



Higher Education Research Commercialisation IP Framework

Accelerated Non-Exclusive Licence Agreement Guide

A licence agreement for an IP owner to licence IP Rights (IPR) (including IPR developed as part of a project) on a non-exclusive basis to the other party, either for non-commercial use or for low-risk commercialisation.

When should it be used?

- To allow non-commercial use of the IP; or
- For commercial transactions valued at less than \$100,000 or agreed by the parties to be low risk; and
- The parties are Australian entities

Whilst it will generally be the university licensing IPR to an industry partner, the agreement is structured so that either party could be the Licensor. The agreement is also suitable when a party is a Commonwealth Entity.

When should it not be used?

- An Accelerated Licence Agreement (inc low risk Commercialisation) is only recommended when both parties decide that the Accelerated agreement is appropriate. If you cannot agree, and the licence is for commercialisation, use of the Licence Agreement (Non-exclusive Commercialisation) is recommended
- For the grant of an exclusive commercial licence to IPR (the [Licence Agreement \(Exclusive Commercialisation\)](#) **must be used**)
- As a licence arrangement for equipment (use [the Equipment Licence Agreement](#))
- When one party is not an Australian entity

Should I use the Accelerated or Standard Non-Exclusive Licence?

The university and the industry partner should consider the following factors to decide whether to use the Accelerated or Standard licence template for a non-exclusive licence. Independent advice or further information from the other party may be needed to make an informed judgement.

- **Will the licence be for uses that do not involve commercialisation?** If the licence is for internal use only, then the Accelerated Licence Agreement (inc low risk Commercialisation) **must be used**. The Research Agreement templates already include a licence to the industry partner for internal use, which will normally be sufficient and in these cases there is no requirement to use this Agreement. If additional coverage is required by the industry partner, the parties should enter into a separate licence agreement using this template
- **Are indemnity or warranty provisions needed?** If one or both parties require indemnity and/or warranty provisions, then it is recommended that a Standard Licence Agreement is used, as these include standard warranty and indemnity provisions that can be customised as required
- **Are the Fees payable expected to be less than \$100,000?** For many lower value agreements, the Accelerated Licence Agreement (inc low risk Commercialisation) will be appropriate, and will streamline the process of negotiating and finalising an agreement, which can otherwise be costly and time consuming for both parties. Each form of agreement allows for flexibility in how the parties set the Fees - including for royalty payments. However, if the risks in the agreement are high and/or specific risks are identified, the Standard Licence Agreement will be more suitable, for example if:
 - one party is a foreign entity
 - the licence structure or Fees are complex
 - the proposed intellectual property arrangements are complex (for example, multiple types of intellectual property being licensed with different licensing approaches)
 - there are existing arrangements in place between the parties
- **What has the internal risk assessment returned?** Before starting a commercialisation project, each party should carry out their own risk assessment. Factors to consider include:
 - what is the potential legal exposure that the activity may create?
 - could this activity lead to a breach of intellectual property rights, including patent or copyrights?
 - will this activity involve significant physical or environmental risks?

If the internal assessment indicates a low risk, then the Accelerated Licence Agreement (inc low risk Commercialisation) would be appropriate

- This risk assessment may also be used to determine an appropriate liability cap for the agreement. For the Accelerated Licence Agreement (inc low risk Commercialisation), the liability cap would generally not exceed \$100,000. If the proposed liability cap is higher than \$100,000, the Standard Licence Agreement may be more appropriate
- **Are additional arbitration or mediation systems needed:** While the parties can always agree to refer their dispute to mediation, there is no mandated mediation or arbitration in the Accelerated Licence Agreement (inc low risk Commercialisation). If this is required, the Standard Licence Agreement should be considered
- **Will the licensee be paying a royalty?** Either the Accelerated Licence Agreement (inc low risk Commercialisation) or the Standard Licence Agreement can be used with a royalty model. The method for calculating the royalty must be agreed by the parties. If the method is complex, the Standard Licence Agreement is preferred, as it provides more guidance on audit rights and a template that can be adapted for calculation of royalty amounts. In each case parties should obtain independent financial and taxation advice

- **Is sublicensing allowed?** In most commercialisation arrangements a licensee may wish to be permitted to sublicense the licensed IP rights to enable commercial exploitation. For example, the licensee may wish to outsource some aspects of manufacturing, service provision or sales. While this is consistent with options in both the Accelerated Licence Agreement (inc low risk Commercialisation) and the Standard Licence Agreements, it indicates a higher level of complexity and risk. If sublicensing is allowed for these types of activities, then the Standard Licence Agreement is recommended, as this includes template provisions regulating sublicensing, such as provisions which must be included in the sublicense agreement, whether the sublicense must be approved, and management of the risks associated with sublicensing
- **Other factors to consider are:** whether the agreement is required to address the ownership and/or licensing of any improvements back to the licensor, and whether there are any product safety requirements that need to be addressed. In general, these factors increase risk and make the Standard Licence Agreement more appropriate

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 an Accelerated Licence Agreement (inc low risk Commercialisation) using the template.

The template is provided in the Accelerated track and it is expected that it can be used with minimal negotiation between the parties. Nevertheless, discussing and understanding each party's needs and concerns up front will help you reach an agreement more quickly. A licence agreement may take three to six months or more to negotiate and sign, often longer, depending on the complexity of the proposed licence. It is, therefore, important the parties start these discussions as early as possible.

For organisations, particularly SMEs, that have not previously been asked to enter this type of agreement, this table will help you understand what the key provisions of a licensing agreement 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 licensing IP on a non-exclusive basis using the Accelerated Licence Agreement (inc low risk Commercialisation). Understanding your own key considerations, as well as those of the other party, will help you to negotiate a fair and reasonable agreement that works for both parties

Licence Provision	University (Licensor)	Industry partner (Licensee)
<p>Term</p> <ul style="list-style-type: none"> The time period of the licence Generally, this covers the life of any registered IPR or a defined number of years for copyright or software licences 	<ul style="list-style-type: none"> Clarity over how long the licence will last and what happens when it expires 	<ul style="list-style-type: none"> Ensure the industry partner has the rights it needs for long enough, and that this matches their business model and the level of investment needed to get to market
<p>Licensed IPR & Technology</p> <ul style="list-style-type: none"> A clear definition of what IPR is being licensed and its technology field and intended applications Details of any Materials being transferred as part of the licence and how they need to be treated Where the Licensed IPR includes Confidential Information, the Licensee must not disclose it unless the parties have agreed otherwise 	<ul style="list-style-type: none"> Be clear on exactly what is being licensed and what is not Check that you have the right to grant the rights to the IPR 	<ul style="list-style-type: none"> Be clear on exactly what is being licensed to ensure the industry partner has access to everything it needs to commercialise the IPR Ensure you understand any restrictions in terms of Confidential Information that forms part of the Licensed IPR

This table sets out the key points each party needs to consider when licensing IP on a non-exclusive basis using the Accelerated Licence Agreement (inc low risk Commercialisation). Understanding your own key considerations, as well as those of the other party, will help you to negotiate a fair and reasonable agreement that works for both parties

Licence Provision	University (Licensor)	Industry partner (Licensee)
<p>Licence Scope</p> <ul style="list-style-type: none"> The scope of the licence and whether this is for internal use only or whether it also includes commercialisation rights 	<ul style="list-style-type: none"> The granted rights should match the needs, capabilities and commitment from the industry partner 	<ul style="list-style-type: none"> Ensure the industry partner has the rights it needs and that this matches your business model and the level of investment needed to get to market
<p>Limitations on Use</p> <ul style="list-style-type: none"> A clear definition of the specific field of use or application that the licence is granted for 	<ul style="list-style-type: none"> Ensure that the licence is to those fields of use where the industry partner has expertise This is particularly important with IPR that can be applied in many different applications (so called platform technologies) 	<ul style="list-style-type: none"> Ensure the industry partner has the rights it needs and that this matches your business model and the level of investment needed to get to market
<p>Derivatives</p> <ul style="list-style-type: none"> Improvements (Derivatives) to the Licensed IPR made by the Licensee will be owned by them If the Licensor also wants to use these improvements, this will need to be agreed and included in the agreement 	<ul style="list-style-type: none"> Where the University is the Licensor, it may be appropriate to ask for a licence to Derivatives created by the company for research and teaching purposes. This will need to be agreed by the parties and set out in the agreement 	<ul style="list-style-type: none"> Where the industry partner is the Licensor, it can be important to have access to Derivatives made by the Licensee to enable the industry partner to use these themselves. This will need to be agreed and set out in the agreement

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Licence Provision	University (Licensor)	Industry partner (Licensee)
<p>Third Party IPR</p> <ul style="list-style-type: none"> • Details of any IPR owned by third parties within the scope of the rights being licensed - for example third party software or hardware • If Third Party IPR is relevant, no rights are granted to the Licensee unless this is specifically inserted 	<ul style="list-style-type: none"> • Ensure that the Licensee is clear what other licences it may need to use Third Party IPR (if any) • For most licences this would not be expected to be relevant 	<ul style="list-style-type: none"> • Ensure the industry partner is aware of any Third Party IPR restrictions and any further licences it may need to obtain from others
<p>Further assurances</p> <ul style="list-style-type: none"> • If the licence includes commercialisation rights, details of any additional obligations the Licensee may have – for example to provide a Technology Roadmap or agree to development milestones • The template includes very limited assurances for the licensed IPR and no indemnities from either party. Whilst the template can be varied to include these, the Standard Licence templates may be more appropriate to use 	<ul style="list-style-type: none"> • Ensure that the impact of the licensed IPR is maximised and the industry partner does not take a licence and then does not develop the technology • This is less of a concern as this licence is non-exclusive. However, agreeing a development plan and milestones can still be important • If the company is seeking additional warranties relating to the licensed IPR, carefully consider if these are appropriate and that you can give them • If the licence includes commercialisation rights and an indemnity from the company for these activities is required, this will need to be added to the template or the parties should use the Standard Licence templates 	<ul style="list-style-type: none"> • Ensure the industry partner has the freedom to take commercial decisions and adopt development timelines that are realistic • Ensure any diligence requirements reflect technical and commercial realities and are achievable • Consider whether additional warranties and indemnities are required / being asked for and if so whether to include them in this template or use the Standard Licence templates

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Licence Provision	University (Licensor)	Industry partner (Licensee)
<p>Fee</p> <ul style="list-style-type: none"> • Details of any fees or if the licence is royalty-free • If a Fee is payable, details of whether this is paid upfront, or against milestones and/or a royalty on sales 	<ul style="list-style-type: none"> • Ensure a fair return for the IPR if a Fee is appropriate • The template does not include obligations for the reimbursement of patent or other IPR costs. If this is important, ensure this is taken into account in the fees being charged 	<ul style="list-style-type: none"> • Ensure the fair value being paid for the licence matches the value it gains from access to the IPR, and any additional risks it may be taking to get the technology to market

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Licence Provision	University (Licensor)	Industry partner (Licensee)
<p>Confidential Information</p> <ul style="list-style-type: none"> • Details of any confidential information exchanged under the licence should be recorded • A period agreed for how long this information needs to be kept confidential. Often this will be 5-7 years, although longer periods may be appropriate in some circumstances • A perpetual term is sometimes appropriate, subject to the receiving party being confident they can manage this long-term obligation • In most cases the term will be the same for both parties • Where the Licensed IPR includes Confidential Information, the Licensee must not disclose it unless the parties have agreed otherwise 	<ul style="list-style-type: none"> • Ensure a clear description of any confidential information relating to the Licensed IPR is recorded • Ensure you understand your obligations with respect to confidential information shared with you • If you are asked to accept a perpetual term, ensure you have the systems and processes to manage these obligations into the future 	<ul style="list-style-type: none"> • Ensure details of any confidential information arising from your use of Licensed IPR are recorded • For example, you would usually expect progress and payment reports that you share with the Licensor will be kept confidential • If you are asked to accept a perpetual term, ensure you have the systems and processes to manage these obligations into the future

This table sets out the key points each party needs to consider when licensing IP on a non-exclusive basis using the Accelerated Licence Agreement (inc low risk Commercialisation). Understanding your own key considerations, as well as those of the other party, will help you to negotiate a fair and reasonable agreement that works for both parties

Licence Provision	University (Licensor)	Industry partner (Licensee)
Liability cap	<ul style="list-style-type: none"> • Ensure the agreed liability cap is in line with the value being captured by the licence • Where a cap is agreed, this can be limited to the fees payable or a multiple of these fees • The liability cap would generally not exceed \$100,000. If the proposed liability cap is higher than \$100,000, the Standard Licence Agreement may be more appropriate 	<ul style="list-style-type: none"> • Ensure the agreed liability cap is in line with the value being captured by the licence and the risks the Licensee is taking to develop the licensed IPR

HERC IP Framework – Accelerated Licence Agreement (including low risk Commercialisation)

Details Schedule

Item	Agreement Details	
1.	Licensor (granting entity)	Name: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i>
2.	Licensee (receiving entity)	Name: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i>
3.	Term	This Agreement commences on <i>[insert date]</i> and expires on <i>[insert date/period]</i> , unless terminated earlier in accordance with its terms. <i>[Optional: 'The Licensee may terminate this Agreement in accordance with clause 10(a) if the registration of [any of the Licensed IPR' / or refer to a specific registration] expires, is not granted, or ceases to be in force prior to the end of the Term.'</i>

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

The location of the Licensor also determines the governing law and jurisdiction of the Agreement (see clause 11.3).

Guidance Note for item 3: The Term should align with the period of the Licence in item 5. If the Licence is to be perpetual, the parties should remove the text and insert 'This Agreement commences on *[insert date]* and continues unless terminated in accordance with this Agreement'.

The option in this item provides some protection to the Licensee if the Licensee is paying a Fee and there are critical aspects of Licensed IPR subject to registration, such as a patent or patent application. See also clause 10(b).

Guidance Note for item 4: This item defines the scope of the IPR being licensed.

For patents and other registered IPR, identify the patent registration or application. For copyright and unregistered IPR, identify both the subject of the IPR and the material that is contained in it. Any exclusions from the scope of the IPR should be clearly described. The parties can refer to an attachment to this Agreement if more space is required to complete this item (but remember to ensure the attachment is labelled and included with this Agreement when executed).

Guidance Note for item 5: Licences are subject to the terms of clause 3.1 unless agreed and specified otherwise by the parties in this item 5. All licences are non-exclusive.

Period: This should usually refer to the Term of the Agreement - see further item 3.

Scope: Describe another scope here if these options are not appropriate. Any right to Commercialise must be specified in this item.

The scope of any Licence will also be limited by the provisions in the Agreement regarding Confidential Information, sublicensing and assignment of rights. The parties should consider these when describing the Licence rights being granted.

Field: The Licence can be limited in scope to only apply to specific fields. This is particularly relevant if Licensed IPR has potential dual uses.

Sublicensing: A right to sublicense to Affiliates, and also to third parties for Use within the Licensee's organisation, is included within the rights of 'Use'. Any change to this position should be described in this item 5.

Limitations on scope: Describe any further limitations on the scope of the Licence.

Details of Licence		
4.	Licensed IPR (clause 1)	Licensed IPR: <i>[Note: Identify the IPR that is being Licensed under this Agreement.]</i>
5.	Licence terms (clause 3.1(a))	Period: For the Term. Scope: <i>['Use of the Licensed IPR (excluding Commercialisation)' / 'Use and Commercialisation of the Licensed IPR'.]</i> <i>[Where the Licence includes Commercialisation insert - The Licence to Commercialise is limited in scope by the other obligations under this Agreement (as applicable), including in respect of Confidential Information and sublicensing'.]</i> Field: <i>[Insert any specific field or application permitted for the Licensed IPR or state 'all fields'.]</i> Sublicensing: <i>['Not permitted' / 'Permitted - No limitations' / 'Permitted subject to the limitations on scope below'.]</i> Limitations on scope: The Licence scope does not include <i>[insert]</i> .

6.	Improvements to Licensed IPR (clause 3.1(e))	<p>Licensor's rights to Improvements:</p> <p><i>[If no rights are granted, insert: 'No rights are granted to the Licensor to Improvements'].</i></p> <p><i>If rights are to be granted, consider inserting either of the following examples:</i></p> <p><i>Example only (broad rights): 'The Licensor is granted a non-exclusive, perpetual, irrevocable, royalty free, worldwide licence (including the right to sublicense) to Use and Commercialise the IPR in the Improvements created by the Licensee.'</i></p> <p><i>Example only (narrower rights): 'The Licensor is granted a non-exclusive, perpetual, irrevocable, royalty free, worldwide licence (including the right to sublicense) to Use the IPR in the Improvements created by the Licensee solely for research and teaching purposes.'</i></p>	
7.	Third Party IPR (clause 1)	<i>['None' / '[insert description]']</i>	
8.	Further assurances (clause 3.1(f))	<p><i>[Insert any further assurances (e.g. warranties, indemnities or further obligations) that apply. Note that there is also no express restriction on the Licensor from publishing its own Licensed IPR, if one is required it should be included here.]</i></p> <p><i>Example only: 'Each party warrants that it has the necessary rights to vest under clause 3 and to grant the licences required or referred to, under clause 3.'</i></p> <p><i>Example only (for Commercialisation): 'The Licensee is required to undertake Commercialisation of the Licensed IPR in accordance with the agreed Commercialisation milestones set out in Schedule 1.'</i></p>	
9.	Materials (clause 3.3)	<i>[Set out here any Materials to be provided to the Licensee and any requirements regarding their treatment or return.]</i>	
10.	Acknowledgement (clause 4)	<i>[Insert any requirement for the Licensee to acknowledge in publications (including the form of acknowledgment) its use of the Licensor's IPR.]</i>	
11.	Reporting (clause 5)	Frequency	<i>[Monthly], [Quarterly] [Annually]</i>
		<i>[Insert requirements for the Licensee to provide reports to the Licensor.]</i>	

Guidance Note for item 6: This Agreement does not assign to the Licensor ownership of any Improvement created by the Licensee. If the Licensor requires a right to Use or Commercialise Improvements, the terms of the licence need to be included in item 6.

The parties can also agree that rights will only be granted to specific Improvements.

If an assignment is required to an Improvement, a separate agreement should be used for this.

Guidance Note for item 7: This item should describe any Third Party IPR incorporated into the Licensed IPR or that is otherwise required in order for the Licensee to exercise their Licence to the Licensed IPR. Unless item 7 identifies the Third Party IPR and rights being granted, no rights to Third Party IPR are granted by the Licensor.

Both parties should ensure that any Licensed IPR requiring Third Party IPR (including for example COTS products and open source software) are known and managed.

Guidance Note for item 8:

Note 1: This template does not include standard warranties or indemnities regarding the Licensed IPR as the appropriate terms will depend on the circumstances. See example provided in item 8. Refer to the HERC IP Framework Practical Guide and the terms of the 'Accelerated Research Agreement'.

Note 2: Where the Licence is for Commercialisation (and particularly if the Fee is based on a royalty) it is usual for the Licensee to have further obligations to promote the Licensed IPR so as to maximise revenue. See example provided in item 8.

Guidance Note for item 9: Refer to the Guidance Note at clause 3.3.

Guidance Note for item 10: If the Licensor would like to be acknowledged for its contribution in any publication that relates to the Licensed IPR (for example, journal papers or articles), the details of the form of acknowledgment should be specified in item 10. For example, the Licensor may specify that its contribution be acknowledged in any abstract of a journal paper.

Guidance Note for item 11: This item should specify the timing and content of any reports by the Licensee to ensure that both parties have the same expectations, including any progress reports for Commercialisation activity where that is required under Schedule 1.

Payments						
12.	Fees (AUD) (clause 6.1)	<p>Fixed or periodic Fees: <i>[Insert a fixed amount as agreed.]</i></p> <p>Royalty: <i>[Insert any royalty payable, and either include the method for calculation here, or refer to Schedule 1 and provide further detail there.]</i></p> <p>Other Fees: <i>[Insert any other Fees, which may include recovery of registration costs or other amounts agreed.]</i></p>				
General						
13.	Confidential Information (clause 7)	Licensor				
		<table border="1"> <thead> <tr> <th>Description of Confidential Information</th> <th>Period of confidentiality</th> </tr> </thead> <tbody> <tr> <td>Description: <i>[Insert description of Confidential Information. If the parties agree to limit Confidential Information to the specific information described here, clearly state that only the information listed here is Confidential Information. If more space is required an attachment can be added.]</i></td> <td>Period: <i>[Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]</i></td> </tr> </tbody> </table>	Description of Confidential Information	Period of confidentiality	Description: <i>[Insert description of Confidential Information. If the parties agree to limit Confidential Information to the specific information described here, clearly state that only the information listed here is Confidential Information. If more space is required an attachment can be added.]</i>	Period: <i>[Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]</i>
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Licensee						
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Description: <i>[Insert description of Confidential Information. If the parties agree to limit Confidential Information to the specific information described here, clearly state that only the information listed here is Confidential Information. If more space is required an attachment can be added.]</i>	Period: <i>[Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]</i>					
14.	Liability cap (clause 8)	<i>[Note: Insert liability cap amount.]</i>				

Guidance Note for item 12: Further guidance is available on how the parties may agree an appropriate fixed/periodic Fee or royalty structure (see the HERC IP Framework Practical Guide).

It is important that full details are provided here (or a reference is added to a new Schedule) for how the Fee will be calculated, including the basis for any royalty calculation or periodic amount.

Guidance Note for item 13: 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.

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

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

This liability cap does not apply to losses arising from the acts set out in clause 8(b).

Operative provisions

1. Definitions

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

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.

Commencement Date means the date that the last party signs this Agreement.

Commercialise means in relation to IPR, to:

- (a) manufacture, sell or hire out goods, or to 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 item 13 of the Details Schedule; or
- (b) a party knows or ought to know is confidential, unless the parties have specified otherwise in item 13 of the Details Schedule,

but does not include information that is:

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

Control of a corporation, partnership or other entity means:

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

Details Schedule means the schedule of details particular to this Agreement and is set out on the front cover of this Agreement.

Fee means the charges payable to the Licensee in accordance with item 12 of the Details Schedule. The Fee includes any royalty payable under item 12 of the Details Schedule.

Improvement means any improvement in, variation of, modification to or adaptation of the Licensed IPR or a Product, which cannot be Commercialised separately from the Licensed IPR.

Guidance Note for the definition of Commercialise: Refer to the Guidance Note for the definition of 'Use'.

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

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.

Licence means a licence on the terms set out in item 5 of the Details Schedule.

Licensed IPR means the IPR identified in item 4 of the Details Schedule.

Material means the material identified in item 9 of the Details Schedule.

Moral Rights has the same meaning as in Part IX of the *Copyright Act 1968* (Cth), or in 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.

Product means:

- (a) any product, apparatus, method or process which, or the manufacture, distribution, use or sale of which is based on, arises from or incorporates any of the Licensed IPR;
- (b) any service which uses the Licensed IPR and which is provided in relation to a product described in (a); and
- (c) any larger product, package of products, method, or service of which a product, apparatus, method or service described in (a) or (b) forms an integral part or component.

Report mean the report(s) identified in item 11 of the Details Schedule.

Term has the meaning given in item 3 of the Details Schedule.

Third Party IPR means any IPR which are owned by a party other than the Licensor 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 are:

- (a) incorporated into the Licensed IPR; or
- (b) otherwise required in order for the Licensee to exercise their Licence to the Licensed IPR under this Agreement.

Use unless otherwise set out in item 5 of the Details Schedule, means to use, reproduce, adapt, modify, communicate, broadcast, distribute or publish in each case solely within the party's own organisation and any of its Affiliates and includes sublicensing such rights for Use within the party's own organisation and any of its Affiliates, and excludes Commercialisation or publication outside of the party and its Affiliates.

2. Precedence of documents

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:

- (a) clauses 1 to 11;
- (b) Details Schedule;
- (c) Schedule 1;

Guidance Note for definition of Use: The definition of Use and Commercialise are used in this Agreement to define the scope of potential Licence rights. The definitions in this Agreement are different to the other templates, so that they can be used for this purpose.

The Parties may adjust the rights granted in item 5 of the Details Schedule and should ensure this item reflects their agreed scope of rights being granted to the Licensed IPR.

Guidance Note for clause 2: 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.

- (d) any annexures or attachments to Schedule 1; and
- (e) any documents incorporated by reference in this Agreement.

3. Licence grant

3.1 Licence to IPR

- (a) For the Term, the Licensor grants the Licensee a non-exclusive Licence to the Licensed IPR in accordance with item 5 of the Details Schedule and this Agreement.
- (b) The Licensor retains all rights not expressly granted to the Licensee.
- (c) Except as expressly granted to the Licensee by this Agreement:
 - (i) the Licensee may not sublicense its rights under this Agreement and any attempted sublicense in contravention of this Agreement is void; and
 - (ii) nothing in this Agreement gives the Licensee any right, title or interest in the Licensed IPR or any other IPR.
- (d) This Agreement does not assign any ownership in the Licensed IPR, Improvements, or in any aspect of the Products, or other IPR.
- (e) If identified and in accordance with item 6 of the Details Schedule, any Improvement created by the Licensee is licensed on its creation to the Licensor and the Licensee must promptly disclose to the Licensor all IPR and associated technical data required for the Licensor to exercise such licence rights.
- (f) Each party must take any further steps and agrees to such further obligations as set out in item 8 of the Details Schedule.

3.2 Acknowledgement and disclaimer

- (a) The Licensee acknowledges that except as expressly agreed by the Licensor in items 7 or 8 of the Details Schedule, the Licensee has determined that the Licensed IPR, Material and the Products are suitable for their purpose and:
 - (i) the Licensor has no further obligation to ensure that there are no defects or deficiencies;
 - (ii) the Licence does not include rights to any Third Party IPR (the Licensee must obtain its own licence to any Third Party IPR);
 - (iii) any use of the Licensed IPR or Products (including where applicable Commercialisation) is solely at the Licensee's own risk and the Licensor does not represent or warrant that such use will not infringe any third party's rights;
 - (iv) the Licensee has not relied on any pre-agreement or implied representations or warranties;
 - (v) the Licensor is not required to apply for or continue the application for any registered IPR protection (or to preserve any such rights);
 - (vi) the Licensor may initiate or allow for any registered IPR protection (or any application) to expire, cease, or be altered in scope; and
 - (vii) the Licensor is not required to defend or initiate any IPR infringement or other claims against or by a third party.

Guidance Note for clause 3.1: The Licence granted under this Agreement is non-exclusive.

The parties may adjust the rights granted under clause 3.1 in item 5 of the Details Schedule and should ensure this item reflects their agreed scope of rights being granted to the Licensed IPR.

See also the note in item 6 of the Details Schedule for where rights to Improvements are granted to the Licensor.

Item 8 of the Details Schedule allows the parties to agree further requirements, including additional obligations on the Licensee if the Licensee will be granted rights to Commercialise.

Guidance Note for clause 3.2: This clause limits the Licensor's responsibility for the Licensed IPR and the actions the Licensor is required to take. These statements should be checked by the parties to confirm they reflect the terms agreed.

As noted in item 7 of the Details Schedule, there is no licence to Third Party IPR unless expressly agreed by the parties.

Further obligations may be agreed by the parties and included in items 7 and 8 of the Details Schedule.

Refer also to the terms of the 'Accelerated Research Agreement' and the further guidance provided in the HERC IP Framework Practical Guide.

- (b) The Licensee agrees that it will act in good faith in the exercise of the Licence.
- (c) The Licensee must obtain all relevant regulatory approvals and take all reasonable steps to ensure that all Products are safe for their intended use.

3.3 Materials and further support

- (a) The Licensor must provide to the Licensee the Materials (if any) and any further support as set out in item 9 of the Details Schedule. Unless otherwise set out in item 9 of the Details Schedule:
 - (i) the Licensor must deliver the Material to the Licensee at the address in this Agreement, promptly following entry into the Agreement;
 - (ii) property to and risk in the Materials vests in the Licensee on delivery;
 - (iii) the Materials are intended solely for use in support of the Licence of the Licensed IPR;
 - (iv) the Licensee is responsible for ensuring the delivered Materials are suitable for the Licensee's intended use and must promptly notify the Licensor of any deficiency in the agreed Materials. No warranties or undertakings are provided by the Licensor in respect of suitability or condition; and
 - (v) the Licensor will advise the Licensee of any hazardous or otherwise dangerous components or properties of the Materials that are known or should have been reasonably apparent to the Licensor, and where applicable, instructions for safe use and operation of the Materials.
- (b) The Materials are intended solely for use in support of the Licence of the Licensed IPR.
- (c) The Licensee must comply with any restrictions on or terms for use of the Materials as set out in item 9 of the Details Schedule.
- (d) Except to the extent agreed in a separate agreement, the Licensor has no obligation to provide the Licensee with any additional support or other services in respect of the Products, Materials or the Licensed IPR.

Guidance Note for clause 3.3: Any Materials the parties agree the Licensor should provide must be listed in item 9 of the Details Schedule.

The Materials are only to be used to support the Licensed IPR and further restrictions on use can be included in item 9 of the Details Schedule.

Note that any conditions which apply to support being provided need to be agreed and included at item 9 of the Details Schedule, as the template is not designed for provision of services by the Licensor. For any substantive support, the parties should consider entry into another appropriate agreement.

4. Use of the party's name and acknowledgement

- (a) Except with a party's prior written consent, the other party must not use that party's name:
 - (i) in a manner that suggests that the party endorses or is associated with the other party's business, products or services; or
 - (ii) in any publication or promotional material.
- (b) Except with a party's prior written consent, the other party must not use the party's logo or branding.
- (c) The Licensee must acknowledge the Licensor's contribution in any publication that refers to the Licensed IPR in accordance with any requirements specified in item 10 of the Details Schedule.

Guidance Note for clause 4: This clause prevents either party from using the other party's name or logo without the other party's consent. For example, the Licensee cannot use the Licensor's logo on its website without the Licensor's prior written consent.

5. Reporting, records and audit

- (a) The Licensee must provide the reports to the Licensor in accordance with item 11 of the Details Schedule.
- (b) The Licensee must keep, and on the Licensor's request make available to the Licensor, complete and accurate records of all amounts and information necessary to calculate the Fees payable to the Licensor, including any revenue or amounts received in the exercise of the Licence.
- (c) Once during each year of the Term, the Licensor may carry out an audit of the Licensee's records (by a third party qualified financial auditor). If such audit reveals an underpayment or outstanding amounts owed to the Licensor in that year:
 - (i) the Licensee must promptly pay the Licensor the outstanding amount;
 - (ii) if the underpayment or outstanding amounts are 7% or more of Fees, the Licensee must pay the Licensor the Licensor's reasonable costs for performing the audit; and
 - (iii) in the event of any finding of fraud or negligence on the part of the Licensee, the Licensor may (at its election) terminate this Agreement for default under clause 10(c).

Guidance Note for clause 5: The Licensee must provide reports to the Licensor in accordance with item 11 of the Details Schedule.

The Licensee must keep complete and accurate records of the Fees payable to the Licensor (including any information necessary to calculate the Fees) and make these available to the Licensor on request.

The Licensor may carry out an audit of the Licensee's records annually during the Term.

6. Payment

6.1 Fee and payment terms

- (a) The Licensee must pay the Licensor the Fees in accordance with item 12 of the Details Schedule.
- (b) The Licensee must pay an invoice issued by the Licensor for Fees that are due and payable, within 20 Business Days after the date of the invoice. For GST purposes all invoices or receipts issued by the Licensor are tax invoices.
- (c) Late payments may be subject to an additional charge at the discretion of the Licensor, 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.

Guidance Note for clause 6: This clause sets out the Licensee's obligation to pay the Fees, which should be specified in item 12 of the Details Schedule.

Guidance Note for clause 6.1(c): The cash rate for the calculation of the additional charge is published by the Reserve Bank of Australia and can be found on its website: <https://www.rba.gov.au/statistics/cash-rate/>.

6.2 GST

- (a) In this clause 6.2, 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) The Fees payable under this Agreement are exclusive of GST.
- (c) If GST is payable by a supplier on any supply made under this Agreement:
 - (i) 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
 - (ii) this amount will be paid in addition to, and at the same time, that the consideration for the supply is to be provided.

Guidance Note for clause 6.2: This clause provides that if GST is payable, then the Licensee will pay the Licensor the Fee plus any GST payable on that supply.

7. Use of Confidential Information

- (a) Except as set out in this clause 7, for the period that Confidential Information is to remain confidential as set out in item 13 of the Details Schedule, 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 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 7 if the party is required to disclose the 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 7(a): This clause restricts further disclosure of Confidential Information and requires that any use of the Confidential Information be only for the purpose of performing this Agreement.

Exceptions (where disclosure or other uses are permitted) are set out in the remainder of clause 7.

Guidance Note for clause 7(b): Any Personnel that the Confidential Information is disclosed to are also subject to the obligations set out in this Agreement. These Personnel are not required to enter into a separate confidentiality agreement, but the recipient party must ensure that the Personnel are legally bound to comply with equivalent obligations (for example, pursuant to their employment agreement).

Guidance Note for clause 7(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 7(e): Government entities may be required, for public accountability reasons, to disclose Confidential Information in specific circumstances as set out in this clause.

Guidance Note for clause 7(f): There may be additional rights to publish research results in a relevant research agreement. This Agreement does not limit any such rights.

8. Limitation of liability

- (a) The aggregate liability of a party for loss suffered or incurred by the other party 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 8(b), limited to the amount specified in item 14 of the Details Schedule;
 - (ii) where the Licence to the Licensed IPR granted under this Agreement does not permit Commercialisation (or where the parties have agreed there is no Licence Fee), excluded for any loss of anticipated profits or savings, business interruption, loss of revenue or loss of goodwill; and
 - (iii) reduced proportionately to the extent that the acts or omissions of the other party have contributed to the loss.
- (b) Any limit on or exclusion of the liability of each party under clause 8(a)(i) does not apply in relation to liability for:
- (i) personal injury (including sickness and 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 8(a): This clause limits the amount of financial exposure each party faces in the event a lawsuit is filed or a claim is made by the other party.

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

Guidance Note for clause 8(b): The liability cap specified in item 14 does not apply to the types of liability listed in clause 8(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.

9. Dispute resolution

- (a) Any dispute, controversy or claim arising out of or in connection with this Agreement, including its existence, breach, validity or termination (**Dispute**) must be dealt with in accordance with this clause 9. This clause 9 does not prevent either party from seeking urgent injunctive or similar interim relief from a court of competent jurisdiction.
- (b) The party claiming that there is a Dispute must notify the other party in writing and give details of that Dispute.
- (c) On receipt of a notification under clause 9(b) the parties must arrange for their respective representatives to meet within 20 Business Days to attempt to resolve the Dispute in good faith.
- (d) If the Dispute is not resolved within 20 Business Days of receipt of the notification (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.
- (e) If the Dispute is not resolved within 30 Business Days of receipt of the notification, then either party may initiate proceedings in a court of competent jurisdiction.

Guidance Note for clause 9(a): 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.

10. Termination

- (a) Without limiting the termination rights in clauses 10(b) and (c), either party may immediately terminate this Agreement by written notice to the other party if that other party:
- (i) breaches a material term of this Agreement, where that breach is not capable of remedy; or
 - (ii) breaches a material term which is capable of remedy and has not been remedied within 20 Business Days' written notice to do so by the first party.
- (b) The Licensee may terminate this Agreement:
- (i) by giving 12 months' written notice to the Licensor at any time; or
 - (ii) immediately by written notice if a termination event under item 3 of the Details Schedule has occurred.
- (c) The Licensor may terminate this Agreement immediately by giving written notice to the Licensee:
- (i) if the Licensee breaches clause 3.1(c)(i);
 - (ii) in the circumstances set out in clause 5(c)(iii); or
 - (iii) if the Licensee does not within 20 Business Days of written notice, pay any part of the Fees that are due and payable in accordance with this Agreement.
- (d) Upon termination or expiry of this Agreement (and without limiting any other rights or obligations of a party):
- (i) the Licence (and any sublicences granted by the Licensee) terminates;
 - (ii) any amounts of the Fee due remains due and payable;
 - (iii) if the Licensee has paid any of the Fee in advance, the Licensor must refund any portion that was not required to have been paid by or at the time of termination or expiry;
 - (iv) each party must destroy or return all Material and Confidential Information of the other party (as directed by the other party), except that a party is entitled to keep a copy of Confidential Information of the other party for the sole purpose of managing legal obligations (including where a Licence is perpetual), 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; and
 - (v) the confidentiality obligations under this Agreement survive the return or destruction of any Confidential Information for the period of confidentiality specified in respect of that Confidential Information in item 13 of the Details Schedule.

Guidance Note for clause 10(a): This Agreement may be terminated where a party has not complied with a material obligation.

If the breach of the Agreement can be fixed by the party in breach, the other party must issue a notice requiring the breach to be remedied within 20 Business Days.

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

Guidance Note for clauses 10(b) and (c): These termination rights are in addition to clause 10(a).

Licensee rights to terminate: Clause 10(b) sets out the additional circumstances in which the Licensee may terminate this Agreement. This includes a right to terminate at any time, without reason, on 12 months' notice. See also the note at item 3 of the Details Schedule for termination if a registration or application for registration is significant to the rights being granted.

Licensor rights to terminate: Clause 10(c) sets out the additional circumstances in which the Licensor may terminate this Agreement. This includes:

- 1) where the Licensee attempts to sublicense its rights and is not permitted to do so;
- 2) a finding of fraud or negligence following an audit under clause 5; or
- 3) a failure to pay Fees that are due and payable following a notice to do so.

Guidance Note for clause 10(d): The main consequence of termination is that the Licence will terminate (even if the Licence granted was perpetual). Any Fee paid in advance must be refunded unless it was due prior to the time of termination.

Guidance Note for clause 10(d)(iv) and (v): Upon termination or expiry of this Agreement, each party must destroy or return all Material and Confidential Information of the other party. The other party cannot then continue to use or retain the Confidential Information unless required by law, to manage legal obligations, or where stored in a back-up of an IT system.

The return or destruction of Confidential Information does not affect the parties' obligations, which continue for the period specified in item 13 of the Details Schedule.

11. General

11.1 Notices

- (a) The parties' respective representatives for the receipt of notices are as set out in items 1 and 2 respectively of the Details Schedule, until changed by written notice.
- (b) A notice is 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.
- (c) A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

11.2 Counterparts

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

11.3 Governing law

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, and this Agreement is governed by the laws of the State or Territory based on the location of the Licensor set out in item 1 of the Details Schedule. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State or Territory.

11.4 Variation

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

11.5 Assignment and novation

Except as permitted by the Licence, the Licensee must not assign or novate its rights and obligations under this Agreement unless it has the prior written consent of the Licensor. The Licensor may assign or novate its rights to the Licensed IPR or this Agreement without further consent of the Licensee unless expressly prohibited under this Agreement.

11.6 Entire agreement

This 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 11.1: For any formal notices and communications, the parties should follow the requirements of clause 11.1 to ensure it is valid.

A notice will be deemed to be received upon delivery, as set out in clause 11.1(b).

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.

Guidance Note for clause 11.2: 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.

Guidance Note for clause 11.3: The location of the Licensor in the Details Schedule determines the applicable law and jurisdiction of the Agreement.

Guidance Note for clause 11.4: 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.

Guidance Note for clause 11.5: Except as agreed and stated in item 5 of the Details Schedule, the Licensee will not be permitted to assign or novate rights and obligations under this Agreement without the Licensor's consent. Unless otherwise agreed, the Agreement does not restrict the Licensor from assigning or novating its rights.

Guidance Note for clause 11.6: The purpose of this clause is to make clear that this Agreement is the entire agreement between the parties with respect to the licensing of the relevant IPR.

Schedule 1 - Commercialisation milestones

No.	Commercialisation milestones	Milestone date	Additional Fees (if applicable)
1			
2			
3			

Guidance Note for Schedule 1:

In item 8 of the Details Schedule, the parties should confirm if Schedule 1 applies (it can be removed or mark not used if not applicable).

Schedule 1 is only required where the Licence includes a right to Commercialise. It should set out the steps (milestones) the Licensee is required to take to promote the Licensed IPR.

There is also an ability to refer to these milestones in the Fees. If the milestones are not relevant to the Fees, that column can be deleted or marked as not applicable.

For guidance only

Signing page

Executed as an agreement.

Signed for and on behalf of the
[Insert Licensee/Licensor name
and ABN] by its duly authorised
representative:

Signature of authorised
representative

Full name of authorised
representative

Date

Signed for and on behalf of the
[Insert Licensee/Licensor name
and ABN] by its duly authorised
representative:

Signature of authorised
representative

Full name of authorised
representative

Date

Guidance Note for execution: The default execution blocks require each party to sign by an authorised representative and a witness.

However, the parties should amend these execution blocks if they are not appropriate for a party (for example, if a party is a company and will execute in accordance with section 127 of the *Corporations Act 2001* (Cth)) either by wet ink or electronically.

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

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

Signature of witness

Full name of witness

Signature of witness

Full name of witness

HERC IP Framework – Accelerated Licence Agreement (including low risk Commercialisation)

Details Schedule

Item	Agreement Details	
1.	Licensor (granting entity)	Name: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i>
2.	Licensee (receiving entity)	Name: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i>
3.	Term	This Agreement commences on <i>[insert date]</i> and expires on <i>[insert date/period]</i> , unless terminated earlier in accordance with its terms. <i>[Optional: 'The Licensee may terminate this Agreement in accordance with clause 10(a) if the registration of [any of the Licensed IPR' / or refer to a specific registration] expires, is not granted, or ceases to be in force prior to the end of the Term.'</i>]
Details of Licence		
4.	Licensed IPR (clause 1)	Licensed IPR: <i>[Note: Identify the IPR that is being Licensed under this Agreement.]</i>
5.	Licence terms (clause 3.1(a))	Period: For the Term. Scope: <i>['Use of the Licensed IPR (excluding Commercialisation)' / 'Use and Commercialisation of the Licensed IPR'.]</i> <i>[Where the Licence includes Commercialisation insert - The Licence to Commercialise is limited in scope by the other obligations under this Agreement (as applicable), including in respect of Confidential Information and sublicensing'.]</i> Field: <i>[Insert any specific field or application permitted for the Licensed IPR or state 'all fields'.]</i> Sublicensing: <i>['Not permitted' / 'Permitted - No limitations' / 'Permitted subject to the limitations on scope below'.]</i> Limitations on scope: The Licence scope does not include <i>[insert]</i> .
6.	Improvements to Licensed IPR (clause 3.1(e))	Licensor's rights to Improvements: <i>[If no rights are granted, insert: 'No rights are granted to the Licensor to Improvements'.]</i> <i>If rights are to be granted, consider inserting either of the following examples:</i> <i>Example only (broad rights): 'The Licensor is granted a non-exclusive, perpetual, irrevocable, royalty free, worldwide licence (including the right to sublicense) to Use and Commercialise the IPR in the Improvements created by the Licensee.'</i> <i>Example only (narrower rights): 'The Licensor is granted a non-exclusive, perpetual, irrevocable, royalty free, worldwide licence (including the right to sublicense) to Use the IPR in the Improvements created by the Licensee solely for research and teaching purposes.'</i>
7.	Third Party IPR (clause 1)	<i>['None' / '[insert description]']</i>

Item	Agreement Details		
8.	Further assurances (clause 3.1(f))	<p><i>[Insert any further assurances (e.g. warranties, indemnities or further obligations) that apply. Note that there is also no express restriction on the Licensor from publishing its own Licensed IPR, if one is required it should be included here.]</i></p> <p><i>Example only: 'Each party warrants that it has the necessary rights to vest under clause 3 and to grant the licences required or referred to, under clause 3.'</i></p> <p><i>Example only (for Commercialisation): 'The Licensee is required to undertake Commercialisation of the Licensed IPR in accordance with the agreed Commercialisation milestones set out in Schedule 1.'</i></p>	
9.	Materials (clause 3.3)	<i>[Set out here any Materials to be provided to the Licensee and any requirements regarding their treatment or return.]</i>	
10.	Acknowledgement (clause 4)	<i>[Insert any requirement for the Licensee to acknowledge in publications (including the form of acknowledgment) its use of the Licensor's IPR.]</i>	
11.	Reporting (clause 5)	Frequency	<i>[Monthly], [Quarterly] [Annually]</i>
		<i>[Insert requirements for the Licensee to provide reports to the Licensor.]</i>	
Payments			
12.	Fees (AUD) (clause 6.1)	<p>Fixed or periodic Fees: <i>[Insert a fixed amount as agreed.]</i></p> <p>Royalty: <i>[Insert any royalty payable, and either include the method for calculation here, or refer to Schedule 1 and provide further detail there.]</i></p> <p>Other Fees: <i>[Insert any other Fees, which may include recovery of registration costs or other amounts agreed.]</i></p>	
General			
13.	Confidential Information (clause 7)	Licensor	
		Description of Confidential Information	Period of confidentiality
		Description: <i>[Insert description of Confidential Information. If the parties agree to limit Confidential Information to the specific information described here, clearly state that only the information listed here is Confidential Information. If more space is required an attachment can be added.]</i>	Period: <i>[Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]</i>
		Licensee	
		Description of Confidential Information	Period of confidentiality
		Description: <i>[Insert description of Confidential Information. If the parties agree to limit Confidential Information to the specific information described here, clearly state that only the information listed here is Confidential Information. If more space is required an attachment can be added.]</i>	Period: <i>[Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]</i>
14.	Liability cap (clause 8)	<i>[Note: Insert liability cap amount.]</i>	

Operative provisions

1. Definitions

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

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.

Commencement Date means the date that the last party signs this Agreement.

Commercialise means in relation to IPR, to:

- (a) manufacture, sell or hire out goods, or to 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 item 13 of the Details Schedule; or
- (b) a party knows or ought to know is confidential, unless the parties have specified otherwise in item 13 of the Details Schedule,

but does not include information that is:

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

Control of a corporation, partnership or other entity means:

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

Details Schedule means the schedule of details particular to this Agreement and is set out on the front cover of this Agreement.

Fee means the charges payable to the Licensee in accordance with item 12 of the Details Schedule. The Fee includes any royalty payable under item 12 of the Details Schedule.

Improvement means any improvement in, variation of, modification to or adaptation of the Licensed IPR or a Product, which cannot be Commercialised separately from the Licensed IPR.

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.

Licence means a licence on the terms set out in item 5 of the Details Schedule.

Licensed IPR means the IPR identified in item 4 of the Details Schedule.

Material means the material identified in item 9 of the Details Schedule.

Moral Rights has the same meaning as in Part IX of the *Copyright Act 1968* (Cth), or in 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.

Product means:

- (a) any product, apparatus, method or process which, or the manufacture, distribution, use or sale of which is based on, arises from or incorporates any of the Licensed IPR;
- (b) any service which uses the Licensed IPR and which is provided in relation to a product described in (a); and
- (c) any larger product, package of products, method, or service of which a product, apparatus, method or service described in (a) or (b) forms an integral part or component.

Report mean the report(s) identified in item 11 of the Details Schedule.

Term has the meaning given in item 3 of the Details Schedule.

Third Party IPR means any IPR which are owned by a party other than the Licensor 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 are:

- (a) incorporated into the Licensed IPR; or
- (b) otherwise required in order for the Licensee to exercise their Licence to the Licensed IPR under this Agreement.

Use unless otherwise set out in item 5 of the Details Schedule, means to use, reproduce, adapt, modify, communicate, broadcast, distribute or publish in each case solely within the party's own organisation and any of its Affiliates and includes sublicensing such rights for Use within the party's own organisation and any of its Affiliates, and excludes Commercialisation or publication outside of the party and its Affiliates.

2. Precedence of documents

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:

- (a) clauses 1 to 11;
- (b) Details Schedule;
- (c) Schedule 1;
- (d) any annexures or attachments to Schedule 1; and
- (e) any documents incorporated by reference in this Agreement.

3. Licence grant

3.1 Licence to IPR

- (a) For the Term, the Licensor grants the Licensee a non-exclusive Licence to the Licensed IPR in accordance with item 5 of the Details Schedule and this Agreement.
- (b) The Licensor retains all rights not expressly granted to the Licensee.
- (c) Except as expressly granted to the Licensee by this Agreement:
 - (i) the Licensee may not sublicense its rights under this Agreement and any attempted sublicense in contravention of this Agreement is void; and
 - (ii) nothing in this Agreement gives the Licensee any right, title or interest in the Licensed IPR or any other IPR.
- (d) This Agreement does not assign any ownership in the Licensed IPR, Improvements, or in any aspect of the Products, or other IPR.
- (e) If identified and in accordance with item 6 of the Details Schedule, any Improvement created by the Licensee is licensed on its creation to the Licensor and the Licensee must promptly disclose to the Licensor all IPR and associated technical data required for the Licensor to exercise such licence rights.

- (f) Each party must take any further steps and agrees to such further obligations as set out in item 8 of the Details Schedule.

3.2 Acknowledgement and disclaimer

- (a) The Licensee acknowledges that except as expressly agreed by the Licensor in items 7 or 8 of the Details Schedule, the Licensee has determined that the Licensed IPR, Material and the Products are suitable for their purpose and:
 - (i) the Licensor has no further obligation to ensure that there are no defects or deficiencies;
 - (ii) the Licence does not include rights to any Third Party IPR (the Licensee must obtain its own licence to any Third Party IPR);
 - (iii) any use of the Licensed IPR or Products (including where applicable Commercialisation) is solely at the Licensee's own risk and the Licensor does not represent or warrant that such use will not infringe any third party's rights;
 - (iv) the Licensee has not relied on any pre-agreement or implied representations or warranties;
 - (v) the Licensor is not required to apply for or continue the application for any registered IPR protection (or to preserve any such rights);
 - (vi) the Licensor may initiate or allow for any registered IPR protection (or any application) to expire, cease, or be altered in scope; and
 - (vii) the Licensor is not required to defend or initiate any IPR infringement or other claims against or by a third party.
- (b) The Licensee agrees that it will act in good faith in the exercise of the Licence.
- (c) The Licensee must obtain all relevant regulatory approvals and take all reasonable steps to ensure that all Products are safe for their intended use.

3.3 Materials and further support

- (a) The Licensor must provide to the Licensee the Materials (if any) and any further support as set out in item 9 of the Details Schedule. Unless otherwise set out in item 9 of the Details Schedule:
 - (i) the Licensor must deliver the Material to the Licensee at the address in this Agreement, promptly following entry into the Agreement;
 - (ii) property to and risk in the Materials vests in the Licensee on delivery;
 - (iii) the Materials are intended solely for use in support of the Licence of the Licensed IPR;
 - (iv) the Licensee is responsible for ensuring the delivered Materials are suitable for the Licensee's intended use and must promptly notify the Licensor of any deficiency in the agreed Materials. No warranties or undertakings are provided by the Licensor in respect of suitability or condition; and
 - (v) the Licensor will advise the Licensee of any hazardous or otherwise dangerous components or properties of the Materials that are known or should have been reasonably apparent to the Licensor, and where applicable, instructions for safe use and operation of the Materials.
- (b) The Materials are intended solely for use in support of the Licence of the Licensed IPR.
- (c) The Licensee must comply with any restrictions on or terms for use of the Materials as set out in item 9 of the Details Schedule.
- (d) Except to the extent agreed in a separate agreement, the Licensor has no obligation to provide the Licensee with any additional support or other services in respect of the Products, Materials or the Licensed IPR.

4. Use of the party's name and acknowledgement

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

- (b) Except with a party's prior written consent, the other party must not use the party's logo or branding.
- (c) The Licensee must acknowledge the Licensor's contribution in any publication that refers to the Licensed IPR in accordance with any requirements specified in item 10 of the Details Schedule.

5. Reporting, records and audit

- (a) The Licensee must provide the reports to the Licensor in accordance with item 11 of the Details Schedule.
- (b) The Licensee must keep, and on the Licensor's request make available to the Licensor, complete and accurate records of all amounts and information necessary to calculate the Fees payable to the Licensor, including any revenue or amounts received in the exercise of the Licence.
- (c) Once during each year of the Term, the Licensor may carry out an audit of the Licensee's records (by a third party qualified financial auditor). If such audit reveals an underpayment or outstanding amounts owed to the Licensor in that year:
 - (i) the Licensee must promptly pay the Licensor the outstanding amount;
 - (ii) if the underpayment or outstanding amounts are 7% or more of Fees, the Licensee must pay the Licensor the Licensor's reasonable costs for performing the audit; and
 - (iii) in the event of any finding of fraud or negligence on the part of the Licensee, the Licensor may (at its election) terminate this Agreement for default under clause 10(c).

6. Payment

6.1 Fee and payment terms

- (a) The Licensee must pay the Licensor the Fees in accordance with item 12 of the Details Schedule.
- (b) The Licensee must pay an invoice issued by the Licensor for Fees that are due and payable, within 20 Business Days after the date of the invoice. For GST purposes all invoices or receipts issued by the Licensor are tax invoices.
- (c) Late payments may be subject to an additional charge at the discretion of the Licensor, 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.

6.2 GST

- (a) In this clause 6.2, 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) The Fees payable under this Agreement are exclusive of GST.
- (c) If GST is payable by a supplier on any supply made under this Agreement:
 - (i) 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
 - (ii) this amount will be paid in addition to, and at the same time, that the consideration for the supply is to be provided.

7. Use of Confidential Information

- (a) Except as set out in this clause 7, for the period that Confidential Information is to remain confidential as set out in item 13 of the Details Schedule, 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 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 7 if the party is required to disclose the 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.

8. Limitation of liability

- (a) The aggregate liability of a party for loss suffered or incurred by the other party 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 8(b), limited to the amount specified in item 14 of the Details Schedule;
 - (ii) where the Licence to the Licensed IPR granted under this Agreement does not permit Commercialisation (or where the parties have agreed there is no Licence Fee), excluded for any loss of anticipated profits or savings, business interruption, loss of revenue or loss of goodwill; and
 - (iii) reduced proportionately to the extent that the acts or omissions of the other party have contributed to the loss.
- (b) Any limit on or exclusion of the liability of each party under clause 8(a)(i) does not apply in relation to liability for:
 - (i) personal injury (including sickness and death);
 - (ii) an infringement of Third Party IPR;
 - (iii) a breach of any obligation of confidentiality; or
 - (iv) wilful default or fraud.

9. Dispute resolution

- (a) Any dispute, controversy or claim arising out of or in connection with this Agreement, including its existence, breach, validity or termination (**Dispute**) must be dealt with in accordance with this clause 9. This clause 9 does not prevent either party from seeking urgent injunctive or similar interim relief from a court of competent jurisdiction.
- (b) The party claiming that there is a Dispute must notify the other party in writing and give details of that Dispute.

- (c) On receipt of a notification under clause 9(b) the parties must arrange for their respective representatives to meet within 20 Business Days to attempt to resolve the Dispute in good faith.
- (d) If the Dispute is not resolved within 20 Business Days of receipt of the notification (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.
- (e) If the Dispute is not resolved within 30 Business Days of receipt of the notification, then either party may initiate proceedings in a court of competent jurisdiction.

10. Termination

- (a) Without limiting the termination rights in clauses 10(b) and 10(c), either party may immediately terminate this Agreement by written notice to the other party if that other party:
 - (i) breaches a material term of this Agreement, where that breach is not capable of remedy; or
 - (ii) breaches a material term which is capable of remedy and has not been remedied within 20 Business Days' written notice to do so by the first party.
- (b) The Licensee may terminate this Agreement:
 - (i) by giving 12 months' written notice to the Licensor at any time; or
 - (ii) immediately by written notice if a termination event under item 3 of the Details Schedule has occurred.
- (c) The Licensor may terminate this Agreement immediately by giving written notice to the Licensee:
 - (i) if the Licensee breaches clause 3.1(c)(i);
 - (ii) in the circumstances set out in clause 5(c)(iii); or
 - (iii) if the Licensee does not within 20 Business Days of written notice, pay any part of the Fees that are due and payable in accordance with this Agreement.
- (d) Upon termination or expiry of this Agreement (and without limiting any other rights or obligations of a party):
 - (i) the Licence (and any sublicences granted by the Licensee) terminates;
 - (ii) any amounts of the Fee due remains due and payable;
 - (iii) if the Licensee has paid any of the Fee in advance, the Licensor must refund any portion that was not required to have been paid by or at the time of termination or expiry;
 - (iv) each party must destroy or return all Material and Confidential Information of the other party (as directed by the other party), except that a party is entitled to keep a copy of Confidential Information of the other party for the sole purpose of managing legal obligations (including where a Licence is perpetual), 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; and
 - (v) the confidentiality obligations under this Agreement survive the return or destruction of any Confidential Information for the period of confidentiality specified in respect of that Confidential Information in item 13 of the Details Schedule.

11. General

11.1 Notices

- (a) The parties' respective representatives for the receipt of notices are as set out in items 1 and 2 respectively of the Details Schedule, until changed by written notice.
- (b) A notice is 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.
- (c) A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

11.2 Counterparts

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

11.3 Governing law

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, and this Agreement is governed by the laws of the State or Territory based on the location of the Licensor set out in item 1 of the Details Schedule. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State or Territory.

11.4 Variation

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

11.5 Assignment and novation

Except as permitted by the Licence, the Licensee must not assign or novate its rights and obligations under this Agreement unless it has the prior written consent of the Licensor. The Licensor may assign or novate its rights to the Licensed IPR or this Agreement without further consent of the Licensee unless expressly prohibited under this Agreement.

11.6 Entire agreement

This 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.

Schedule 1 - Commercialisation milestones

No.	Commercialisation milestones	Milestone date	Additional Fees (if applicable)
1			
2			
3			

Signing page

Executed as an agreement.

Signed for and on behalf of the **[Insert Licensee/Licensor name and ABN]** by its duly authorised representative:

Signature of authorised representative

Signature of witness

Full name of authorised representative

Full name of witness

Date

Signed for and on behalf of the **[Insert Licensee/Licensor name and ABN]** by its duly authorised representative:

Signature of authorised representative

Signature of witness

Full name of authorised representative

Full name of witness

Date