

Collaborative Research Agreement

AGREEMENT DETAILS

Agreement Date	The date that this Agreement is executed by the last party to it.	
UNSW		
Name	The University of New South Wales, a body corporate established pursuant to the University of New South Wales Act 1989 (NSW) (UNSW)	
Address	UNSW Sydney NSW 2052, Australia	
ABN	57 195 873 179	
Attention - RGC	Director, Research Grants and Contracts Research Grants and Contracts	
Address	Level 3, Rupert Myers Building South Wing UNSW NSW 2052, Australia	
Email	Myresearch.rgc@unsw.edu.au	
Notices & Invoices	Phone	+61 2 9065 8491
Attention – Research Finance	Associate Director, Research Revenue and Accounting	
Email	researchfinance@unsw.edu.au	
Phone	+61 2 9065 8577	
[Insert Collaborator shortform name]	Name	[LEGAL NAME]
	Address	[REGISTERED ADDRESS OR STREET ADDRESS AND COUNTRY IF A FOREIGN PARTY]
	ABN or ACN or other registration number:	[INSERT NUMBER – For Australian Entities]
Notices & Invoices	Attention	[INSERT NAME OF LEGAL CONTACT] <i>[This person should be the organisation contact not the researcher, project manager or agreement contact]</i>

	Address	[insert]
	Email	[insert]
Project Start Date	The Agreement Date OR [DATE]	
Project Completion Date	[DATE] OR [EVENT]	
Project Title	[DETAILS]	
Ethics/Biosafety approval required (clause 2.4)	<input type="checkbox"/> YES <input type="checkbox"/> NO	
Insurance	<p>Workers compensation insurance in accordance with applicable Law and awards;</p> <p>Public liability insurance appropriate to the party's activities for an amount not less than \$10 million; and</p> <p>Professional indemnity insurance for an amount not less than \$5 million in respect of a claim for breach of professional duty whether incurred in contract, tort or otherwise or by reason of any act or omission of the party.</p>	

SAMPLE

EXECUTION

Executed as an agreement

Signed for and on behalf of UNSW by its authorised representative:

_____ Signature	_____ Date
_____ Name of authorised representative	_____ Position
_____	_____

Signed for and on behalf of [insert company name] by its authorised representative:

_____ Signature	_____ Date
_____ Name of authorised representative	_____ Position
_____	_____

GENERAL TERMS

1 Definitions and interpretation

1.1 Definitions

In this Agreement, the following capitalised words have the following meaning.

Affiliate of a party means an entity who, directly or indirectly, Controls or is Controlled by or is under common Control with a party.

Agreement means this agreement between UNSW and the Collaborating Organisation(s) once executed.

Asset means an item of real or personal property but does not include Intellectual Property.

Background IP means Intellectual Property Rights owned or controlled by a party as at the Project Start Date, including any described in Schedule 1, or acquired or developed by a party (whether alone or jointly with any other person) independently of the Project, in each case which that party makes available to the other parties for the performance of the Project.

Business Day means any day that is not a Saturday, Sunday or public holiday in New South Wales, Australia.

Cash Contribution means the cash component of the Total Contribution.

Collaborating Organisation means the party with contact details specified in the Agreement Details.

Commercialise means in relation to Relevant IP, to:

- (a) manufacture, sell, import, hire out goods or provide a service (or offer to do any of those things), based on or incorporating the Relevant IP;
- (b) otherwise 'exploit' or exercise the rights of the owner of the Relevant IP; or
- (c) license any third party to do any of those things mentioned in paragraph (a) or (b) regardless of whether any revenue is generated or intended to be generated.

Committed means, at a particular date, funds that the party:

- (a) is contractually and irrevocably obliged to pay to a third party in respect of the Project; and
- (b) are identified in a written contractual arrangement between the party and that third party.

Confidential Information means all information related to:

- (a) the Project, and
- (b) all other information disclosed by a party (**Discloser**) to the other party (**Receiving Party**) or which the Receiving Party otherwise becomes aware of during the Term or before the Project Start Date, that is:

- (i) imparted in circumstances of confidence; or
- (ii) by its nature reasonably to be considered the confidential information of the Discloser or of a person to whom the Discloser owes a duty of confidence,

in each case, irrespective of the medium or means of disclosure or whether the disclosure is made directly or indirectly either by or to the Receiving Party or by the Discloser's Personnel, Affiliates or Related Body Corporate but does not include any Excluded Information.

Conflict of Interest means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through a party engaging in any activity, participating in any association, holding any membership or obtaining any interest that is likely to conflict with or restrict that party participating in the Project.

Control has the meaning given to that term in section 50AA of the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Dispute means a dispute arising out of or relating to this Agreement including a dispute about the breach, termination, validity, or subject matter of this Agreement, or a claim in equity or in tort relating to the performance or non-performance of this Agreement.

Excluded Information means information that:

- (a) is wholly in the public domain other than due to a breach of this Agreement or any other obligation of confidentiality;
- (b) was known by a Receiving Party at the time of disclosure by the Discloser or is subsequently disclosed to the Receiving Party by someone other than the Discloser and the information was not acquired directly or indirectly through a breach of this Agreement or any other obligation of confidentiality; or
- (c) is independently developed by the Receiving Party without any reference to or reliance on the Confidential Information.

Excluded Loss means any special, indirect or consequential Loss arising under or in connection with this Agreement, including any loss of profits, loss of anticipated savings or loss of reputation.

Force Majeure Event means an event outside the reasonable control of the affected party (except for a lack of funds) and that could not have been prevented by that party taking all reasonable steps, and includes without limitation natural disasters (i.e. floods, tornadoes, earthquakes, hurricanes), acts of people (i.e. acts of terrorism, riots, strikes, wars), epidemics, pandemics, quarantine and government action.

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

Government Agency means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or replaced from time to time.

Improvement means any modification, enhancement, development or improvement to any Background IP made by a party in the course of performing the Project.

In-kind Contribution means the in-kind component of the Total Contribution.

Insolvency Event means, with respect to a party:

- (a) a liquidator is appointed to the party;
- (b) the party applies to be voluntarily deregistered;
- (c) the party resolves to wind itself up; or
- (d) the party receives a notice from the Australian Securities and Investments Commission that it is to be deregistered, unless the deregistration process is stopped within one month after that notice.

Intellectual Property Rights means any inventions, patents, trade marks, service marks, design rights, database rights (whether registered or otherwise) and any applications, renewals and extensions for these, copyright, know-how, trade or business names and all other intellectual or industrial property rights anywhere in the world, whether or not registered or capable of registration and any associated goodwill.

Law means any applicable statute, regulation, by-law, ordinance, rule, proclamation, subordinate legislation, order in council, any other instrument of a legislative character, and court rules, that are in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government) or elsewhere, and includes the common law and rules of equity as applicable from time to time.

Loss means liabilities, expenses, charges, claims, losses, damages and costs (including legal cost on a full indemnity basis) whether incurred by or awarded against a party.

Management Committee means the management committee for the Project established under clause 4.1.

Material means all materials in any form including all data, information, records, documents, databases and software (including source code and object code), other works and material and the subject matter of any category of Intellectual Property Rights.

Nominee means NewSouth Innovations Pty Limited (ABN 25 000 263 025) a wholly owned subsidiary of UNSW responsible for management and

commercialisation of UNSW's Intellectual Property Rights.

Personal Information means personal information as defined in the *Privacy Act 1988* (Cth).

Personnel means any employee, officer, principal, agent, contractor, student or volunteer of a party.

PID Act means the *Public Interest Disclosures Act 2022* (NSW).

Privacy Laws means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Privacy Act 1988* (Cth) and laws, principles, codes and policies relating to the collection, use, disclosure, storage and access to Personal Information in the jurisdiction where a party is located.

Project means the project and activities described in the Agreement Details, including any Project Plan in Schedule 3.

Project Completion Date means the scheduled completion date for the Project specified in the Agreement Details.

Project IP means all Intellectual Property Rights created or developed as part of performing the Project but does not include Intellectual Property Rights in Background IP, Improvements, and copyright in a Student's thesis.

Project Obligations of a party means that party's obligations in relation to the Project as specified in Schedule 1.

Project Plan means the research plan for the conduct, milestones and deliverables for the Project, as set out in 1.

Project Start Date means the start date for the Project specified in the Agreement Details.

Publication means any manuscript, abstract, article, thesis, paper or other work intended for publication; any visual or oral presentation; or any poster, electronic or web presentation.

Related Body Corporate has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth).

Relevant IP means Project IP or Background IP (as applicable).

Specified Personnel means those Personnel specified in Schedule 1 to perform the Project or as replaced in accordance with this Agreement.

Student means a student who is enrolled at UNSW or a Collaborator and involved in the Project.

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

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

Term means the period commencing on the Project Start Date and ending on the Project Completion Date,

unless terminated earlier in accordance with clause 14.

Total Contribution of a party means the aggregate of the Cash Contribution and In-kind Contribution to the Project as set out in Schedule 1.

1.2 Interpretation

Unless the context requires otherwise:

(a) Reference to:

- (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes a partnership, a joint venture, an unincorporated association, a corporation and a government or statutory body or authority;
 - (iv) this or any other document includes the document as novated, varied or replaced and despite any change in a party's identity;
 - (v) a party includes the party's executors, administrators, successors and permitted assigns;
 - (vi) dollars means Australian dollars unless otherwise stated.
- (b) "Including" and similar expressions are not words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.
- (e) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (f) A reference to a term in the Agreement Details which is not separately defined has the meaning specified in the Agreement Details.

2 The Project

2.1 Term

The parties must:

- (a) start the Project on the Project Start Date, and
- (b) use reasonable endeavours to complete the Project on or near the Project Completion Date or other date agreed by the parties in writing.

2.2 Conduct of the parties

- (a) The parties agree to carry out the Project:
 - (i) in accordance with the terms of this Agreement and the Project Plan;

- (ii) in compliance with all applicable Laws, accepted professional and scientific standards, ethical principles, codes and guidelines; and
- (iii) using the Specified Personnel. If for any reason any Specified Personnel become unavailable before completion of the Project, the relevant party will promptly notify the other party and provide a suitable replacement.

2.3 General obligations

Each party must:

- (a) give each other party's Specified Personnel access to its premises for the purpose of carrying out the Project, where necessary, provided they comply with:
 - (i) applicable work, health and safety, security, and other policies and procedures relating to the premises accessed as notified; and
 - (ii) any reasonable directions notified in writing by the party providing access.
- (b) perform its Project Obligations;
- (c) co-operate with the other party and provide all other assistance, Material, equipment, facilities, resources as may be reasonably necessary to perform the Project; and
- (d) maintain complete and accurate records on the conduct and results of the Project during the Term.

2.4 Ethics and other approvals

- (a) The parties acknowledge that the Project may require ethics and/or biosafety approvals as a matter of Law or policy by a party's ethics or biosafety committees and/or a Government Agency. The relevant party must use reasonable endeavours to promptly obtain that approval.
- (b) The parties are not required to commence the Project before such approvals are obtained.
- (c) If a party is unable to obtain any required approval, it will notify the other party and this Agreement may be immediately terminated on written notice by a party.

2.5 Conflicts of Interest

- (a) Each party warrants that it has disclosed in writing to the other party all actual, potential or perceived Conflicts of Interest of which it is aware, relating to it, or any of its Specified Personnel, at the Project Start Date.
- (b) Each party agrees to:
 - (i) notify UNSW and each other party immediately in writing on becoming aware of any actual, potential or

perceived Conflict of Interest during the Term; and

- (ii) comply with any reasonable directions of UNSW to manage or avoid that Conflict of Interest.

- (c) Each party acknowledges that clauses 2.5(a) and (b) are material terms of this Agreement for the purpose of clause 14.

2.6 Representations

No party may make any representation to the effect that a party has evaluated, tested, recommended, approved or endorsed any product or service related to the Project, without the relevant party's consent.

2.7 Subcontracting

A party may only subcontract its obligations under this Agreement to a third party with the prior written consent of the other party. The party who subcontracts:

- (a) remains responsible for its obligations and the acts of its subcontractor under this Agreement; and
- (b) must ensure that it enters into an agreement with such subcontractors on terms consistent with this Agreement.

3 Contributions and Payments

3.1 Contributions

Subject to clause 3.3, a party must provide its Total Contribution to the Project in the manner set out in the Agreement Details and Schedule 1.

3.2 Payments

Subject to clause 3.3, the Collaborating Organisation must pay its Cash Contribution to UNSW.

3.3 Invoices

- (a) A party will provide a Tax Invoice for taxable supplies due under this Agreement.
- (b) A party must pay the relevant party the amount specified in a Tax Invoice issued in accordance with clauses 3.1 or 3.2 by the due date specified on the Tax Invoice or if no due date is specified, within 30 days after the Tax Invoice is issued.
- (c) Contact details for invoices for the parties are set out in the Agreement Details.

3.4 Taxes

- (a) Unless specified otherwise, all monetary amounts expressed in this Agreement are exclusive of GST and any other applicable taxes, duties, imposts and other similar charges payable in respect of services provided.
- (b) If any supply under this Agreement is a Taxable Supply, the party making the supply may, in addition to any payment for the supply, recover the amount of the GST applicable to the supply.

- (c) Any amount of GST payable for a supply will be payable at the same time as the payment for the supply to which it relates.

- (d) For all countertrade transactions that occur under this Agreement, and for the purpose of enabling the parties to rely on Practical Compliance Guideline PCG 2016/18 issued by the ATO in complying with their GST obligations, the parties agree and declare as follows:

- (i) the parties are each registered for GST;
- (ii) the supplies that each of the parties make under the countertrade transaction or transactions (including In-kind Contributions) are all taxable supplies;
- (iii) each supply is used by the recipient of the supply for a fully creditable purpose;
- (iv) the GST-inclusive market values of the countertrade supplies are equal; and
- (v) relevant records in respect of the countertrade transactions will be kept for a period of at least 5 years.

4 Project Management

4.1 Establishment and responsibilities of the Management Committee

- (a) Unless otherwise agreed between the parties, as soon as reasonably practicable after the Project Start Date, the parties may establish a Management Committee comprising 2 nominees from UNSW and 2 nominees from the Collaborating Organisation.
- (b) A member of the Management Committee nominated by UNSW will chair the Management Committee.

- (c) The Management Committee will have general oversight of the conduct of the Project, including matters relating to the progress, direction and results of the Project and any disclosure of Project IP.

4.2 Meetings of the Management Committee

- (a) The Management Committee may conduct its meetings by teleconference or videoconference.
- (b) The following matters may be considered at the first meeting of the Management Committee:
 - (i) frequency and format of meetings to discuss the progress of the Project;
 - (ii) obligations to take and keep minutes of meetings;
 - (iii) protocols for making decisions in relation to the conduct of the Project; and
 - (iv) protocols for identifying, protecting and disclosing Project IP.

4.3 Conduct of the Management Committee

- (a) The Management Committee may make decisions and take action as required under this Agreement to carry out the Project.
- (b) A decision of a majority of the members of the Management Committee will be binding. If there are an even number of votes, the chair will have the deciding vote.
- (c) For clarity, the Management Committee does not have the power to make any binding decisions in relation to Intellectual Property Rights or to amend this Agreement including to vary:
 - (i) the Total Contributions; or
 - (ii) content or scope of the Project.

5 Intellectual Property

5.1 Background IP

- (a) Each party grants to the other parties a non-exclusive, revocable, non-transferable, royalty-free licence:
 - (i) for the duration of the Project to use their Background IP solely for the purpose of conducting the Project; and
 - (ii) to use their Background IP to the extent necessary to allow the other party to use the Project IP that they own following completion of the Project.
- (b) Each party acknowledges that:
 - (i) the Background IP of a party remains the property of that party (or a third party licensor, as the case may be) and nothing in this Agreement assigns any right, title or interest in or to any Background IP of a party; and
 - (ii) nothing in this Agreement prevents a party from Commercialising its Background IP or using its Background IP to conduct research (including collaborative, contract or other external research) outside the scope of this Agreement.
- (c) All rights and interests in, and title to, Improvements (including all Intellectual Property Rights subsisting in those Improvements) vest in the party granting a licence of the relevant Background IP, with effect from the date of the creation of the Improvement. Those Improvements form part of the Background IP licensed under clause 5.1(a).

5.2 Project Intellectual Property

- (a) All Project IP will vest in UNSW on creation (except that a Student owns copyright in their thesis). The Collaborating Organisation hereby assigns to UNSW all its right, title and interest in and to Project IP and agrees to do all things

reasonably necessary to give effect to such ownership and assignment (including ensuring its Personnel do the same).

- (b) The parties must use reasonable endeavours to ensure that their Personnel promptly notify each other on creation of Project IP.

5.3 Non-commercial licence of Project IP

UNSW grants to the Collaborating Organisation an irrevocable, non-transferable, non-exclusive, free of cost licence (not including a right to sub-licence) to use the Project IP for the purposes of conducting the Project for the duration of the Project and for its own internal non-commercial purposes following completion of the Project.

6 Assets

- 6.1 Except as stated otherwise in Schedule 1 or the Agreement Details, any Asset purchased wholly or partly with the Cash Contributions will be owned by UNSW.
- 6.2 For the term of this Agreement, the owner of Assets contributed to or acquired for the Project, including as part of an In-Kind Contribution:
 - (a) must make the Asset available for use by all parties for the purposes of the Project, as reasonably required;
 - (b) must not sell, hire, charge, mortgage or otherwise encumber the Asset; and
 - (c) is responsible for insurance, maintenance and if required, repair and replacement of the Asset and any other costs and liabilities associated with the Asset, except to the extent that such liabilities and costs arise from the negligent or unlawful act or omission of or a breach of this Agreement by the non-owning party.

7 Confidentiality

7.1 Confidentiality obligations

- (a) Each party may use Confidential Information of the other party solely for the purposes of this Agreement.
- (b) A Receiving Party must and must ensure their Personnel:
 - (i) keep secure and maintain the confidentiality of any Confidential Information of a Discloser;
 - (ii) refrain from using or directly or indirectly disclosing any Confidential Information of a Discloser, or attempting to do so, except for the purposes of this Agreement;
 - (iii) take all action necessary to maintain the confidential nature of the Confidential Information;

- (iv) take reasonable steps to keep the Confidential Information:
 - (A) within its possession and control, and
 - (B) secure and properly stored to protect it from unauthorised access, disclosure or use, or loss, damage or destruction;
 - (v) notify the Discloser as soon as the Receiving Party becomes aware of a breach of this Agreement or any actual, suspected or likely unauthorised access to, or use or disclosure of the Confidential Information; and
 - (vi) not disclose Confidential Information to any third party without the Discloser's prior written consent, except where otherwise permitted under this Agreement.
- (c) The parties must comply with the confidentiality obligations under this clause 7 until the later of:
- (i) six (6) months after the expiry of the Term; or
 - (ii) the date five (5) years from the Project Start Date.

7.2 Permitted disclosures

- (a) During the Term, the Receiving Party may disclose the Confidential Information to its Personnel, Affiliates and Related Bodies Corporate who have a specific need to access the Confidential Information for the Project and provided they are made aware of the confidential nature of the Confidential Information and the terms of this Agreement before they are provided with or given access to Confidential Information.
- (b) If a Receiving Party wants to disclose Confidential Information to a person other than their Personnel, the Discloser may require the Receiving Party to enter into a confidentiality agreement with the third party on substantially similar terms to those confidentiality requirements specified in this Agreement.

7.3 Disclosure required by Law

The Receiving Party may disclose Confidential Information if required by any Law or order of any Government Agency provided that it:

- (a) only discloses the minimum amount of information necessary to comply with the requirement;
- (b) takes all reasonably available legal measures to avoid such disclosure;
- (c) notifies the Discloser as soon as practicable after such disclosure is ordered so that the Discloser may seek an appropriate protective order or other remedy, and

- (d) consults with the Discloser as to the form of disclosure to be made and takes account of any reasonable comments of the Discloser.

7.4 Consequences of expiry or termination

- (a) A Receiving Party must cease all use of and return to the Discloser, or on the Discloser's instruction, destroy all Confidential Information on expiration or termination of this Agreement.
- (b) Despite clause 8.4(a), the Receiving Party may retain a copy of the Confidential Information (acting reasonably and only for as long as it is reasonably required):
 - (i) to fulfil legal, regulatory or reporting obligations;
 - (ii) that is stored electronically due to an existing routine data backup, provided the Confidential Information is deleted from local hard drives and no attempt is made to recover it other than as required by Law, and

provided the Receiving Party maintains the confidentiality of the Confidential Information in accordance with clause 8.1.

8 Privacy

8.1 The parties agree to:

- (a) comply with the relevant Privacy Laws;
- (b) not do anything with any Personal Information it receives or holds that will cause the other party to be in breach of any Privacy Laws; and
- (c) assist and co-operate with the other party in resolving any complaints made under any Privacy Laws.

9 Publications and publicity

9.1 Publications

- (a) Each party is entitled to publish the results of the Project in a Publication provided that no Confidential Information owned by the non-publishing party is disclosed, subject to this clause 10.
- (b) A publishing party must give notice of any proposed Publication in respect of the Project to the other party at least 30 days before the publication date.
- (c) Acting reasonably, the non-publishing party may, within that thirty (30) day period:
 - (i) provide comments on the proposed Publication to the publishing party, which that party must consider but is not obliged to follow;
 - (ii) require the publishing party to delay Publication for no more than ninety (90) days to allow the non-publishing party to file patent applications or take other measure to protect its proprietary rights; or

- (iii) require the publishing party to remove specified Confidential Information from the Publication.
- (d) If the publishing party has not received any comments from the non-publishing party on the proposed Publication within thirty (30) days of giving notice under clause 10.1(b), the publishing party may make the Publication.
- (e) The parties must ensure that all Publications in respect of the Project appropriately acknowledge the contribution of the other party and their Specified Personnel who have provided significant intellectual or scholarly contributions in connection with a Publication (or any research relating to the Publication) in accordance with usual academic practice.
- (f) Where applicable, each party must comply with any 'Open Access' policy that applies to the Project, including the requirement that any Publications arising from a Project must be deposited into an open access institutional repository within twelve months of the date of Publication.

9.2 Use of name and logo

A party must not use another party's trade mark, name, trade name, logo or other designation in any way without:

- (a) their prior written consent, and
- (b) complying with any guidelines or other reasonable directions issued by that party for the proposed use.

9.3 Public announcements

Except for the research Publications contemplated by clause 10.1, a party must not make a public statement or announcement in any press release, advertising or other promotional material, including by social media, in connection with this Agreement without the prior written consent of the other party.

10 Students

10.1 A party who has a Student involved in carrying out the Project agrees that:

- (a) they will ensure that such a Student will comply with the terms of this Agreement;
- (b) they will ensure that Project IP developed by a Student is owned in accordance with clause 5, provided the Student will own the copyright in their thesis;
- (c) the only restrictions they will impose on publishing a Student's thesis will be those reasonably necessary to protect Confidential Information or any Project IP;
- (d) any restrictions imposed under clause 11(c) must be no longer than twelve (12) months after completion of the Project;
- (e) the parties must not inhibit the right of a Student to have their thesis examined, but an examiner

may be required to sign a confidentiality agreement to protect a party's Confidential Information; and

- (f) before a Student becomes involved in the Project, the parties may require that the Student and the institution in which the Student is enrolled enter into a written agreement, in an approved form, setting out the terms on which the Student will be involved in the Project, which must be consistent with the principles in this clause 11.

10.2 Each party acknowledges and agrees that:

- (a) notwithstanding any provision in this Agreement to the contrary, copyright in the thesis of a Student involved in the Project will belong to that Student; and
- (b) a Student of a party will have a right to have a thesis examined and published in accordance with that party's internal statutes, policies, procedures and guidelines including, without limitation, the right for a copy of such thesis to be deposited into the library of the relevant party, subject to, and provided that the Student and relevant party comply with:
 - (i) the notification and approval process for proposed Publications set out in clause 10; and
 - (ii) the Confidential Information disclosure obligations set out in clause 7.

11 Indemnity and limitations on liability

11.1 Warranties

- (a) Each party represents and warrants to the other party that to its actual knowledge at the Project Start Date it has:
 - (i) full power and authority to enter into and perform its obligations under this Agreement; and
 - (ii) taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into this Agreement and perform the Project.
- (b) The parties agree that:
 - (i) the Project is speculative and that the outcomes of the Project and its ability to produce commercially useful results are not guaranteed; and
 - (ii) the results are the result of experimental research and as such, each party must use its own judgement as to the applicability and fitness for purpose of the results for that party's intended use of the results.
- (c) A party disclosing Background IP in connection with this Agreement makes no warranty or representation that the Background IP:

- (i) is suitable for any particular use or application;
 - (ii) has certain qualities of accuracy, precision or life expectancy; or
 - (iii) does not infringe any third party's Intellectual Property Rights.
- (d) Each party excludes all terms, conditions and warranties implied by custom, the general law or statute into this Agreement except for any implied warranty, the exclusion of which would contravene any statute or which would cause this clause to be void or unenforceable (**Non-Excludable Condition**).
- (e) A party's liability to the other party for breach of any Non-Excludable Condition is limited, at the first party's option, to:
- (i) services:
 - (A) providing those services again; or
 - (B) paying the cost of having those services provided again;
 - (ii) for goods:
 - (A) replacing the goods; or
 - (B) paying the cost of replacing the goods.

11.2 Excluded Loss

A party is not liable to the other party under or in connection with this Agreement for any Excluded Loss.

11.3 Indemnity

- (a) Each party (**Indemnifying Party**) indemnifies the other party (**Indemnified Party**) and its Personnel against all Loss, where such Loss was caused by a negligent act or omission of the Indemnifying Party, or its Personnel in connection with this Agreement.
- (b) The Indemnifying Party's liability to indemnify the Indemnified Party and its Personnel under this Agreement will be reduced proportionally to the extent that any negligent act or omission of the Indemnified Party or its Personnel caused or contributed to the Loss.

11.4 Liability cap

- (a) To the extent permitted by applicable Law, the aggregate liability of UNSW under or in connection with this Agreement, whether in contract, tort (including negligence), statute or any other cause of action, is limited to the Total Contributions made by UNSW under this Agreement.
- (b) The liability cap in clause 12.4(a) does not apply to claims for:
 - (i) personal injury; and
 - (ii) property damage.

12 Insurance

- 12.1 Each party must take out, maintain and keep current, at its own cost the insurances specified in the Agreement Details.
- 12.2 On request, a party must provide evidence to the other party of the terms and currency of all insurance policies required under this Agreement.
- 12.3 A party may act as its own insurer but only to the extent that it will be able to adequately meet its obligations under this Agreement.

13 Termination

13.1 Termination for cause

If:

- (a) a party breaches any material term of this Agreement not capable of remedy; or
- (b) a party breaches any material term of this Agreement capable of remedy and fails to remedy the breach within 30 days after receiving written notice requiring it to do so; or
- (c) an Insolvency Event occurs in relation to a party (whether or not notified),

then:

- (d) the other party may terminate this Agreement immediately by written notice; or
- (e) the other party may terminate the defaulting or insolvent party's involvement in the Project and continue to perform the Project.

13.2 Termination for convenience or by agreement

- (a) UNSW may terminate this Agreement with thirty (30) days' notice in writing to the Collaborating Organisation.
- (b) The parties may also terminate this Agreement by mutual agreement in writing.

13.3 Consequences of termination

On termination of this Agreement for any reason:

- (a) UNSW will be entitled to payment from the Collaborating Organisation of:
 - (i) all monies paid by UNSW to the Collaborating Organisation pursuant to Clause 3 but unspent by the Collaborating Organisation and not Committed (if applicable); and
 - (ii) any outstanding Cash Contributions that have been incurred or Committed by UNSW for the Project as at the effective date of termination;
- (b) without limiting 14.3(a), UNSW will be entitled to payment of any costs incurred by it in terminating any Specified Personnel or any other research Personnel, in each case where that person cannot reasonably be allocated to another project or redeployed;

- (c) all Cash Contributions paid by the Collaborating Organisation remains the property of UNSW;
- (d) if requested by a party (**Requesting Party**), the other party must return to the Requesting Party all property in their possession or control belonging to them, including Background IP and Confidential Information; and
- (e) if a party terminates this Agreement under clause 14.1, the defaulting party must pay any reasonable costs incurred by the other party directly attributable to the termination of this Agreement.

14 Notices

- 14.1 A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.
- 14.2 In addition to any other method of service provided by Law, a Notice may be sent to a party's contact for Notices at the address or email address set out in the Agreement Details or as subsequently notified, by:
 - (a) prepaid priority post;
 - (b) email; or
 - (c) delivery.
- 14.3 If the Notice is sent or delivered in a manner provided by clause 15.2, it must be treated as given to and received by the party to which it is addressed:
 - (a) if sent by post to an address:
 - (i) in the same country as the place of sending, on the 3rd Business Day; or
 - (ii) in a different country to the place of sending, on the 10th Business Day,
 - (iii) (at the address to which it is posted) after posting;
 - (b) if sent by email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt, or
 - (c) if otherwise delivered before 5pm on a Business Day at the place of delivery, on delivery, and otherwise on the next Business Day at the place of delivery.

15 Dispute Resolution

- 15.1 This clause 16 applies to any dispute which arises between the parties in connection with this Agreement (**Dispute**). Each party must follow the dispute resolution process in this clause before it commences litigation or takes

similar action, except to seek an urgent injunction or declaration.

- 15.2 Each party must use its best endeavours to co-operatively resolve any Dispute.
- 15.3 If a party considers that a Dispute has arisen (**Initiating Party**), it must give notice in writing of the Dispute to the other party (**Receiving Party**), setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- 15.4 Within twenty (20) Business Days of the service of the Dispute Notice by the Initiating Party on the Receiving Party, in the case of UNSW, the Deputy Vice-Chancellor Research (or equivalent) or their delegate and in the case of the Collaborating Organisation, their Chief Executive Officer, or their delegates who have appropriate authority to resolve the Dispute (collectively, the **Senior Representatives**), will meet (in person or by telephone or video conference) and attempt to resolve the Dispute in good faith.
- 15.5 If the Dispute is not resolved within twenty (20) Business Days after the Dispute is referred to Senior Representatives, the parties will endeavour to settle the Dispute by mediation administered by the Australian Disputes Centre (**ADC**) before having recourse to litigation.
- 15.6 Where a Dispute is referred to mediation under clause 16.5 above:
 - (a) the mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC (**Guidelines**).
 - (b) the terms of the Guidelines are hereby deemed incorporated into this Agreement.
- 15.7 Prior to the resolution of a Dispute, each party must continue to perform its obligations under this Agreement:
 - (a) unless the nature of the Dispute renders it impossible to do so; or
 - (b) unless and until such obligations are terminated or expire in accordance with this Agreement.
- 15.8 This clause 16 shall survive termination of this Agreement.

16 Force Majeure Event

- (a) Delay in or failure of performance by a party (other than the payment of money) does not constitute a breach of the Agreement evidenced by this document by that party if and to the extent that the delay or failure is caused by a Force Majeure Event, provided the party claiming to be affected:
 - (i) gives notice to the other party within ten (10) Business Days of the occurrence of the Force Majeure Event providing details of the Force Majeure Event and its anticipated likely duration and effect, and

- (ii) uses its best endeavours to resume fulfilling its obligations and gives the other party written notice within five (5) Business Days of the cessation of the Force Majeure Event.

16.2 If a delay caused by a Force Majeure Event continues for more than sixty (60) days, either party may terminate this Agreement by giving thirty (30) days' written notice to the other party.

17 General

17.1 Assignment

A party must not assign, novate, or otherwise deal with this Agreement without the prior written consent of the other party except that UNSW may assign its rights and obligations in whole or in part under this Agreement to its Nominee by written notice to the Collaborating Organisation.

17.2 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary to give full effect to this Agreement.

17.3 No relationship

Nothing in this Agreement may be construed as creating a relationship of partnership, employment, principal and agent or trustee and beneficiary between the parties.

17.4 Entire Agreement

This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.

17.5 Waiver

The failure by a party to require performance of an obligation under this Agreement by the other party will not operate as a waiver of the obligation and the other party remains liable to perform all its obligations under this Agreement.

17.6 Variation

Any variation to this Agreement is not effective unless it is made in writing and signed by the parties to it.

17.7 Severability

Any term of this Agreement which is wholly or partially unenforceable, illegal or void is severed to the extent that it is void or unenforceable, and the rest of this Agreement is not affected and remains in force.

17.8 Survival

Clauses 5, 7, 9, 11, 12, 15, 16 and any other clause that expressly or by implication continues after termination or expiration of this Agreement, will survive termination or expiry of this Agreement.

17.9 Counterparts

This Agreement may be executed in any number of counterparts each of which may be executed

electronically or in handwriting and will be deemed an original whether kept in electronic or paper form. All counterparts together constitute one agreement.

17.10 Governing law and jurisdiction

The Laws of New South Wales, Australia govern this Agreement and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

Schedule 1 - Project Details

UNSW				
Specified Personnel	[insert names and email]			
UNSW Background Intellectual Property	[insert details or NA]			
Project Obligations	[List any specific obligations or NA]			
In-kind Contribution	[insert details of non-monetary contributions or NA]			
Cash Contribution		Year 1	[\$XXXX]	[Due date – for Year 1, first due date should be shortly after the Agreement Date]
		Year 2	[\$XXXX]	[Due date]
		Year 3	[\$XXXX]	[Due date]
Collaborating Organisation				
Specified Personnel	[insert names and email]			
Collaborating Organisation Background Intellectual Property	[insert details or NA]			
Project Obligations	[List any specific obligations or NA]			
In-kind Contribution	[insert details of non-monetary contributions or NA]			
Cash Contribution		Year 1	[\$XXXX]	[Due date – for Year 1, first due date should be shortly after the Agreement Date]
		Year 2	[\$XXXX]	[Due date]
		Year 3	[\$XXXX]	[Due date]

Schedule 2 – UNSW Payments to the Collaborating Organisation (GST Exclusive)

[Insert or N/A]

Expected Date	Year 1	Year 2	Year 3	Total
[Due date]	\$ [insert]	\$ [insert]	\$ [insert]	\$ [insert]
[Due date]	\$ [insert]	\$ [insert]	\$ [insert]	\$ [insert]
[Due date]	\$ [insert]	\$ [insert]	\$ [insert]	\$ [insert]

SAMPLE

Schedule 3 – Project Plan

[INSERT PROJECT PLAN]

SAMPLE