

Draft v4.0 - Date: 22 July 2022

Collaborative Research Agreement

For projects not involving clinical trials

(Where clinical trials are as defined in the Australian Commission on Safety and Quality in Health Care National Clinical Trials Governance Framework)

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Party 1 ABN Insert (**Insert**)

Party 2 ABN Insert (**Insert**)

Party 3 ABN Insert (**Insert**)

Party 4 ABN Insert (**Insert**)

[Repeat for as many Parties as required]

Collaborative Research Agreement

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Details

Date

Parties

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| Name | Party 1 |
| ABN | Insert |
| Short form name | Insert |
| Notice details | Insert (including contact name, position title, and address) Email: Insert Attention: Insert |

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|-----------------|--|
| Name | Party 2 |
| ABN | Insert |
| Short form name | Insert |
| Notice details | Insert (including contact name, position title, and address) Email: Insert Attention: Insert |

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| Name | Party 3 |
| ABN | Insert |
| Short form name | Insert |
| Notice details | Insert (including contact name, position title, and address) Email: Insert Attention: Insert |

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| Name | Party 4 |
| ABN | Insert |
| Short form name | Insert |
| Notice details | Insert (including contact name, position title, and address) Email: Insert Attention: Insert |

[Repeat for as many Parties as required]

Background

A The Parties have agreed to collaborate on the Project in accordance with the terms and conditions set out in this Agreement.

Agreed terms

1. Defined terms & interpretation

1.1 In this Agreement:

Agreement means this Collaborative Research Agreement, as may be amended from time to time in accordance with its terms.

Background IP of a Party means the Intellectual Property that is made available by that Party for the purposes of the Project that is either: (a) created before the Commencement Date; (b) created or developed by that Party during the Term independently of the Project; (c) assigned or licensed to that Party during the Term independently of the Project; or (d) specified in Schedule 1 as being made available by that Party and, unless specified in Schedule 1 as not included, includes any **Improvements** to any Intellectual Property contemplated in (a), (b), (c) or (d). For clarity, Background IP does not include **Medical Records** or **Study Participant Data**.

Business Day means a day that is not a Saturday, a Sunday, a public holiday or a bank holiday in the place in which any relevant act is to be or may be done.

Commencement Date means the date specified as such in Schedule 1.

Commercialisation means the provision of rights in Intellectual Property or services including the exploitation of Intellectual Property in exchange for any benefit, whether monetary or otherwise, but excludes **Internal Purposes**. For the avoidance of doubt, the making of an academic publication in compliance with clause 7 is not considered to be Commercialisation of Intellectual Property, even where the author or a Party receives benefit for the publication.

Completion Date means the date specified as such in Schedule 1.

Confidential Information means financial, business and strategic information of a Party, any ideas, concepts, technical and operational information, scientific or technical processes and techniques, methodology and processes of a Party used in the Project, and other valuable information of whatever description and in whatever form but does not include:

- (a) information which is lawfully in the public domain before its disclosure to a Party under this Agreement;
- (b) information which enters the public domain otherwise than as a result of an unauthorised disclosure;
- (c) information which is or becomes available to a Party from a third person lawfully in possession of it who has the lawful power to disclose the information on a non-confidential basis; or
- (d) information which is rightfully known or independently developed by the Recipient Party (as shown by its written record) before the date of disclosure to it under this Agreement.

Contributions means the cash and In-Kind Contributions of a Party to the Project as set out in Schedule 1.

Coordinating Principal Investigator means the Investigator identified in Schedule 1 as responsible for coordinating the Project, including obtaining Ethics Approval.

Disclosing Party is the Party that is disclosing Confidential Information.

Ethics Approval means the ethics application for a Project together with the approval of that application and any conditions of approval provided by the HREC.

Force Majeure Event means any act of god, act of nature, including any epidemic or outbreak of pandemic disease, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining raw material, energy or other supplies, labour disputes of whatever nature or whatever reason beyond the control of the affected Party.

Funding means the funding which a Party receives under the Funding Agreement towards the conduct of the Project, as set out in Schedule 1.

Funding Agreement means the agreement specified as such in Schedule 1.

Government Authority means a government or government department or other body or a governmental, semi-governmental, judicial, municipal, statutory or public entity or authority (including a statutory authority, a State-owned enterprise or a corporate Commonwealth entity), a self-regulatory authority established under statute, or a stock exchange (wherever created or located) or a person (whether autonomous or not) who is charged with the administration of a law.

HREC means the Ethics Committee specified in the Ethics Approval identified in Schedule 1.

Human Biological Material means physical samples of biological material of a Study Participant provided for the purpose of the Project, such as tissue, saliva or blood samples, and includes any unmodified material that is propagated from, derived from or based upon that biological material, which may be more specifically described Schedule 1.

Improvements mean any improvements, variations, modifications, developments or adaptations made to a Party's Background IP as a result of its use in the Project. For the avoidance of doubt, an Improvement does not include any intellectual property that can be used or exercised without infringing the relevant Background Intellectual Property.

In-Kind Contributions by a Party to a Project means all Contributions that are not cash, including the following:

- (a) the commercial value of Background IP provided by each Party in the Project;
- (b) time of personnel and Students (if applicable);
- (c) access to equipment and facilities of a Party;
- (d) supply of consumables and services to the Project by a Party;
- (e) access to Study Participants; or
- (f) access to Medical Records and Study Participant Data.

Intellectual Property or **IP** means all intellectual property rights, including but not limited to:

- (a) trade and service marks (including goodwill in those marks), patents, inventions, discoveries, copyright, rights in circuit layouts, designs, moral rights, domain names, registrable plant varieties, processes, trade secrets and know-how;
- (b) any application or right to apply for registration of any rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraph (a) and (b) which may subsist anywhere in the world (including Australia), whether or not such rights are registered or capable of being registered.

Internal Purposes means a Party's internal research, education, training, academic, health, business or operations purposes (as may be applicable), excluding Commercialisation.

Investigators means the personnel specified in Schedule 1, or any other person that may be nominated by a Party for that role from time to time during the Project.

Lead has the meaning set out in clause 3.2(a).

Materials means physical samples of a thing or substance, and includes Human Biological Materials and Study Participant Data.

Material Owner means a Party who provides or makes available Materials to another Party in connection with the Project.

Medical Records means a clinical record or note created by a medical or health professional for inclusion in an official record of treatment of a Study Participant.

Moral Rights means as described in Part IX of the *Copyright Act 1968* (Cth) and any analogous rights arising under statute that exist, or may come to exist, anywhere in the world.

Party means a party to this Agreement.

Personal Information has the same meaning as in the *Privacy Act 1998* (Cth).

Project means the research project described in Schedule 1.

Project IP means the Intellectual Property developed by a Party as a direct result of undertaking the Project, but excludes Background IP, Student IP, Medical Records, and Study Participant Data.

Project IP Owner means the Party or Parties as specified in Schedule 1 who will own Project IP in accordance with clause 6.1 of this Agreement.

Publication means a paper, article, manuscript, report, poster, internet posting, presentation, abstract, outline, video, instruction material or other public disclosure, in printed, electronic, oral or other form, but excludes a Thesis.

Publishing Party has the meaning set out in clause 7.

Recipient Party means a Party who receives Confidential Information, Human Biological Material, Study Participant Data or Material in connection with the Project.

Relevant Privacy Laws means the *Privacy Act 1998* (Cth) or any other applicable legislation (including delegated and subordinate legislation such as regulations), code or guideline relating to the protection of Personal Information or Sensitive Information.

Research Misconduct has the same meaning as set out in the *Australian Code for the Responsible Conduct of Research* (2018), as updated from time to time.

Research Plan means the research plan or protocol for the Project, as applicable, at Appendix A to this Agreement.

Reviewing Party has the meaning set out in clause 7.

Sensitive Information has the same meaning as in the Privacy Act 1998 (Cth).

Site Specific Authorisation means any required approval or authorisation from any relevant organisation for the conduct of human research at a site as part of the Project.

Special Conditions means any changes to clauses 3 to 16.14 of this Collaborative Research Agreement, or any additional clauses agreed between the Parties, as set out in Schedule 1.

Student means a student of a Party, as specified in the Project including undergraduate, postgraduate and PhD researchers, involved in the Project for the purpose of obtaining research data/information towards a higher degree) and students who are acting as volunteers (other than as Study Participants) for the purposes of the Project. Students will include any replacement or additional students of a Party, as notified to the other Parties in writing.

Student IP means copyright in any Thesis.

Study Participant means an individual that is directly or indirectly a subject of study in the course of the Project.

Study Participant Data means the Study Participant data or any other data or information of a Study Participant provided for the purpose of the Project, as described in Schedule 1.

Term means the period of time specified in clause 2.

Thesis means any work required to be submitted by a Student to that Student's enrolling institution for examination for the award of a degree.

1.2 In this Agreement:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a gender includes the other genders;
- (c) headings are for reference only and do not affect the meaning of any provision;
- (d) other grammatical forms of each defined word or expression will have a corresponding meaning;
- (e) a reference to this Agreement includes any schedules or annexures to this Agreement;
- (f) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement;

- (g) a reference to a document or agreement, including a reference to this Agreement, includes a reference to that document or agreement as novated, varied or replaced from time to time;
- (h) a reference to "\$", "\$A", "dollar" or "A\$" is a reference to Australian currency;
- (i) a reference to a month is a reference to a calendar month;
- (j) a reference to any legislation, regulation or other statutory instrument includes a reference to any enactment, amendment, substitution or consolidation and any statutory instrument issued pursuant to such legislation, regulation or other statutory instrument;
- (k) a reference to writing includes all physical and electronic methods of visibly representing or reproducing words, figures or symbols;
- (l) no rule of construction applies to the disadvantage of the Party that drafts this Agreement on the basis that the Party suggested the relevant drafting;
- (m) words such as "includes" and "including" do not impose any limitation on the construction of general language that is followed by specific examples.

2. Term

This Agreement will commence on the Commencement Date and continue until the Completion Date unless terminated earlier in accordance with clause 12.

3. Performance of the Project

3.1 The Parties agree to perform their respective roles and responsibilities in conducting the Project:

- (a) in a competent and diligent manner, exercising due care and skill;
- (b) using appropriately qualified and experienced personnel;
- (c) in compliance with:
 - (i) the terms and conditions of this Agreement, including any Special Conditions that may be specified in Schedule 1;
 - (ii) the Ethics Approval, Research Plan, Site Specific Authorisation, and any site-specific requirements nominated in Schedule 1 or otherwise reasonable and notified to the Parties in writing;
 - (iii) the principles of good scientific practice, good clinical practices and, if applicable, good manufacturing practices; and
 - (iv) all applicable local, state and federal laws, legislation, regulations, rules, by-laws, including without limitation the Relevant Privacy Laws.

3.2 If the Project is wholly or partially funded under a Funding Agreement:

- (a) the Party which is a party to the Funding Agreement (**Lead**) undertakes to comply with the Funding Agreement;
- (b) Parties other than the Lead will use their best endeavours to not do anything which would cause the Lead to be in breach of the Funding Agreement; and
- (c) the Parties will co-operate and do all things reasonably required to assist the Lead to meet its obligations under the Funding Agreement including providing all information that the Lead requires to meet a condition of any Funding, as well as any other applicable reporting, compliance and financial management obligations relating to the Funding;

3.3 The Parties will use best endeavours to:

- (a) ensure that their Investigators follow the relevant research governance procedures for the notification and management of breaches of the *Australian Code for the Responsible Conduct of Research (2018)* including instances of Research Misconduct, and to

- cooperate with each other in relation to any allegations of Research Misconduct arising in connection with the Project;
- (b) keep complete and accurate records and accounts for their conduct of the Project, to be sufficient to enable a complete understanding of all Project IP and expenditure by a Party of all cash Contributions and the Funding (if any).
- 3.4 Each Party acknowledges and agrees that the Project involves research of a speculative nature, and that the Project may not result in any particular outcome or Project IP, which may or may not be able to be used or commercialised.
- 3.5 Except as provided for in Schedule 1, the Parties will respect the Moral Rights of authors of Background IP and Project IP.
- 3.6 The Parties will require their respective Investigators to meet regularly to discuss the progress and conduct of the Project, including:
- (a) any outcomes or developments related to analysis of the Human Biological Material, Study Participant Data or other Materials;
- (b) any actual or potential Project IP;
- (c) any Improvements to Background IP as a result of its use in the Project; or
- (d) any actual or anticipated amendment or variation to the Research Plan.
- 3.7 The timing and agenda for the meetings described in clause 3.6 will be agreed between the Parties from time to time, or in the absence of agreement, as directed by the Coordinating Principal Investigator.
- 3.8 The Lead will make the Funding available to the other Parties to the extent and at the time as set out in Schedule 1. Each Party receiving Funding agrees to ensure it will be spent only on the Project and in accordance with the budget approved under the Funding Agreement, unless otherwise agreed in writing between the Parties and approved by the relevant funding body (if required).
- 3.9 Each Party will make their respective Contributions to the Project, including providing all cash, equipment, consumables, services and facilities necessary for the conduct of the Project, as set out in Schedule 1.
- 3.10 The Parties acknowledge and agree that the safety and well-being of Study Participants is paramount and nothing in this Agreement will require a Party to take a step in the course of the Project which would inhibit the care, safety or well-being of those Study Participants.
- 3.11 Each Party warrants throughout the Term that neither it, and to the best of its knowledge its personnel, have a conflict of interest in the performance of the Project, except as may have been disclosed and resolved to the satisfaction of the other Parties.

4. Material Transfer

- 4.1 Subject to Ethics Approvals, Site Specific Authorisations, any required consents, and/or other approvals or authorisations required by law, the Parties agree to contribute the Materials for the Project including as described in Schedule 1.
- 4.2 Each Recipient Party agrees to:
- (a) only use the Materials for the Project in accordance with the Research Plan, subject to any additional restrictions or conditions as notified in writing by the Material Owner;
- (b) not provide the Materials to any third party other than as approved in writing by the Material Owner;
- (c) not use the Materials in humans;

- (d) not use the Materials for any commercial, diagnostic or therapeutic purposes;
 - (e) not seek any form of registration of Intellectual Property or other statutory protection of the Materials (subject to clause 4.6);
 - (f) not seek to reverse engineer the Materials or otherwise determine the origin of the Materials;
 - (g) comply with all laws and applicable codes of conduct in relation to use, storage and handling of the Materials;
 - (h) comply with and maintain any Ethics Approval and Site Specific Authorisation necessary to use the Materials; and
 - (i) co-operate with the Material Owner and act reasonably in connection with this Agreement and receipt and use of the Materials.
- 4.3 Except as provided under clause 4.1, where the Materials consist of Human Biological Material or Study Participant Data, the Material Owner must before providing the Materials ensure that:
- (a) clear advice is or has been provided to Study Participants:
 - (i) that the Project is being performed in collaboration with the Parties to this Agreement;
 - (ii) whether the Human Biological Material or Study Participant Data will be provided on an identified, de-identified or anonymised basis, including information about any Personal Information that will be linked to it;
 - (iii) which Parties will have access to the Human Biological Material and Study Participant Data for the purposes of conducting the Project and at what level of identifiability;
 - (iv) whether the Human Biological Material and Study Participant Data is intended to be used for any future purpose other than the Project; and,
 - (v) it is at the discretion of each Study Participant as to whether they consent to participate in the Project; and
 - (b) as required, consent is or has been obtained from each Study Participant for use of the Human Biological Material and Study Participant Data in accordance with Ethics Approvals.
- 4.4 Except as provided under clause 4.1, if the Materials include any Personal Information of a Study Participant, the Material Owner must hold the relevant consent from the Study Participant for the collection and use of that Personal Information.
- 4.5 The Recipient Party acknowledges and agrees that, as between the Parties, the Material Owner retains title to the Materials and any Background IP in such Materials provided to the Recipient Party under this Agreement, unless and until it is extinguished as a result of its use in the Project.
- 4.6 The Recipient Party must notify the Material Owner of any new Intellectual Property created as a result of use of the Materials, upon creation. Ownership of new IP under this clause 4.6 will vest in the Recipient Party, unless the new Intellectual Property is reliant upon the Materials or Background IP in the Materials, in which case the new IP will be deemed as Project IP and clause 6 of this Agreement will apply.
- 4.7 The Recipient Party must acknowledge the Material Owner's provision of the Materials and any personnel notified by the Material Owner as being involved in the development of the Materials in any Publications relating to the Materials.
- 4.8 The Recipient Party acknowledges and agrees that:
- (a) the Material Owner does not make any representation or give any warranty that the Materials are fit for any particular purpose;

- (b) the Material Owner does not make any representation or give any warranty that the use of the Materials by the Recipient Party or transfer of the Materials to the Recipient Party will not infringe the Intellectual Property or other rights of any third party;
- (c) the Materials are provided on an “as is” basis and use of the Materials will be at the Recipient Party's own risk; and
- (d) except as provided for in clause 4.6, nothing in this Agreement grants the Recipient Party a licence or assigns to the Recipient Party any Intellectual Property of the Material Owner.

4.9 The Recipient Party must:

- (a) when the Recipient Party has completed the performance of the Project;
- (b) upon expiry or termination of this Agreement; or
- (c) where reasonably requested to do so by the Material Owner,

promptly return to the Material Owner, or destroy if requested by the Material Owner to do so, any remaining Materials supplied by the Material Owner to the Recipient Party, subject to clause 8.5.

5. Background IP

5.1 The Parties agree that nothing in this Agreement will affect ownership of any Background IP that a Party makes available for the Project.

5.2 The Parties each grant to the other Parties:

- (a) a worldwide, royalty free, non-exclusive licence (including the right to grant sub-licences) to exercise its Background IP during the Term solely to the extent required for the purpose of performing the Project; and
- (b) in respect of any of its Background IP which is incorporated into any material developed in the course of or in connection with the Project, a worldwide, royalty free, non-exclusive, irrevocable, perpetual licence (including the right to grant sub-licences) to exercise the Intellectual Property rights in that Background IP to the extent it is incorporated into the material and only to the extent that the Party is granted Intellectual Property Rights in respect of that material under this Agreement.

5.3 If a Party notifies the other Parties that any encumbrances or prior licences apply to particular Background IP at the time that Background IP is made available for the purpose of performing the Project or as specified in Schedule 1, then the licence contemplated by clause 5.2 is limited with respect to that Background IP to the extent of that encumbrance or prior licence.

5.4 Subject to clause 5.3, each Party that grants to the other Parties rights under clause 5.2, warrants, as a fundamental term of this Agreement as at the date of this Agreement and on an ongoing basis, that:

- (a) it is authorised to grant the rights in this clause; and
- (b) the use of the Background IP as permitted by this Agreement will not infringe the Intellectual Property Rights or Moral Rights of any person.

5.5 Each Party must:

- (a) take all reasonably necessary steps to protect, maintain and, to the extent reasonably required, enforce Background IP made available for the purpose of carrying out the Project;
- (b) give the relevant other Party prompt notice of any infringement of Background IP that comes to that Party's attention; and
- (c) give the relevant other Party all assistance which is reasonably required by the other Party to protect Background IP of the other Party at the other Party's cost.

6. Project IP

- 6.1 Project IP shall vest immediately upon its creation in the Project IP Owner.
- 6.2 Each Party hereby assigns to the Project IP Owner all its right, title and interest in and to the Project IP (whether in existence now or created in the future) and agrees to do all things reasonably necessary to give effect to such ownership under clause 6.1 and assignment under this clause 6.2.
- 6.3 The Project IP Owner hereby grants each Party a worldwide, non-exclusive, fee-free and royalty-free licence to use the Project IP for the:
- (a) purpose of carrying out the Project; and
 - (b) each Party's own Internal Purposes, subject to the requirements in clause 8.
- 6.4 Each Party must provide to each other Party written notice setting out a description of any Project IP or Improvement to another Party's Background IP that could be reasonably expected to have commercial potential as soon as practicable after such Project IP or Improvement arises.
- 6.5 As soon as possible after receiving notice under clause 6.4, the Parties will negotiate in good faith an agreement allowing for commercial use of the relevant Project IP or Improvement, including:
- (a) (if applicable) ownership and protection of Project IP or Improvement;
 - (b) identification of the Party who will lead Commercialisation and protection of Project IP, including who will bear costs and expenses (including patent attorney fees);
 - (c) payment to the non-lead Party or Parties a share of any Commercialisation benefits received.
- 6.6 In reaching agreement under clause 6.5 the Parties shall take into account each Party's contribution to the creation of the relevant Project IP, including know-how, inventorship and Clinical Contributions. In default of agreement on each Party's Contributions, this will be finally determined by an independent expert in accordance with, and subject to, Resolution Institute Expert Determination Rules and unless the Parties agree upon an expert, any Party may request a nomination from the Chair of Resolution Institute.

7. Publication and publicity

- 7.1 If a Party (**Publishing Party**) wishes to make a disclosure of Confidential Information, Material, Project IP or another Party's Background IP by means of a Publication, the Publishing Party must first obtain the unanimous consent of the other Parties (**Reviewing Party**), which may not be unreasonably withheld or delayed.
- 7.2 The Publishing Party must submit a draft version of the proposed Publication to each Reviewing Party at least thirty days prior to the date upon which it is intended the draft be submitted for Publication.
- 7.3 Each Reviewing Party must respond within fourteen days of receiving a request contemplated by clause 7.2 by:
- (a) providing consent to the Publication;
 - (b) requesting removal from or anonymity in the Publication;
 - (c) providing consent to the Publication subject to that Party's Confidential Information being removed from the draft; or
 - (d) requesting a delay of no greater than 3 months in disclosure of the Publication so as not to prejudice protection of Intellectual Property or Commercialisation of Project IP.
- 7.4 Any person, including an Investigator or Student, who is named as an author or co-author on a Publication must also be given a reasonable opportunity to review the final Publication in the form

intended to be submitted for publication and may request the removal of their name from the Publication.

- 7.5 If the Publishing Party has not received a response from a Reviewing Party within fourteen days it will be entitled to assume consent has been granted by that Reviewing Party to publish the draft in the form in which it was submitted for review.
- 7.6 If a Reviewing Party responds as contemplated by clauses 7.3(c) or 7.3(d), that Reviewing Party must provide notice of reasons to justify not providing unconditional consent.
- 7.7 The Parties agree to negotiate in good faith in relation to any reasonable objections or requested amendments from a Reviewing Party to any Publication.
- 7.8 Each Party will acknowledge the contribution of the other Parties in Publications in the form agreed between the Parties and in accordance with the version of the Australian Code for the Responsible Conduct of Research current as at the date of notice under clause 7.2.
- 7.9 In relation to any public announcement about the Project, a Party agrees to obtain prior written approval of the other Parties as to the form and manner of such public announcement.
- 7.10 Each Party agrees it will not use the name, logo or other branding of another Party in any public announcement or Publication concerning the Project, without the prior written consent of that other Party.

8. Confidentiality

- 8.1 Except as otherwise provided in this clause 8, each Party must keep confidential and not disclose any Confidential Information of another Party without the Disclosing Party's prior written approval.
- 8.2 A Recipient Party may:
 - (a) use Confidential Information of the Disclosing Party only for the purposes of this Agreement and the Project;
 - (b) disclose Confidential Information of the Disclosing Party to:
 - (i) its personnel (including Students);
 - (ii) its directors and officers; and
 - (iii) its legal, financial or other professional advisors,
who have a need to know for the purposes of this agreement or the Project (and only to the extent that each has a need to know), provided the disclosure is made subject to an obligation of confidentiality on terms at least equivalent to this clause 8); and
 - (iv) if the Recipient Party is a government entity, to a government Minister, Ministerial adviser or Parliament or otherwise as required in order to comply with an order or direction of a responsible Minister; disclose Confidential Information of the Disclosing Party to the extent required or permitted by law, or required or requested by any Government Authority, provided that the Recipient Party notifies the Disclosing Party, unless it is legally prohibited from doing so, prior to the disclosure to enable the Disclosing Party to seek a protective order or other appropriate remedy in respect of the Confidential Information.
- 8.3 If the Recipient Party learns or believes that:
 - (a) any unauthorised person has come into possession of any part of the Confidential Information of the Disclosing Party;
 - (b) any person has made any improper or unauthorised use of the Confidential Information of the Disclosing Party; or
 - (c) any unauthorised person is doing anything in contravention of rights that attach to and arise from the Confidential Information of the Disclosing Party,

the Recipient Party must notify the Disclosing Party as soon as possible, including full particulars of the unauthorised possession, use or action, and must provide to the Disclosing Party all assistance and information the Disclosing Party may reasonably request with respect to the unauthorised possession, use or action.

8.4 Each Recipient Party must:

(a) where requested to do so by a Disclosing Party; or

(b) when the Recipient Party has completed the performance of the Project,

promptly return to the Disclosing Party, or destroy if requested by the Disclosing Party to do so, any Confidential Information supplied by the Disclosing Party to the Recipient Party (whether in electronic or hard copy and in any storage device).

8.5 Notwithstanding clause 8.4 or any other clause in this Agreement, each Party may retain a copy of such Confidential Information and Materials to the extent required for internal record keeping and compliance with legal requirements provided that it is retained in accordance with the Party's obligations under this clause 8.

9. Privacy

9.1 Each Party agrees to comply with the Relevant Privacy Laws as applicable to their respective conduct of a Project.

9.2 Each Party agrees not to do anything that would cause a breach of the Relevant Privacy Laws and agrees not to do anything that would cause any other Party to breach a Relevant Privacy Law applicable to that Party.

9.3 Each Party must

(a) only use Personal Information or Sensitive Information held in connection with this Agreement for fulfilment of the Parties' obligations under this Agreement;

(b) return or destroy (at the election of the owner of the Personal Information or Sensitive Information) the Personal Information and/or Sensitive Information upon the expiration or termination of this Agreement, except to the extent required for internal record keeping and compliance with legal requirements, provided that it is retained in accordance with the Party's obligations under clause 8;

(c) ensure that Personal Information or Sensitive Information in its possession or control is protected against loss and unauthorised access, use, modification or disclosure in accordance with Relevant Privacy Laws; and

(d) notify the other Parties if it becomes aware of any unauthorised access to or unauthorised disclosure of Personal Information, or a loss of Personal Information held in connection with this Agreement.

9.4 Where a Party has any Personal Information, Sensitive Information, Medical Records and Study Participant Data arising from the Project or provided by a Party for the purposes of the Project, that Party must ensure that any Personal Information, Sensitive Information, Medical Records and Study Participant Data will be accessed, stored, used and disclosed in accordance with the Relevant Privacy Laws, and any data security and confidentiality measures that are notified to that Party by the Party providing the information from time to time during the Term.

10. Students

10.1 Each Party must ensure that any of its Students participating in the Project:

(a) is aware of and agrees to comply with the obligations of that Party (in relation to the Personal Information, Sensitive Information, Medical Records, Materials and Study Participant Data requirements) as set out in this Agreement; and

- (b) assigns to that Party all Project IP created by the Student in the course of the Student's participation in the Project.
- 10.2 The Parties agree and acknowledge that ownership of Student IP vests in the Student.
- 10.3 A Party is responsible for any acts or omissions of its Students in relation to the use and disclosure of information and for any other acts or omissions of the Student in connection with the Project, except to the extent the Student is complying with a direct written instruction issued by the personnel of another Party.
- 10.4 The supervision of a Party's Student will be in accordance with the relevant Party's regulations, policies and procedures.
- 10.5 Subject to clause 10.4 and 10.6, the Parties agree that a Student may include the results of the Project in whole or in part in their Thesis.
- 10.6 Upon the reasonable request of another Party, a Party responsible for the Student will use its reasonable endeavours to ensure that the Thesis is kept confidential for a period of up to 12 months from the completion of the Project. Nothing in this clause 10 permits the publication or disclosure of the Confidential Information of a Party.

11. Liability and insurance

- 11.1 Each Party must effect and maintain the insurance for the Project as required in Schedule 1 or if no requirements are specified, adequate insurance coverage necessary to indemnify it in relation to any liability it may incur in conducting the Project or performing its obligations under this Agreement.
- 11.2 A Party may satisfy the obligation to insure through a self-insurance scheme.
- 11.3 Subject to clauses 11.4 and 11.5, each Party is not liable to the other Parties in connection with this Agreement for any loss or damage however caused (including due to the negligence of that Party) that is consequential loss, indirect loss, loss of profits, loss of revenue, loss of reputation, loss of bargain or loss of opportunity.
- 11.4 Subject to clause 11.6, no Party will be liable for any loss or damage however caused (including due to the negligence of that Party) suffered or incurred by any of the Parties in connection with use of any results of the Project, the Project IP, the Material or the Study Participant Data.
- 11.5 Subject to clause 11.6, each Party excludes all implied terms, representations and warranties, whether statutory or otherwise relating to the Project or the subject matter of this Agreement other than as expressly set out in this Agreement.
- 11.6 If any applicable legislation prohibits the exclusion of liability by a Party in the manner contemplated by this clause with respect to particular loss or damage, then:
 - (a) the exclusion does not apply to that loss or damage; and
 - (b) that Party's liability is only limited or excluded with respect to that loss or damage in the manner permitted under that legislation (if any).

12. Termination

- 12.1 The Parties may agree in writing to terminate this Agreement at any time.
- 12.2 A Party may terminate this Agreement (in whole or in part) immediately by written notice to the other Parties if:

- (a) another Party commits a material breach of any clause of this Agreement and such breach is not remedied within 30 days of receipt of written notice specifying the details of the breach, or is incapable of being remedied;
- (b) an event referred to in clause 12.3 happens to another Party;
- (c) a notice is given by a Party under clause 16.13;
- (d) the terminating Party is of the reasonable opinion that it is unable to obtain, maintain or comply with Ethics Approval from the HREC to conduct the Project;
- (e) the terminating Party is a government agency and it is terminating due to change in government policy; or
- (f) the Project is not safe and Study Participant well-being necessitates the termination of this Agreement.

12.3 A Party must notify the other Parties immediately if:

- (a) it disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
- (b) it ceases to carry on business;
- (c) it ceases to be able to pay its debts as they become due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of its assets, operations or business;
- (e) any step is taken to enter into any arrangement between it and its creditors;
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person of the whole or part of its assets, operations or business; or
- (g) having regard to its legal structure, any event analogous to an event in paragraphs (a) to (f) happens to it.

12.4 If any Party's involvement in the Project is terminated in accordance with this clause 12:

- (a) if only one Party remains a party to the Project, this Agreement will be terminated; or
- (b) if more than one Party remains a party to the Project, those remaining Parties will discuss and, in good faith, elect whether to terminate or vary this Agreement; and

where the Agreement is to continue, the terminated Party must provide all reasonable assistance to the other Parties to enable continuation of the Project if they request, including in collaboration with a replacement Party.

12.5 Upon expiry or termination of the Agreement:

- (a) subject to any applicable retention requirements imposed by law, a Party will return to all other Parties all Materials in their custody and possession which belongs to the other Party including Confidential Information;
- (b) subject to clause 12.4, the Parties must promptly initiate all appropriate action to close the Project; and
- (c) where funding or Contribution has been provided to a terminated Party by another Party, that terminated Party must reimburse any Funding or Contribution that has not yet been expended as at the date of termination.

12.6 The Parties agree that termination of this Agreement will not affect any clause of this Agreement which is expressly or by implication intended to come into force or continue on or after the termination including this clause 12 and clauses 4.9, 5, 6, 7, 8, 9, 10, 11, 13 and 16.8.

13. Dispute Resolution

- 13.1 A Party must not commence legal proceedings relating to this Agreement unless the Party wishing to commence proceedings has complied with this clause 13. However, this clause 13 will not apply where a Party seeks urgent interlocutory relief from a court.
- 13.2 The Parties will co-operate with each other and use their best endeavours to resolve by mutual agreement any differences between them and all other difficulties which may arise from time to time relating to this Agreement.
- 13.3 If a dispute arises between the Parties relating to or arising out of this Agreement, except under clause 6.6 (the Dispute) then:
- (a) the Party alleging the Dispute must notify the existence and nature of the Dispute to the other Parties within 30 days of the dispute arising (the Notification);
 - (b) upon receipt of a Notification the Parties must request a senior executive of a Party (or equivalent, or their nominee) to resolve the Dispute;
 - (c) if the Dispute is not resolved as provided in clause 13.3(b) with 30 days of receipt of the Notification then any Party may refer the Dispute to mediation as provided in clause 13.3(d) and must do so before initiating proceedings in a court to resolve the Dispute;
 - (d) any Dispute which is referred to mediation must be referred to the Resolution Institute and be conducted in accordance with the Mediation Rules of the Resolution Institute;
 - (e) the Parties must co-operate with Resolution Institute as facilitator;
 - (f) if within 10 Business Days after referral of the dispute to Resolution Institute the Parties have not agreed upon the mediator or other relevant particular the mediator and any other relevant particular will be determined in accordance with Resolution Institute's Facilitation Rules; and
 - (g) if the Dispute is not resolved within 60 days of referral to the Resolution Institute any Party is free to initiate proceedings in a court in respect of the Dispute.

14. GST

- 14.1 Capitalised words or expressions used in this clause 14 which are not defined in this Agreement have the corresponding meaning under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (the "GST Law") or, if not so defined, then which are defined in the *Competition and Consumer Act 2010* (Cth).
- 14.2 Unless stated otherwise in Schedule 1, all amounts payable under or in connection with this Agreement are expressed on a GST exclusive basis.
- 14.3 If a Contribution made under this Agreement is a Taxable Supply, the Recipient must pay to the Supplier, in respect of that Taxable Supply, an additional amount equal to the GST payable by the Supplier in respect of that Taxable Supply.
- 14.4 The Recipient must pay the amount payable under clause 14.3 at the same time as payment must be made for the Taxable Supply, provided the Supplier has given the Recipient a Tax Invoice for that payment stating the amount of GST paid or payable by the Supplier in respect of the supply to which the Tax Invoice relates.
- 14.5 If, at any time, an adjustment event arises in respect of any supply made by a Party under this Agreement, a corresponding adjustment must be made between the Parties in respect of any amount paid pursuant to clause 14.3.
- 14.6 Payments to give effect to the adjustment must be made between the Parties and the Supplier must issue a valid adjustment note in relation to the Adjustment Event.

- 14.7 If an amount that would otherwise be payable under this Agreement is calculated by reference to or otherwise relates to a cost, expense or other amount incurred by a Party, then that amount will be reduced by the amount of any input tax credit to which that Party is entitled in respect of that amount.
- 14.8 The Party referred to in clause 14.7 will be assumed to be entitled to a full Input Tax Credit unless it demonstrates that its entitlement is otherwise prior to the date on which the payment must be made.
- 14.9 If a Party is a member of a GST group, references to GST for which the Party is liable and to Input Tax Credits to which the Party is entitled include GST which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.

15. Notices

- 15.1 The addresses of the Parties for the purposes of giving notices under this Agreement are set out in the Details page following the table of contents in this Agreement.
- 15.2 A notice, consent, approval or other communication (each a notice) under this Agreement must be:
- (a) delivered to the Party's address;
 - (b) sent by pre-paid mail to the Party's address; or
 - (c) sent by email to the Party's email address.
- 15.3 A notice given by a Party in accordance with this clause 15 is treated as having been given and received:
- (a) if delivered to a Party's address, on the day of delivery if a business day, otherwise on the next business day;
 - (b) if sent by pre-paid mail, on the fifth business day after posting;
 - (c) if sent by email, upon read receipt or when the sender's system registers that the email has passed the internet gateway of the sender's system (provided that no delivery failure is received by the sender within one hour of sending).
- 15.4 Each Party must promptly notify the other Parties of any change to their addresses in Schedule 1.

16. General

- 16.1 Each Party is responsible for its own costs of entering into and performing this Agreement and will do anything (including execute any document and perform all acts) that another Party may reasonably require to give full effect to this Agreement.
- 16.2 This Agreement may be signed electronically and executed in any number of counterparts, including by exchange of electronic copy. All counterparts taken together will be taken to constitute one agreement.
- 16.3 No variations of this Agreement are legally binding on any Party unless evidenced in writing signed by all Parties.
- 16.4 A Party may not sub contract, assign or novate its rights or obligations under this Agreement without the prior written consent of the other Parties, such consent not to be unreasonably withheld.
- 16.5 This Agreement is governed by the laws of the jurisdiction identified in Schedule 1. The Parties agree to submit to the non-exclusive jurisdiction of the courts within that jurisdiction.

- 16.6 Excepting as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and in addition to any other rights of that Party.
- 16.7 Unless otherwise expressly contemplated, where a provision of this Agreement contemplates that a Party may exercise its discretion then that Party is entitled to exercise that discretion absolutely, with or without conditions and without being required to act reasonably or give reasons.
- 16.8 No right under this Agreement is waived or deemed to be waived except by notice in writing signed by the Party waiving the right. A waiver by any Party in respect of any breach of a condition or provision of this Agreement will not be deemed to be a waiver in respect of any other breach. Failure or delay by any Party to enforce any provision of this Agreement will not be deemed to be a waiver by that Party of any right in respect of any other such breach.
- 16.9 Except to the extent that a warranty is expressly given in this Agreement or is implied by an applicable law and cannot be excluded, the Parties give no representation, warranty, statement or promise, either express or implied, as to any matter whatsoever concerning the conduct of the Project. The Parties agree that no Party has relied on any representation made to it by another Party prior to entry into this Agreement.
- 16.10 If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of this Agreement.
- 16.11 The obligations and liabilities of the Parties under this Agreement are several and not joint or joint and several.
- 16.12 Nothing in this Agreement creates a relationship of employer and employee, principal and agent, joint venture, trust or partnership between the Parties and no Party will hold itself out as an agent for another.
- 16.13 If any Party is delayed or prevented from the performance of any act required under this Agreement by a Force Majeure Event, the affected Party will promptly notify the other Parties in writing, giving details of the Force Majeure Event, the acts affected by the Force Majeure Event and the extent to which they are affected, and performance of such acts will be excused for the period of such event provided that if such interference lasts for any period in excess of 60 days each Party may, by written notice to the other, terminate this Agreement under clause 12.2.
- 16.14 This Agreement constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.
- 16.15 In the event of any inconsistency between clauses 3 to 16.14 of this Agreement and the Special Conditions, the Special Conditions prevail.

Schedule 1 – Agreement Details

| | |
|---|---|
| Project Title | Click or tap here to enter Project Title. |
| Project Description | Click or tap here to enter Project Description. eg [insert short description], as more fully described in Appendix A |
| Funding Agreement (if any) | Please select: |
| Commencement Date | Click or tap to enter the Commencement Date. e.g. The date the last Party signs this Agreement. |
| Completion Date | Click or tap to enter the Completion Date. e.g. Upon termination or expiry of HREC approval, or any later date the Parties agree in writing. |
| Ethics Approval Reference Number and HREC name | Click or tap here to enter the Ethics Approval Reference Number. Click or tap here to enter the HREC name corresponding to the above Ethics Approval Reference Number. |
| Coordinating Principal Investigator | Click or tap here to enter the Coordinating Principal Investigator |
| Investigator/s | Click or tap here to enter the Investigator/s. |
| Student(s) | Click or tap here to enter the Student(s). |
| Activities to be conducted by Parties | Click or tap here to enter the Activities to be conducted by Parties. |
| Funding | Click or tap here to enter Funding details. |
| Contributions | Click or tap here to enter the Contributions, including cash and In-Kind Contributions [if applicable, attach the Project Budget]. |
| Human Biological Material | Material: Providing Party: Recipient Party: [add additional rows if additional Material is to be provided] |
| Study Participant Data | Data: Providing Party: Recipient Party: [add additional rows if additional Material is to be provided] |
| Other Material | Material: Providing Party: Recipient Party: [add additional rows if additional Material is to be provided] |
| Background IP | Click or tap here to enter Background IP details. |

| | |
|---|--|
| Project IP Owner | Click or tap here to enter Project IP Owner. e.g. identify specific Project IP Owner (if more than one owner, specify whether joint or any nominated percentage ownership) OR If no specific Project IP Owner(s), insert: all of the Parties to this Agreement as tenants in common in equal shares* / in shares that are in proportion to each Party's Contributions* (* delete whichever is inapplicable) |
| Moral Rights | Click or tap here to enter the Moral Rights. |
| Specific insurance requirements (if any) | Click or tap here to enter specific insurance requirements. |
| Governing law jurisdiction | Click or tap here to enter the governing law jurisdiction. e.g. insert the State jurisdiction common to all Parties, or if not common, consider inserting the jurisdiction where the Coordinating Principal Investigator is located. |
| Special Conditions (if any) | Click or tap here to enter Special Conditions (if any). |
| Appendix A | Research Plan or Protocol is attached as Appendix A. |
| Appendix B | [if applicable: Proof of Funding is attached as Appendix B.] |
| Appendix C | [if applicable: Funding Agreement is attached as Appendix C.] |

Signing page

EXECUTED as an agreement.

Executed by [insert Party] by its duly authorised officer:

Signature of Authorised Representative

Name and Position of Authorised Representative
(print)

Date:

[Repeat for as many Parties as required]

Appendix A – Research Plan or Protocol

Appendix B – Proof of Funding

Appendix C – Funding Agreement