

# Data Access and Use Agreement

## AGREEMENT DETAILS

<b>Effective Date</b>	[The date that this Agreement is executed by the last party to it OR insert date]		
<b>Parties</b>	<b>Provider</b>	[insert] (ABN [insert]) of [insert address].	
	<b>Recipient</b>	[insert] (ABN [insert]) of [insert address].	
<b>Background</b>	[Insert any relevant background information here if required]		
<b>Data Access Date</b>	[Date the data will be transferred to/accessible by the Recipient]		
<b>Term</b>	[Insert the term of this Agreement]		
<b>Project</b>	[Insert the name or title of the research project, study or protocol the data will be used in]		
<b>Data</b>	[Details of the data requested, include specific information]		
<b>Purpose</b>	[Describe what the data will be used for, specify details of the permitted use] [examples: <ul style="list-style-type: none"> <li>• The data will be used for benchmarking the results from project x.</li> <li>• The data will be used to create a survey for y purpose.</li> <li>• The data will be used to develop a prototype for manufacturing z.]</li> </ul>		
<b>Method of Data Access</b>	[Details of how access to or transfer of the data will be effected by the Provider. For example: <ul style="list-style-type: none"> <li>- Data will be made available via a secure, password protected encrypted file sharing service of the Recipient's choice.</li> <li>- Files containing the data will be emailed to the Recipient in x format.]</li> </ul>		
<b>Procedures</b>	[Specify the Provider procedures that will apply to security, storage, retention and disposal procedures of the Data (see clause 4.1(d)).  Where UNSW is the Provider, the Procedures include UNSW's mandatory policies and procedures for data handling and data breaches [Insert links to relevant policies]		
<b>Special Conditions</b>	[Specify any special conditions related to matters such as intellectual property, publication (such as specific requirements for de-identification of data, method of attribution or otherwise, that are non-standard to the General Terms <b>OR</b> state "Not applicable"]		
<b>Insurance</b>	[Specify types of insurance and \$ limits if required <b>OR</b> state "Not applicable"]		
	<b>Provider details</b>	[insert contact name and address details]	

<b>Contact for Legal Notices</b>	<b>Recipient details</b>	[insert contact name and address details]
<b>Provider Agreement Contact</b>	<b>Name</b>	[insert]
	<b>Email</b>	[insert]
<b>Recipient Agreement Contact</b>	<b>Name</b>	[insert]
	<b>Email</b>	[insert]
<b>Recipient Approved Personnel</b>	<b>Name</b>	[insert]
	<b>Position</b>	[insert]
	<b>Email</b>	[insert]

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, in addition to the matters defined in the Agreement Details, the following capitalised words have the following meaning.

**ADC** has the meaning given in clause 12.2(c).

**Agreement** means this agreement between the Provider and the Recipient once executed.

**Background IP** means all Intellectual Property rights owned or controlled by a party at the Effective Date and which they have the right to license to third parties, made available to the other party for use in relation to the Purpose under this Agreement, and includes Improvements to the Background IP. Background IP of the Provider does not include Data.

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

**Confidential Information** means any information, including all Records, 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 Effective Date:

- (a) comprising or related to the Data;
- (b) related to the Purpose; and/or
- (c) 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 or Related Bodies Corporate but does not include any Excluded Information.

**Data** means the data specified in the Agreement Details and all data and information of the Provider including Personal Information disclosed in relation to the Purpose and/or the Project and includes Improvements to the Data.

**Data Breach** means any:

- (a) unauthorised access to, or unauthorised disclosure of, any Personal Information, Data and/or other Confidential Information; or
- (b) loss of any Personal Information, Data and/or other Confidential Information.

**Excluded Information** means information that:

- (a) the Receiving Party can prove is wholly in the public domain other than due to a breach of this Agreement;
- (b) was known by the 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, and not because of, the disclosure of the Confidential Information by the Discloser.

**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.

**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.

**Guidelines** has the meaning given in clause 12.2(d)(i).

**Improvement** means any transformation, modification, translation, version, enhancement, advancement, variation or configuration of or to the Data or the Background IP which is developed or updated in connection with this Agreement, including during the course of the Project.

**Insolvency Event**, with respect to a person:

- (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 and all inventions, patents, trade marks, service marks, design rights, database rights (whether registered or otherwise), copyright, know-how, trade or business names and other intellectual or industrial property rights anywhere in the world, whether or not registered or capable of registration, including any applications, registrations, renewals and extensions 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, 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 costs on a full indemnity basis) whether incurred by or awarded against a party.

**Non-Excludable Provision** has the meaning given in clause 9.3.

**Notice** has the meaning given in clause 10.

**Personal Information** means personal information as defined in the Privacy and Personal Information Protection Act 1998 (NSW) that the Recipient accesses, collects, uses, processes or handles in connection with this Agreement.

**Personnel** means all employees, officers, principals, agents, contractors, students, secondees, consultants and volunteers of a party.

**Privacy Laws** means the Privacy and Personal Information Protection Act 1998 (NSW), the Privacy Act 1988 (Cth) and any other applicable Laws affecting privacy or Personal Information in the jurisdiction where a party is located.

**Project** has the meaning set out 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.

**Purpose** means the permitted use of the Data described in the field titled "Purpose" in the Agreement Details.

**Records** means all notes, memoranda, copies and records (in whatever form) made by a party containing, referring to or based on the Confidential Information.

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

**Results** means all outcomes generated by the Recipient's use of the Data.

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 body corporate;
  - (iv) a party includes the party's executors, administrators, successors and permitted assigns;
  - (v) a thing includes the whole and each part of it separately; and
  - (vi) a statute, regulation, code or other Law or a provision of any of them includes:

- (A) any amendment or replacement of it; and
- (B) another regulation or other statutory instrument made under it, including as amended or replaced;

- (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) headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation;
- (e) 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; And
- (f) 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.

### 1.3 Order of precedence

This Agreement comprises the:

- (a) Agreement Details; and
- (b) General Terms,

The General Terms will take precedence over the Agreement Details to the extent of any ambiguity or inconsistency, except that if the Agreement Details include any Special Conditions, the Special Conditions will have precedence over the General Terms to the extent of any ambiguity or inconsistency.

## 2 Access to Data

2.1 The Provider agrees to make the Data available by the Method of Data Access to the Recipient on the Data Access Date for the Term on the terms of this Agreement.

2.2 Notwithstanding clause 13.6, the parties may agree to make changes to the data fields and/or data scope set out in the field titled "Data" in the Agreement Details as follows:

- (a) the Recipient Agreement Contact may request such changes by sending an email to the Provider Agreement Contact; and
- (b) to the extent approved, the Provider Agreement Contact will confirm by email to the Recipient Agreement Contact that such changes are approved, and

from the date of such approval email or the date specified in such approval email, the changes that have been approved will be deemed to be listed in the field titled "Data" in the Agreement Details.

2.3 The Recipient acknowledges that its right to use the Data under this Agreement is non-exclusive

and that nothing in this Agreement prevents the Provider from exploiting the Data or granting access to the Data to any third party.

### **3 Use of Data**

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3.1 The Recipient must only use the Data:

- (a) for the Purpose;
- (b) during the Term; and
- (c) in compliance with all applicable:
  - (i) Laws;
  - (ii) codes and guidelines on responsible research;
  - (iii) ethical approvals, and
  - (iv) reasonable directions given by the Provider;

3.2 The Recipient must:

- (a) where required by the Provider, notify the Provider promptly of all Results and provide the Provider with regular reports on the progress of the Project;
- (b) if requested by the Provider, provide a report in a form acceptable to the Provider on the conclusion of the Project, including details of all Results and any Improvements; and
- (c) not sell, loan, or otherwise provide the Data to any third party, without the Provider's express prior written consent.

### **4 Protection of Data**

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4.1 The Recipient must:

- (a) ensure the Data is always:
  - (i) kept secure and confidential;
  - (ii) used and managed consistent with Privacy Laws and industry best practice;
  - (iii) used under the active supervision of the Recipient Investigator named in the Agreement Details; and
  - (iv) where there are Recipient Approved Personnel listed in the Agreement Details, accessed and used only by those Recipient Approved Personnel and any other Personnel approved by the Provider in writing;
- (b) not access, transfer, take or send the Data outside of Australia unless the Recipient has the prior written consent of the Provider to do so (which consent may be withheld in the Provider's absolute discretion and may be given subject to conditions);
- (c) implement appropriate technical and organisational systems and processes to protect and secure the Data, and if requested by the Provider provide details of such systems and processes; and

- (d) comply with all security, storage, retention and disposal procedures with respect to the Data set out in this Agreement (including the Agreement Details), subject to any variations agreed by the parties.

### **5 Intellectual Property**

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5.1 Data

- (a) The Provider is the owner of all right, title and interest in and to the Data (including all Improvements to the Data immediately on and from their creation), including all Intellectual Property Rights in the Data.
- (b) Nothing in this Agreement or the use of the Data by the Recipient grants or assigns to the Recipient any right, title or interest in or to the Data, including any Intellectual Property Rights in the Data, other than as expressly set out in this Agreement.
- (c) The Provider hereby grants the Recipient a non-exclusive, non-transferable, royalty-free licence (including a right of sublicense only to the Recipient's Personnel on the same terms) to use the Data for the Purpose during the Term.

5.2 Background IP

- (a) Each party retains all rights in Intellectual Property owned by it on or before the Effective Date and nothing in this Agreement grants or assigns any right, title or interest in or to any Background IP of either party.
- (b) Each party (**Licensor**) hereby grants the other party (**Licensee**) a non-exclusive, non-transferable, royalty-free licence (including a right of sublicense only to the Recipient's Personnel on the same terms) for the duration of the Project, to use the Licensor's Background IP solely for the purpose of conducting the Project.

5.3 Improvements to Background IP

If Improvements are made to Background IP, the party that owns the relevant Background IP will own all right, title and interest (including all Intellectual Property Rights) in such Improvements immediately on and from their creation.

5.4 Trade marks, names and logos

A party must not use any of other party's trade marks, names, trade names, logos or other designations in any way without the other party's prior written consent. If such consent is granted, the first-mentioned party must comply with all guidelines or other reasonable directions issued by that party for the proposed use.

### **6 Confidentiality**

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6.1 Confidentiality obligations

- (a) The Receiving Party must, and must ensure its Personnel:
  - (i) use the Confidential Information of the Discloser in compliance with its

obligations under this Agreement and solely for the Purpose (and not for any other purpose);

- (ii) not use, disclose or permit the disclosure or use of the Confidential Information of the Discloser, except as provided in this Agreement;
- (iii) take all action necessary to maintain the confidential nature of the Confidential Information of the Discloser, including taking reasonable steps to keep such Confidential Information:
  - (A) within its possession and control; and
  - (B) secure and properly stored to protect it from unauthorised access, disclosure or use, and loss, damage or destruction;

- (b) notify the Discloser as soon as the Receiving Party becomes aware of a breach of this Agreement; and
- (c) not disclose Confidential Information of the Discloser to any third party without the Discloser's prior written consent, except where otherwise permitted under this Agreement.

#### 6.2 Permitted disclosures

- (a) During the Term, the Receiving Party may disclose the Confidential Information of the Discloser to its Personnel who have a specific need to access such Confidential Information for the Purpose and provided they are made aware of the confidential nature of such Confidential Information and the terms of this Agreement before they are provided with or given access to such Confidential Information.

#### 6.3 Disclosure required by Law

- (a) The Receiving Party may disclose Confidential Information of the Discloser if required by any Law or order of any Government Agency provided that it:
- (b) only discloses the minimum amount of information necessary to comply with the requirement;
- (c) takes all reasonably available legal measures to avoid such disclosure;
- (d) 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
- (e) consults with the Discloser as to the form of disclosure to be made and takes account of any reasonable comments of the Discloser.

### 7 Publication

The Recipient may publish or present the Results obtained using the Data in a Publication, provided the Recipient:

- (a) gives notice of any proposed Publication to the Provider with a copy of such Publication for review and comment at least 30 days before its submission or publication date;
- (b) on reasonable request by the Provider in that 30-day period:
  - (i) removes from the Publication any reference to the Provider's Confidential Information; or
  - (ii) removes from the Publication the details of any of the Provider's Intellectual Property, if disclosure would, in the opinion of the Provider, prejudice the ability of the Provider to protect that Intellectual Property; and
  - (iii) where applicable, ensures the Data is de-identified prior to inclusion in any Publication;
- (c) acknowledges the Provider (and relevant Provider Personnel) as the provider of the Data in the manner reasonably specified by the Provider; and
- (d) where appropriate, acknowledges any Provider Personnel who have provided significant advice or recommendations in connection with the use of the Data and the Purpose as co-authors of any Publication in accordance with usual academic practice.

### 8 Privacy

- 8.1 The Recipient must comply (and must ensure that its Personnel, and procure that any other persons to whom it has disclosed Data or Confidential Information received under this Agreement comply) with all Privacy Laws with respect to all Personal Information, irrespective of whether or not the Recipient is otherwise bound by the Privacy Laws.

#### 8.2 The Recipient must:

- (a) only use, hold, store, transfer, and disclose Personal Information under or in connection with this Agreement for (and only to the extent required for) the Purpose and the related Project, and must ensure that the Recipient's Personnel who have access to any Personal Information made available by the Provider under this Agreement only use, hold, store, transfer and disclose such Personal Information for (and only to the extent necessary for) the Purpose and the related Project, unless the Recipient has the prior written consent of the Provider or is otherwise required by Law;
- (b) take all necessary steps to ensure that the Personal Information is protected against misuse, interference and loss, and from unauthorised access, modification and disclosure; and
- (c) ensure that Personal Information is treated as the Confidential Information of the Provider.

- 8.3 The Recipient must, as soon as reasonably practicable, notify the Provider if it becomes aware that a disclosure of Personal Information may be required to comply with any Law or a breach of clauses 8.1 to 8.5 (inclusive) has occurred.
- 8.4 The Recipient must immediately report to the Provider any Data Breach which has occurred or which the Recipient had reasonable grounds to suspect may have occurred, and:
- (a) take reasonable steps to mitigate the effects of any Data Breach on the Personal Information and/or Data (as applicable);
  - (b) promptly provide the Provider with any information, assistance and co-operation requested by the Provider to allow the Provider to investigate such Data Breach and to comply with its obligations under the Privacy Laws;
  - (c) if the Recipient forms the view that it is or may be required to notify affected individuals of a Data Breach under the Privacy Laws, ensure that before making any such notification it promptly discusses such matter with the Provider in good faith and complies with any reasonable directions issued by the Provider in relation to such notification, including as to whether the Recipient or the Provider will be the person responsible for fulfilling the relevant notification requirements;
  - (d) where the Provider determines that the Recipient will be the party responsible for fulfilling the relevant notification requirements, comply with all such notification requirements in accordance with the Privacy Laws; and
  - (e) cooperate with all reasonable requirements of the Provider to that end.
- 8.5 The Recipient must not do, or fail to do, anything which would result in the Provider being in breach of any Privacy Laws.
- 8.6 Before the Provider provides to the Recipient or allows the Recipient to access the Data or Confidential Information under this Agreement, and irrespective of whether or not the Provider is otherwise bound by the Privacy Laws, the Provider must ensure that it has provided all notices and obtained all consents required under the Privacy Laws from each relevant individual for whom the Data or Confidential Information is or contains their Personal Information, to allow the Recipient to use such Data or Confidential Information for the Purpose under this Agreement.

## **9 Liability and Indemnity**

- 9.1 The Recipient acknowledges and agrees that:
- (a) the Data is provided on an 'as is' basis, and
  - (b) to the extent permitted by law, the Provider excludes all warranties, express and implied, including (without limitation) any warranties of

merchantability, fitness for a particular purpose or use, accuracy, quality or reliability in relation to the supply of the Data.

- 9.2 Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law which contains guarantees that protect the purchasers of goods and services in certain circumstances.
- 9.3 If any guarantee, warranty, term or condition is implied or imposed in relation to this Agreement under the Australian Consumer Law or any other applicable legislation and cannot be excluded (a **Non-Excludable Provision**), and the Provider is able to limit the Recipient's remedy for a breach of the Non-Excludable Provision, then the liability of the Provider for breach of the Non-Excludable Provision is limited to one or more of the following at the Recipient's option:
- (a) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or
  - (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 9.4 The Recipient is liable for all risks in relation to its storage, management and use of the Data.
- 9.5 To the extent permitted by Law, neither party is liable to the other party under or in connection with this Agreement for any Excluded Loss.

## **10 Notices**

- 10.1 A notice or other communication connected with this Agreement (Notice) has no legal effect unless it is in writing.
- 10.2 A Notice may be sent to a party's Contact for Legal Notices at the address or email address set out in the Agreement Details or as subsequently notified by that party, by:
- (a) prepaid priority post;
    - (i) email; or
    - (ii) personal delivery.
- 10.3 A Notice will 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 third Business Day; or
    - (ii) in a different country to the place of sending, on the tenth 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 personally delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- 10.4 The contact details of the Provider Agreement Contact and Recipient Agreement Contact will be as set out in the Agreement Details (or as subsequently notified by the relevant party to the other party) and may be used by the parties for day-to-day and operational discussions regarding the Agreement.

## 11 Term and Termination

### 11.1 Term

This Agreement commences on the Effective Date and continues for the Term unless otherwise terminated or extended in accordance with the provisions of this Agreement.

### 11.2 Termination for convenience

Either party may terminate this Agreement for any reason by the provision of 30 days' written notice to the other party.

### 11.3 Termination for cause

Either party may terminate this Agreement immediately by written notice to the other party if:

- (a) the other party materially breaches any term of this Agreement, the breach is capable of remedy, and the other party fails to remedy the breach within ten (10) Business Days after receiving written notice from the first-mentioned party requiring it to do so;
- (b) the other party materially breaches any term of this Agreement and the breach is not capable of remedy;
- (c) if any Insolvency Event occurs in relation to the other party (whether or not notified); or
- (d) the Project is discontinued.

### 11.4 Consequences of expiry or termination

- (a) The Recipient must promptly cease all use of and return to the Provider, or permanently delete or destroy, all Data and Confidential Information:
  - (i) if the Project is discontinued;
  - (ii) if there is no further need for the Data, or
  - (iii) on expiry or termination of this Agreement.
- (b) Despite clause 1.1(a), the Recipient may retain a copy of the Data or 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
- (iii) provided the Recipient maintains the confidentiality of all Confidential Information in accordance with clause 6.

## 12 Dispute resolution

### 12.1 Notice of Dispute

- (a) This clause 12 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.
- (b) If a party considers that a Dispute has arisen, it must give the other party written notice of the Dispute setting out reasonable particulars of the matters in dispute (**Dispute Notice**).

### 12.2 Discussions

- (a) Each party must ensure that its representative meets promptly with the other party's representative for good faith discussions to attempt to resolve the Dispute.
- (b) If a Dispute has not been resolved within ten (10) Business Days after the date on which the notice described in clause 12.1(b) is provided, the parties must attempt to resolve the Dispute by holding good faith discussions between senior executives nominated by each party.
- (c) If a Dispute has not been resolved within twenty (20) Business Days after the date on which the Dispute is referred to the senior executives under clause 12.2(b), the parties will endeavour to settle the Dispute by mediation administered by the Australian Disputes Centre (**ADC**).
- (d) Where a Dispute is referred to mediation under clause 12.2(c):
  - (i) 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**); and
  - (ii) the terms of the Guidelines are hereby deemed incorporated into this Agreement.

### 12.3 Obligation to continue to perform

- (a) Each party must continue to perform its obligations under this Agreement

notwithstanding the existence of any Dispute unless and until such obligations are terminated or expire in accordance with this Agreement, unless the nature of the Dispute renders it impossible to do so.

- (b) Each party must bear its own costs of complying with this clause 12.

## **13 General**

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### **13.1 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 under this agreement to its Nominee upon written notice to the other party.

### **13.2 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.

### **13.3 No relationship**

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

### **13.4 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.

### **13.5 Waiver**

No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted. 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.

### **13.6 Variation**

Any variation to this Agreement is not effective unless it is made in writing and signed by each party, except in the circumstances described in clause 2.2.

### **13.7 Severability**

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

### **13.8 Survival**

Clauses 1, 3.2(c), 4, 5 to 10 (inclusive), 11.4, 12 and this clause 13, and any other clause that expressly or by implication continues after termination or expiry of this Agreement, will survive termination or expiry of this Agreement.

### **13.9 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.

### **13.10 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.