

HERC IP Framework - Accelerated Research Agreement

Details Schedule

Item	Parties	
1.	University	University name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i>
2.	Collaborator	Collaborator name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i>
Details of Project		
3.	Commencement Date	<i>[Insert the date this Agreement commences.]</i>
4.	Project Title	<i>[Insert title and summary details of Project]</i> The Project is further detailed in Schedule 1, including the requirements for achievement of each Milestone.
5.	Key Personnel (clause 3.6)	<i>[Insert any specific University Personnel that are required to undertake the Project.]</i>
6.	Policies, standards or laws (clause 3.3(a)(ii))	<i>[Insert any specific policies, standards or law that the University must comply with in delivering the Project.]</i>
Intellectual Property Rights		
7.	Owner of IPR in the Project IP (clause 5.2)	University <i>[or where appropriate in accordance with the HERC IP Framework Practical Guide, the parties may agree that the Collaborator should be the owner.]</i>
8.	Licensee of IPR in the Project IP (clause 5.2(b))	Collaborator <i>[or where appropriate in accordance with the HERC IP Framework Practical Guide, the parties may agree that the Collaborator should be the owner, in which case the University should be the Licensee.]</i>
9.	Responsibility for registration and protection of IPR (clause 5.3(a))	<i>[Specify the Collaborator or University as responsible for the registration and protection of IPR.]</i>
10.	Purpose (clause 1)	<i>[Insert the purpose for which the Licensee is permitted to Use the Project IP.]</i>
11.	Third Party IPR (clause 5.1(e))	<i>[Insert any Third Party IPR that will be used in the Project and any restrictions on use of the Third Party IPR.]</i>

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

The location of the University is also the governing law and jurisdiction of the Agreement (see clause 12.4).

Guidance Note for item 3: The date the Agreement commences should be specified here. This would normally be on or after signing of the Agreement, but can be earlier if both parties agree.

Guidance Note for item 4: This item should include the title of the Project and the summary. This is intended to assist parties in easily identifying the relevant Agreement for a Project.

Guidance Note for item 5: The University is obliged to perform the project utilising any Key Personnel listed in item 5 (see clause 3.6).

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

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

Guidance Note for item 7: Please refer to the HERC IP Framework Practical Guide for information to assist parties to determine the Owner of the Project IP. The Owner is usually responsible for the registration and protection of the IPR in the Project IP, unless otherwise specified in this item 9 (see clause 5.3).

If the Collaborator is the Owner of the Intellectual Property Rights (IPR) in the Project IP, this item 7 should be updated and item 8 should specify the University as the Licensee.

The party that is not the Owner of the Project IP is granted a licence to Use the Project IP (see clause 5.2 and item 8).

Guidance Note for item 8: Where the Collaborator is the Owner of the IPR in the Project IP, this item 8 should be updated.

If the Collaborator is the Licensee, but responsible for the registration and protection of the IPR in the Project IP, this should be specified in item 9 (see clause 5.3) and the detail set out in section 4 of Schedule 1.

Guidance Note for item 9: If there is an agreement at the outset of the Project that the IPR in the Project IP will be subject to a registration process/assessment at the conclusion of the Project or there should be any obligation in relation to defending an infringement action, the entity responsible should be identified in this item - with the process set out as part of the description of the Project in Schedule 1.

Item	Parties			
12.	University's Pre-existing IPR restrictions (clause 5.1(b))	[Insert any additional restrictions on use of the University's Pre-existing IPR.]		
13.	Collaborator's Pre-existing IPR restrictions (clause 5.1(c))	[Insert any additional restrictions on use of the Collaborator's Pre-existing IPR.]		
14.	Right to Commercialise (clause 5.4(a))	[Specify here if the Licensee will have the first right to Commercialise the IPR in the Project IP or include details of any other approach to Commercialisation. Otherwise insert 'Clause 5.4 does not apply']		
15.	Period for Commercialisation (clause 5.4(a)(i))	[Insert the period for which the Owner of the Project IP has the first right to Commercialise or insert 'N/A'.]		
Fees				
16.	Fee/s (AUD) (clause 7.1)	<p>[\$[insert] (excluding GST) to be paid [monthly / quarterly] in [advance / arrears]</p> <p>OR</p> <p>[insert the Milestone payments, which are to be paid by the Collaborator on the University's achievement of each applicable Milestone Date.]</p>		
General				
17.	Acknowledgement (clause 6)	[Insert any requirements or restrictions for a party to acknowledge in publications (including the form of acknowledgement) the contribution of the other party.]		
18.	Confidential Information (clause 8.2)	Collaborator		
		<table border="1"> <thead> <tr> <th>Description of Confidential Information</th> <th>Period of confidentiality</th> </tr> </thead> <tbody> <tr> <td>Description: [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</td> <td>Period: [Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]</td> </tr> </tbody> </table>	Description of Confidential Information	Period of confidentiality
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Guidance Note for item 10: The Owner grants the Licensee a licence to Use the Project IP for the 'Purpose' (see clause 5.2). This Purpose restricts the scope of the Licensee's licence (for example, to specific fields of use or activities). 'Use' is also a defined term and limits what the Licensee can do with the Project IP for the Purpose.

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

Parties should note that the definition of 'Use' permits 'Use' by Affiliates. If this is not acceptable to the parties, 'Use' by Affiliates should be restricted in this item 10.

Guidance Note for item 11: If the parties expect to use Third Party IPR (for example, third party software) in the Project, the details of the Third Party IPR and any restrictions imposed by the third party must be specified in this item 11 (see also clause 5.1(e)).

If during the Project, the parties need to use Third Party IPR that is not identified in this item 11, the parties can amend this item in accordance with clause 12.5 of this Agreement.

Guidance Note for items 12 and 13: Each party is granted a licence to Use the other party's Pre-existing IPR for the purpose specified in clause 5.1(b) or clause 5.1(c) (as relevant).

If either party seeks to impose restrictions on the other party's use of Pre-existing IPR, the restrictions should be set out in these items.

Guidance Note for item 14: Clause 5.4 provides an initial position in relation to Commercialisation of IPR in the Project IP. However, if both parties consider that the approach in clause 5.4 is not appropriate for their particular Project, the parties can agree an alternative approach and set it out in this item.

If the parties do not wish to specify an initial position with respect to Commercialisation of the IPR in the Project IP, the parties should specify that clause 5.4 does not apply in this item.

Guidance Note for item 15: This item allows the parties to specify the period for which the Owner of the Project IP has the first right to Commercialise.

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

Guidance Note for item 16: This item should set out any Fees (exclusive of GST) payable by the Collaborator.

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

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

Item	Parties		
		<i>attachment can be added.]</i>	
		University	
		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>
19.	Liability cap (clause 9(a)(i))	<i>[Insert liability cap amount.]</i>	
20.	Reporting requirements (clause 12.1(a))	Frequency	<i>[Weekly], [Monthly], [Quarterly], [Annually]</i>
		<i>[Insert specific report details/requirements for the Project]</i>	
21.	Meeting requirements (clause 12.1(b))	Frequency	<i>[Weekly], [Monthly], [Quarterly], [Annually]</i>
		<i>[Insert specific meetings details/requirements for the Project]</i>	

Guidance Note for item 17: If a party would like to be acknowledged in any of the other party's publications that relates to the Project IP (for example, journal papers or articles), the details of the form of acknowledgment should be specified in item 17. For example, the Collaborator may specify that its contribution be acknowledged in any abstract of a journal paper.

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

Guidance Note for item 18: 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 19: 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 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 9(b).

Guidance Note for item 20: The parties should specify here any reporting requirements for the parties. This may include, for example, monthly status reports.

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

This item is intended for Project governance reports. Specific documents regarding the development of the Project IP should be set out in Schedule 1.

Guidance Note for item 21: The parties should specify here any requirements for the parties to meet. This may include, for example, monthly status meetings.

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

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.

Agreement means this accelerated research agreement, and any schedules, annexures and attachments to it.

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

Commencement Date means the date on which this Agreement commences, as specified in item 3 of the Details Schedule.

Commercialise means in relation to IPR, to:

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

but does not include the other actions specified in the definition of Use.

Commercialisation has the same meaning.

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

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

- (a) is designated by a party as confidential in item 18 of the Details Schedule; or
- (b) a party knows or ought to know is confidential, unless the parties have specified otherwise in item 18 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.

Fees means the amounts payable by the Collaborator in accordance with item 16 of the Details Schedule.

Guidance Note for the definition of

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

This Agreement does not cover the Commercialisation of Project IP, but does provide for the parties to agree a first right to Commercialise the IPR in the Project IP (see clause 5.4). Any agreement to Commercialise the Project IP will be the subject of a separate agreement between the parties.

Guidance Note to the definition of Confidential

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

In-kind Contribution means services, materials, equipment and facilities made available by a party for the purposes of the Project in accordance with section 5 of Schedule 1.

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

Key Personnel means the Personnel specified in item 5 of the Details Schedule. **Key Person** has a corresponding meaning.

Milestone means a key performance obligation to be met by the University under this Agreement, as specified in Schedule 1.

Milestone Date means any fixed date to be met by the University in performing any of its obligations under this Agreement, as specified in Schedule 1.

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

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

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

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

Project means the program of work (research and/or development activity) summarised in item 4 of the Details Schedule and described in Schedule 1.

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

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

including any Project IP specified in section 3 of Schedule 1.

Purpose means the purpose for which a party is permitted to use the Project IP, as set out in item 10 of the Details Schedule.

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

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

Term means the term of this Agreement, as described in clause 3.1.

Guidance Note to the definition of Milestone and Milestone Dates: Milestones are key achievements the University must meet during the Project. For example, a Milestone may be the submission of a Project report, or completion of a particular stage of an experiment. The Fees payable to the University may be contingent on the University completing certain Milestones. This should be specified in item 16

Guidance Note to the definition of Moral Rights: This Agreement excludes Moral Rights from the definition of IPR. The Agreement does not set out a position with respect to Moral Rights and the position under the law applies.

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

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

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

Guidance Note for definition of Use: The definition of Use specifies how the relevant party may use the Project IP or Pre-existing Material, as set out in clause 5.

The parties are permitted to Use the Project IP or Pre-existing Material provided it is for the Purpose (set out in item 10 of the Details Schedule).

The definition of Use excludes Commercialisation of the Project IP, but permits communication of the IPR within the party's own organisation and its Affiliates. However, the Licensee has the first right to negotiate an agreement with the Owner to Commercialise the Project IP under clause 5.4.

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 12;
- (b) Details Schedule;
- (c) Schedule 1;
- (d) any annexures or attachments to Schedule 1; and
- (e) any documents incorporated by reference in this Agreement.

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.

3. Project requirements

3.1 Term

The Project will begin on the Commencement Date and (unless terminated in accordance with clause 11 or varied in accordance with clause 12.5) will continue until the completion of the Project as described in Schedule 1.

Guidance Note for clause 3.1: This Agreement commences as specified in item 3 of the Details Schedule and will end when terminated or varied by the parties or the Project is completed (for example, all Milestones have been achieved) in accordance with Schedule 1.

3.2 Scope

Each party must:

- (a) carry out the tasks allocated to it for the Project in Schedule 1; and
- (b) provide the In-kind Contributions and Pre-existing IPR which are designated as its responsibility.

Guidance Note for clause 3.2: This clause sets out the general obligations that apply to both parties. Specifically, that each party carry out the tasks allocated to it for the Project and to provide the In-Kind Contributions each party has promised.

3.3 University obligations

The University must, and must ensure its Personnel:

- (a) perform the Project in accordance with this Agreement and:
 - (i) with professional care and skill; and
 - (ii) in accordance with all applicable policies, standards and laws, including those specified in item 6 of the Details Schedule; and
- (b) obtain and maintain all regulatory and ethical licences, consents and approvals necessary to carry out the Project, including as relevant for a Person's role.

Guidance Note for clause 3.5: The parties can specify that the University is required to provide certain deliverables or undertake certain tasks by a particular date. This detail should be specified in section 3 of Schedule 1.

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

3.4 Collaborator obligations

The Collaborator must, and must ensure its Personnel, cooperate with the University and provide all information or material reasonably requested by the University, so as to enable the University to carry out the Project in accordance with this Agreement.

3.5 Achievement of Milestones

- (a) The University must deliver the Project so as to achieve the Milestones by the applicable Milestone Dates and meet all other applicable timeframes as set out in this Agreement.
- (b) The University must provide written notice to the Collaborator on achievement of each Milestone.
- (c) Where the University is unable to achieve a Milestone, it must provide notice to the Collaborator as soon as possible after becoming aware, including setting out the expected delay and steps being implemented to mitigate the delay to the Milestone Date.
- (d) The University will not be responsible for any delay or failure to meet a Milestone if such failure or delay is due to delay or failure of the Collaborator to:
 - (i) carry out the tasks allocated to it for the Project under Schedule 1; or
 - (ii) provide the In-kind Contributions or Pre-existing IPR which are designated as the Collaborator's responsibility.

3.6 Key Personnel

- (a) The University must undertake the Project, or any part of the Project to which its particular expertise relates, with the active involvement of, and using the expertise of, the Key Personnel.
- (b) If:
 - (i) a Key Person becomes unavailable to perform the Project; and
 - (ii) the University is unable to provide a replacement for the Key Person within a reasonable period of time and that is satisfactory to the Collaborator (acting reasonably),

the parties may agree to terminate the Agreement and each party will bear their own costs incurred in terminating the Agreement.

Guidance Note for clause 3.6: This clause acknowledges that the Collaborator may be seeking the expertise of specific University Personnel to perform the Project. Any such person must be specified in item 5 of the Details Schedule.

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

4. Access to premises

- (a) Each party will ensure that any Personnel of the other party that they permit to access their premises for the purposes of the Project are:
 - (i) provided with a healthy and safe working environment and are properly supervised; and
 - (ii) informed of that party's health, safety and security policies and undertake relevant training and induction, as reasonably required by that party.
- (b) Each party must ensure its Personnel comply with:
 - (i) all reasonable directions given by the other party as to health, safety, and security; and

Guidance Note for clause 4: This clause applies if Personnel of a party attend the other party's premises (for example, the Collaborator's Personnel visits the University to observe an experiment).

- (ii) all relevant obligations under this Agreement, including with respect to Confidential Information, while on the other party's premises.

5. Intellectual Property Rights

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

- (a) This Agreement does not affect the ownership of any IPR in:
- (i) any Pre-existing IPR;
 - (ii) any Third Party IPR; or
 - (iii) any other information, data, techniques, know-how, results, inventions, software, discoveries and materials, that are not Project IP.
- (b) The University grants to the Collaborator a royalty-free, world-wide, non-transferable, non-exclusive licence to Use any University Pre-existing IPR in the Project IP for the sole purpose of and only to the extent necessary to exercise the Collaborator's rights to the Project IP for the Purpose and subject to any limitations on Use specified in item 12 of the Details Schedule.
- (c) The Collaborator grants to the University a royalty-free, world-wide, non-transferable, non-exclusive licence to Use the Collaborator Pre-existing IPR for the sole purpose of and only to the extent necessary to exercise the University's rights to the Project IP for the Purpose and subject to any limitations on Use specified in item 13 of the Details Schedule.
- (d) The rights granted in clause 5.1(b) and 5.1(c) do not include a right to Commercialise the other party's Pre-existing IPR.
- (e) If a party proposes to use Third Party IPR in its performance of the Project, and that party is aware that such use may restrict the other party's exercise of their rights to IPR in the Project IP:
- (i) the party proposing to use such Third Party IPR must notify the other party; and
 - (ii) except as otherwise agreed in item 11 of the Details Schedule, that party must not use the Third Party IPR unless it grants or procures for (as required) the other party all necessary rights for the other party to exercise their rights to IPR in the Project IP.

5.2 Ownership of Intellectual Property Rights

- (a) Subject to clause 5.1(a), all IPR in the Project IP vest in, and are assigned to, the party identified in item 7 of the Details Schedule (the **Owner**) on creation and the other party hereby assigns and agrees to assign all such IPR to the Owner.
- (b) If the Owner is the University, the University grants to (or will procure for) the Collaborator (the Licensee) a perpetual, irrevocable (except for material breach), royalty-free, world-wide, non-exclusive licence to Use the Project IP (and IPR in the Project IP, subject to clause 5.1(d) in respect of Pre-existing IPR and clause 5.1(e) in respect of any Third Party IPR) for the Purpose. If this clause 5.2(b) applies, then clause 5.2(c) does not apply.

Guidance to clause 5: This clause sets out the IPR arrangements for the Project.

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

Guidance Note for clause 5.1(a): The ownership of all other IPR used in performing the Project, including Pre-existing IPR and Third Party IPR, is not affected by this Agreement. For example, nothing in this Agreement changes that the Collaborator or University owns its Pre-existing IPR.

Guidance Note for clauses 5.1(b) to 5.1(d): These clauses set out the licences for a party to use the other party's Pre-existing IPR. The licenses granted under these clauses allows:

- the Collaborator to Use the University's Pre-existing IPR that is included in the Project IP for the Purpose (refer to item 10 of the Details Schedule); and
- the University to Use the Collaborator's Pre-existing IPR to perform the Project.

If either party's Use of Pre-existing IPR in the Project is to be subject to certain conditions (for example, the Pre-existing IPR can only be used in Australia), these should be specified in item 12 or item 13 of the Details Schedule (as relevant).

The parties are reminded that the licences for Pre-existing IPR do not contemplate sublicensing to a third party that is external to the entity (such as another collaborator).

Guidance Note for clause 5.2: This clause allows the parties to specify the Owner and Licensee of the IPR in Project IP in the Details Schedule (see items 7 and 8 of the Details Schedule).

The licence granted under these clauses allows the Licensee to Use the Project IP for the Purpose (refer to clause 1 definition of 'Use' and item 10 of the Details Schedule).

- (c) If the Owner is the Collaborator, the Collaborator grants to (or will procure for) the University (the **Licensee**) a perpetual, irrevocable (except for material breach), royalty-free, world-wide, non-exclusive licence to Use the Project IP (and IPR in the Project IP, subject to clause 5.1(d) in respect of Pre-existing IPR and clause 5.1(e) in respect of any Third Party IPR) for the Purpose. If this clause 5.2(c) applies, then clause 5.2(b) does not apply.

5.3 Intellectual Property Rights management

- (a) The Owner will be responsible for (and for decisions related to) the registration and protection of the IPR that it owns in the Project IP, unless otherwise specified in item 9 of the Details Schedule.
- (b) Except as specified in section 4 of Schedule 1, under this Agreement there is no obligation on the Owner, or rights for the Licensee, to register, or to institute or defend any infringement actions, in respect of IPR in the Project IP or the other party's Pre-existing IPR.
- (c) The parties acknowledge and agree that each party's Personnel:
- (i) may develop knowledge and skills while performing the Project that do not form part of the IPR in the Project IP and do not constitute Confidential Information; and
 - (ii) may use such knowledge and skills for performing other projects.
- (d) Each party must:
- (i) take reasonable steps to protect the Project IP; and
 - (ii) promptly notify the other party in writing if it becomes aware of any actual, suspected or threatened infringement by a third party of a party's Pre-existing IPR or the IPR in the Project IP.
- (e) This clause 5 survives termination or expiry of this Agreement.

5.4 Commercialisation of IPR in the Project IP

- (a) Unless otherwise set out in item 14 of the Details Schedule:
- (i) the Collaborator has during the Term, and any further period specified in item 15 of the Details Schedule (Commercialisation Option Period), the first right to Commercialise the IPR in the Project IP in accordance with this clause 5.4;
 - (ii) where the Owner is the University, the University must:
 - A. not during the Term and any Commercialisation Option Period, without the written consent of the Collaborator, Commercialise the IPR in the Project IP; and
 - B. on the Collaborator's request prior to expiry of the Commercialisation Option Period, negotiate in good faith the terms of a further licence of the IPR in the Project IP to the Collaborator, for the Collaborator to Commercialise the

Guidance Note for clause 5.3: The registration and protection of IPR in the Project IP may include applying for patent or design registration, or taking legal action where someone has infringed the IPR.

The parties can specify in item 9 of the Details Schedule whether the Licensee has the right to register or protect the IPR in the Project IP, and whether it can require the Owner to register or protect the IPR.

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

Guidance Note for clause 5.4: This clause provides an initial position in relation to Commercialisation of IPR in Project IP.

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

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

If both parties consider that this approach is not appropriate for their particular Project, the parties can agree an alternative approach and specify it in item 14 of the Details Schedule.

IPR in the Project IP, on reasonable commercial terms; and

- (iii) where the Owner is the Collaborator, on request of the University at any time following expiry of the Commercialisation Option Period and subject to any other arms-length commercial agreements that have been entered into by the Collaborator, negotiate in good faith the terms of a further licence of the IPR in the Project IP to the University, for the University to Commercialise the IPR in the Project IP, on reasonable commercial terms.
- (b) If the party Commercialising the IPR in the Project IP requires a licence to Commercialise Pre-existing IPR in conjunction with, or as part of, Commercialising the IPR in the Project IP, the parties will negotiate in good faith to agree the reasonable commercial terms of that licence.
- (c) Any reference in this clause 5.4 and the Details Schedule to reasonable commercial terms requires regard to be given both to the value of the applicable IPRs and the respective contributions of the parties to the Project.

Guidance Note for clause 5.4(c): Reasonable commercial terms should take into account the current and projected value of the applicable IPRs and each party's contribution to the Project (whether financial or otherwise).

5.5 Warranty

- (a) Each party warrants to the best of its knowledge and belief (having made reasonable enquiry of those of its Personnel involved in the Project or likely to have relevant knowledge) that it has the necessary rights to vest the IPR under clause 5.2 and to grant the licences required or referred to, under this clause 5.
- (b) The warranties given under the Agreement are deemed to be repeated by each party on the Commencement Date and on each day during the Term that a party provides Pre-existing IPR, Third Party IP or Project IP to the other party.

Guidance Note for clause 5.5: This Agreement requires each party to provide IPR to the other party (for example, material, data, products) to undertake the Project and this clause requires the party providing the IPR to promise to the other party that, as far as it is aware, that it has the rights to provide the IPR on the terms of this clause 5.

Universities should note that the warranty will apply to any IPR developed by Students that the University is required to license to the Collaborator.

6. Use of the party's name and acknowledgement

- (a) Except with a party's prior written consent, the other party must not use that party's name:
 - (i) in a manner that suggests that the party endorses or is associated with the other party's business, products or services; or
 - (ii) in any publication or promotional material.
- (b) A party must not use the other party's logo or branding without the prior written consent of an authorised representative of the other party.
- (c) Each party must acknowledge the other party's contribution in any publication that refers to the Project IP in accordance with any requirements or restrictions specified in item 17 of the Details Schedule.

Guidance Note for clause 6: This clause prevents either party from using the other party's name or logo without the other party's consent. For example, the Collaborator cannot use the University's logo on its website without the University's prior written consent.

7. Financial contribution

7.1 Payment

- (a) The Collaborator must pay the University the Fees in accordance with item 16 of the Details Schedule.

Guidance Note for clause 7: This clause sets out the Collaborator's obligation to pay the Fees, which should be specified in item 16 of the Details Schedule.

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

- (b) The Collaborator must pay an invoice issued by the University for Fees that are due and payable within 20 Business Days after the date of the invoice. For GST purposes all invoices or receipts issued by the University are tax invoices.
- (c) Late payments may be subject to an additional charge at the discretion of the University, calculated daily from the due date until the date the outstanding amount is paid at:
 - (i) in respect of the period from 1 January to 30 June in any year – the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced; and
 - (ii) in respect of the period from 1 July to 31 December in any year – the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced.
- (d) If the Collaborator is more than 30 Business Days late paying an invoice:
 - (i) the University may stop working on the Project (and will not be in breach of the University's obligations under this Agreement) until the date the outstanding amount is paid; and
 - (ii) the relevant Milestones will be amended to reflect the period the University stops work in accordance with this clause 7.1(d).

Guidance Note for clause 7.1(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/>.

7.2 GST

- (a) In this clause 7.2, 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 7.2: This clause provides that if GST is payable by the University, then the Collaborator will pay the University the Fee plus any GST payable on that supply.

7.3 In-kind Contributions

The parties must contribute to the Project the In-kind Contributions as set out in section 5 of Schedule 1. If:

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

Guidance Note for clause 7.3: In-kind Contributions can be provided by either party and are separate from (and do not include) the Fees. In-kind Contributions should be specified in section 5 of Schedule 1 and may include items such as resources, facilities, loaned equipment or other contributions which may have a financial value but are not monetary.

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

8. Information management

8.1 Confidentiality of Project IP

The parties acknowledge and agree that:

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

Guidance Note for clause 8.1: This clause sets out the position with respect to the confidentiality of the Project IP. This clause has the consequence that neither party can disclose the Project IP without the consent of the other party during the Term and any Commercialisation Option Period.

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

8.2 Confidential Information

- (a) Except as set out in this clause 8, for the period that Confidential Information is to remain confidential as set out in item 18 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, 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 the security exchange, but only to the extent of the legal requirement and after appropriate action is taken to protect the form and content of the disclosure. If a party is required to disclose any Confidential Information of the other party pursuant to this clause, that party must promptly notify the other party (to the extent notification is permitted by law).
- (d) Without limiting its obligations, each party:
 - (i) undertakes to implement appropriate security practices to prevent any unauthorised copying, use or disclosure of the other party's Confidential Information; and
 - (ii) must promptly notify the other if the party becomes aware of any actual or suspected unauthorised use or disclosure of the other party's Confidential Information.

Guidance Note for clause 8.2(a): This clause restricts further disclosure of Confidential Information and requires that any use of the Confidential Information be only for the purpose of performing this Agreement.

Exceptions (where disclosure or other uses are permitted) are set out in the remainder of clause 8.

Guidance Note for clause 8.2(b): Any Personnel that the Confidential Information is disclosed to are also subject to the obligations set out in this Agreement. These Personnel are not required to enter into a separate confidentiality agreement, but the recipient party must ensure that the Personnel are legally bound to comply with equivalent obligations (for example, pursuant to their employment agreement).

Guidance Note for clause 8.2(d): The party receiving the Confidential Information is required to implement appropriate security practices and promptly notify the disclosing party of any actual or suspected unauthorised use or disclosure.

- (e) Notwithstanding any other provision of this Agreement, if a party is a Commonwealth Entity or a State or Territory government entity, that party will not be in breach of this clause 8.2 if it is required to disclose the information to a Minister or a House or Committee of Parliament.
- (f) The obligations under this clause 8.2 survive the return or destruction of any Confidential Information and the termination or expiry of this Agreement for the period of confidentiality specified in respect of that Confidential Information in item 18 of the Details Schedule.

Guidance Note for clauses 8.2(e): Government entities may be required, for public accountability reasons, to disclose Confidential Information in specific circumstances as set out in this clause.

8.3 Right to publish

- (a) Notwithstanding any other obligation in this Agreement, the parties are permitted to publish the Project IP (including any Pre-existing IPR or Third Party IPR incorporated into the Project IP) in accordance with this clause 8.3.
- (b) The parties will ensure that all publications and presentations in respect of the Project comply with the authorship and publication requirements of the *Australian Code for the Responsible Conduct of Research*, as amended from time to time.
- (c) In addition to clause 8.3(a), each party (a '**Publishing Party**') may only proceed with publishing or submitting for publication, or presenting, anything in relation to the Project that discloses any Confidential Information of the other party or the Project IP ('**Publication**'), provided that it has complied with the process set out in clauses 8.3(d) and 8.3(e) and is permitted to proceed in accordance with clause 8.3(h).
- (d) The Publishing Party must provide a copy of the proposed Publication to the other party (the '**Reviewing Party**') for review and response in accordance with clause 8.3(e).
- (e) Within 30 Business Days of the Publishing Party providing the Publication to the Reviewing Party for review, the Reviewing Party must notify the Publishing Party in writing that it:
 - (i) gives unconditional consent;
 - (ii) gives consent subject to certain amendments being made (including, if required, the removal of the Reviewing Party's Confidential Information) which are in the reasonable opinion of the Reviewing Party necessary to ensure its Confidential Information is not disclosed and its privacy obligations are met; or
 - (iii) requires the Publication to be delayed for up to 3 months so as to not prejudice its ability to protect and/or Commercialise its IPR in the Project IPR, Confidential Information or Pre-existing IPR.
- (f) Notwithstanding clause 8.3(e)(ii), the Reviewing Party will not have editorial rights over the content of the Publication.

Guidance Note for clause 8.3: This clause sets out a process for the University to publish the Project IP without disclosing the Collaborator's Confidential Information or impacting the potential commerciality of the Project IP.

Guidance Note for clause 8.3(a): The purpose of this clause is to clarify that publishing Project IP in accordance with this clause is not Commercialising the Project IP.

- (g) If the Publishing Party does not receive a response in accordance with clause 8.3(e) within 20 Business Days of the Reviewing Party receiving the Publication for review, the Publishing Party may provide the Reviewing Party with a further notice in writing requiring confirmation that it has no objections to the Publication. The Reviewing Party will be deemed to have given unconditional consent to the Publication if it does not respond to such further notice within 10 Business Days of receipt, notifying of any required amendments or a delay in accordance with clause 8.3(e).
- (h) The Publishing Party may proceed with the Publication:
- (i) upon unconditional consent being given by the Reviewing Party; or
 - (ii) if amendments are required under clause 8.3(e)(ii), upon all reasonable amendments being made; and
 - (iii) if a period of delay is required under clause 8.3(e)(iii), upon the expiry of that period.
- (i) This clause 8.3 does not apply to the non-public presentation or submission of Student Work for assessment or examination and instead clause 8.4 applies in such circumstances.

Guidance Note for clause 8.3(g): The purpose of this clause is to permit the Publishing Party to proceed with Publication if the Reviewing Party (commonly the Collaborator) does not respond to the Publishing Party's requests for Publication. If the Reviewing Party has any concerns with the Publication, it's important that the Reviewing Party responds to the Publishing Party in accordance with clause 8.3(e).

8.4 Students' right to publish

- (a) Notwithstanding any other provision of this Agreement, the parties agree that Students:
- (i) may include Project IP in their Student Work, which may be made publicly available in accordance with the University's policies and procedures and any statutes and regulations, subject to the provisions of clause 8.3; and
 - (ii) will retain copyright in their Student Work.
- (b) Nothing in this clause 8.4 prevents a Student from submitting their Student Work for assessment and the University will ensure each person to whom Student Work is presented or submitted for assessment purposes is legally bound by obligations of confidentiality that ensure that any Confidential Information contained in the Student Work is not disclosed to others, or used for purposes other than assessing the Student's Work (unless it is a use or disclosure permitted under 8.2).
- (c) At the Collaborator's request, the University must promptly provide written evidence of its compliance with clause 8.4(b).
- (d) Student Work submitted for a higher degree may be deposited in the library of the University, subject to any reasonable conditions agreed by the parties, including the removal of any Confidential Information.

Guidance Note for clause 8.4: This clause sets out a Student's right to publish. However, the University must obtain all rights to assign the IPR in Project IP, even where a Student from another university performs work on the Project.

Guidance Note for clause 8.4(a) to (c): These clauses allow the Student to include the Project IP in their Student Work. However, any Confidential Information (including the Project IP) contained in any Student Work must be kept confidential during the University's assessment of that Student Work.

8.5 Privacy

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

Guidance Note for clause 8.5: The parties are required to comply with applicable privacy laws, which may include the *Privacy Act 1988* (Cth) and other State and Territory privacy legislation.

9. 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 9(b), limited to the amount specified in item 19 of the Details Schedule;
 - (ii) 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 has contributed to the loss.
- (b) Any limit on the liability of each party under clause 9(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.
- (c) Except as specified in this Agreement, each party's use of any Pre-existing IPR and Project IP licensed or made available to it under this Agreement is at its own risk.

Guidance Note for clause 9(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 they 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 19 of the Details Schedule.

Guidance Note for clause 9(b): The liability cap specified in item 19 does not apply to the types of liability listed in clause 9(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.

Guidance Note for clause 9(c): The use of Pre-existing IPR and the Project IP is at each party's own risk, except to the extent that another party has provided a warranty in relation to the IPR under this Agreement.

10. 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 10. This clause 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 10(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, either party may initiate proceedings in a court of competent jurisdiction.

Guidance Note for clause 10(a): A party may go to court and urgently seek an order for injunctive or interim relief (for example, to prevent disclosure or use of Confidential Information), including prior to following the Dispute process. This is permitted because the value of the Confidential Information is lost once it is disclosed.

11. Termination

- (a) Either party may immediately terminate this Agreement by written notice to the other party if that other party:
- (i) breaches a material term of this Agreement, where that breach is not capable of remedy; or
 - (ii) breaches a material term of this Agreement which is capable of remedy and has not been remedied within 20 Business Days' written notice to do so by the first party.
- (b) Either party may terminate this Agreement for convenience with 30 Business Days written notice, subject to payment of:
- (i) the amounts due under this Agreement on or before the effective date of termination; and
 - (ii) any reasonable costs (including any committed costs as at the date of termination that cannot reasonably be avoided) incurred by the other party as a result of the termination (excluding profits).
- (c) The total of any payments made by a party under clause 11(b) must not exceed the Fees.
- (d) Upon termination or expiry of this Agreement:
- (i) the parties' rights to IPR in the Project IP continue in accordance with this Agreement;
 - (ii) each party must return or destroy (as directed by the other party) any material of the other party not incorporated into the Project IP provided under the Agreement, except that a party is entitled to keep a copy of any material of the other party for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. A party must continue to treat any such copy as Confidential Information of the other party which is subject to the terms of this Agreement;
 - (iii) the University will (subject to payment of any outstanding Fees) be required to deliver to the Collaborator copies of all Project IP in their current state at the date of termination or expiry; and
 - (iv) except where clause 11(b) applies, if the Collaborator has paid any of the Fees in advance, the University must refund any portion that was not required to have been paid by or at the time of termination or expiry.
- (e) Where the Owner of the IPR in the Project IP has terminated this Agreement under clause 11(b), or the Licensee has terminated this Agreement under clause 11(a), in addition to Use of the IPR in the Project IP for the Purpose, the Licensee may Use the IPR in the Project IP (but not the Owner's Pre-existing IPR or Third Party IPR) to otherwise complete the Project itself or to engage a third party to complete the Project.

Guidance Note for clause 11(a): This Agreement may be terminated where a party has not complied with a material obligation. For example, the Collaborator has not paid owing Fees or the University has failed to achieve multiple Milestones.

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

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

Guidance Note for clause 11(b): This Agreement may be terminated at any time, provided that the terminating party gives the other party 30 Business Days' written notice. The terminating party will also be required to pay certain costs, as described in clause 11(b).

Guidance Note for clause 11(e): If the Owner terminates this Agreement for any reason or the Licensee terminates the Agreement for the Owner's breach, the Licensee may Use the IPR in the Project IP to complete the Project. This mitigates the Licensee's (which is typically the Collaborator) risk that the Owner does not want to continue with the Project or breaches the Agreement.

12. General

12.1 Governance

- (a) The University must provide the Collaborator with reports summarising the progress of the Project and a copy of all of the Project IP in accordance with the reporting requirements outlined in item 20 of the Details Schedule.
- (b) The parties will meet summarising the progress of the Project and status of the Project IP in accordance with the frequency outlined in item 21 of the Details Schedule.

12.2 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.

12.3 Counterparts

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

12.4 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 the laws of the State or Territory of the location of the University set out in item 1 of the Details Schedule. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State or Territory.

12.5 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.

12.6 No assignment

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

12.7 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 12.1: This clause allows the parties to agree on reporting and meeting requirements throughout the Project. This gives the Collaborator greater oversight of the Project and its progress.

Guidance Note for clause 12.2: For any formal notices and communications, the parties should follow the requirements of clause 12.2(a) to ensure it is valid.

A notice will be deemed to be received upon delivery, as set out in clause 12.2(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 12.3: 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 12.4: The location of the party specified as the University in the Details Schedule determines the applicable law and jurisdiction of the Agreement.

Guidance Note for clause 12.5: 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 12.6: Assigning any rights will need written consent of the other party. Novation replaces a party with a new party and requires a deed to be **agreed** by all parties.

Guidance Note for clause 12.7: The purpose of this clause is to make clear that this Agreement is the entire agreement between the parties with respect to the conduct of the Project.

Schedule 1 - Project

1. Objectives

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

2. Project methodology

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

3. Project IP

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

4. Process for registration and protection of the IPR (clause 5.3(b))

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

5. In-kind Contributions (clause 7.3)

5.1 University In-kind Contributions

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

Guidance Note for Schedule 1: This Schedule should set out the proposed details of the Project. Alternatively, the parties can prepare separate Project documentation that can be attached to this Schedule. If this is the case, insert 'See document attached separately'. However, please ensure the relevant document is attached to the Agreement on execution.

Guidance Note for section 1 of Schedule 1: This section should have a brief summary of the:

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

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

Guidance Note for section 2 of Schedule 1: The parties should insert details of the Project methodology (including details of the key tasks and activities to be undertaken by the University) for the Project.

It is important that this item is drafted carefully, as this is the process that the University will be accountable for undertaking under this Agreement (see clause 3.3).

The parties can amend this section during the Project as necessary, in accordance with clause 12.5 of this Agreement.

Guidance Note for section 3 of Schedule 1: The Milestones and Milestone Dates for the Project IP should be set out here. However, Milestones may not be suitable for all Projects.

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

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

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

Guidance Note for section 4 of Schedule 1: If the parties agree that the IPR created by the Project in the Project IP will be subject to a registration process/assessment at the conclusion of the Project or there should be any obligations in relation to defending an infringement action (see item 9 of the Details Schedule or clause 5.3(b)), the details and process should be specified here.

Guidance Note for section 5 of Schedule 1: This item should detail any resources (including personnel), facilities, materials and loaned equipment, including the estimated value of the contributions that have been committed by the parties to the Project. Any contribution specified in this item must be provided by the relevant party.

5.2 Collaborator In-kind Contributions

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

For guidance only

Signing page

Signed as an agreement.

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

Signature of authorised representative

Full name of authorised representative

Date

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

Signature of director

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

Date

Signature of witness

Full name of witness

Signature of company secretary/director

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

Date

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

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

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

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

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

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