

HERC IP Framework – Variation Agreement

Details Schedule

Item	Parties	
1.	University	University name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> For attention of: <i>[insert]</i>
2.	Collaborator	Collaborator name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> For attention of: <i>[insert]</i>
Details of the Agreement to be varied		
3.	Description of the Agreement (clause 1.1)	<i>[Insert title of the Agreement.]</i>
4.	Date of execution of the Agreement	<i>[Insert the date the last party signed the Agreement.]</i>
Details of the amendments		
5.	Variation Date (clause 1.1)	<i>[If different from the date the last party signs this Variation Agreement, insert the date on and from which the parties agree that the Agreement is varied.]</i>
6.	Amendments (clause 2)	<i>[Insert details of the amendment(s) to the Agreement.]</i> <i>If amending an existing clause of the Agreement, the parties should clearly describe the amendments being made, or insert the amended text of the relevant clause, with the changes easily identifiable (for example, by using track changes or red text for insertions and strike through text for deletions).</i> <i>If inserting a new clause into the Agreement, the parties should insert the new clause and clause number.</i> <i>Alternatively, the parties can attach separate documentation that details the amendments. If this is the case, insert 'See document attached separately'.]</i>

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

The location of the Collaborator is also the governing law and jurisdiction of the Variation Agreement (see clause 4.4).

Guidance Note for item 3: The parties should insert the title of the Agreement which is being varied and any reference number and/or project title. This is to ensure that the parties are varying the correct Agreement.

Guidance Note for item 4: The date of execution of the Agreement should be inserted in this item. This is further detail to assist the parties to be clear about which Agreement is being varied.

Guidance Note for item 5: This item allows the parties to specify the date the variation will come into effect. If no date is specified then the date that the last party signs this Variation Agreement will be the Variation Date.

Guidance Note for item 6: This item should set out the details of the amendment(s) to be made to the Agreement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Variation Agreement, words and phrases defined in the Agreement have the same meaning when used in this Variation Agreement, except for the following definitions:

Agreement means the agreement described in item 3 of the Details Schedule, as varied.

Details Schedule means the schedule of details particular to this agreement and is set out at the beginning of this Variation Agreement.

Variation Agreement means this variation agreement and any schedules, annexures and attachments to it.

Variation Date means the date that the last party signs this agreement or as otherwise specified in item 5 of the Details Schedule.

1.2 Interpretation

The interpretation clause in the Agreement applies to the interpretation of this Variation Agreement.

Guidance Note to the definition of 'Agreement' and 'Variation Agreement': The term 'Agreement' refers to the agreement being amended.

The term 'Variation Agreement' refers to this document, which gives effect to the amendments.

Guidance Note to clause 1.2: The interpretation clause in the Agreement being varied applies when interpreting this Variation Agreement.

Guidance Note for clause 2: All variations to the Agreement must be specified in item 6 of the Details Schedule.

2. Variations to the Agreement

The parties agree that, on and with effect from the Variation Date, the Agreement is varied in accordance with item 6 of the Details Schedule.

Guidance Note for clause 3: The purpose of this clause is for the parties to affirm that the Agreement is not being amended in any respect other than as outlined in item 6 of the Details Schedule. This affirmation ensures that the parties' conduct since the execution of the Agreement and prior to the execution of the Variation Agreement is not taken to be a variation of the Agreement (unless reflected in item 6 of the Details Schedule).

3. Affirmation of the Agreement

- (a) The parties affirm in all other respects the terms and conditions in the Agreement as varied by this Variation Agreement.
- (b) The Agreement, as varied by this Variation Agreement, comprises the entire agreement between the parties with respect to the subject matter of the Agreement.
- (c) The parties acknowledge and agree that the Agreement as varied by this Variation Agreement is and continues to be in full force and effect.
- (d) Nothing in this Variation Agreement affects or reduces in any way any rights that the parties may have in relation to the performance of the Agreement prior to the Variation Date.

Guidance Note for clause 4.1: Each party is required to cover its costs in connection with the Variation Agreement (unless otherwise stated in this Variation Agreement).

4. General

4.1 Liability for expenses

Except as otherwise provided in this Variation Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Variation Agreement.

4.2 Consideration under this Variation Agreement

The parties agree that each of them has received valuable consideration, including the ongoing benefit of the amended Agreement, for entering into this Variation Agreement. To the extent required to ensure this Variation Agreement is legally binding, each party promises in consideration to pay \$1 to the other party on demand by the other party.

Guidance Note for clause 4.2: For the Variation Agreement to form a contract that binds the parties, consideration must transfer from one party to another. Consideration is the price (usually money) paid by one party for the other party's promise (for example, the promise to undertake the project). Whilst some variations to the Agreement will result in additional Fees being paid, there may be occasions when a variation will not satisfy the requirement for consideration (for example, the variation is only to project details, such as milestone dates or key personnel).

To ensure that this Variation Agreement is legally binding and satisfies the consideration requirement, this clause requires each party to pay \$1 in consideration to the other party. Note that this payment is for administrative purposes and only payable on demand. The parties are not required to demand or exchange \$1 in order for the Variation Agreement to be binding.

4.3 Counterparts

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

4.4 Governing law

The laws that govern the Agreement, and any process for management of disputes under the Agreement, apply to this Variation 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.

4.5 Entire agreement

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

Guidance Note for clause 4.3: The purpose of this clause is to make it clear that the parties can sign separate copies of this Variation Agreement (called 'counterparts') and the Agreement will be binding. The parties should ensure that the counterpart documents are exactly the same.

Guidance Note for clause 4.4: The same laws, jurisdiction, and dispute resolution procedure that is set out in the Agreement applies to this Variation Agreement.

Guidance Note for clause 4.5: The purpose of this clause is to make clear that this Variation Agreement is the entire agreement between the parties in relation to the amendments set out in item 6 of the Details Schedule. This clause does not prevent additional Variation Agreements being entered into by the parties in the future, in order to give effect to additional amendments.

For guidance only

Signing page

Signed as an agreement.

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

Signature of authorised representative

Full name of authorised representative

Date

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

Signature of director

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

Date

Signature of witness

Full name of witness

Signature of company secretary/director

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

Date

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

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

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

The parties may execute the Variation 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.

It is preferable (but not required) that the execution blocks reflect the execution blocks used in the Agreement being amended.

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

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