

# HERC IP Framework – Technical (Consulting) Services 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.	Client	Client name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i>

**Guidance Note on use of template:** A technical service for which this template is designed may involve a Client engaging expertise at the University, for example, to help the Client test their product, with the detailed Service requirements specified by the Client. The output (Contract Material) for the Services is often a written report. This is different to where a University is engaged to undertake 'research'.

IPR in the Contract Material under this template is owned by the Client. This should not be significant, or be required for the University's future work. Further information is contained in the HERC IP Practical Guide.

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

The location of the Client is also the governing law and jurisdiction of the Agreement (see clause 13.3).

## Details of Services

3.	Commencement Date	<i>[Insert the date this Agreement commences.]</i>	
4.	End Date	<i>[Insert the date this Agreement ends.]</i>	
5.	Services	<i>[Insert summary details of the Services required from the University]</i>  The Services are further detailed in Schedule 1, including the requirements for achievement of each Milestone.	
6.	Key Personnel (clauses 1 and 3.6)	<i>[Insert any specific Personnel that are required to perform the Services, and the tasks allocated to them, or otherwise specify 'N/A'.]</i>	
7.	Reporting requirements (clause 3.3(b))	Frequency	<i>[Weekly], [Monthly], [Quarterly], [Annually]</i>
		<i>[Insert specific report details/requirements for the Services]</i>	
8.	Meeting requirements (clause 3.3(c))	Frequency	<i>[Weekly], [Monthly], [Quarterly], [Annually]</i>
		<i>[Insert specific meetings details/requirements for the Services]</i>	

**Guidance Note for items 3 and 4:** The date the Agreement commences and ends should be specified here. Commencement would normally be on or after signing of the Agreement, but can be earlier if both parties agree.

**Guidance Note for item 5:** This item should include a summary of the Services, with further detail to be included in Schedule 1.

**Guidance Note for item 6:** The University is obliged to perform the Services utilising any Key Personnel listed in Item 6 (see clause 3.6).

List any Key Personnel that the University must utilise in the performance of the Services or if there are no Key Personnel, insert 'Not applicable' or 'N/A'.

**Guidance Note for items 7 and 8:** Specify here any requirements for the University to provide reports or to meet the Client. This may include, for example, monthly status meetings or reports.

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

**Guidance Note for item 9:** This item should detail the Materials, or other assistance to be provided by a party, including access to premises or equipment, or disclosure of information, data or software. Any terms of use or restrictions on use should also be described. The parties may also specify any timeframes within which Materials or other assistance must be provided.

This item may be used to list a variety of materials (for example, samples, materials, chemical or biological reagents, prototypes, equipment, software, firmware, documented methodology, technique or process, information, data and documentation).

9.	Material and assistance (clauses 3.4 and 4)	[Insert description, including any terms of use or restrictions.]
----	---	---

**Guidance Note for item 10:** If the University expects to use Third Party Intellectual Property Rights (IPR) (for example, third party software), the details of the Third Party IPR and any restrictions imposed by the third party must be specified in this item 10 (see also clause 5.2(d)). If the University needs to use Third Party IPR that is not identified in this item 10, the parties can agree to amend this item in accordance with clause 13.4.

**Guidance Note for item 11:** The University's Pre-existing IPR must be identified in this item, along with any restrictions on the licence to Use this IPR. The rights for the Client under this Agreement to University Pre-existing IPR do not include Commercialisation, but a separate licence can be negotiated on request on commercial terms.

**Guidance Note for item 12:** The Client owns New IPR (i.e. IPR in the Contract Material that is not Pre-existing IPR or Third Party IPR). If the University is granted any right to New IPR it must be set out in this item.

It is not intended that IPR significant to the University's future work be developed under this template. If the University requires rights to this material, the parties should consider if a research agreement template would be more appropriate.

**Guidance Note for item 13:** This template includes requirements for the University to indemnify the Client. The parties can agree in this item to remove or modify the indemnities (refer to the HERC IP Practical Guide).

**Guidance Note for item 14:** This item should set out any Fees (exclusive of GST) payable by the Client.

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 engagements.

**Guidance Note for item 15:** 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.

The parties may also specify that certain information that a party knows or ought to know is confidential will *not* be treated Confidential Information for the purpose of this Agreement.

Unless there is a good reason to specify otherwise, the period of confidentiality will ordinarily be the same for each party's Confidential Information.

### Intellectual Property Rights

10.	Third Party IPR (clause 5.2(d)(i))	[Insert any Third Party IPR that will be used in the Services and any restrictions on use of the Third Party IPR.]
-----	------------------------------------	--

11.	University Pre-existing IPR restrictions (clause 5.2(c))	[Insert any additional restrictions on use of University Pre-existing IPR.]
-----	--	---

12.	Additional right of University (clause 5.1(b))	[Insert any additional rights of use for the University in relation to the New IPR (i.e. IPR in the Contract Material that is not Pre-existing IPR or Third Party IPR). For example, a right for academic or research purposes.]
-----	--	--

13.	Indemnity limitations (clause 10(c))	[Insert any agreed limitations on the indemnity given by the University. If no indemnity applies state 'clause 10(c) does not apply'.]
-----	--------------------------------------	--

### Fees

14.	Fee/s (AUD) (clause 8.1)	<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 Client on the University's achievement of each applicable Milestone Date.]</p>
-----	--------------------------	--

### General

15.	Confidential Information (clause 9.1)	Client	
		Description of Confidential Information	Period of confidentiality
		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	Period: [Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]

		<i>space is required an attachment can be added.]</i>	
		<b>University</b>	
		<b>Description of Confidential Information</b>	<b>Period of confidentiality</b>
		<i>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 attachment can be added.]</i>	<i>Period: [Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]</i>
<b>16.</b>	<b>Liability cap (clause 10(a)(i))</b>	<i>[Insert liability cap amount.]</i>	

**Guidance Note for Item 16:** 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 10(b).

# Operative provisions

## 1. Definitions

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

**Agreement** means this technical (consulting) services 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 15 of the Details Schedule; or
- (b) a party knows or ought to know is confidential, unless the parties have specified otherwise in item 15 of the Details Schedule,

and includes (as the Confidential Information of the Client) the Contract Material, but does not include information that is:

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

**Conflict of Interest** means any interest the University or Key Personnel have or any duty the University or Key Personnel owe to third parties that may reasonably be anticipated to conflict with or restrict the University or Key Personnel in performing the Services fairly and impartially.

**Contract Material** 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) that is delivered or required to be delivered to the Client by the University in performance of the Services, including any Contract Material specified in Schedule 1.

### **Guidance Note for the definition of**

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

As detailed in the general guidance above, the Client owns any New IPR and can use the Contract Material however the Client chooses. However, a separate licence may be required if commercial use of the Contract Material requires rights to use University Pre-existing IPR.

Clause 5.4 contemplates that the parties may separately agree a licence for the Client (the owner of the IPR in Contract Material) to use University Pre-existing IPR as part of Commercialising the IPR in Contract Material (see clause 5.4).

### **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.

**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.

**End Date** means the date this Agreement ends, as specified in item 4 of the Details Schedule.

**Fees** means the amounts payable by the Client in accordance with item 14 of the Details Schedule.

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

**Key Personnel** means the Personnel specified in item 6 of the Details Schedule. **Key Person** has a corresponding meaning.

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

**Milestone** means a key performance obligation for the University under the 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.

**New IPR** means IPR in the Contract Material that is not Pre-existing IPR or Third Party IPR.

**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 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 Services;
- (b) incorporated into the Contract Material; or
- (c) otherwise required in order for the other party to exercise their rights to the Contract Material under this Agreement.

**Services** means the services required to be provided by the University to the Client in accordance with this Agreement, as set out in item 5 of the Details Schedule and described in Schedule 1.

**Student** means a student enrolled at the University.

**Guidance Note to the definition of Milestone and Milestone Date:** Milestones are key achievements the University must meet in performing the Services. For example, a Milestone may be the submission of a 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 14 of the Details Schedule.

**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) incorporated into the Contract Material; or
- (b) otherwise required in order for the Client to exercise their rights to the Contract Material 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 excludes Commercialisation. However, the Client owns the New IPR and can use the Contract Material however they choose.

The Client is also granted a right to negotiate an agreement with the University to Commercialise the University's Pre-existing IPR that is in or is required to Use the Contract Material under clause 5.4.

**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.

---

## 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 13;
- (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. Services requirements

### 3.1 Term

The Agreement will begin on the Commencement Date and (unless terminated in accordance with clause 12) will continue until the End Date.

### 3.2 Scope

The University agrees to provide the Services to the Client.

### 3.3 University obligations

- (a) The University must, and must ensure its relevant Personnel:
  - (i) perform the Services in accordance with this Agreement and:
    - A. with professional care and skill; and
    - B. in accordance with all applicable laws; and
  - (ii) obtain and maintain all regulatory and ethical licences, consents and approvals necessary to carry out the Services, including as relevant for a Key Person's role.
- (b) The University must provide the Client with reports summarising the progress of the Services and a copy of all relevant Contract Material in accordance with the reporting requirements outlined in item 7 of the Details Schedule.
- (c) The University must ensure its relevant Personnel (including any Key Personnel) are available to meet with the Client to discuss the progress of the Services and status of the

**Guidance Note for clause 3.1:** This Agreement commences as specified in item 3 of the Details Schedule and will end on the date specified in item 4, unless terminated earlier in accordance with the parties' rights under clause 12.

Contract Material in accordance with the frequency outlined in item 8 of the Details Schedule.

- (d) The University must not subcontract any part of the Services without first obtaining the written permission of the Client, which must not be withheld or delayed unreasonably.

### 3.4 Client obligations

- (a) Where applicable, the Client will provide the Materials and any assistance to the University for the purpose of providing the Services as set out in item 9 of the Details Schedule.
- (b) The Client will advise the University of any hazardous or otherwise dangerous components or properties of the Materials the Client should reasonably be aware of, and where applicable, instructions for safe use and operation of the Materials.
- (c) The Materials are intended solely for use in support of the University providing the Services and cannot be used for any other purpose. The University must comply with any restrictions on or terms for use of the Materials as set out in item 9 of the Details Schedule.

**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 the Services. It can also assist to keep the University accountable for the delivery of elements of the Services in a timely manner.

### 3.5 Achievement of Milestones

- (a) The University must deliver the Services so as to achieve the Milestones by the applicable Milestone Dates and meet all other timeframes as specified in this Agreement.
- (b) The University must provide written notice to the Client on achievement of each Milestone.
- (c) Where the University is unable to achieve a Milestone, it must provide notice to the Client 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 Client to provide the Materials or assistance in accordance with clause 3.4.

**Guidance Note for clause 3.6:** This clause acknowledges that the Client may be seeking the expertise of specific University Personnel to perform the Services. Any such person must be specified in item 6 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 Client may terminate this Agreement.

The parties do not need to specify any Key Personnel if they do not wish to.

### 3.6 Key Personnel

- (a) The University must undertake the Services, including the part of the Services to which their 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 Services; and
  - (ii) the University is unable to provide a replacement for the Key Person that is satisfactory to the Client (acting reasonably) within a reasonable time,

the Client may terminate this Agreement for material default in accordance with clause 12(a).

---

## 4. Access to premises

- (a) The University will make available any premises (including agreed equipment at the premises) for the performance of Services that are identified in item 9 of the Details Schedule.
- (b) The University must, at all reasonable times, give the Client reasonable access to the premises where the Services are being provided and permit the Client to inspect the provision of the Services and any material in connection with the provision of the Services.
- (c) Each party will ensure that any Personnel of the other party that they permit to access their premises for the purposes of the Services 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 the other party.
- (d) Each party must ensure its Personnel comply with:
  - (i) all reasonable directions given by the other party as to health, safety, and security; and
  - (ii) all relevant obligations under this Agreement, including with respect to Confidential Information,while on the other party's premises.

**Guidance to clause 5:** This clause sets out the IPR arrangements for this Agreement. As set out in the general guidance note at the start of this template, the Client owns New IPR. It is not intended that this template be used for creation of IPR required for the University to undertake future work in the field. Accordingly, the University has no ongoing right to this New IPR (even for academic use) unless agreed in item 12 of the Details Schedule.

This agreement is not intended to accommodate bespoke IPR arrangement where, for example, certain types of IPR but not others are assigned. If the parties wish to adopt such an arrangement, a different agreement should be entered into.

**Guidance Note for clause 5.2(a):** The ownership of all other IPR used in performing the Services, including Pre-existing IPR and Third Party IPR, is not affected by this Agreement. For example, nothing in this Agreement changes that the Client or University owns its Pre-existing IPR.

---

## 5. Intellectual Property Rights

### 5.1 New IPR

- (a) All New IPR will vest in the Client on creation and the University hereby assigns and agrees to assign all such New IPR to the Client. The University must take all steps, execute all documents and do everything reasonably required by the Client to ensure that New IPR vests in the Client.
- (b) Except as set out in item 12 of the Details Schedule, the only right granted to the University to the New IPR is to Use such IPR for the sole purpose of and only to the extent necessary to provide the Services.
- (c) If the University terminates this Agreement in accordance with clause 12(a) where the material breach relied upon is or includes a failure of the Client to pay any Fee due under this Agreement, the Client must assign to the University its rights in any New IPR.

**Guidance Note for clauses 5.2(b) to 5.2(c):** These clauses set out the licences for a party to use the other party's Pre-existing IPR. The licence granted includes the right for the Client to Use (but not Commercialise) the University's Pre-existing IPR that is included in the Contract Material - to Use the Contract Material. The University is only permitted to Use Client Pre-existing IPR for the Services.

If Use of Pre-existing IPR is subject to further conditions (for example, the Pre-existing IPR can only be used in Australia), these should be specified in item 11 of the Details Schedule.

### 5.2 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 Contract Material.



- (b) If the Contract Material includes University Pre-existing IPR, or Use of the Contract Material requires rights to University Pre-existing IPR, then the University must identify such Pre-existing IPR to the Client before providing the Contract Material.
- (c) Subject to any limitations specified in item 11 of the Details Schedule:
  - (i) the University grants to the Client a royalty-free, world-wide, non-exclusive licence to Use any University Pre-existing IPR in or required to Use the Contract Material, but only for the sole purpose of and only to the extent necessary to exercise the Client's rights to the Contract Material; and
  - (ii) the Client grants to the University a royalty-free, world-wide, non-transferable, non-exclusive licence to Use the Client Pre-existing IPR for the sole purpose of and only to the extent necessary to provide the Services.
- (d) Unless otherwise agreed in item 10 in the Details Schedule:
  - (i) the University must ensure the Contract Material does not include Third Party IPR, and that Use of the Contract Material does not require rights to Third Party IPR; and
  - (ii) the University grants or must procure for the Client (as required) all necessary rights to Third Party IPR on the same terms as for University Pre-existing IPR under clause 5.2(c)(i).

**Guidance Note for clause 5.2(d):** Where the Contract Material includes Third Party IPR - or requires it in order to Use the Contract Material - this needs to be agreed by the parties. The terms of such use must be agreed and set out in item 10 in the Details Schedule. This is an obligation for the University and failure to agree and list such rights results in an obligation on the University to procure a licence on the same terms as for the University Pre-existing IPR.

No rights to Commercialise Third Party IPR are granted unless agreed by the parties.

### 5.3 Intellectual Property Rights management

- (a) The parties acknowledge and agree that each party's Personnel:
  - (i) may develop knowledge and skills while performing the Services that do not form part of the New IPR and do not constitute Confidential Information of the other party; and
  - (ii) may use such knowledge and skills for performing other projects.
- (b) This clause 5 survives termination or expiry of this Agreement.

**Guidance Note for clause 5.4:** This clause provides the Client a right to negotiate a further licence for University Pre-existing IPR in or required to Use the Contract Material on reasonable commercial terms.

### 5.4 Commercialisation of University Pre-existing IPR in the Contract Material

If the Client requires a further licence to University Pre-existing IPR in or required to Use the Contract Material, either in conjunction with or as part of Commercialising the IPR in the Contract Material, the University agrees to negotiate in good faith to agree the reasonable commercial terms of that licence.

**Guidance Note for clause 6:** This Agreement requires the University to promise that it has the rights to provide the Services, and grant the rights to IPR on the terms of the Agreement. This means the University is at risk for any resulting losses if it proceeds in performing the Agreement without having secured these rights.

## 6. Warranties

- (a) The University represents and warrants to the Client that:
  - (i) the University's provision of the Services is not contrary to any obligation owed by the University to any other person;

- (ii) the University has full power and authority to meet its obligations and grant the rights its grants to the Client regarding the Contract Material; and
  - (iii) there are no actual, potential or perceived Conflicts of Interest.
- (b) In performing this Agreement, the University must not (and must ensure its Personnel do not):
  - (i) infringe any person's IPR; or
  - (ii) engage in any activity or obtain any interest which gives or is likely to give rise to a Conflict of Interest. The University will immediately notify the Client in writing of any event which gives or is likely to give rise to a Conflict of Interest and the Client may suspend performance of this Agreement until the Conflict of Interest (whether actual, potential or perceived) is resolved to the Client's reasonable satisfaction.
- (c) The Client represents and warrants to the University that the Client has full power and authority to enter into and perform its obligations under this Agreement, and to grant rights to the University in respect of the Pre-existing IPR of the Client.

**Guidance Note for clause 7:** This clause prevents either party from using the other party's name or logo without the other party's consent. For example, the Client cannot use the University's logo on its website without the University's prior written consent.

---

## 7. 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.

---

## 8. Financial contribution

### 8.1 Payment

- (a) The Client must pay the University the Fees in accordance with item 14 of the Details Schedule.
- (b) The Client 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.

**Guidance Note for clause 8.1(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/>.

- (d) If the Client is more than 30 Business Days late paying an invoice:
- (i) the University may stop working on the Services (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 8.1(d).

**Guidance Note for clause 8.2:** This clause provides that if GST is payable by the University, then the Client will pay the University the Fee plus any GST payable on that supply.

## 8.2 GST

- (a) In this clause 8.2, 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 9.1(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 9.1.

## 9. Information management

### 9.1 Confidential Information

- (a) Except as set out in this clause 9.1, for the period that Confidential Information is to remain confidential as set out in item 15 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

**Guidance Note for clause 9.1(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).

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).

**Guidance Note for clause 9.1(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.

- (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 9.1 if it 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.
- (g) The obligations under this clause 9.1 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 15 of the Details Schedule.

**Guidance Note for clause 9.1(e):** Government entities may be required, for public accountability reasons, to disclose Confidential Information in specific circumstances as set out in this clause.

**Guidance Note for clause 9.2:** 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.

## 9.2 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 Contract Materials include personal information, the parties will agree and comply with appropriate protocols for handling the Contract Materials, consistent with applicable laws and ethics approvals obtained.

**Guidance Note for clause 10(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 16 of the Details Schedule.

## 10. Limitation of liability and indemnity

- (a) The aggregate liability of each party for loss suffered or incurred by the other party arising out of or in connection with this Agreement (including under an indemnity) however caused whether in tort (including negligence), contract, statute, equity or otherwise is, to the full extent permitted by law:
- (i) subject to clause 10(b), limited to the amount specified in item 16 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 have contributed to the loss.

**Guidance Note for clause 10(b):** The liability cap specified in item 16 does not apply to the types of liability listed in clause 10(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.

- (b) Any limit on the liability of each party under clause 10(a)(i) does not apply in relation to liability (including under an indemnity) for:
- (i) personal injury (including sickness and death);
  - (ii) an infringement of third party IPR;
  - (iii) a breach of any obligation of confidentiality; or
  - (iv) wilful default or fraud.

**Guidance Note for clause 10(c):** Because of the nature of the engagement, it will normally be appropriate for the University to provide the Client with these indemnities in respect of the performance of the Services and the claims that the Services infringe third party IPR.

The parties can agree otherwise in item 13 of the Details Schedule.

- (c) Except as set out in item 13 of the Details Schedule, the University indemnifies the Client and the Client's Personnel against losses reasonably sustained or incurred by any of them as a result of any claim made or threatened by a third party (including a subcontractor) in relation to any of the following:

- (i) a breach of this Agreement by the University, including any breach of the University's warranties in this Agreement;
- (ii) any claim that any Services provided by University infringes the IPR of a third party; and
- (iii) any negligent or deliberately wrongful act or omission, or breach of law, in relation to this Agreement.

**Guidance Note for clause 11(a):** A party may go to court and urgently seek an order injunctive or interim relief (for example, to prevent disclosure or use of Confidential Information), including prior to following the Dispute process. This is permitted because the value of the Confidential Information is lost once it is disclosed.

## 11. 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 11. 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 11(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 12(a):** This Agreement may be terminated where a party has not complied with a material obligation. For example, the Client has not paid owing Fees or the University has failed to achieve multiple Milestones.

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

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

## 12. 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) The Client 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 University as a result of the termination (excluding profits).
- (c) The total of any payments made by a party under clause 12(b) must not exceed the Fees.
- (d) Upon termination or expiry of this Agreement:
- (i) the Client's rights to IPR in the Contract Material continue in accordance with this Agreement;
  - (ii) the University must return or destroy any Material (unless required by law to be retained);
  - (iii) the University will (subject to payment of any outstanding Fees) be required to deliver to the Client copies of all Contract Material in its current state at the date of termination or expiry;
  - (iv) if the Client 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; and
  - (v) each party must destroy or return all Confidential Information of the other party (as directed by the other party), except to the extent that the University's Confidential Information is incorporated into or required for Use of the Contract Material in accordance with the rights granted to the Client under this Agreement. A party is also entitled to keep a copy of Confidential Information of the other party for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. A party must continue to treat any such copy as Confidential Information of the other party which is subject to the terms of this Agreement.

**Guidance Note for clause 13.1:** For any formal notices and communications, the parties should follow the requirements of clause 7.1 to ensure it is valid.

A notice will be deemed to be received upon delivery, as set out in clause 13.1(b).

While there are several ways to send notices, the most common approach (and the fastest) is via email. An email sent before 5pm on a Business Day in the place of receipt is deemed delivered at the time sent, unless an automated message is received that an email has not been delivered. There is no requirement to also post or hand deliver a copy of a notice once sent via email.

## 13. General

### 13.1 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

**Guidance Note for clause 12(b):** This Agreement may be terminated at any time by the Client, provided that the Client gives the University 30 Business Days' written notice. The Client will also be required to pay certain costs, as described in clause 12(b).

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.

### 13.2 Counterparts

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

### 13.3 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 the laws of the State or Territory of the location of the Client set out in item 2 of the Details Schedule. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State or Territory.

### 13.4 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.

### 13.5 No assignment

The University must not assign or novate its rights and obligations under this Agreement unless it has the prior written consent of the Client.

### 13.6 Entire agreement

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

**Guidance Note for clause 13.3:** The Client's location in the Details Schedule determines the applicable law and jurisdiction for the purpose of the Agreement.

**Guidance Note for clause 13.4:** Despite the requirement for changes to be agreed and in writing, if

**Guidance Note for clause 13.2:** The purpose of this clause is to make it clear that the parties can sign separate copies of this Agreement (called 'counterparts') and the Agreement will be binding. The parties should ensure that the counterpart documents are exactly the same.

**Guidance Note for clause 13.5:** Assigning any rights will need written consent of the other party. Novation replaces a party with a new party and requires a deed.

**Guidance Note for clause 13.6:** 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 Services.

## Schedule 1 - Services

### 1. Overview

*[insert a description of the objectives and key requirements for the Services]*

### 2. Services

	Description of deliverables, tasks and activities to be undertaken by the University (attach additional pages if required)	Due date / Delivery Date
1.		
2.		
3.		

### 3. Milestones and Contract Material

	Milestone	Contract Material	Milestone Date
1.	<i>[Describe the work that the University is required to do]</i>	<i>[Reports? Physical items? Is the University required to make improvements to the Client's Pre-existing IPR?]</i>	
2.			
3.			

**Guidance Note for Schedule 1:** This Schedule should set out the details of the Services.

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

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

**Guidance Note for section 2 of Schedule 1:** The parties should insert details of the key tasks and activities to be undertaken by the University for the Services.

It is important that this item is drafted carefully, as these are the tasks and activities that the University will be accountable for undertaking or delivering under this Agreement (see clause 3.3).

The parties can amend this section as necessary, in accordance with clause 13.4.

**Guidance Note for section 3 of Schedule 1:** The Milestones and Milestone Dates for the Services should be set out here.

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

The Contract Material to be identified should include any deliverable / output (such as a report or a prototype) the Client requires from the University.



## 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 Client 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 Client  
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 Client 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 Client 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 Client is not a company).

The parties may execute this 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.