

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.
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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.
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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