

NATIONAL INDUSTRY PHD PROGRAM COLLABORATION AGREEMENT

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Details of the Parties

Name of University

Address

ABN

Contact for notices

Email for notices

Phone number

Name of Industry Partner

Address

ABN

Contact for notices

Email for notices

Phone number

Background Intellectual Property (University) – if applicable

Background Intellectual Property (Industry Partner) – if applicable

Project Name

Date of agreement:

(Date of last party to sign)

This agreement is made between the Parties

RECITALS

A. The Parties have agreed to collaborate on the Project in accordance with the terms and conditions set out in this Agreement and consistent with the conditions set out in Chapter 4 of the *Other Grants Guidelines (Research) 2017 (Other Grants Guidelines)* for a project in relation to the National Industry PhD Program (Program) specified in the Other Grants Guidelines.

The Program aims to support PhD Candidates:

- to undertake industry-focused research projects and be equipped with the knowledge and skills to better translate university research into commercialisation outcomes; and
- who have the strong potential to work at the interface of research and industry, and across the sectors in future.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

1.1 In this Agreement:

Agreement means this document, including all the Schedules.

Background Intellectual Property means Background IP identified in the Details, and any IP which is or has been created independently of the Project and which is contributed by a party to perform the Project.

Commercialisation in relation to Intellectual Property, means to manufacture, sell, hire or otherwise exploit a product or process, or to provide a service, incorporating that Intellectual Property, or to license or assign Intellectual Property to any third party to do any of those things.

Confidential Information means any information (in any form) that is disclosed by a Disclosing Party to a Recipient which is identified as being confidential or which is by its nature confidential. Confidential Information includes the Background IP, Project IP and Project Results. Information is not confidential if it is:

- publicly available other than as a result of a breach of this Agreement;
- rightfully known by the Recipient before or independently of disclosure by the Disclosing Party; or
- independently created by the Recipient without access to the Disclosing Party's confidential information.

Department means the Australian Government department administering the National Industry PhD Program under the Other Grants Guidelines.

Disclosing Party has the same meaning set out in [clause 11](#).

Funding means the funding to be provided for the conduct of the Project as set out in Schedule 2. The amounts set out in Schedule 2 do not include GST.

GST has the same meaning as in the A New Tax System (Goods and Services) *Tax Act 1999*.

Industry Partner means the Party identified in the Details.

Intellectual Property (IP) means any rights in any copyright work (including any work or item created in the future), invention (whether or not patent protection has been sought), design, circuit layout, new plant variety, trademark, know-how or trade secret.

Other Grants Guidelines (OGGs) means the [Other Grants Guidelines \(Research\) 2017](#).

Party means a party to this Agreement and **Parties** means both Parties to this Agreement.

Personal Information means personal information as defined in any applicable Privacy Laws.

PhD Candidate means a student enrolled at a university undertaking a PhD as defined in the ToC of the OGGs and involved in the Project.

Privacy Laws means Commonwealth and/or State and/or Territory legislation, principles, codes and guidelines in relation to the collection, use, storage and security or disclosure of any Personal Information which applies in the jurisdiction in which the Project is located.

Project means the research collaboration to be conducted in accordance with the Protocol and this Agreement and described in Item 1 of Schedule 1.

Project IP means any Intellectual Property created, invented or discovered in carrying out the Project including in respect of the Project Results but does not include Background IP or copyright in a PhD Candidate's thesis or other material produced by them for the purpose of assessment towards the degree.

Project Results means all data and results of the Project.

Protocol means the document identified in Item 4 of Schedule 1 which describes the objective(s), design, methodology, statistical considerations and organisation of the Project.

Recipient has the meaning set out in [clause 11](#).

Representative has the meaning set out in [clause 3.1](#).

Schedule means a schedule to this Agreement.

Term has the meaning set out in [clause 8.1](#).

University means the Party identified in the Details.

1.2 In this Agreement:

- (a) a reference to a Party includes a reference to that Party's administrator, successors and permitted assigns;
- (b) headings are for guidance only, and do not affect interpretation;
- (c) a reference to any statute is a reference to that statute, as amended and in force from time to time;
- (d) a reference to a Party means each Party to this Agreement, its officers, employees, sub-contractors, agents and persons for which it is vicariously liable, and its respective successors and permitted assigns.

1.3 The following items have the following descending order of precedence to the extent of any conflict or inconsistency between them, the:

- (e) conditions in Chapter 4 of the Other Grants Guidelines (to the extent these apply to the Parties);
- (f) terms and conditions of the clauses of this Agreement; and
- (g) Schedules.

2. CONDUCT OF PROJECT

- 2.1 Each Party agrees to carry out its obligations under this Agreement and conduct the Project in accordance with:
- (a) the Protocol;
 - (b) any applicable laws; and
 - (c) the conditions in Chapter 4 of the Other Grants Guidelines (to the extent these apply to the Parties).
- 2.2 Each Party must:
- (a) obtain and comply with all required authorisations from government agencies and ethics committees which are required for the Project; and
 - (b) not knowingly infringe, and use its best endeavours not to infringe, the Intellectual Property rights of any person in carrying out the Project.

3. REPRESENTATIVES AND NOTICES

- 3.1 Each Party nominates as its representative for this Agreement the person set out on the first page of this Agreement under 'Contact for Notices' ("**Representative**").
- 3.2 Any communication under this Agreement must be in writing and sent to the recipient Party's Representative.

4. INDUSTRY PARTNER OBLIGATIONS

- 4.1 **[Only for the Industry Linked PhD stream]** The Industry Partner will provide the University with a yearly cash contribution of for four years for each full-time PhD Candidate associated with the Project, and a yearly cash contribution of for up to eight years for each part-time PhD Candidate associated with the Project.
- 4.2 The Industry Partner will provide supervision for any PhD Candidate associated with the Project.
- 4.3 The Industry Partner will provide PhD Candidates associated with the Project with access to

- 4.4 **[Only for the Industry Linked PhD stream]** The Industry Partner will ensure that any PhD Candidates associated with the Project spend per cent of the duration of their PhD Candidature undertaking work relevant to the Project in the Industry Partner's facilities, unless an exception is approved by the Department.
- 4.5 **[Only for the Industry Researcher PhD stream]** The University will ensure that any PhD Candidates associated with the Project spend per cent of the duration of their PhD Candidature embedded in the University's facilities, unless an exception is approved by the Department.
- 4.6 The Industry Partner will be responsible for supporting the employee (as the PhD Candidate) to undertake study and work concurrently, while paying full salary and benefits for the Project duration, and is responsible for all other relevant expenses, including (but not limited to) workplace accommodation, equipment, and materials as required.
- 4.7 The Industry Partner will support the PhD Candidates for the full duration of the Project.
- 4.8 The Industry Partner will collect and provide data specified by the Department for the purpose of program assurance and agrees to provide that data to the University.
- 4.9 **[Only if the Industry Partner is not an 'organisation' for the purposes of the Privacy Act 1988]** The Industry Partner will comply with the Australian Privacy Principles as set out in Schedule 1 of the *Privacy Act 1988*, as if it were an 'organisation' for the purposes of the *Privacy Act 1988*.

5. PROJECT RESULTS AND PROJECT IP

- 5.1 Unless otherwise specified in Item 3 of Schedule 1, the Parties agree that all rights, title and interest in the Project IP will be owned solely by the Party, or jointly by the Parties, that contribute to its development or creation and, in the case of jointly owned Project IP, the Parties will own the Project IP in shares proportionate to their respective intellectual contributions to the development or creation of that Intellectual Property.
- 5.2 In the case of jointly owned Project IP, neither Party may:
- (a) grant a licence of its share of any Project IP; or
 - (b) assign its share of the Project IP,
- without the written consent of the other Party, which will not be unreasonably withheld.
- 5.3 **[Only for the Industry Linked PhD stream]** The Parties agree that copyright in a PhD Candidate's thesis will be owned by the PhD Candidate but the University will ensure that the PhD Candidate enters into a written agreement which is consistent with this Agreement and the terms of this [clause 5](#) before the PhD Candidate commences any Project activities.
- 5.4 **[Only for the Industry Researcher PhD stream]** The Parties agree that copyright in a PhD Candidate's thesis will be owned by the PhD Candidate but the Industry Partner will ensure that the PhD Candidate enters into a written agreement which is consistent with this Agreement and the terms of this [clause 5](#) before the PhD Candidate commences any Project activities.
- 5.5 Each Party agrees to promptly provide written notice to the other Party of any Project IP that may have potential commercial value on becoming aware of any such Project IP. The Parties will consult and decide what (if any) measures should be taken to protect the Project IP and negotiate in good faith and using all best endeavours to agree to the terms of any program of Commercialisation arising from the Project IP so as to fairly share in any commercial return associated with the Project and the Project IP.

5.6 Having regard to any requirements to protect potentially commercially valuable Project IP, each Party grants to each other Party a non-exclusive, non-transferable, perpetual, royalty free, worldwide licence to use the Project IP it owns for:

- (a) non-commercial research, education and training purposes; and
- (b) publication purposes (subject to [clause 7](#) of this Agreement).

5.7 The Parties are committed to appropriate recognition of contributions to invention and exploitation of Intellectual Property for the benefit of the Australian community.

6. BACKGROUND IP

6.1 The Parties agree that the ownership of Background IP is not affected by this Agreement and that all Background IP remains the property of the Party that makes it available for the purpose of carrying out the Project.

6.2 No representations or warranties are made or given in relation to Background IP, however, each Party making available Background IP acknowledges that to the best of its knowledge, such Background IP when used in accordance with this Agreement will not infringe any third party Intellectual Property rights.

6.3 Each Party grants to the other Party for the Term a royalty free, non-exclusive licence to use its Background IP to the extent necessary to carry out the Project.

7. PUBLICATION

7.1 A Party may publish the Project Results subject to this [clause 7](#).

7.2 At least 28 days prior to any publication, the publishing Party must provide a copy of the proposed publication to the other Party.

7.3 The other Party may provide comments and/or reasonable amendments to the publication to protect its Confidential Information and/or Intellectual Property provided they are given to the publishing Party in writing no later than 14 days before the publication is proposed. If no such comments or amendments are provided within those 14 days, the publishing Party can make the publication.

7.4 All publications will recognise the contribution by the Parties to the Project.

8. TERM AND TERMINATION

8.1 This Agreement commences on the date specified on the first page of this Agreement, or if such date is not included on the date this Agreement is last signed by a Party and expires on completion of the Project unless terminated earlier in accordance with this [clause 8](#) ("**Term**").

8.2 Either Party may terminate the Agreement by giving 28 days prior written notice to the other.

8.3 In the event of termination, the Parties must promptly initiate all appropriate action to close the Project and, subject to any applicable retention requirements imposed by law, return to the other Party (or destroy if requested, and provide evidence of such destruction) any materials received from a Party before termination of this Agreement. Where Funding has been provided to a Party by the other Party, that Party must reimburse any Funding that has not yet been expended as at the date of termination. The Parties must also return any Confidential Information within 14 days of the date of termination.

9. LIABILITY AND INSURANCE

- 9.1 Each Party is liable for its acts and omissions in relation to the conduct of the Project.
- 9.2 Each Party must maintain such insurances as are necessary to provide indemnity to it in relation to any liability which it may incur in conducting the Project or performing its obligations under this Agreement.
- 9.3 A Party satisfies the requirements of [clause 9.2](#) if it is entitled to indemnity under a program or scheme of insurance or indemnity that is arranged by a department or agency of a State or Territory of the Commonwealth of Australia.

10. FUNDING

- 10.1 Each Party shall supply all funding, in-kind contributions, equipment and other resources as necessary to fulfil its responsibilities under this Agreement for the Project including as specifically set out in [clause 4.1](#) and Schedule 2.

11. CONFIDENTIALITY AND PRIVACY

- 11.1 Subject to [clause 11.2](#), where a Party ("**Disclosing Party**") provides Confidential Information to the other Party ("**Recipient**") the Recipient must not:
- (a) use the Confidential Information except to the extent such use is necessary for the performance of the Project; and
 - (b) disclose the Confidential Information to any third party,
- except with the prior written consent of the Disclosing Party.
- 11.2 The Recipient may disclose Confidential Information of the Disclosing Party to such of its directors, officers, employees, PhD Candidates and professional advisers as is necessary for the purposes of the Project provided that the person to whom the Recipient discloses the Confidential Information is subject to contractual or other duties of confidentiality to the Recipient at least equivalent to the duties of confidentiality imposed upon the Recipient under this Agreement.
- 11.3 The Parties must ensure that any Personal Information arising from the Project is collected, stored, used and disclosed in accordance with applicable Privacy Laws.

12. DISPUTES

- 12.1 A Party may not commence legal proceedings against the other in respect of a dispute arising in relation to this Agreement (except for urgent interlocutory relief) unless the Parties have complied with this clause and that Party has first notified the other Party in writing of the dispute and has used all reasonable endeavours to resolve the dispute with the other Party including referring it to senior representatives within 28 days of the giving of that notice ("**Initial Period**").
- 12.2 If the dispute is not resolved within the Initial Period, then the dispute shall be referred within a further 28 days to the Australian Disputes Centre for mediation or any other agreed venue which conducts mediation.
- 12.3 Each Party must bear its own costs of resolving a dispute under this clause, and unless the Parties otherwise agree, the Parties to the dispute must bear equally the costs of the mediator.
- 12.4 In the event that the dispute is not settled at mediation within 28 days (or such other period as the Parties agree in writing) after the appointment of the mediator, or if no mediator is appointed, then within 28 days of the referral of the dispute to mediation, then the Parties are free to pursue any other procedures available at law for the resolution of the dispute.

13. GENERAL

- 13.1 This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement.
- 13.2 Any variation of any term and condition of this Agreement or the Project must be made in writing and executed by all Parties.
- 13.3 A Party must not assign the rights and obligations arising under this Agreement without the prior written consent of the other Party.
- 13.4 The Parties are independent contracting Parties and nothing in this Agreement makes any Party the employee, partner, agent, or legal representative of any other for any purpose whatsoever, nor does it grant either Party any authority to assume or to create any obligation on behalf of or in the name of any other.
- 13.5 Any provision of this Agreement that is invalid or unenforceable will be deemed deleted, but only to the extent necessary and remaining provisions remain in full force and effect.
- 13.6 This Agreement does not preclude any Party engaging in research or other activities similar to the Project or its subject matter.
- 13.7 This Agreement may be executed by electronic signature and in counterparts. All counterparts will be taken to constitute one instrument.
- 13.8 Each Party may communicate its execution of this Agreement by successfully transmitting an executed copy of this Agreement by email to the other Party.

Agreement

In witness hereof, the Parties have caused this Agreement to be executed as of respective dates written below.

Choose the appropriate signature block for University and Industry Partner, leaving the Irrelevant signature blocks blank.

University

Name of University

Where Party is a **company** under the *Corporations Act 2001* use the following:

EXECUTED by , ,

in accordance with the requirements of section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Full name of director

Full name of director/secretary

Date

Where Party is a **company** and will execute by affixing a company seal:

THE COMMON SEAL of

, the affixing of which was witnessed by:

Signature of director

Signature of director/secretary

Full name of director

Full name of director/secretary

Date

Where Party is a **company** and the Contract will be executed by power of attorney:

SIGNED for and on behalf of ,

by:

Signature

Signature of witness

Full name of signatory

Full name of witness

Date

who is authorised by Power of Attorney

and who declares that has at the time of execution of this document no notice of its revocation.

Where Party is a **partnership** use the following:

SIGNED by:

Signature of partner

Signature of witness

Full name of partner

Full name of witness

Date

who by signing warrants that they have authority to bind

Where Party is a **incorporated association** use the following:

SIGNED for and on behalf of ,

by:

Signature of Committee Member

Signature of witness

Full name of Committee Member

Full name of witness

Date

Industry Partner

Name of Industry Partner

Where Party is a **company** under the *Corporations Act 2001* use the following:

EXECUTED by , ,

in accordance with the requirements of section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Full name of director

Full name of director/secretary

Date

Where Party is a **company** and will execute by affixing a company seal:

THE COMMON SEAL of

, the affixing of which was witnessed by:

Signature of director

Signature of director/secretary

Full name of director

Full name of director/secretary

Date

Where Party is a **company** and the Contract will be executed by power of attorney:

SIGNED for and on behalf of ,

by:

Signature

Signature of witness

Full name of signatory

Full name of witness

Date

who is authorised by Power of Attorney

and who declares that has at the time of execution of this document no notice of its revocation.

Where Party is a **partnership** use the following:

SIGNED by:

Signature of partner

Signature of witness

Full name of partner

Full name of witness

Date

who by signing warrants that they have authority to bind

Where Party is a **incorporated association** use the following:

SIGNED for and on behalf of

by:

Signature of Committee Member

Signature of witness

Full name of Committee Member

Full name of witness

Date

Schedule 1

Item 1: Project

Item 2: Materials

Provider:

User:

Post-analysis arrangements:

Item 3: Ownership of Project Results and Project IP:

Item 4: Protocol (attached as Annexure A)

Protocol number

Version number:

Version date:

Schedule 2

Funding and/or other resources

Annexure A - Protocol