key Person becomes unavailable (for example, due to illness or change of employment), the party employing that person must find a suitable replacement. Otherwise, the parties may agree to terminate the Agreement (and consequently the Project) under this clause.

ramifications of replacing the Key Person) and attempt to resolve any problems with the Key Person; and

B. if the Governance Committee still requires the replacement of the Key Person, 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;
- (iii) work with the other parties to update any agreements with a third party for funding that require participation of the Key Person; and
- (iv) keep the Governance Committee informed as to the progress of the process to replace the Key Person.

(e) If, after a reasonable period of time, a 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; and
- (ii) unless otherwise agreed, each party will bear their own costs incurred in terminating the Agreement.

Guidance Note for clauses 6.4(d) to (e): If a Key Person becomes unavailable or is removed, the party providing the Key Person must immediately 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 6.4(e).

6.5 Reporting

- (a) The parties must provide the Governance Committee with reports and information in accordance with the Project Plan.
- (b) On or before the Project End Date or within 30 Business Days following the termination of this Agreement (including following expulsion or withdrawal), each party must provide the Governance Committee with a final report (for distribution to all parties):

Guidance Note for clause 6.5: The parties can agree the reports to be provided during the Project. At a minimum, each party must provide the Governance Committee with a final report on or before the Project End Date.

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

- (i) specifying all tasks performed during the Project; and
- (ii) providing a summary of the Project IP generated.

Guidance Note for clause 7: 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.

Any party can initiate a review of the Project.

This process gives the parties' certainty about changes to the Project and mitigates the risk of disagreement.

7. 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 Governance Committee 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) At the next meeting of the Governance Committee after receiving a Review Notice, or within 10 Business Days after receiving a Review Notice at a specially convened meeting (whichever is the earliest) the Governance Committee will discuss the proposed variations to the Project to address the concerns raised in the Review Notice.
- (c) If the Governance Committee agrees to vary the Project, it may:
 - (i) approve a variation to the Project Plan (excluding any variation to the Funding) to implement the Review Notice; or
 - (ii) if an amendment to the Funding or the Agreement is required, recommend that each party execute a written variation in accordance with clause 23.6.
- (d) Subject to clause 7(c), the parties must continue working in accordance with the unaltered Project Plan and this Agreement.

8. Project Funding

8.1 Contributions

- (a) A party must pay to another party any instalments of the Funding at the times and in the amounts set out in the Details Schedule or Project Plan (as applicable).
- (b) Except in accordance with clause 4, or where otherwise agreed by the Governance Committee, the Governance Committee will determine (acting reasonably) if the receiving party has met any requirement in this Agreement or the Project Plan for payment of the Funding.

Guidance Note for clause 8.1: This clause requires the parties to pay the Funding in accordance with the Project Plan. This clause also sets out the applicable payment terms (including requirements for invoicing and late payments).

The parties may also receive financial contributions in relation to the Project from third parties (e.g. government grants). The parties must report any third party contributions to the Governance Committee. Alternatively, the parties may prohibit third party contributions in the Project Plan.

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 Owners/s, or subject to a separate licence agreement.

- (c) Unless otherwise set out in the Project Plan, nothing in this Agreement prevents a party from receiving financial or other contributions from a third party for the purpose of performing its obligations under this Agreement. Subject to any confidentiality obligations owed to the third party, the party must report all such financial or other contributions to the Governance Committee (including the identity of the third party) and ensure any agreement with the third party is consistent with its obligations under this Agreement.

8.2 Payment terms

- (a) All invoices issued by a party for payment of Funding that is due and payable in accordance with this Agreement must be paid within 20 Business Days of receipt of the invoice. For GST purposes, all invoices or receipts issued by a party are tax invoices.
- (b) Where a party disputes an amount set out in an invoice, it must notify the issuing party within 10 Business Days of receipt of the invoice.
- (c) Late payments may be subject to an additional charge at the discretion of the party owed the payment, 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 a party is more than 30 Business Days late paying an invoice:
- (i) the other party is entitled to stop working on the Project (and will not be in breach of its 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 other party stops work in accordance with this clause.

Guidance Note for clause 8.2(c): The cash rate for the calculation of interest is published by the Reserve Bank of Australia and can be found on its website: <https://www.rba.gov.au/statistics/cash-rate/>.

8.3 No deduction

The Funding 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.

8.4 GST

(a) In this clause 8, 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 a party paying Funding is an Australian entity:

- (i) all Funding payable under this Agreement is 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 a party paying Funding is a foreign entity:

- (i) any supply made by the receiving party under this Agreement to the paying party will be treated by the receiving party as GST-free under the GST Act in reliance on the following representations made by the paying party 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

Guidance Note for clause 8.4: This clause sets out the treatment of GST, which depends on whether the relevant party is an Australian entity or not.

- (ii) if any supply made under this Agreement is classified as a taxable supply for GST purposes because any of the representations in clause 8.4(c) are incorrect, the paying party will on demand pay the receiving party the GST payable on that supply together with any interest, fine, penalty or other amount imposed as a consequence of the incorrect representation.

8.5 Pre-payment for the Project

If a party pays any Funding in advance in consideration for another party performing all or part of the Project, and the other party does not perform the Project or the relevant part of the Project, then:

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

Guidance Note for clause 8.5: This clause contemplates the pre-payment of Funding and requires that a party repay any pre-paid Funding if it does not perform the Project or the relevant part of the Project.

9. Intellectual property

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

This clause 9 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 9: 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 the parties can negotiate a separate arrangement for a Commercialisation licence or assignment of IPRs if this is what the parties require.

Guidance Note for clause 9.1: 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 a party owns its Pre-existing IPR.

9.2 Right to use each party's Pre-existing IPR

- (a) Subject to clause 9.2(b), each party grants to each other party a royalty-free, world-wide, non-transferable, non-exclusive licence (including to sublicense to those subcontractors approved under clause 3.2) to Use the Pre-existing IPR of that party for the sole purpose of and only to the extent necessary to:
- (i) carry out the Project; and
- (ii) exercise the party's rights to Use the Project IP for the Purpose.

Guidance Note for clause 9.2(a): This clause provides that each party must give the other parties a licence to Use its Pre-existing IPR. The licence is limited to Using the Pre-existing IPR for the purpose of:

- carrying out the Project; and
- exercising a party's rights to Use the Project IP for the Purpose.

If a party's use of Pre-existing IPR in the Project 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 5 of Schedule 3.

- (b) The parties may agree in Schedule 3 to further limit the licence granted under clause 9.2(a), such that specific Pre-existing IPR is only licenced for Use by specific parties, for specific purposes, or under specific conditions.
- (c) Each party warrants that:
 - (i) it owns or is otherwise entitled to grant to each other party the right to Use the Pre-existing IPR (and any other information provided to the party) that it contributes 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), each other party's use of its Pre-existing IPR to carry out the Project (in accordance with this Agreement), as at the time such material is provided by the party, will not infringe any third party's rights (including IPR).
- (d) Each party warrants that there are no actions, claims or proceedings pending or threatened against the party in respect of its Pre-existing IPR.
- (e) Unless otherwise agreed in Schedule 3, each party contributing Pre-existing IPR does not make any representation or warranty, express or implied, that Use of its 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 9.2(c) and 9.2(d): These clauses require each party to promise that no entity or person has started or is intending to start a law suit against it, in relation to its Pre-existing IPR.

However, the legal exposure of each party providing Pre-existing IPR is limited by clause 9.2(e). Each party providing Pre-existing IPR does not promise that any Use of that IPR that is not contemplated in the Project Plan is lawful.

9.3 Right to use Third Party IPR

- (a) Unless agreed otherwise by the parties in the Project Plan, 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 another 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 each other party a licence to Use the Third Party IPR, on the same terms as clause 9.2(a).

Guidance Note for clause 9.3: 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, a 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 6 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 licences for the other parties.

If during the Project, the parties need to use Third Party IPR that is not identified in section 6 of Schedule 3, the parties can amend this section, in accordance with clause 23.6 of this Agreement.

- (b) If the Proposing Party cannot obtain the licences as described in clause 9.3(a) (including because the Third Party IPR is only licenced on standard terms or because individual licenses are required), the Proposing Party must:
- (i) notify the Governance Committee of the best alternative licence terms for that Third Party IPR and not use that Third Party IPR unless the Governance Committee approves those terms; and
 - (ii) if the Governance Committee does not approve the terms under clause 9.3(b)(i), notify the Governance Committee of any comparable Third Party IPR (if available) and comply with its obligations under this clause 9.3 in respect of such comparable Third Party IPR.

9.4 Ownership of Intellectual Property Rights in the Project IP

Model 1 - One or more selected parties own IPR in the Project IP

- (a) This clause 9.4(a) applies where Model 1 is identified as applying to the Project in section 1 of Schedule 3. Subject to clause 9.1:
- (i) all IPR in the Project IP vest in the party (or parties) identified in section 1 of Schedule 3 (the '**Owner**') on creation and the other parties hereby assign and agree to assign all such IPR to the Owner;
 - (ii) the Owner grants to each other party ('**Licensee**') a perpetual, irrevocable (except for material breach), world-wide, royalty-free, non-exclusive licence to Use the IPR in the Project IP (other than Pre-existing IPR and Third Party IPR):
 - A. to carry out the Project; and
 - B. for the Purpose; and
 - (iii) the Owner must not exercise their rights to the IPR in the Project IP licenced under clause 9.4(a)(ii), except:
 - A. as would be permitted if the Owner were a Licensee;
 - B. as otherwise expressly permitted under this Agreement; or

Guidance Note for clauses 9.4: This clause sets out alternative approaches to ownership of the IPR in the Project IP. The parties should specify which model they are adopting in section 1 of Schedule 3.

Please refer the HERC IP Framework Practical Guide for information to assist parties to determine the appropriate model for the Project.

Guidance Note for clause 9.4(a): Under Model 1, the party or parties specified in section 1 of Schedule 3 are the Owners of the IPR in the Project IP. The intent of Model 1 is to allow the parties to clearly agree the Owner of IPR in the Project IP, including the ability to specify different Owners for different components of the IPR in the Project IP.

The relevant Owners grant the other parties licences to Use the IPR in the Project IP for the Purpose.

- C. as otherwise set out in the Project Plan, approved by the Governance Committee, or agreed by all parties in writing.

Model 2 - Each party owns their own IPR in the Project IP

- (b) This clause 9.4(b) applies where Model 2 is identified as applying to the Project in section 1 of Schedule 3:
 - (i) this Agreement does not affect the ownership of any IPR in the Project IP;
 - (ii) for IPR in the Project IP created by a party (the '**Creator**'), the Creator grants to each other party ('**Licensee**') a perpetual, irrevocable (except for material breach), world-wide, royalty-free, non-exclusive licence to Use the IPR in the Project IP (other than Pre-existing IPR and Third Party IPR):
 - A. to carry out the Project; and
 - B. for the Purpose; and
 - (iii) the Creator must not exercise their rights to the IPR in the Project IP licenced under clause 9.4(b)(ii), except:
 - A. as would be permitted if the Creator were a Licensee;
 - B. as otherwise expressly permitted under this Agreement; or
 - C. as otherwise set out in the Project Plan, approved by the Governance Committee, or agreed by all parties in writing.

Guidance Note for clause 9.4(b): Under Model 2, each party owns the portion of the IPR in the Project IP that it creates. Each party grants a licence to the other parties to Use the IPR it creates in the Project IP for the Purpose.

Parties should be aware that it may be difficult to determine who is the owner of specific IPR under this Model 2, if they have worked together on the Project IP. This may also potentially result in joint ownership, which is not contemplated by this template Agreement and would require amendments to be made. In the circumstances of joint creation, the parties are encouraged to consider use of Model 1 so that the owner of all IPR in Project IP (or relevant components) is clearly agreed.

9.5 Further action

Each party will execute such documents or instruments, and do all other things reasonably required by another party, in order to give effect to the parties' agreement and the rights in this clause 9.

Guidance Note for clause 9.5: This clause requires the 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 Project IP.

9.6 Use of the party's name and acknowledgement

- (a) Except with a party's prior written consent, each other party must not use that party's name:
 - (i) in a manner that suggests that the party endorses or is associated with any other party's business, products or services; or

Guidance Note for clause 9.6: This clause prevents each party from using any other party's name or logo without the other party's consent. For example, a Collaborator cannot use a University's logo on its website without that University's prior written consent.

- (ii) in any publication or promotional material.
- (b) A party must not use any other party's logo or branding without prior written consent of an authorised representative of the other party.
- (c) Each party must acknowledge any other party's contribution in any publication that refers to the Project IP in accordance with any requirements or restrictions specified in item 12 of the Details Schedule.

10. Intellectual Property Rights management

10.1 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 of Schedule 3.
- (b) Except as specified in section 4 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 any 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 10.1: The registration and protection of IPR in the Project IP may include applying for patent or design registration, or taking legal action where someone has infringed the IPR.

The parties can specify in section 4 of Schedule 3 whether any Licensee has the right to register or protect the IPR in the Project IP, and whether it can require the Owner to register or protect the IPR.

The responsibilities of the parties to manage IPR are ongoing and continue to apply following the termination of this Agreement (and completion of the Project).

10.2 Commercialisation of IPR in the Project IP

- (a) The party (or parties) identified in item 10 of the Details Schedule, have during the Term and for any further period specified in item 11 of the Details Schedule (**Commercialisation Option Period**), the first right to Commercialise the IPR in Project IP in accordance with this clause 10.2.
- (b) Item 10 of the Details Schedule may identify a party or parties for the purpose of clause 10.2(a) in respect of either all or part of the Project IP, or in respect of Commercialisation for the Purpose or any other purpose, or in such other manner as agreed.

Guidance Note for clause 10.2: 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 Owner(s) should be aware that, during the Commercialisation Option Period, they will be prohibited from Commercialising the Project IP to the extent of another party's Commercialisation Option. The parties specified in item 10 of the Details Schedule will have the first right to Commercialise the IPR in the Project IP within the scope agreed in that item and may request that the Owner(s) negotiate a reasonable commercial licence to Commercialise the IPR in the Project IP and any incorporated Pre-existing IPR.

If the 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.

- (c) Unless otherwise set out in item 10 of the Details Schedule, the Owner or Owners must:
- (i) not during the Commercialisation Option Period, without the written consent of any party with the right to Commercialise the relevant IPR, Commercialise the IPR or any relevant part of it, in the Project IP; and
 - (ii) on request of any party with the right to Commercialise the relevant IPR under clause 10.2(a), prior to expiry of the Commercialisation Option Period, negotiate in good faith the terms of a further licence of that IPR in the Project IP to the party, for the party to Commercialise the IPR or any relevant part of it, in the Project IP, on reasonable commercial terms.
- (d) If the party Commercialising the IPR in the Project IP requires a licence to Commercialise a party's Pre-existing IPR in conjunction with, or as part of, Commercialising the IPR in the Project IP, the relevant parties will negotiate in good faith to agree the reasonable commercial terms of that licence.
- (e) Any reference in this clause 10.2 and the Details Schedule to reasonable commercial terms requires regard to be given both to the value of the applicable Intellectual Property Rights and the respective contributions of the parties to the Project.

10.3 Infringement and enforcement of IPR

- (a) Each party must promptly notify the party that contributed (or owns) the relevant IPR 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.

Guidance Note for clause 10.3: 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 must be reported to the party that contributed to or owns the IPR. The affected parties will then determine the approach to take. However, a party does not require approval from another party in order to defend any action by a third party against it, or initiate proceedings in relation to IPR that it owns.

This clause survives the termination or expiry of the Agreement (see clause 23.12).

- (b) Upon notification under clause 10.3(a), the parties that use the relevant IPR will meet to discuss 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 another 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.

11. Right to publish

- (a) Notwithstanding other obligations in the 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 11.
- (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 11(b), 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 any other party or the Project IP (**'Publication'**), provided that it has complied with the process set out in clauses 11(d) and 11(e) and is permitted to proceed in accordance with clause 11(h).
- (d) The Publishing Party must provide a copy of the proposed Publication to the other party or parties to whom the Publication relates (the **'Reviewing Party'**) for review and response in accordance with clause 11(e).
- (e) Within 30 Business Days of the Publishing Party providing the Publication to a 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

Guidance Note for clause 11: This clause sets out a process for a University to publish the Project IP without disclosing another party's Confidential Information or impacting the potential commerciality of the Project IP.

Guidance Note for clause 11(a): This purpose of this clause is to clarify that publishing Project IP in accordance with this clause is not Commercialising the Project IP.

- (iii) requires the Publication to be delayed for up to 3 months so as to not prejudice its ability to protect and/or Commercialise the IPR in the Project IP, Confidential Information or Pre-existing IPR.
- (f) Notwithstanding clause 11(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 11(d) within 20 Business Days of a 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 11(d).
- (h) The Publishing Party may proceed with the Publication:
 - (i) upon unconditional consent being given by each Reviewing Party; or
 - (ii) if amendments are required under clause 11(e)(ii), upon all reasonable amendments being made; and
 - (iii) if a period of delay is required under clause 11(e)(iii), upon the expiry of that period.
- (i) This clause 11 does not apply to the non-public presentation or submission of Student Work for assessment or examination and instead clause 12 applies in such circumstances.

Guidance Note for clause 11(g): The purpose of this clause is to permit the Publishing Party to proceed with Publication if the Reviewing Party (commonly the Collaborators) does not respond to the Publishing Party's requests for Publication. If the Reviewing Party has any concerns with the Publication, it is important that the Reviewing Party responds to the Publishing Party in accordance with clause 11(e).

12. 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 relevant University's policies and procedures and any statutes and regulations, subject to the provisions of clause 11; and
 - (ii) will retain copyright in their Student Work.

Guidance Note for clause 12: This clause sets out a Student's right to publish. However, each University must obtain all rights to assign the IPR under the Project, even where a Student from another university performs work on the Project.

Guidance Note for clause 12(a) to (d): These clauses allow the Student to include the Project IP in their Student Work. However, any Confidential Information (including the Project IP) contained in any Student Work must be kept confidential during the relevant University's assessment of that Work.

- (b) Nothing in this clause 12 prevents a Student from submitting their Student Work for assessment and each 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 15).
- (c) At a party's request, a University must promptly provide written evidence of its compliance with clause 12(b).
- (d) Student Work submitted for a higher degree may be deposited in the library of the relevant University, subject to any reasonable conditions agreed to by the parties, including the removal of any Confidential Information.

13. Privacy

In undertaking the Project, the parties agree to comply with their 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 13: 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.

14. Moral Rights

14.1 Compliance

- (a) This clause 14.1 applies if specified in item 13 of the Details Schedule. If this clause 14.1 applies, then clause 14.2 does not apply.
- (b) Each party must respect the Moral Rights of the Personnel of the other parties as required by law.

Guidance Note for clause 14: 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 13 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.

14.2 Consent

- (a) This clause 14.2 applies if specified in item 13 of the Details Schedule. If this clause 14.2 applies, then clause 14.1 does not apply.
- (b) Except as set out in clause 14.2(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 14.2(b), the party must promptly notify the Governance Committee in writing.

15. Confidential Information

15.1 Confidentiality of Project IP

The parties acknowledge and agree that:

- (a) the Project IP is the Confidential Information of each party 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 Project IP.

Guidance Note for clause 15.1: This clause sets out the position with respect to the confidentiality of the Project IP. This clause has the consequence that a party can disclose the Project IP without the consent of the other parties 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.

15.2 Use of Confidential Information

- (a) Except as set out in this clause 15.2 or in clause 11, for the period that Confidential Information is to remain confidential as set out in section 7 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

Guidance Note for clause 15.2(a): This clause restricts further disclosure of Confidential Information and requires that any use of the Confidential Information be only for the Permitted Purpose.

Exceptions (where disclosure or other uses are permitted) are set out in the remainder of clause 15.

Guidance Note for clause 15.2(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).

- (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 15.2 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 15.2(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.

Guidance Note for clause 15.2(e): Government entities may be required, for public accountability reasons, to disclose Confidential Information in specific circumstances as set out in this clause.

15.3 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 or 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 15.3(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.

Guidance Note for clause 15.3: Any party may, at any time, request the return or destruction of all copies of their Confidential Information. The other parties 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 7 of Schedule 3.

- (c) The obligations under this clause 15 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 7 of Schedule 3.

16. Intellectual Property Rights indemnity

16.1 General

This clause 16 applies unless otherwise set out in item 14 of the Details Schedule.

16.2 Indemnity

Each party ('**Indemnifying Party**') will indemnify each other party, and its Personnel ('**Indemnified Party**'), against any loss or liability arising out of or in connection with any claim that the:

- (a) Indemnified Party's Use of any IPR provided by the Indemnifying Party for the Project, consistent with any licence granted by the Indemnifying Party under this Agreement, infringes any IPR of a third party; or
- (b) Indemnifying Party's Use of any IPR provided by the Indemnified Party for the Purpose infringes any IPR of a third party.

16.3 Obligations

- (a) Where an Indemnified Party wishes to enforce an indemnity under clauses 16.2, it must:
- (i) give written notice to the relevant Indemnifying Party as soon as practical;
- (ii) make reasonable efforts to mitigate the relevant loss;
- (iii) subject to the Indemnifying Party agreeing to comply at all times with clause 16.3(b), permit the Indemnifying Party, at the Indemnifying Party'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 Indemnifying Party is permitted to handle negotiations or conduct litigation on behalf of the Indemnified Party under clause 16.3(a)(iii), provide all reasonable assistance to the Indemnifying Party in the handling of any negotiations and litigation.

Guidance Note for clause 16: 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 each party in relation to the IPR it provides to the other parties under the Agreement.

If the 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 14 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 HERC IP Framework Practical Guide.

Guidance Note for clause 16.3: This clause sets out the steps that should be taken by a party in the event that another party seeks to enforce the indemnity in clause 16.2.

- (b) The requirements referred to in clause 16.3(a)(iii) are that the Indemnifying Party must:
- (i) if the Indemnified Party is a Commonwealth Entity, comply with government policy and obligations, as if the Indemnifying Party were the Indemnified Party, 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 Indemnified Party informed of any significant developments relating to the conduct of the defence or settlement of any claim.

17. Warranties and liability

17.1 General warranties

Each party represents and warrants to each 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; and
- (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 17.1: 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.

17.2 Substantive warranties

- (a) Each party represents and warrants to each other party that it will undertake the Project in accordance with the requirements of clause 3.1(a).
- (b) This clause 17.2 does not require any party to make any representations or warranties to any other party in respect of the outcome of the Project or ability to use the Project IP.

17.3 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 another other party.

17.4 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

Guidance Note for clause 17.4: This clause acknowledges the speculative and experimental nature of research projects.

- (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.

17.5 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.

Guidance Note for clause 17.5: 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 parties' remedies are limited to providing the goods/services again, or paying for the goods/services to be provided again.

17.6 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, any 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 17.6(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 (for example, clause 9.2(c)).

Guidance Note for clause 17.6(b): Where Party A is liable to the other parties under this Agreement, Party A's liability is reduced to the extent that any other party contributed any loss it suffered. For example, a party may have been negligent and contributed to its loss.

17.7 Liability cap

- (a) The aggregate liability of a party for loss suffered or incurred by any other party (in aggregate across all parties) arising out of or in connection with this Agreement, however caused whether in tort (including negligence), contract, statute, equity or otherwise is, to the full extent permitted by law:
 - (i) subject to clause 17.7(b), limited to the applicable amount specified in item 15 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 a party under clause 17.7(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 17.7(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 a party.

The parties can agree to cap the total amount they may be liable to pay to the other party for loss suffered in relation to this Agreement. The cap can be a different amount for each party and should be set out in item 15 of the Details Schedule.

Guidance Note for clause 17.7(b): The liability cap specified in item 15 of the Details Schedule does not apply to the types of liability listed in clause 17.7(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.

18. Insurance

18.1 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 17 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 protection by a party are acceptable as an alternative to the insurance required under this clause 18.1.

Guidance Note for clause 18.1: Each party is required to maintain for the duration of the Agreement the types of insurance, and for the values, specified in item 17 of the Details Schedule. Refer to the HERC IP Framework Practical Guide for further guidance.

18.2 Insurance details

- (a) The insurance policies specified in clause 18.1 must:
 - (i) if held with an insurer (or equivalent), be held 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 18.1 within 10 Business Days of receipt of a written request from any other party.
- (c) Each party will all times comply with the terms of the insurance policies it is required to hold under clause 18.1.
- (d) Nothing in this clause 18 limits the other obligations and liabilities of any party under this Agreement or at law.

19. Dispute resolution

19.1 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 19.

Guidance Note for clause 19: 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 relevant parties (clause 19.3) detailing the Dispute. Within 20 Business Days of the notice, the senior representatives of the relevant parties must attempt to resolve the dispute (clause 19.4). If the senior representatives cannot resolve the Dispute, the relevant parties may undertake mediation.

19.2 Interlocutory relief and claim for debt

Nothing in this clause 19:

- (a) prevents any party from seeking urgent injunctive or similar interim relief from a court of competent jurisdiction; or
- (b) prevents a party from taking any step (including, but not limited to, commencing a proceeding) in relation to a claim for monies owing to the party under clause 8.

Guidance Note for clause 19.2: A party may go to court and urgently seek an order 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.

19.3 Notice of Dispute

The party claiming that a Dispute exists ("**the Initiating Party**") must give each other party relevant to the Dispute ("**the Receiving Parties**") 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 19.

19.4 Meeting of senior representatives

Within 20 Business Days of the service of the Notice of Dispute by the Initiating Party on the Receiving Parties, the Senior Representatives identified in item 1 or 2 of the Details Schedule, 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.

19.5 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 19.5: The ADC Guidance for Commercial Mediation is available on the ADC website at: <https://disputescentre.com.au/adr-guidelines/>.

19.6 Escalation to court proceedings

- (b) This clause 19.6 applies if specified in item 16 of the Details Schedule. If this clause 19.6 applies, then clauses 19.7 and 19.8 do not apply.
- (c) If the Dispute is not resolved within 30 Business Days of the service of the Notice of Dispute, any party to the Dispute may initiate proceedings in a court of competent jurisdiction.

Guidance Note for clauses 19.6, 19.7 and 19.8: If mediation is unsuccessful or 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 the 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).

Depending on which escalation process is specified in item 16 of the Details Schedule, will dictate whether clause 19.6, clause 19.7 or clause 19.8 will be operative in the Agreement.

19.7 Escalation to arbitral proceedings

- (a) This clause 19.7 applies if specified in item 16 of the Details Schedule. If this clause 19.7 applies, then clauses 19.6 and 19.8 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 set out in item 18 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 set out in item 18 of the Details Schedule.

19.8 Escalation to arbitral proceedings

- (a) This clause 19.8 applies if specified in item 16 of the Details Schedule. If this clause 19.8 applies, then clauses 19.6 and 19.7 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 set out in item 18 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 set out in item 18 of the Details Schedule.

19.9 Confidentiality

Each party to the Dispute must treat as confidential and not disclose to a third party (or the other parties) without each other party to the Dispute'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 19;
- (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 19.9: 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 19.9(a) to (d) sets out a number of exceptions to the obligation of confidentiality.

20. Termination

20.1 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 23.6.

20.2 Termination and expulsion

- (a) The Governance Committee may agree to:
- (i) expel a party from this Agreement (terminating the Agreement as between that party and each other party only) by giving notice to the relevant party, if any event occurs set out in clause 20.3; and/or
- (ii) terminate this Agreement with immediate effect, where it does not believe that the Project is able to continue and the parties have not been able to agree to amend the scope of the Project.

Guidance Note for clause 20.2: This Agreement may be terminated, or a party may be expelled or retire from this Agreement, as follows:

- **Termination:** This Agreement may be terminated where the Governance Committee determines that the Project is unable to continue. The termination takes immediate effect.
- **Expulsion:** The Governance Agreement may expel a party to this Agreement from the Project, if the party has done any act set out in clause 20.3. The Governance Committee must give the party 15 Business Days to respond to any proposal to expel the party.

If a party is expelled, the Agreements that party had with each other party are terminated.

- (b) The Governance Committee acknowledges that it will not exercise its rights under this clause 20.2 to expel a party, without first consulting with a party proposed to be expelled and allowing them to respond to the proposal. Such party will be given at least 15 Business Days to respond to any such proposal.

20.3 Termination Events

- (a) The Governance Committee may expel a party under clause 20.2 if the 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 Governance Committee.
- (b) Without limitation, for the purposes of clause 20.3(a)(i), each of the following constitutes a breach of a material term of this Agreement:
 - (i) a failure to comply with clause 6.4 (Key Personnel);
 - (ii) a failure to comply with clause 8 (Project Funding);
 - (iii) a failure to comply with clause 9 (Intellectual property);
 - (iv) a failure to comply with clause 10 (Intellectual Property Rights management);
 - (v) a failure to comply with clause 11 (Right to publish); or
 - (vi) a failure to comply with clause 15 (Confidential Information).

20.4 Withdrawal for convenience

- (a) Any party may withdraw from this Agreement (terminating the Agreement as between that party and each other party only) for convenience at any time by giving the Governance Committee 120 Business Days' written notice, subject to the payment of:
 - (i) the amounts due under this Agreement before the effective date of withdrawal; and

Guidance Note for clause 20.4: A party may withdraw from this Agreement at any time, provided that the withdrawing party gives the Governance Committee 120 Business Days' written notice. The withdrawing party must also pay any amounts it is due to pay under this Agreement before the date of withdrawal, plus certain costs as described in 20.4(a)(ii).

- (ii) any reasonable costs (including any committed costs as at the date of termination that cannot reasonably be avoided), incurred by any other party at the date of withdrawal 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 20.4(a) must not exceed the Funding that was committed by the withdrawing party.

20.5 Consequences of termination or expiry

Upon termination of this Agreement under clause 20.2(a)(ii) or expiry of this Agreement:

- (a) the parties' rights to IPR in the Project IP continue in accordance with this Agreement;
- (b) the parties must store, dispose of, destroy or return any Contribution Material of another party not incorporated into the Project IP in accordance with clause 5.3 (as directed by the relevant party), except that a party is entitled to keep a copy of any Material of another party for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. The party keeping a copy of any Material must continue to treat any such copy as Confidential Information of another party which is subject to the terms of this Agreement;
- (c) each party will (subject to payment of any outstanding Funding) be required to deliver to the other parties copies of all Project IP in their current state at the date of termination or expiry (subject to any agreed limitations on delivery of such Project IP in this Agreement or determined by the Governance Committee);
- (d) if a party has paid any of the Funding in advance, the recipient party must refund any portion that was not required to have been paid by or at the time of termination or expiry; and
- (e) each party may Use the IPR in the Project IP created under the Project (but not other Pre-existing IPR or Third Party IPR) to otherwise complete the Project itself or to engage a third party to complete the Project.

Guidance Note for clause 20.5(e): Where this Agreement is terminated or expires, the parties may Use the IPR in the Project IP to complete the Project. However, the parties will not be able to Use any Pre-existing IPR or Third Party IPR in the Project IP, without negotiating a further licence with the relevant owner of that IPR.

20.6 Consequences of termination for expulsion or withdrawal

- (a) If a party is expelled or withdraws from this Agreement, on the date of expulsion or withdrawal, that party:
- (i) will cease to be a party to this Agreement;
 - (ii) relinquishes all rights (including licences) under this Agreement;
 - (iii) without limiting clause 23.12, agrees that all licences it has granted to IPR in the Project IP (including in relation to Pre-existing IPR and Third Party IPR), and any option granted to Commercialise, survive in accordance with their terms;
 - (iv) must store, dispose of, destroy or return any Contribution Material not incorporated into the Project IP in accordance with clause 5.3 (as directed by each other party), except that the party is entitled to keep a copy of any Material of another party for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. The party keeping a copy of any Material must continue to treat any such copy as Confidential Information of another party which is subject to the terms of this Agreement;
 - (v) will (subject to payment of any outstanding Funding being paid to that party) be required to deliver to the other parties copies of all Project IP in their current state at the date of termination (subject to any agreed limitations on delivery of such Project IP in this Agreement or determined by the Governance Committee);
 - (vi) except where clause 20.4 applies, if it has received any of the Funding in advance, must refund any portion that was not required to have been paid;
 - (vii) will co-operate with any other party as necessary (at the cost, expense and risk of the requesting party) and promptly do all acts and things and execute all documents which may be reasonably necessary to enable the enforcement, protection and Commercialisation of any IPR in the Project IP; and

- (viii) will be relieved of its obligation to make further Contributions, other than Contributions required to be made under any third party agreement in force to which it remains a party.
- (b) The expulsion or withdrawal of a party from this Agreement:
 - (i) will not affect the enforceability of any other party's rights against a party who is retiring or being expelled that have accrued at that time; and
 - (ii) will not relieve the other parties of their obligations under this Agreement and they will continue to carry the Project to the extent those parties are able to continue to carry on the Project and perform the terms of this Agreement as between them.

Guidance Note for clause 20.6(b): The expulsion or withdrawal of a party from this Agreement does not affect the validity of this Agreement between the other parties. This Agreement will continue to have effect between the other parties.

If the withdrawal or expulsion of a party means that the Project can no longer continue, the Governance Committee may decide to terminate the Agreement under clause 20.2(a)(ii).

21. 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 parties and the Governance Committee:
 - A. describing the Unexpected Event;
 - B. specifying the impacted obligation and the extent to which the Affected Party cannot perform those obligations;
 - C. if possible, estimate 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 21: 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 Governance Committee notice of the Unexpected Event and its impact. If the Unexpected Event continues for 30 Business Days or more, the Governance Committee 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, the Governance Committee will further consider the appropriate actions to take in accordance with this Agreement.

22. Notices

22.1 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.

22.2 Deemed receipt

- (a) Notices given in accordance with clause 22.1 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 delivered on the next Business Day in that place.

22.3 Notice to or from Governance Committee

- (a) The Governance Committee may determine the address for the parties to send notices to, and for notices to be sent from, and the process for authorising the sending of such notices as part of its administrative arrangements.

Guidance Note for clause 22: For any formal notices and communications, the parties should follow the requirements of clause 22 to ensure it is valid.

A notice will be deemed to be received upon delivery, as set out in clause 22.2.

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.

- (b) All notices sent to or received from the Governance Committee will be attached to the minutes of the Governance Committee's next meeting and distributed to the parties following approval of the minutes.

23. General

23.1 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 any other party; or
- (b) having any authority to act on behalf of any other party or to bind any other party to any course of action.

Guidance Note for clause 23.1: 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.

23.2 No constraints

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

Guidance Note for clause 23.2: 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.

23.3 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 all of the other parties or the Governance Committee.

Guidance Note for clause 23.3: Assigning any rights will need written consent of the other parties. Novation replaces a party with a new party and requires a deed to be agreed by all parties.

23.4 Further assurances

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

Guidance Note for clause 23.4: 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.

23.5 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 23.5: 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.

23.6 Variation

- (a) 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.
- (b) No additional person may become a party to this Agreement without the written agreement of all of the then existing parties to this Agreement and unless the additional person and all the then existing parties to this Agreement execute a written agreement to that effect.

Guidance Note for clause 23.6: 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.

23.7 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 23.7: 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.

23.8 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 23.8: 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.

23.9 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 23.9: 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.

23.10 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 23.10: 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.

23.11 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 set out in item 18 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 23.11: The jurisdiction specified in item 18 of the Details Schedule determines the law and courts that apply for the purpose 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.

23.12 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 9 (Intellectual property);
 - (ii) clause 10 (Intellectual Property Rights management);
 - (iii) clause 11 (Right to publish);
 - (iv) clause 13 (Privacy);
 - (v) clause 14 (Moral Rights);
 - (vi) clause 15 (Confidential Information);
 - (vii) clause 17 (Warranties and liability);
 - (viii) clause 18 (Insurance);
 - (ix) clause 20.5 (Consequences of termination or expiry); and
 - (x) clause 20.6 (Consequences of termination for expulsion or withdrawal).
- (b) Termination or expiry of this Agreement (including as between one or more parties on expulsion or withdrawal) does not affect the rights and remedies of the parties that accrued before the date of termination or expiry.

Guidance Note for clause 23.12: This clause sets out the provisions of this Agreement that continue in effect following the termination or expiry of this Agreement.

Schedule 1 - Details Schedule

Item	Related clause	Subject	Description
1	Clause 1.1	Universities	University Name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i> Senior representative: <i>[insert]</i>
			University Name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i> Senior representative: <i>[insert]</i>
2	Clause 1.1	Collaborators	Collaborator Name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i> Senior representative: <i>[insert]</i>
			Collaborator Name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i> Senior representative: <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. This may be on the date the last party signs the</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 Chief Investigator and Senior Representative may be the same person, however the Senior Representative should have authority to resolve disputes on behalf of the relevant party. In the case of the University, the Senior Representative should be the Deputy Vice-Chancellor Research (or equivalent) or their delegate.

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 all parties agree.

Item	Related clause	Subject	Description	
			<i>Agreement, or it may be a specific date.]</i>	
5	Clause 1.1	Project End Date	<i>[Insert date Agreement is to end eg, dd/mm/yy]</i>	
6	Clause 3.1(a)(i)C	Policies, standards or laws	<i>[insert any specific policies, standards or law that a party or all parties must comply with in delivering the Project.]</i>	
7	Clause 1.1 and 6.2	Governance Committee	<i>[For each party, insert the representative the party appoints to the Governance Committee.]</i>	
8	Clause 6.3(a)	Chief Investigator	<i>[Specify Chief Investigator or state 'N/A'.]</i>	
9	Clause 1.1 and 6.4	Key Personnel	University A Key Personnel	University B Key Personnel
			<i>[For each party, insert any specific Personnel that are required to undertake the Project. This may include the designated Chief Investigator.]</i>	<i>[For each party, insert any specific Personnel that are required to undertake the Project. This may include the designated Chief Investigator.]</i>
			Collaborator A Key Personnel	Collaborator B Key Personnel
			<i>[For each party, insert any specific Personnel that are required to undertake the Project. This may include the designated Chief Investigator.]</i>	<i>[For each party, insert any specific Personnel that are required to undertake the Project. This may include the designated Chief Investigator.]</i>

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 individuals nominated by the parties to sit on the Governance Committee should be specified in this item.

Guidance Note for item 8: The individual identified by the parties to be the Chief Investigator should be identified in this item.

The Chief Investigator should be from the party who will manage and coordinate the Project, which will likely be one of the Universities.

Guidance Note for item 9: Each party is obliged to perform the Project utilising any Key Personnel listed in item 9 (see clause 6.4).

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

Item	Related clause	Subject	Description
10	Clause 10.2	Right to Commercialise	[Specify here the party or parties that will have the first right to Commercialise the IPR in the Project IP and include details of any other approach to Commercialisation Otherwise insert 'Clause 10.2 does not apply']
11	Clause 10.2(a)	Period for Commercialisation	[insert the period for which the party or parties identified in item 10 has the first right to Commercialise or insert 'N/A'.]
12	Clause 9.6(c)	Acknowledgement	[Insert any requirements or restrictions for a party to acknowledge in publications (including the form of acknowledgement) the contribution of another party.]
13	Clause 14	Moral Rights	[Tick which Moral Rights provision applies.] Clause 14.1 (Compliance) Clause 14.2 (Consent)
14	Clause 16.1	Indemnity	[Insert: <ul style="list-style-type: none"> 'N/A' if the indemnity in clause 16 is to apply; or if the indemnity in clause 16 is not to apply, either: <ul style="list-style-type: none"> an alternative indemnity agreed by the parties; or if no indemnity is to be included, 'No party indemnifies any other party under this Agreement'.']
15	Clause 17.7(a)(i)	Liability cap	[Insert the liability cap amount for each party to the Agreement.]

Guidance Note for item 11: This item allows the parties to specify the period for which the party or parties identified in item 10 has the first right to Commercialise the Results. If the parties agree that there is no right to Commercialise, insert 'N/A'.

Guidance Note for item 12: If a party would like to be acknowledged in any of the other party's publications that relates to the Project IP (for example, journal papers or articles), the details of the form of acknowledgement should be specified in item 13. For example, a 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 13: This item allow the parties to select whether Moral Rights in the creators will be respected (clause 14.1) or Moral Rights consents will be obtained from the creators (clause 14.2).

Guidance Note for item 14: 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 Practical Guide provides further guidance regarding indemnities.

Guidance Note for item 15: This item sets out the agreed maximum liability of a party for loss suffered by the other parties.

The liability cap for each party should be based on a risk assessment (refer 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 17.7(b).

Item	Related clause	Subject	Description
16	Clause 19	Dispute resolution	<p><i>[Tick which dispute resolution provision applies.]</i></p> <p>Clause 19.6 (Escalation to court proceedings)</p> <p>Clause 19.7 (Escalation to arbitral proceedings - WIPO)</p> <p>Clause 19.8 (Escalation to arbitral proceedings - ACICA)</p>
17	Clause 18.1(a)	Insurance	<p><i>[Insert insurance types and amounts. For example:</i></p> <p><i>Public and product liability insurance with a limit of liability of not less than \$10 million for each and every event.</i></p> <p><i>Professional indemnity insurance with a limit of liability of not less than \$5 million for each and every event.]</i></p>
18	Clauses 19 and 23.11	State or Territory for venue and governing law	<i>[insert]</i>

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.

Guidance Note for item 17: 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 18: This item allows the parties to specify the State or Territory whose governing law will apply to this Agreement.

Schedule 2 - Project Plan

1. Objectives

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

Guidance Note for section 1 of Schedule 2: This section should have 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.

2. Project methodology

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

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 each University) for the Project.

It is important that this item is drafted carefully, as this is the process that the Party responsible will be accountable for undertaking under this Agreement.

The parties can amend this section during the Project as necessary, in accordance with clause 23.6 of this Agreement.

3. Project IP

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

Guidance Note for section 3 of Schedule 2: The Milestones and Milestone Dates for the Project IP should be set out here.

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 a report or a prototype) that the parties expect to be developed during the Project.

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

4. Funding

	Party responsible for payment	Party receiving the payment	Frequency of payment	Advance/ arrears	If payable in instalments, amount of each Funding instalment (excl GST)	Total Funding (excl GST)
1.			[monthly / quarterly / once off]	[advance / arrears]		
2.						
TOTAL						

Guidance Note for section 4 of Schedule 2: This item should set out any Funding (exclusive of GST) payable by any party and the timing of the payment(s).

The agreed Funding should reflect compensation for use of the other parties' 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.

OR

[insert the Milestone payments, which are to be paid by a party on the achievement of each Milestone by the applicable Milestone Date.]

	Milestone	Milestone Date	Party responsible for payment	Party receiving the payment	Funding amount (excl GST)
1.					

	Milestone	Milestone Date	Party responsible for payment	Party receiving the payment	Funding amount (excl GST)
2.					
TOTAL					

5. Contribution Material

	Description of Contribution Material and timing (attach additional pages if required)	Party providing	Party receiving (if any)	Value (\$) (if applicable)	Conditions
1					
2					
3					

Guidance Note for section 5 of Schedule 2: This item should detail any Material (for example chemical or biological reagents, software, or data and documentation) that has been committed by any party to the Project. Any Contribution Material specified in this item must be provided by the relevant party.

6. Other Contributions

	Description of Contribution and timing (attach additional pages if required)	Party providing	Party receiving (if any)	Value (\$) (if applicable)	Conditions
1					
2					
3					

Guidance Note for section 6 of Schedule 2: This item should detail any other Contributions (that are not Material), including any services or facilities being provided by a party. Any Contribution specified in this item must be provided by the relevant party.

7. Governance Committee - Progress meetings (clause 6.2)

Meeting	Attendees	Frequency	Place

Guidance Note for section 7 of Schedule 2: The parties should specify here any requirements for the Governance Committee to meet. This may include, for example, monthly status meetings.

The parties should specify the details and requirements of the meetings, to ensure that the 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

[Tick which model of ownership applies (clause 9.4).]

Model 1 (clause 9.4(a))

Under clause 9.4(a), IPR in the Project IP is owned by the party or parties specified in clause 1.2 of Schedule 3.

Model 2 (clause 9.4(b))

The Agreement does not assign IPR in the Project IP, but each party grants a cross-licence to each other party in accordance with clause 9.4(b).

1.2 Model 1 Owners

[Select one of the following:

For a single Owner insert: 'IPR in the Project IP is owned by [Insert].'

OR

For different parties to own different components of IPR in the Project IP: The IPR in the Project IP is owned [Insert] except for the following portions of the Project IP that have a different Owner, as specified in the table below:

Project IP	Owner

Guidance Note for section 1 of Schedule 3: Please refer to the HERC IP Framework Practical Guide for information to assist parties to determine which Ownership model is suitable.

The Owner is usually responsible for the registration and protection of the IPR in the Project IP, unless otherwise specified in section 1.1 (see clauses 10.1 and 10.2).

If there is an agreement at the outset of the Project that the IPR in the Project IP will be subject to a registration process/assessment at the conclusion of the Project, this should be included in this item - with the process set out in section 4.2.

If Model 1 is selected and different parties will own different aspects of the IPR in the Project IP, the parties should, to the extent possible identify the party that will own each aspect of IPR in the Project IP. An Owner for any 'other' IPR in the Project IP not specifically identified could also be specified to ensure that all IPR in the Project IP are captured.

2. Use

IPR	Limitations on Use
Project IP	<i>[Insert any limitation on the right to Use the Project IP or insert N/A.]</i>
Pre-existing IPR	<i>[If limitations apply include 'Limitations on Use are set out in section 5.2 of this Schedule.' or insert 'N/A'.]</i>
Third Party IPR	<i>[If limitations apply include 'Limitations on Use are set out in section 6 of this Schedule.' or insert 'N/A'.]</i>

3. Purpose

[Insert the purpose for which the parties are 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 party 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. Research Tools and Pre-existing IPR

5.1 Research Tools

Contributing Party	Description	Use in the Project

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 parties. For example, any limitations specified in this section to the Project IP will limit the other 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 clause 9.4) and the parties grant a licence to Use their Pre-existing IPR for the 'Purpose' (clause 9.2(a)(ii)). This Purpose restricts the scope of the licence (for example, to specific fields of use or activities). 'Use' is also a defined term and limits what the parties can do with the Project IP for the Purpose (see section 2 of this Schedule).

If a 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 this section 3.

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 Licensees' Pre-existing IPR or Third Party IPR incorporated into the Project IP.

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 entity responsible) and process should be detailed here.

If a Licensee is responsible for the registration and protection of the IPR in the Project IP, this should be specified in section 4.1 of this Schedule, including which party is responsible.

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

5.2 Limitations on Pre-existing IPR

(a) Patents and patent applications

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

Guidance Note for section 5.2 of Schedule 3: Each party provides a licence to the other parties to Use its Pre-existing IPR (see clause 9.2).

If a party wants to impose restrictions on the other parties' Use of its 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 a party as part of its role in the Project, any restrictions should be carefully considered to avoid restricting a party in using the Project IP or undertaking the Project.

(b) Other IPR

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

5.3 Excluded Pre-existing IPR

Party	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 5.3. Any Pre-existing IPR identified in this section will need to be licenced separately to the other parties, if incorporated into the Project IP.

6. 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 6 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 this section 6 (see also clause 9.3).

If during the Project, the parties need to use Third Party IPR that is not identified in this section 6, the parties can amend this item in accordance with clause 23.6 of this Agreement.

7. Confidential Information

7.1 Confidential Information

Contributing Party	Description	Period of confidentiality
[Insert]	[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.]	[Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]

Guidance Note for section 7 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.

Signing page

Signed as an agreement.

Signed for and on behalf of the **[Insert University A 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

Signed for and on behalf of the **[Insert University B 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

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

- in the case of a University to be signed by an authorised representative and a witness; and
- in the case of a 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 a 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 parties have validly signed the Agreement.

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

Executed by [Insert Collaborator A 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 A 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 A Name]**

Date

Executed by [Insert Collaborator B 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 B 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 B Name]**

Date

Multi-Party Collaboration Agreement

[Insert name of University A]

University A

[Insert name of University B]

University B

[Insert name of Collaborator A]

Collaborator A

[Insert name of Collaborator B]

Collaborator B

[Insert Project title]

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Agreement

Date *[Insert date of Agreement]*

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

[Insert name of University B] ([Insert ABN of University B]) (University B)

[Insert name of Collaborator A] ([Insert ABN of Collaborator A]) (Collaborator A)

[Insert name of Collaborator B] ([Insert ABN of Collaborator B]) (Collaborator B)

Background

- A. The parties wish to engage collaboratively to undertake a research project *[Insert Project title]* (the **Project**).
- B. The parties agree that they will each 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 multi-party collaboration 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 6.3.

Collaborator means a party to this Agreement identified as a Collaborator in item 2 of the Details Schedule. **Collaborators** means all such parties.

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 7 of Schedule 3; or
- (b) a party knows or ought to know is confidential, unless the parties have specified otherwise in section 7 of 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 any other party's Confidential Information.

Contribution means the Contribution Material, Funding, services, equipment and facilities being provided by a party for the Project, including that which is identified in Schedule 2.

Contribution Material means the Material made available by a party for the Project, including that which is identified in Schedule 2 and includes any Research Tools.

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.

Funding means the amounts payable by a party to one or more other parties under this Agreement as specified in the Project Plan.

Governance Committee means the committee established in accordance with clause 6.2 and includes the individuals specified in item 7 of the Details Schedule.

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 9 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 Contribution Material.

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

Milestone Date means any fixed date to be met by a party 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 a University, includes Students. Personnel includes the Personnel of a contractor.

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

- (a) provided by one party to any other 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 any other party to exercise their rights to the Project IP under this Agreement,

but does not include:

- (d) a Research Tool; or
- (e) 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 a party in the course of and as a result of carrying out the Project; and
- (b) that is delivered or required to be delivered to a party 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 the parties are 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 a party in carrying out the Project, that are not required for another party to carry out the Project or exercise its rights to the Project IP under this Agreement, and includes the items identified as a Research Tool in section 5 of 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 any 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:

- (a) 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;
- (d) fire, flood, earthquake, elements of nature or act of God;
- (e) war, riot, civil disorder, rebellion, revolution, or a terrorist act as defined in section 100.1 of the *Criminal Code Act 1995* (Cth); or
- (f) 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:

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

University means a party to this Agreement identified as a University in item 1 of the Details Schedule. **Universities** means all such parties.

Use 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, unless otherwise set out in section 2 of Schedule 3, 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;
- (f) this Agreement is to be interpreted as a separate agreement between each party and each other party. Any reference to termination includes in relation to a party that is the subject of withdrawal or expulsion, termination of the Agreement as between that party and each other party; and
- (g) 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 23.6.

- (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 23.6.

3. Conduct of the Project

3.1 Project responsibilities

- (a) Each party must, and must ensure that its Personnel:
- (i) perform their role in 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 their role in the Project so as to:
 - A. complete the tasks allocated to them in the Project Plan; and
 - B. achieve the Milestones (if any) they are responsible for,by the applicable dates set out in the Project Plan and where no applicable dates are specified, promptly and without delay.
- (b) Each party must enable each other party to carry out their role in the Project in accordance with this Agreement, including by:
- (i) providing any Contribution they have committed to the Project; and
 - (ii) cooperating with each other party and providing all information reasonably requested by each other party.

- (c) The 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 7) or vary the Project Plan or other aspects of this Agreement. Any variation to this Agreement must be in accordance with clause 23.6.

3.2 Subcontracting

- (a) A party must not, unless approved in the Project Plan or by the Governance Committee, subcontract the performance of any of its obligations under this Agreement.
- (b) Notwithstanding clause 3.2(a), unless otherwise set out in the Project Plan or agreed by the Governance Committee, each party may subcontract its obligations under this Agreement to an Affiliate without approval.
- (c) Each party is fully responsible for the performance of all of its obligations under this Agreement, including for the performance of any of its subcontractors.
- (d) Despite any approval given under this clause 3.2:
 - (i) each party is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Agreement; and
 - (ii) a party must enter into an agreement with the subcontractor prior to the subcontractor conducting any work in relation to this Agreement. The subcontract agreement must, unless approved by the Governance Committee:
 - A. be consistent with the terms of this Agreement, including, without limitation, the confidentiality provisions set out in clause 15;
 - B. be in a form and include any standard terms that may be required by the Governance Committee;
 - C. include a right to terminate and other provisions consistent with clause 20; and
 - D. assign or grant licences to the party to IPR to enable the party to perform its obligations under this Agreement (as if the subcontractor were the party under this Agreement).

3.3 Access to premises

- (a) Where required in the Project Plan, the relevant party will ensure that the Personnel of another party are provided with access to their premises required for the conduct of the Project.
- (b) Each party will ensure that any Personnel of any 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 another 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.

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), or the performance of specific activities, by one or more parties.
- (c) If the parties have agreed Milestones, unless otherwise specified in the Project Plan, the Governance Committee will assess, acting reasonably (including at its next meeting when requested by a party submitting a claim for achievement of a Milestone) whether a Milestone has been achieved by the applicable Milestone Date in accordance with this Agreement.
- (d) If the Governance Committee's assessment reveals that a Milestone:
 - (i) has been achieved, the Governance Committee will record that in the minutes of its meeting; or
 - (ii) has not been achieved, the Governance Committee will record in its minutes the actions that must be completed by any relevant party to rectify the deficiency and the Governance Committee will then repeat the assessment.
- (e) If the Governance Committee is unable to decide on the achievement of a Milestone, the parties must work together collaboratively and in good faith to:
 - (i) understand the circumstances occurring that are resulting in the Milestone potentially not being achieved;
 - (ii) seek to agree alternative steps as applicable to be undertaken by the 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 must be in accordance with clause 23.6.
- (f) Where Funding is payable to a party following achievement of a Milestone, no amounts are payable until the Governance Committee has unanimously assessed that the relevant Milestone is achieved or the parties vary this Agreement in accordance with clause 23.6.

5. Contribution Material

5.1 Provision of Contribution Material

- (a) In respect of any Contribution Material, each party:
 - (i) must provide the Contribution Material to any other party that requires it (if any):
 - A. as set out in the Project Plan or as agreed by the Governance Committee, so as to enable the parties to carry out the Project; and
 - B. in a safe and suitable manner for the purposes of the Project;
 - (ii) must organise and pay the costs of transport of the Contribution Material it provides (if required for the Project), to and from any relevant other party's premises, unless otherwise specified in the Project Plan;
 - (iii) must advise each receiving party of any hazardous or otherwise dangerous components or properties of the Contribution Material that it is aware of, and where applicable, instructions for safe use and operation of the Contribution Material; and
 - (iv) is responsible for insuring, maintaining and, if necessary, repairing and replacing any Contribution Material it provides, if required for the Project, unless otherwise specified in the Project Plan.
- (b) Each party acknowledges that Contribution Material may be altered, damaged or destroyed during the conduct of the Project as an anticipated and necessary part of the Project or as set out in the Project Plan.

5.2 Receipt and use of Contribution Material

- (a) Where a party is required to provide Contribution Material to another party for the conduct of the Project, a receiving party is not obliged to commence or continue the part of the Project for which the relevant Contribution Material relates until:
 - (i) the party has provided the relevant Contribution Material; and
 - (ii) the receiving party has completed an assessment to confirm the Contribution Material is safe and suitable for the purposes of the Project.
- (b) The party providing Contribution Material must at its own cost replace any of the Contribution Material that a receiving party reasonably determines to be unsafe or unsuitable for the purposes of the Project.
- (c) A party providing Contribution Material grants each receiving party a non-transferable, non-exclusive, royalty free licence (including a right to sublicense to those subcontractors approved under clause 3.2) to Use the Contribution Material (including any IPR in the Contribution Material, but subject to any restrictions specified in the Project Plan) for the purposes of carrying out the Project.
- (d) Except as expressly set out in this Agreement, nothing in this Agreement affects the ownership of Contribution Materials (including associated Pre-existing IPR).

5.3 Destruction or return of Contribution Material

- (a) Each party contributing Contribution Material acknowledges that Contribution 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 Contribution Material incorporated into the Project IP and subject to clause 5.3(c), each recipient of Contribution Material must store, dispose of, destroy or return Contribution Material in its possession or control on termination or expiry of the Agreement, if specified in the Project Plan or as directed by the relevant providing party (at the cost of the providing party).
- (c) Notwithstanding clause 5.3(b), each party is entitled to keep a copy of any Contribution Material for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. Each party must continue to treat any such copy in accordance with the terms of this Agreement.

6. Project management

6.1 Representation on the Governance Committee

- (a) Each party appoints as its representative on the Governance Committee the person named in item 7 of the Details Schedule, or such replacement person notified by that party in writing to the other parties.
- (b) Each party must ensure that their representative:
 - (i) is suitably experienced to act as a representative for that party;
 - (ii) manages the day to day conduct of those tasks allocated to the party in the Project Plan; and
 - (iii) maintains full and accurate records of the performance of the Project.
- (c) Except where required otherwise under clause 6.4, a party may replace its representative by giving written notice to the other parties. The party must ensure that its replacement representative is suitably experienced to act as that party's representative.

6.2 Governance Committee

- (a) The Governance Committee will:
 - (i) meet at the times set out in the Project Plan (or otherwise as agreed by the Governance Committee) to discuss the progress of the Project, including any issues or risks arising;
 - (ii) endorse, at the frequency set out in the Project Plan, a written summary and report on the progress of the Project;
 - (iii) discuss any variations to any aspect of the Project proposed by a party;
 - (iv) carry out any other tasks set out in this Agreement or as otherwise agreed by the parties from time to time;
 - (v) record minutes of its meetings for distribution to all parties prior to its next meeting; and
 - (vi) as required, amend the Project Plan in accordance with clause 7.

- (b) The Governance Committee may develop and approve further terms of reference and meeting protocols that are consistent with this Agreement.
- (c) The Governance Committee is not authorised to amend this Agreement (except for the Project Plan), but may make decisions or grant approvals where specified under this Agreement or the Project Plan.
- (d) Unless otherwise set out in the Project Plan, all decisions of the Governance Committee must be unanimous, except that a party's representative must not participate in a decision of the Governance Committee:
 - (i) to approve achievement of a Milestone under clause 4.1 that the party is required to achieve;
 - (ii) to remove their Key Personnel from the Project under clause 6.4(c); or
 - (iii) in relation to their expulsion under clause 20.2.
- (e) Where the Governance Committee cannot reach a decision, any party (including a party not represented on the Governance Committee) may raise a Dispute.

6.3 Chief Investigator

- (a) Where specified in item 8 of the Details Schedule, a Chief Investigator is appointed to manage and coordinate the conduct of the Project in accordance with the Project Plan.
- (b) The Governance Committee will determine the scope of responsibility for the Chief Investigator, including the delegation of any authority or administrative responsibilities of the Governance Committee. The Chief Investigator is not authorised to amend this Agreement, or exercise any rights of another party.

6.4 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 Governance Committee, which will not be unreasonably withheld; and
 - (iii) except if clause 6.4(b) applies, before replacing any Key Person, give the Governance Committee 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 Governance Committee 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) The Governance Committee may decide to give a notice to a party:
 - (i) directing the party to immediately remove a Key Person from the Project, if the Key Person has breached the law or engaged in serious misconduct; or
 - (ii) in any other case, requesting that the party replace a Key Person, in which case:
 - A. unless otherwise agreed by the parties, prior to the next meeting of the Governance Committee, the party must investigate the reasons stated in the notice, report its findings to the Governance Committee (including any ramifications of replacing the Key Person) and attempt to resolve any problems with the Key Person; and
 - B. if the Governance Committee still requires the replacement of the Key Person, 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;
 - (iii) work with the other parties to update any agreements with a third party for funding that require participation of the Key Person; and
 - (iv) keep the Governance Committee informed as to the progress of the process to replace the Key Person.
- (e) If, after a reasonable period of time, a 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; and
 - (ii) unless otherwise agreed, each party will bear their own costs incurred in terminating the Agreement.

6.5 Reporting

- (a) The parties must provide the Governance Committee with reports and information in accordance with the Project Plan.
- (b) On or before the Project End Date or within 30 Business Days following the termination of this Agreement (including following expulsion or withdrawal), each party must provide the Governance Committee with a final report (for distribution to all parties):
 - (i) specifying all tasks performed during the Project; and
 - (ii) providing a summary of the Project IP generated.

7. 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 Governance Committee 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) At the next meeting of the Governance Committee after receiving a Review Notice, or within 10 Business Days after receiving a Review Notice at a specially convened meeting (whichever is the earliest) the Governance Committee will discuss the proposed variations to the Project to address the concerns raised in the Review Notice.
- (c) If the Governance Committee agrees to vary the Project, it may:
 - (i) approve a variation to the Project Plan (excluding any variation to the Funding) to implement the Review Notice; or
 - (ii) if an amendment to the Funding or the Agreement is required, recommend that each party execute a written variation in accordance with clause 23.6.
- (d) Subject to clause 7(c), the parties must continue working in accordance with the unaltered Project Plan and this Agreement.

8. Project Funding

8.1 Contributions

- (a) A party must pay to another party any instalments of the Funding at the times and in the amounts set out in the Details Schedule or Project Plan (as applicable).
- (b) Except in accordance with clause 4, or where otherwise agreed by the Governance Committee, the Governance Committee will determine (acting reasonably) if the receiving party has met any requirement in this Agreement or the Project Plan for payment of the Funding.
- (c) Unless otherwise set out in the Project Plan, nothing in this Agreement prevents a party from receiving financial or other contributions from a third party for the purpose of performing its obligations under this Agreement. Subject to any confidentiality obligations owed to the third party, the party must report all such financial or other contributions to the Governance Committee (including the identity of the third party) and ensure any agreement with the third party is consistent with its obligations under this Agreement.

8.2 Payment terms

- (a) All invoices issued by a party for payment of Funding that is due and payable in accordance with this Agreement must be paid within 20 Business Days of receipt of the invoice. For GST purposes, all invoices or receipts issued by a party are tax invoices.
- (b) Where a party disputes an amount set out in an invoice, it must notify the issuing party within 10 Business Days of receipt of the invoice.

- (c) Late payments may be subject to an additional charge at the discretion of the party owed the payment, 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 a party is more than 30 Business Days late paying an invoice:
 - (i) the other party is entitled to stop working on the Project (and will not be in breach of its 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 other party stops work in accordance with this clause.

8.3 No deduction

The Funding 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.

8.4 GST

- (a) In this clause 8, 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 a party paying Funding is an Australian entity:
 - (i) all Funding payable under this Agreement is 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 a party paying Funding is a foreign entity:
 - (i) any supply made by the receiving party under this Agreement to the paying party will be treated by the receiving party as GST-free under the GST Act in reliance on the following representations made by the paying party 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 8.4(c) are incorrect, the paying party will on demand pay the receiving party the GST payable on that supply together with any interest, fine, penalty or other amount imposed as a consequence of the incorrect representation.

8.5 Pre-payment for the Project

If a party pays any Funding in advance in consideration for another party performing all or part of the Project, and the other party does not perform the Project or the relevant part of the Project, then:

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

9. Intellectual property

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

This clause 9 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.

9.2 Right to use each party's Pre-existing IPR

- (a) Subject to clause 9.2(b), each party grants to each other party a royalty-free, world-wide, non-transferable, non-exclusive licence (including to sublicense to those subcontractors approved under clause 3.2) to Use the Pre-existing IPR of that party for the sole purpose of and only to the extent necessary to:
 - (i) carry out the Project; and
 - (ii) exercise the party's rights to Use the Project IP for the Purpose.
- (b) The parties may agree in Schedule 3 to further limit the licence granted under clause 9.2(a), such that specific Pre-existing IPR is only licenced for Use by specific parties, for specific purposes, or under specific conditions.
- (c) Each party warrants that:
 - (i) it owns or is otherwise entitled to grant to each other party the right to Use the Pre-existing IPR (and any other information provided to the party) that it contributes 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), each other party's use of its Pre-existing IPR to carry out the Project (in accordance with this Agreement), as at the time such material is provided by the party, will not infringe any third party's rights (including IPR).
- (d) Each party warrants that there are no actions, claims or proceedings pending or threatened against the party in respect of its Pre-existing IPR.
- (e) Unless otherwise agreed in Schedule 3, each party contributing Pre-existing IPR does not make any representation or warranty, express or implied, that Use of its 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.

9.3 Right to use Third Party IPR

- (a) Unless agreed otherwise by the parties in the Project Plan, 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 another 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 each other party a licence to Use the Third Party IPR, on the same terms as clause 9.2(a).
- (b) If the Proposing Party cannot obtain the licences as described in clause 9.3(a) (including because the Third Party IPR is only licenced on standard terms or because individual licenses are required), the Proposing Party must:
 - (i) notify the Governance Committee of the best alternative licence terms for that Third Party IPR and not use that Third Party IPR unless the Governance Committee approves those terms; and
 - (ii) if the Governance Committee does not approve the terms under clause 9.3(b)(i), notify the Governance Committee of any comparable Third Party IPR (if available) and comply with its obligations under this clause 9.3 in respect of such comparable Third Party IPR.

9.4 Ownership of Intellectual Property Rights in the Project IP

Model 1 - One or more selected parties own IPR in the Project IP

- (a) This clause 9.4(a) applies where Model 1 is identified as applying to the Project in section 1 of Schedule 3. Subject to clause 9.1:
 - (i) all IPR in the Project IP vest in the party (or parties) identified in section 1 of Schedule 3 (the '**Owner**') on creation and the other parties hereby assign and agree to assign all such IPR to the Owner;
 - (ii) the Owner grants to each other party ('**Licensee**') a perpetual, irrevocable (except for material breach), world-wide, royalty-free, non-exclusive licence to Use the IPR in the Project IP (other than Pre-existing IPR and Third Party IPR):
 - A. to carry out the Project; and

- B. for the Purpose; and
- (iii) the Owner must not exercise their rights to the IPR in the Project IP licenced under clause 9.4(a)(ii), except:
 - A. as would be permitted if the Owner were a Licensee;
 - B. as otherwise expressly permitted under this Agreement; or
 - C. as otherwise set out in the Project Plan, approved by the Governance Committee, or agreed by all parties in writing.

Model 2 - Each party owns their own IPR in the Project IP

- (b) This clause 9.4(b) applies where Model 2 is identified as applying to the Project in section 1 of Schedule 3:
 - (i) this Agreement does not affect the ownership of any IPR in the Project IP;
 - (ii) for IPR in the Project IP created by a party (the '**Creator**'), the Creator grants to each other party ('**Licensee**') a perpetual, irrevocable (except for material breach), world-wide, royalty-free, non-exclusive licence to Use the IPR in the Project IP (other than Pre-existing IPR and Third Party IPR):
 - A. to carry out the Project; and
 - B. for the Purpose; and
 - (iii) the Creator must not exercise their rights to the IPR in the Project IP licenced under clause 9.4(b)(ii), except:
 - A. as would be permitted if the Creator were a Licensee;
 - B. as otherwise expressly permitted under this Agreement; or
 - C. as otherwise set out in the Project Plan, approved by the Governance Committee, or agreed by all parties in writing.

9.5 Further action

Each party will execute such documents or instruments, and do all other things reasonably required by another party, in order to give effect to the parties' agreement and the rights in this clause 9.

9.6 Use of the party's name and acknowledgement

- (a) Except with a party's prior written consent, each other party must not use that party's name:
 - (i) in a manner that suggests that the party endorses or is associated with any other party's business, products or services; or
 - (ii) in any publication or promotional material.
- (b) A party must not use any other party's logo or branding without prior written consent of an authorised representative of the other party.

- (c) Each party must acknowledge any other party's contribution in any publication that refers to the Project IP in accordance with any requirements or restrictions specified in item 12 of the Details Schedule.

10. Intellectual Property Rights management

10.1 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 any 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.

10.2 Commercialisation of IPR in the Project IP

- (a) The party (or parties) identified in item 10 of the Details Schedule, have during the Term and for any further period specified in item 11 of the Details Schedule (**Commercialisation Option Period**), the first right to Commercialise the IPR in Project IP in accordance with this clause 10.2.
- (b) Item 10 of the Details Schedule may identify a party or parties for the purpose of clause 10.2(a) in respect of either all or part of the Project IP, or in respect of Commercialisation for the Purpose or any other purpose, or in such other manner as agreed.
- (c) Unless otherwise set out in item 10 of the Details Schedule, the Owner or Owners must:
 - (i) not during the Commercialisation Option Period, without the written consent of any party with the right to Commercialise the relevant IPR, Commercialise the IPR or any relevant part of it, in the Project IP; and
 - (ii) on request of any party with the right to Commercialise the relevant IPR under clause 10.2(a), prior to expiry of the Commercialisation Option Period, negotiate in good faith the terms of a further licence of that IPR in the Project IP to the party, for the party to Commercialise the IPR or any relevant part of it, in the Project IP, on reasonable commercial terms.
- (d) If the party Commercialising the IPR in the Project IP requires a licence to Commercialise a party's Pre-existing IPR in conjunction with, or as part of, Commercialising the IPR in the Project IP, the relevant parties will negotiate in good faith to agree the reasonable commercial terms of that licence.
- (e) Any reference in this clause 10.2 and the Details Schedule to reasonable commercial terms requires regard to be given both to the value of the applicable Intellectual Property Rights and the respective contributions of the parties to the Project.

10.3 Infringement and enforcement of IPR

- (a) Each party must promptly notify the party that contributed (or owns) the relevant IPR 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 10.3(a), the parties that use the relevant IPR will meet to discuss 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 another 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.

11. Right to publish

- (a) Notwithstanding other obligations in the 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 11.
- (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 11(b), 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 any other party or the Project IP ('**Publication**'), provided that it has complied with the process set out in clauses 11(d) and 11(e) and is permitted to proceed in accordance with clause 11(h).
- (d) The Publishing Party must provide a copy of the proposed Publication to the other party or parties to whom the Publication relates (the '**Reviewing Party**') for review and response in accordance with clause 11(e).
- (e) Within 30 Business Days of the Publishing Party providing the Publication to a 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 the IPR in the Project IP, Confidential Information or Pre-existing IPR.

- (f) Notwithstanding clause 11(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 11(d) within 20 Business Days of a 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 11(d).
- (h) The Publishing Party may proceed with the Publication:
 - (i) upon unconditional consent being given by each Reviewing Party; or
 - (ii) if amendments are required under clause 11(e)(ii), upon all reasonable amendments being made; and
 - (iii) if a period of delay is required under clause 11(e)(iii), upon the expiry of that period.
- (i) This clause 11 does not apply to the non-public presentation or submission of Student Work for assessment or examination and instead clause 12 applies in such circumstances.

12. 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 relevant University's policies and procedures and any statutes and regulations, subject to the provisions of clause 11; and
 - (ii) will retain copyright in their Student Work.
- (b) Nothing in this clause 12 prevents a Student from submitting their Student Work for assessment and each 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 15).
- (c) At a party's request, a University must promptly provide written evidence of its compliance with clause 12(b).
- (d) Student Work submitted for a higher degree may be deposited in the library of the relevant University, subject to any reasonable conditions agreed to by the parties, including the removal of any Confidential Information.

13. Privacy

In undertaking the Project, the parties agree to comply with their 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.

14. Moral Rights

14.1 Compliance

- (a) This clause 14.1 applies if specified in item 13 of the Details Schedule. If this clause 14.1 applies, then clause 14.2 does not apply.
- (b) Each party must respect the Moral Rights of the Personnel of the other parties as required by law.

14.2 Consent

- (a) This clause 14.2 applies if specified in item 13 of the Details Schedule. If this clause 14.2 applies, then clause 14.1 does not apply.
- (b) Except as set out in clause 14.2(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 14.2(b), the party must promptly notify the Governance Committee in writing.

15. Confidential Information

15.1 Confidentiality of Project IP

The parties acknowledge and agree that:

- (a) the Project IP is the Confidential Information of each party 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 Project IP.

15.2 Use of Confidential Information

- (a) Except as set out in this clause 15.2 or in clause 11, for the period that Confidential Information is to remain confidential as set out in section 7 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 15.2 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.

15.3 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 or 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 15.3(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 15 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 7 of Schedule 3.

16. Intellectual Property Rights indemnity

16.1 General

This clause 16 applies unless otherwise set out in item 14 of the Details Schedule.

16.2 Indemnity

Each party ('**Indemnifying Party**') will indemnify each other party, and its Personnel ('**Indemnified Party**'), against any loss or liability arising out of or in connection with any claim that the:

- (a) Indemnified Party's Use of any IPR provided by the Indemnifying Party for the Project, consistent with any licence granted by the Indemnifying Party under this Agreement, infringes any IPR of a third party; or
- (b) Indemnifying Party's Use of any IPR provided by the Indemnified Party for the Purpose infringes any IPR of a third party.

16.3 Obligations

- (a) Where an Indemnified Party wishes to enforce an indemnity under clauses 16.2, it must:
 - (i) give written notice to the relevant Indemnifying Party as soon as practical;
 - (ii) make reasonable efforts to mitigate the relevant loss;
 - (iii) subject to the Indemnifying Party agreeing to comply at all times with clause 16.3(b), permit the Indemnifying Party, at the Indemnifying Party'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 Indemnifying Party is permitted to handle negotiations or conduct litigation on behalf of the Indemnified Party under clause 16.3(a)(iii), provide all reasonable assistance to the Indemnifying Party in the handling of any negotiations and litigation.
- (b) The requirements referred to in clause 16.3(a)(iii) are that the Indemnifying Party must:
 - (i) if the Indemnified Party is a Commonwealth Entity, comply with government policy and obligations, as if the Indemnifying Party were the Indemnified Party, 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 Indemnified Party informed of any significant developments relating to the conduct of the defence or settlement of any claim.

17. Warranties and liability

17.1 General warranties

Each party represents and warrants to each 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; and
- (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.

17.2 Substantive warranties

- (a) Each party represents and warrants to each other party that it will undertake the Project in accordance with the requirements of clause 3.1(a).
- (b) This clause 17.2 does not require any party to make any representations or warranties to any other party in respect of the outcome of the Project or ability to use the Project IP.

17.3 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 another other party.

17.4 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.

17.5 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.

17.6 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, any 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.

17.7 Liability cap

- (a) The aggregate liability of a party for loss suffered or incurred by any other party (in aggregate across all parties) arising out of or in connection with this Agreement, however caused whether in tort (including negligence), contract, statute, equity or otherwise is, to the full extent permitted by law:
 - (i) subject to clause 17.7(b), limited to the applicable amount specified in item 15 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 a party under clause 17.7(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.

18. Insurance

18.1 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 17 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 protection by a party are acceptable as an alternative to the insurance required under this clause 18.1.

18.2 Insurance details

- (a) The insurance policies specified in clause 18.1 must:
 - (i) if held with an insurer (or equivalent), be held 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 18.1 within 10 Business Days of receipt of a written request from any other party.
- (c) Each party will all times comply with the terms of the insurance policies it is required to hold under clause 18.1.
- (d) Nothing in this clause 18 limits the other obligations and liabilities of any party under this Agreement or at law.

19. Dispute resolution

19.1 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 19.

19.2 Interlocutory relief and claim for debt

Nothing in this clause 19:

- (a) prevents any party from seeking urgent injunctive or similar interim relief from a court of competent jurisdiction; or
- (b) prevents a party from taking any step (including, but not limited to, commencing a proceeding) in relation to a claim for monies owing to the party under clause 8.

19.3 Notice of Dispute

The party claiming that a Dispute exists ("**the Initiating Party**") must give each other party relevant to the Dispute ("**the Receiving Parties**") 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 19.

19.4 Meeting of senior representatives

Within 20 Business Days of the service of the Notice of Dispute by the Initiating Party on the Receiving Parties, the Senior Representatives identified in item 1 or 2 of the Details Schedule, 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.

19.5 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.

19.6 Escalation to court proceedings

- (a) This clause 19.6 applies if specified in item 16 of the Details Schedule. If this clause 19.6 applies, then clauses 19.7 and 19.8 do not apply.
- (b) If the Dispute is not resolved within 30 Business Days of the service of the Notice of Dispute, any party to the Dispute may initiate proceedings in a court of competent jurisdiction.

19.7 Escalation to arbitral proceedings

- (a) This clause 19.7 applies if specified in item 16 of the Details Schedule. If this clause 19.7 applies, then clauses 19.6 and 19.8 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 set out in item 18 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 set out in item 18 of the Details Schedule.

19.8 Escalation to arbitral proceedings

- (a) This clause 19.8 applies if specified in item 16 of the Details Schedule. If this clause 19.8 applies, then clauses 19.6 and 19.7 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 set out in item 18 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 set out in item 18 of the Details Schedule.

19.9 Confidentiality

Each party to the Dispute must treat as confidential and not disclose to a third party (or the other parties) without each other party to the Dispute'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 19;
- (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.

20. Termination

20.1 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 23.6.

20.2 Termination and expulsion

- (a) The Governance Committee may agree to:
 - (i) expel a party from this Agreement (terminating the Agreement as between that party and each other party only) by giving notice to the relevant party, if any event occurs set out in clause 20.3; and/or
 - (ii) terminate this Agreement with immediate effect, where it does not believe that the Project is able to continue and the parties have not been able to agree to amend the scope of the Project.
- (b) The Governance Committee acknowledges that it will not exercise its rights under this clause 20.2 to expel a party, without first consulting with a party proposed to be expelled and allowing them to respond to the proposal. Such party will be given at least 15 Business Days to respond to any such proposal.

20.3 Termination Events

- (a) The Governance Committee may expel a party under clause 20.2 if the 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 Governance Committee.
- (b) Without limitation, for the purposes of clause 20.3(a)(i), each of the following constitutes a breach of a material term of this Agreement:
 - (i) a failure to comply with clause 6.4 (Key Personnel);
 - (ii) a failure to comply with clause 8 (Project Funding);
 - (iii) a failure to comply with clause 9 (Intellectual property);
 - (iv) a failure to comply with clause 10 (Intellectual Property Rights management);
 - (v) a failure to comply with clause 11 (Right to publish); or
 - (vi) a failure to comply with clause 15 (Confidential Information).

20.4 Withdrawal for convenience

- (a) Any party may withdraw from this Agreement (terminating the Agreement as between that party and each other party only) for convenience at any time by giving the Governance Committee 120 Business Days' written notice, subject to the payment of:
 - (i) the amounts due under this Agreement before the effective date of withdrawal; and
 - (ii) any reasonable costs (including any committed costs as at the date of termination that cannot reasonably be avoided), incurred by any other party at the date of withdrawal 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 20.4(a) must not exceed the Funding that was committed by the withdrawing party.

20.5 Consequences of termination or expiry

Upon termination of this Agreement under clause 20.2(a)(ii) or expiry of this Agreement:

- (a) the parties' rights to IPR in the Project IP continue in accordance with this Agreement;
- (b) the parties must store, dispose of, destroy or return any Contribution Material of another party not incorporated into the Project IP in accordance with clause 5.3 (as directed by the relevant party), except that a party is entitled to keep a copy of any Material of another party for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. The party keeping a copy of any Material must continue to treat any such copy as Confidential Information of another party which is subject to the terms of this Agreement;
- (c) each party will (subject to payment of any outstanding Funding) be required to deliver to the other parties copies of all Project IP in their current state at the date of termination or expiry (subject to any agreed limitations on delivery of such Project IP in this Agreement or determined by the Governance Committee);
- (d) if a party has paid any of the Funding in advance, the recipient party must refund any portion that was not required to have been paid by or at the time of termination or expiry; and
- (e) each party may Use the IPR in the Project IP created under the Project (but not other Pre-existing IPR or Third Party IPR) to otherwise complete the Project itself or to engage a third party to complete the Project.

20.6 Consequences of termination for expulsion or withdrawal

- (a) If a party is expelled or withdraws from this Agreement, on the date of expulsion or withdrawal, that party:
 - (i) will cease to be a party to this Agreement;
 - (ii) relinquishes all rights (including licences) under this Agreement;
 - (iii) without limiting clause 23.12, agrees that all licences it has granted to IPR in the Project IP (including in relation to Pre-existing IPR and Third Party IPR), and any option granted to Commercialise, survive in accordance with their terms;
 - (iv) must store, dispose of, destroy or return any Contribution Material not incorporated into the Project IP in accordance with clause 5.3 (as directed by each other party), except that the party is entitled to keep a copy of any Material of another party for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. The party keeping a copy of any Material must continue to treat any such copy as Confidential Information of another party which is subject to the terms of this Agreement;
 - (v) will (subject to payment of any outstanding Funding being paid to that party) be required to deliver to the other parties copies of all Project IP in their current state at the date of termination (subject to any agreed limitations on delivery of such Project IP in this Agreement or determined by the Governance Committee);

- (vi) except where clause 20.4 applies, if it has received any of the Funding in advance, must refund any portion that was not required to have been paid;
 - (vii) will co-operate with any other party as necessary (at the cost, expense and risk of the requesting party) and promptly do all acts and things and execute all documents which may be reasonably necessary to enable the enforcement, protection and Commercialisation of any IPR in the Project IP; and
 - (viii) will be relieved of its obligation to make further Contributions, other than Contributions required to be made under any third party agreement in force to which it remains a party.
- (b) The expulsion or withdrawal of a party from this Agreement:
- (i) will not affect the enforceability of any other party's rights against a party who is retiring or being expelled that have accrued at that time; and
 - (ii) will not relieve the other parties of their obligations under this Agreement and they will continue to carry the Project to the extent those parties are able to continue to carry on the Project and perform the terms of this Agreement as between them.

21. 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 parties and the Governance Committee:
 - A. describing the Unexpected Event;
 - B. specifying the impacted obligation and the extent to which the Affected Party cannot perform those obligations;
 - C. if possible, estimate 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, the Governance Committee will further consider the appropriate actions to take in accordance with this Agreement.

22. Notices

22.1 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.

22.2 Deemed receipt

- (a) Notices given in accordance with clause 22.1 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 delivered on the next Business Day in that place.

22.3 Notice to or from Governance Committee

- (a) The Governance Committee may determine the address for the parties to send notices to, and for notices to be sent from, and the process for authorising the sending of such notices as part of its administrative arrangements.
- (b) All notices sent to or received from the Governance Committee will be attached to the minutes of the Governance Committee's next meeting and distributed to the parties following approval of the minutes.

23. General

23.1 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 any other party; or
- (b) having any authority to act on behalf of any other party or to bind any other party to any course of action.

23.2 No constraints

- (a) Each party acknowledges and agrees that (subject to the scope of the assignment of, and licences to, IPR in this Agreement) each other party's research, development, Commercialisation and consulting are not constrained or restricted by this Agreement.

- (b) Each party acknowledges that any other party's activities may be in competition with its own business or activities.

23.3 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 all of the other parties or the Governance Committee.

23.4 Further assurances

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

23.5 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.

23.6 Variation

- (a) 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.
- (b) No additional person may become a party to this Agreement without the written agreement of all of the then existing parties to this Agreement and unless the additional person and all the then existing parties to this Agreement execute a written agreement to that effect.

23.7 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.

23.8 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.

23.9 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.

23.10 Counterparts

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

23.11 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 set out in item 18 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.

23.12 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 9 (Intellectual property);
 - (ii) clause 10 (Intellectual Property Rights management);
 - (iii) clause 11 (Right to publish);
 - (iv) clause 13 (Privacy);
 - (v) clause 14 (Moral Rights);
 - (vi) clause 15 (Confidential Information);
 - (vii) clause 17 (Warranties and liability);
 - (viii) clause 18 (Insurance);
 - (ix) clause 20.5 (Consequences of termination or expiry); and
 - (x) clause 20.6 (Consequences of termination for expulsion or withdrawal).
- (b) Termination or expiry of this Agreement (including as between one or more parties on expulsion or withdrawal) 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	Universities	University Name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i> Senior representative: <i>[insert]</i>
			University Name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i> Senior representative: <i>[insert]</i>
2	Clause 1.1	Collaborators	Collaborator Name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i> Senior representative: <i>[insert]</i>
			Collaborator Name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i> Senior representative: <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. This may be on the date the last party signs the Agreement, or it may be a specific date.]</i>
5	Clause 1.1	Project End Date	<i>[Insert date Agreement is to end eg, dd/mm/yy]</i>
6	Clause 3.1(a)(i)C	Policies, standards or laws	<i>[insert any specific policies, standards or law that a party or all parties must comply with in delivering the Project.]</i>
7	Clause 1.1 and 6.2	Governance Committee	<i>[For each party, insert the representative the party appoints to the Governance Committee.]</i>

Item	Related clause	Subject	Description	
8	Clause 6.3(a)	Chief Investigator	[Specify Chief Investigator or state 'N/A'.]	
9	Clause 1.1 and 6.4	Key Personnel	University A Key Personnel	University B Key Personnel
			[For each party, insert any specific Personnel that are required to undertake the Project. This may include the designated Chief Investigator.]	[For each party, insert any specific Personnel that are required to undertake the Project. This may include the designated Chief Investigator.]
			Collaborator A Key Personnel	Collaborator B Key Personnel
			[For each party, insert any specific Personnel that are required to undertake the Project. This may include the designated Chief Investigator.]	[For each party, insert any specific Personnel that are required to undertake the Project. This may include the designated Chief Investigator.]
10	Clause 10.2	Right to Commercialise	[Specify here the party or parties that will have the first right to Commercialise the IPR in the Project IP and include details of any other approach to Commercialisation Otherwise insert 'Clause 10.2 does not apply']	
11	Clause 10.2(a)	Period for Commercialisation	[insert the period for which the party or parties identified in item 10 has the first right to Commercialise or insert 'N/A'.]	
12	Clause 9.6(c)	Acknowledgement	[Insert any requirements or restrictions for a party to acknowledge in publications (including the form of acknowledgement) the contribution of another party.]	
13	Clause 14	Moral Rights	[Tick which Moral Rights provision applies.] Clause 14.1 (Compliance) Clause 14.2 (Consent)	
14	Clause 16.1	Indemnity	[Insert: <ul style="list-style-type: none"> • 'N/A' if the indemnity in clause 16 is to apply; or if the indemnity in clause 16 is not to apply, either: • an alternative indemnity agreed by the parties; or • if no indemnity is to be included, 'No party indemnifies any other party under this Agreement.'.] 	
15	Clause 17.7(a)(i)	Liability cap	[Insert the liability cap amount for each party to the Agreement.]	

Item	Related clause	Subject	Description
16	Clause 19	Dispute resolution	<p><i>[Tick which dispute resolution provision applies.]</i></p> <p>Clause 19.6 (Escalation to court proceedings)</p> <p>Clause 19.7 (Escalation to arbitral proceedings - WIPO)</p> <p>Clause 19.8 (Escalation to arbitral proceedings - ACICA)</p>
17	Clause 18.1(a)	Insurance	<p><i>[Insert insurance types and amounts. For example:</i></p> <p><i>Public and product liability insurance with a limit of liability of not less than \$10 million for each and every event.</i></p> <p><i>Professional indemnity insurance with a limit of liability of not less than \$5 million for each and every event.]</i></p>
18	Clauses 19 and 23.11	State or Territory for venue and governing law	<i>[insert]</i>

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 party is required to do]	[Reports? Physical items? Is the party required to make improvements to the Pre-existing IPR?]	[insert]
2.			
3.			

4. Funding

	Party responsible for payment	Party receiving the payment	Frequency of payment	Advance/ arrears	If payable in instalments, amount of each Funding instalment (excl GST)	Total Funding (excl GST)
1.			[monthly / quarterly / once off]	[advance / arrears]		
2.						
TOTAL						

OR

[insert the Milestone payments, which are to be paid by a party on the achievement of each Milestone by the applicable Milestone Date.]

	Milestone	Milestone Date	Party responsible for payment	Party receiving the payment	Funding amount (excl GST)
1.					
2.					

	Milestone	Milestone Date	Party responsible for payment	Party receiving the payment	Funding amount (excl GST)
TOTAL					

5. Contribution Material

	Description of Contribution Material and timing (attach additional pages if required)	Party providing	Party receiving (if any)	Value (\$) (if applicable)	Conditions
1.					
2.					
3.					

6. Other Contributions

	Description of Contribution and timing (attach additional pages if required)	Party providing	Party receiving (if any)	Value (\$) (if applicable)	Conditions
1.					
2.					
3.					

7. Governance Committee - Progress meetings (clause 6.2)

Meeting	Attendees	Frequency	Place

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

[Tick which model of ownership applies (clause 9.4).]

Model 1 (clause 9.4(a))

Under clause 9.4(a), IPR in the Project IP is owned by the party or parties specified in clause 1.2 of Schedule 3.

Model 2 (clause 9.4(b))

The Agreement does not assign IPR in the Project IP, but each party grants a cross-licence to each other party in accordance with clause 9.4(b).

1.2 Model 1 Owners

[Select one of the following:
For a single Owner insert: 'IPR in the Project IP is owned by [Insert].'
 OR
For different parties to own different components of IPR in the Project IP: The IPR in the Project IP is owned [Insert] except for the following portions of the Project IP that have a different Owner, as specified in the table below:

Project IP	Owner

2. Use

IPR	Limitations on Use
Project IP	<i>[Insert any limitation on the right to Use the Project IP or insert N/A.]</i>
Pre-existing IPR	<i>[If limitations apply include 'Limitations on Use are set out in section 5.2 of this Schedule.' or insert 'N/A'.]</i>
Third Party IPR	<i>[If limitations apply include 'Limitations on Use are set out in section 6 of this Schedule.' or insert 'N/A'.]</i>

3. Purpose

[Insert the purpose for which the parties are 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 party 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. Research Tools and Pre-existing IPR

5.1 Research Tools

Contributing Party	Description	Use in the Project

5.2 Limitations on Pre-existing IPR

(a) Patents and patent applications

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

(b) Other IPR

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

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

5.3 Excluded Pre-existing IPR

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

6. 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

7. Confidential Information

7.1 Confidential Information

Contributing Party	Description	Period of confidentiality
[Insert]	[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.]	[Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]

Contributing Party	Description	Period of confidentiality

Signing page

Signed as an agreement.

Signed for and on behalf of the **[Insert University A 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

Signed for and on behalf of the **[Insert University B 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 A 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 A 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 A Name]**

Date

Executed by [Insert Collaborator B 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 B 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 B Name]**

Date