NHMRC Partnership Project Collaborative Research Agreement

PARTIES

UNSW or the Administering Organisation
The University of New South Wales ABN 57 195 873 179, a body corporate established pursuant to the *University of New South Wales Act 1989* (NSW) of UNSW Sydney NSW 2052, Australia

Participating Institution
The Party or Parties with contact details specified in Schedule 1.

DETAILS

KEY DATES

<table>
<thead>
<tr>
<th>Project Start Date (clause 1)</th>
<th>On the date the last Party signs this Agreement.</th>
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<tbody>
<tr>
<td>Project Completion Date (clause 1)</td>
<td>Provision of the Final Report required under the NHMRC Funding Agreement to the satisfaction of NHMRC.</td>
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PROJECT OVERVIEW

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<tr>
<th>Project (clause 1)</th>
<th>NHMRC Application: «NHMRC_Ref»</th>
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<tbody>
<tr>
<td></td>
<td>Project Title: «Project_Title»</td>
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<td></td>
<td>Project Detail: The project description and objectives are set out in Schedule 1.</td>
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<td></td>
<td>NHMRC Funding: As set out in the NHMRC Funding Schedule at Annexure B.</td>
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<tr>
<td>Ethics/biosafety approval required (clause 1)</td>
<td>☐ YES ☐ NO</td>
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Background

A. UNSW has been awarded a NHMRC Partnership Project grant by the Commonwealth of Australia, represented by the National Health and Medical Research Council (NHMRC) on the terms of the NHMRC Funding Agreement to conduct the Project together with the Participating Institutions.

B. The NHMRC Funding Agreement requires the UNSW and the Participating Institutions to enter into a binding agreement that covers each Participating Institution’s conduct of its part of the Project and the expenditure of the funding provided by NHMRC for that purpose.

C. UNSW and the Participating Institutions have agreed to undertake the Project including make their respective contributions and expending the Funding in accordance with the terms of this Agreement.
Terms

1. Definitions and Interpretation

1.1 Any defined term used in this Agreement has the meaning given to it in clause 33.

1.2 If there is any inconsistency between the following documents, the following order of priority will be applied to the extent of that inconsistency (from highest to lowest):

(a) the NHMRC Funding Agreement;

(b) clauses 1 to 33 of this Agreement; and

(c) any Schedule, annexure or attachment to this Agreement.

1.3 If a provision of this Agreement creates an obligation on a Participating Institution to comply with a provision of the NHMRC Funding Agreement, that provision will be interpreted as if the relevant terms of the NHMRC Funding Agreement are incorporated into this Agreement by reference and reproduced in full with any reference to:

(a) the ‘Administering Organisation’ in the NHMRC Funding Agreement being read as a reference to the Participating Institution; and

(b) the ‘Agreement’ in the NHMRC Funding Agreement being read as a reference to this Agreement.

2. Term

2.1 Unless terminated earlier in accordance with its terms, this Agreement commences on the Start Date and continues until 3 months after the Project Completion Date.

3. Performance of the Project

3.1 General

Each Party must perform its Project Obligations in accordance with this Agreement using its Specified Personnel.

3.2 Performance Requirements

Each Party must perform its Project Obligations:

(a) in an ethical, responsible, diligent and competent manner;

(b) in accordance with the Funding Policy that applies to the Scheme under which the Project is funded and any Funding Conditions applicable to the Project under the NHMRC Funding Agreement; and

(c) in compliance with the NHMRC Approved Standards and Guidelines and all other applicable standards, awards, laws and regulations.

3.3 Resources

Each Party must ensure that:
NHMRC Partnership Project Collaborative Research Agreement

(a) it provides the assistance, resources, facilities and services reasonably necessary for the efficient conduct of its Project Obligations;

(b) that all overhead and operating expenses are met as required to support its Project Obligations (including, but not limited to, those indirect costs for administration, insurance, rent, taxes, repairs, salaries, communications and utility charges that relate to that Party’s business as a whole and are not an integral part of the Project); and

(c) that the cost of any of the Specified Personnel’s salary and other entitlements or conditions of service is met by that Party (and not the NHMRC Funding) to the extent that cost exceeds the amount of the respective Salary Support Package for that Party of the Project.

3.4 Security

Each Party must ensure that there are security policy and procedures in place in respect of its Project Obligations to:

(a) prevent unauthorised access to any locations where it performs any part of the Project;

(b) protect all information technology hardware and software associated within its custody or control or used by it as part of the Project; and

(c) prevent unauthorised access to documents and data (including research information and experiment details) within its custody or control pertaining to the Project.

3.5 Nature of Research

The Parties acknowledge that research work is of its nature uncertain and that particular outcomes or results from the Project cannot be guaranteed. No Party will be liable to any other Party for any loss or damage whether arising from that Party’s failure to perform work on time or within the estimated costs of the Project or otherwise provided that Party has used its reasonable endeavours in all respects in carrying out the Project.

3.6 Ethics Approval

The Parties acknowledge that the Project may require approval by an institutional ethics and/or biosafety committees (or similar) of UNSW or the Participating Institutions. The relevant Party must use reasonable endeavours to promptly obtain that approval. Before such approvals are obtained, the Parties are not required to commence the Project.

4. Specified Personnel

4.1 Use of Specified Personnel

Each Party must ensure that its role in the Project is performed by the Specified Personnel in accordance with the Application and this Agreement.

4.2 Unavailability of Specified Personnel

(a) If a Specified Person is unable to perform, or to continue to perform, all or part of his or her role in the Project, the relevant Party (the Affected Party) must promptly notify UNSW.

(b) If requested by UNSW (following a request from NHMRC), the Affected Party must arrange for a replacement Specified Person who is acceptable to NHMRC, to continue to perform the Affected Party’s Project Obligations at no additional cost to UNSW or NHMRC and the Affected Party must promptly comply with that request.
4.3 Salary Support Packages

The Parties must ensure that their Personnel who are employed full-time on the Project, and in respect of whom a Salary Support Package is provided, must not accept any remuneration from any source other than in respect of the Personnel’s work on the Project without the prior agreement of NHMRC or unless otherwise permitted under the relevant Scheme’s Funding Policy. In this clause, ‘remuneration’ excludes income generated from the exploitation of Intellectual Property rights in any Background Intellectual Property.

5. Provision of Contributions and Distribution of Funding

5.1 Contributions

(a) Each Party must provide its Contributions (Cash Contribution and In-kind Contribution) at the times and in the manner specified in Schedule 2.

(b) Except as stated otherwise in the Application or Schedule 2, each Participating Institution must pay its Cash Contribution (if any) to UNSW:

(i) in relation to the first instalment, promptly after the Project Start Date; and

(ii) in relation to each subsequent instalment, on each anniversary of the Project Start Date,

following receipt of a Tax Invoice from UNSW.

5.2 Distribution of Funding

(a) Subject to clause 5.2(c), UNSW must pay each Participating Institution the Funding amount specified in Schedule 2 to be paid to that Participating Institution. UNSW will pay those amounts at the times and in the manner specified in Schedule 2.

(b) If payment in Schedule 2 is specified as being paid on a milestone, UNSW will not be obliged to pay any Funding until the milestone has been achieved to the satisfaction of UNSW.

(c) UNSW is not obliged to make any payment under this Agreement unless and until UNSW has received the corresponding Funding from NHMRC and, if relevant, the Participating Institution has complied with its obligation to provide its Cash Contributions.

5.3 Use of Funding and Refunds

(a) The Parties must only use the Funding:

(i) for the purposes of the Project; and

(ii) for salaries of any Specified Personnel or the payment of stipends to any postgraduate research Students to the extent specified in Schedule 2.

(b) Each Party must:

(i) deal with any Funding received by it in the same was that UNSW is required to deal with Funding under clause 7 of the NHMRC Funding Agreement (except that information will be provided to UNSW and approval will be required from UNSW); and

(ii) repay to UNSW any Funding provided to it which is not spent on the Project in accordance with this Agreement.
5.4 GST

(a) Unless specified otherwise, all monetary amounts expressed in this Agreement are exclusive of GST.

(b) A Party must pay to the relevant Party the amount specified on each Tax Invoice 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) 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.

(d) 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.

6. Governance

6.1 If a governance or management structure is set out in the Application, then the parties agree to follow that structure and this clause 6 will not apply. If the Application does not include any alternative governance or management structure, then the parties agree to implement the Management Committee set out in this clause.

6.2 As soon as reasonably practicable after the Project Start Date, the Parties must establish a Management Committee comprising:

(a) 2 nominees from UNSW; and

(b) up to 2 nominees from each Partner Institution.

6.3 A member of the Management Committee nominated by UNSW will chair the Management Committee.

6.4 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 Intellectual Property.

6.5 The Management Committee will promptly report to UNSW any Project Intellectual Property developed during the Project.

6.6 The following matters may be considered at the first meeting of the Management Committee:

(a) frequency and format of meetings to discuss the progress of the Project;

(b) obligations to take and keep minutes of meetings;

(c) protocols for making decisions in relation to the conduct of the Project; and

(d) protocols for identifying, protecting and disclosing Project Intellectual Property.

6.7 The Management Committee may conduct its meetings by teleconference or videoconference. The Management Committee may make decisions and take action as required under this Agreement to carry out the Project. The decision of a majority of the members of the Management Committee will be binding. In the event of an even number of votes, the chair will have the deciding vote.
6.8 To avoid doubt, the Management Committee does not have the power to make any decisions in relation to Intellectual Property Rights or vary this Agreement including to vary:

(a) the portion of the Funding to be distributed to the Participating Institution by UNSW;

(b) Contributions; or

(c) content or scope of the Project.

7. Record Keeping

7.1 Each Party must:

(a) maintain (and ensure its Specified Personnel maintain) detailed and accurate records regarding the conduct and conclusions of the Project including the creation and disposal of any Intellectual Property Rights and Assets and the use and management of the Funding provided for the Project; and

(b) retain those records for the period that UNSW is required to retain its records under clause 8 of the NHMRC Funding Agreement.

8. Reporting and Acquittals

8.1 General Reporting Obligation

Each Participating Institution must provide to UNSW the information, documentation and certification in relation to their involvement in the Project that UNSW requires in order for UNSW to provide the Reports and certification required under the NHMRC Funding Agreement including provision of that information in the format required by NHMRC and completion by the Personnel required under clause 9 of the NHMRC Funding Agreement.

8.2 Acquittals

The Participating Institution must provide a financial acquittal, addressed to UNSW’s Grants Management Office, by 31 January of each calendar year for the period of the Project, with details of its Contributions to and expenditure in relation to the Project (including expenditure of the Funding transferred to them) in the previous calendar year.

9. Information and Evaluation

Each Participating Institution must comply with the requirements of clause 10 of the NHMRC Funding Agreement.

10. Access to Premises and Documents

Each Participating Institution must comply with the requirements of clause 11 of the NHMRC Funding Agreement.

11. Intellectual Property

11.1 Background Intellectual Property

The Parties agree that the ownership of Background Intellectual Property and Commonwealth Material is not affected by this Agreement and that all Background Intellectual Property remains the property of the Party that makes it available for the purpose of carrying out the Project and all Commonwealth Material remains the property of the Commonwealth.
11.2 Licence of Background Intellectual Property

Each Party grants:

(a) to each other a royalty-free, non-exclusive, non-transferable licence to use its Background Intellectual Property to the extent necessary to carry out the Project; and

(b) a permanent, irrevocable, free, world-wide, non-exclusive licence (including the right to sub-licence) to UNSW in respect of the relevant Background Intellectual Property for the purposes of UNSW fulfilling its obligations to secure those rights for the NHMRC under clause 12 of the NHMRC Funding Agreement.

11.3 Background Intellectual Property Warranty

Each Party warrants that, to the best of its knowledge without making any further enquiries, that making its Background Intellectual Property available for use in the Project in accordance with this Agreement will not infringe any third Party intellectual property rights.

11.4 Compliance with IP Principles

The Parties agree that the administration and management of Project Intellectual Property will comply with the National Principles of Intellectual Property Management for Publicly Funded Research (as amended from time to time).

11.5 Project Intellectual Property

(a) The Parties agree that all rights, title and interest in the Project Intellectual Property (except for copyright in a Student thesis) will be owned solely by the Party, or jointly by the Parties, that contribute to its development or creation and, in the case of jointly owned Project Intellectual Property, the relevant Parties will own the Project Intellectual Property in shares proportionate to their respective intellectual contributions to the development or creation of that Intellectual Property.

Alternative: IP owned by UNSW

The Parties agree that all rights, title and interest in the Project Intellectual Property (except for copyright in a Student thesis) will be owned solely by UNSW.

(b) The Parties agree that copyright in a Student thesis will be owned by the Student but the relevant Party will ensure that the Student enters into written arrangements which are consistent the terms of clause 11 of this Agreement before the Student commences any activities on the Project.

(c) Each Party grants to each other a non-exclusive, non-transferable, perpetual, royalty free licence to use the Project Intellectual Property owned by that Party for non-commercial research, education, training and publication purposes.

(d) Each Participating Institution grants to UNSW a permanent, irrevocable, free, world-wide, non-exclusive licence (including the right to sub-licence) to the UNSW in respect of the Project Intellectual Property it owns for the purposes of UNSW fulfilling its obligations to secure those rights for the NHMRC under clause 12 of the NHMRC Funding Agreement.

If IP owned by UNSW (delete (c) and (d) and replace with the following)

UNSW grants to each Participating Institution a non-exclusive, non-transferable, perpetual, royalty free licence to use the Project Intellectual Property for non-commercial research, education, training and publication purposes.
11.6 Notification and Commercialising

(a) The Participating Institutions must ensure that their respective Personnel undertaking the Project promptly notify UNSW in writing (within a reasonable time) of any Project Intellectual Property that may have potential commercial value if and when such Personnel become aware of that Project Intellectual Property.

(b) The Parties will consult and decide what (if any) measures should be taken to protect the Project Intellectual Property and negotiate in good faith and using all best endeavours to agree the terms of any program of commercialisation arising from the Project Intellectual Property so as to fairly share in any commercial return associated with the Project and the Project Intellectual Property.

11.7 Moral Rights

The Parties must use their best endeavours to arrange for each of their authors to provide the relevant consent to the infringement of those authors’ Moral Rights, as may be required in accordance with clause 12 of the NHMRC Funding Agreement.

12. Assets

12.1 Except as stated otherwise in the Application, any Asset purchased wholly or partly with the Funding will be owned by UNSW and must be dealt with in accordance with the terms of the NHMRC Funding Agreement.

12.2 For the term of this Agreement, each owner of Assets contributed to or acquired for the Project:

(a) must make the Asset available for use by UNSW and the other Participating Institutions for purpose 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.

13. Termination

13.1 Termination for Convenience by NHMRC

(a) If UNSW receives a notice from NHMRC under clause 14.1 of the NHMRC Funding Agreement, UNSW may immediately terminate or reduce the scope of this Agreement (including by terminating or reducing the scope of the Project) to the extent required to comply with the notice from NHMRC.

(b) Upon receipt of a written notice from UNSW under clause 13.1(a):

(i) each Participating Institution must comply with the obligations under clause 14.2 of the NHMRC Funding Agreement to the extent it applies to them; and

(ii) UNSW will remain liable for payments due and owing to the Participating Institution under the payment provisions of this Agreement prior to the date of the notice; and

(iii) UNSW will only be liable for any other reimbursement for costs of the Participating Institutions attributable to the termination or reduction in scope to the extent those costs are paid by NHMRC under the terms of the NHMRC Funding Agreement.
13.2 Termination by NHMRC for any other Reason

UNSW may terminate this Agreement with immediate effect by giving written notice to the other Parties if:

(a) the NHMRC ceases to provide all or any part of the Funds to UNSW; or

(b) the NHMRC Funding Agreement is terminated for any reason.

13.3 Termination for Cause

If:

(a) a Party breaches any material term of this Agreement not capable of remedy;

(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) any event of insolvency occurs in relation to a Participating Institution (whether or not notified), including any step to appoint a receiver, administrator, trustee in bankruptcy or liquidator,

then the other Party or Parties:

(d) may terminate this Agreement by notice in writing; or

(e) may terminate the defaulting or insolvent Party’s involvement in the Project and continue to perform the Project, provided that that Party’s removal from the Project is conducted in accordance with the NHMRC Funding Agreement.

14. Consequences of Termination

14.1 Consequences

On termination:

(a) UNSW will cease expenditure of Funding on the Project and be entitled to payment of costs and expenses that have been incurred or committed for the Project as at the effective date of termination which will not exceed the amount equivalent to the total Cash Contribution of each other Party for the year in which termination occurs;

(b) if requested by a Party (Requesting Party), the other Parties must return to the Requesting Party all:

(i) Background Intellectual Property of the Requesting Party in the other Party’s possession or control; and

(ii) Confidential Information of the Requesting Party in material form (including those parts of all notes or records of the other Party containing Confidential Information of the Requesting Party) in the other Party’s possession or control; and

(iii) property in their possession belonging to another Party, and

(c) if a Party terminates this Agreement under clause 13.3, the defaulting Party must pay any reasonable costs incurred by the other Party or Parties directly attributable to the termination of this Agreement.
14.2 **Survival**

Any clause that expressly or by implication is intended to continue after termination or expiration of this Agreement, will continue.

15. **Research Misconduct**

15.1 A Participating Institution must:

(a) notify UNSW promptly of any complaint or allegation of Research Misconduct that involves any Specified Personnel as soon as it becomes aware of that complaint or allegation; and

(b) provide any information and assistance reasonably required by UNSW in relation to any investigation or inquiry conducted by UNSW into any alleged Research Misconduct in accordance with its obligations under the NHMRC Funding Agreement.

15.2 Each Participating Institution acknowledges that UNSW may withhold payment of Funding to a Participating Institution if NHMRC exercises its rights to withhold under the NHMRC Funding Agreement in relation to any allegation of Research Misconduct of that Participating Institution’s Specified Personnel.

15.3 Each Participating Institution must inform its Specified Personnel prior to any involvement in the Project that their personal information may be disclosed to the NHMRC in accordance with NHMRC Funding Agreement as part of the obligations under the NHMRC Funding Agreement to investigate an report on allegations of Research Misconduct.

16. **Variations**

16.1 The Parties acknowledge that the NHMRC has the ability to implement certain changes to the NHMRC Funding Agreement by provision of notice to UNSW. If NHMRC varies the NHMRC Funding Agreement in accordance with those rights, UNSW may by notice in writing vary this Agreement to the extent necessary to reflect the amendments to the NHMRC Funding Agreement.

16.2 Except to the extent set out in clause 16.1, this Agreement can only be varied by Agreement in writing between all the Parties.

17. **Indemnity, warranties and limitations on liability**

17.1 **Indemnity**

Each Participating Institution:

(a) acknowledges that UNSW is required to provide an indemnity to NHMRC under the NHMRC Funding Agreement in relation to the Project (**NHMRC Indemnity**); and

(b) agrees to indemnify (and to keep indemnified) UNSW and its Personnel from and against any liability that UNSW may have under the NHMRC Indemnity to the extent that the liability arises from or in connection with an act or omission of the Participating Institution or its Personnel.

17.2 **Liabilities**

(a) The Parties exclude:

(i) from this Agreement all conditions, warranties and terms implied by statute, general law or custom, except those that cannot be excluded in law (**Non-excludable**)
Conditions) such as certain warranties under the Competition and Consumer Act 2010 (Cth); 

(ii) all liability to each other for consequential or indirect damages suffered by the Parties, lost profit, loss of anticipated savings or business or goodwill, claims by any third Parties or costs and expenses associated with or incidental to any of the preceding examples, arising out of, or in connection with, the Project and this Agreement even if the Parties knew they were possible or they were otherwise foreseeable; and 

(iii) all liability to each other in negligence or other non-contractual causes of action in respect of which liability can be excluded for acts or omissions of their respective employees, agents, contractors and Students arising out of or in connection with this Agreement.

(b) To the extent permitted by law, UNSW’s total liability to the other Parties for breach of a Non-excludable Condition is limited to any one of the following at UNSW’s option:

(i) supplying, replacing or repairing the goods;

(ii) paying the cost of supplying, repairing, or replacing the goods;

(iii) supplying again; or 

(iv) paying the cost of supplying again, the services in respect of which the breach occurred.

(c) Subject to clause 17.2(b), the total liability of UNSW to a Participating Institution otherwise in connection with this Agreement or the Project for loss or damage of any kind whether arising in contract, tort (including negligence), equity, under statute or otherwise is limited to the amount equivalent to the total cash Contribution of that Participating Institution.

(d) Each Party’s liability under this Agreement is reduced to the extent that any damage, liability, loss or cost arises from or is attributable to any act or omission of the other Party (or Parties), its employees, agents, contractors or Students.

18. Insurance

18.1 Each Participating Institution must or take out, maintain and keep current, at its own cost:

(a) workers compensation insurance in accordance with applicable law and awards;

(b) public liability insurance appropriate to the Party’s activities for an amount not less than $10 million; and

(c) 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.

18.2 On request, a Party must provide evidence to UNSW of the terms and currency of all insurance policies required under this Agreement.

18.3 A Party may act as its own insurer with the prior consent of UNSW but only to the extent that it will be able to adequately meet its obligations under this Agreement.
19. **Acknowledgement of NHMRC Funding**

19.1 Each Participating Institution must ensure that the Funding from NHMRC for the Project is properly acknowledged in any correspondence, public announcement, advertising material, research report or other material produced by, on behalf of or through the Participating Institution that relates to Project.

19.2 Any material published in respect of the Project must:

(a) include the Grant Identification Number for the Research Activity; and

(b) specify that the contents of the published material are solely the responsibility of the Participating Institution or individual authors and do not reflect the views of NHMRC.

19.3 The Participating Institution must ensure that the NHMRC logo is not used without NHMRC’s prior written consent to that specific use of the logo, which NHMRC may give, refuse or revoke in its absolute discretion. NHMRC may give consent subject to any terms or conditions that it considers reasonable.

19.4 The Participating Institution must comply with NHMRC’s rules regarding the use of the logo including its font, colour, size and placement.

20. **Endorsements**

20.1 A Party must not make any representation to the effect that a Party has evaluated, tested, recommended, approved or endorsed any product or service in connection with the Project, without the relevant Party’s consent.

21. **Use of Information**

21.1 Each Participating Institution acknowledges and agrees that any information provided by it to UNSW (including Confidential Information) in relation to the Project (for example, information provided to UNSW in order for UNSW to comply with its reporting obligations) may be disclosed by NHMRC as contemplated by clauses 21 and 26 of the NHMRC Funding Agreement.

22. **Participation in Peer Review and Assessment of Applications**

22.1 As required under the NHMRC Funding Agreement, each Participating Institution must make available to the NHMRC during the term of this Agreement (at no cost to UNSW or the NHMRC) on reasonable notice, the services of its Specified Personnel to provide professional input and reviewing or assessing applications made under a Scheme in the field of expertise of the Specified Personnel (up to 5 applications per year).

23. **Privacy**

23.1 Each Party agrees, in conducting the Project:

(a) not to do any act or engage in any practice which, if done or engaged in by the Party, would be a breach of an Information Privacy Principle;

(b) ensure that any person under the control of the Participating Institution who has access to any Personal Information is made aware of, and undertakes in writing, to observe the Information Privacy Principles;

(c) to comply with any directions, guidelines, determinations or recommendations of the NHMRC, to the extent that they are consistent with the Information Privacy Principles;
(d) not to transfer Personal Information held in connection with this Agreement outside Australia, or to allow Parties outside Australia to have access to it, without the prior approval of NHMRC; and

(e) to comply with any policy guidelines laid down by the Commonwealth or issued by the Information Commissioner from time to time relating to the handling of Personal Information.

24. Confidential Information

24.1 NHMRC Confidential Information

Each Participating Institution must, at the request of UNSW, arrange for its Personnel involved in the Project to give a written undertaking in a form acceptable to the NHMRC in relation to the use and non-disclosure of NHMRC Confidential Information.

24.2 Confidential Information Not to be Disclosed

Each Party:

(a) must not disclose any Confidential Information of a Party or the NHMRC Confidential Information to a third Party; and

(b) must only use Confidential Information of another Party or the NHMRC solely for the purposes of this Agreement.

24.3 Exceptions to Obligations

(a) The obligations of the Parties under clause 24.2(a) will not be breached to the extent the Confidential Information:

(i) is disclosed by a Party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;

(ii) is disclosed by a Party to its internal management Personnel, solely to enable effective management or auditing of Agreement-related activities

(iii) is authorised or required by law to be disclosed; or

(iv) is in the public domain otherwise than due to a breach of this clause 24.

(b) Prior to a Party disclosing Confidential Information pursuant to clauses 24.3(a)(i) to 24.3(a)(iii), a Party must notify the receiving person that the information is confidential.

24.4 Each Party must comply with:

(a) the reasonable directions of each other Party in relation to the handling of any Personal Information that the Party holds or has held; and

(b) the requirements of the NHMRC Funding Agreement in relation to the handling of Personal Information, including any applicable obligations under the Privacy Act 1988 (Cth) and related policies of the Commonwealth specified in the NHMRC Funding Agreement.

25. Conflict of Interest

25.1 Each Party warrants that, at the date of signing this Agreement and to the best of its knowledge after making reasonable inquiries, either:
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(a) no Conflict of Interest exists in its or its Specified Personnel's performance of this Agreement; or

(b) it has fully declared to UNSW the details of each Conflict of Interest that it or its Specified Personnel has in relation to this Agreement and has obtained UNSW's and NHMRC's written consent to the Participating Institution or the Specified Personnel performing this Agreement notwithstanding that declared Conflict of Interest.

25.2 If during the term of this Agreement, a Conflict of Interest arises in respect of a Participating Institution or its Specified Personnel, the Participating Institution must:

(a) immediately notify UNSW in writing of the full details of that Conflict of Interest and of the steps the Participating Institution proposes to resolve or otherwise deal with the Conflict of Interest;

(b) take such steps as UNSW may reasonably require to resolve or otherwise deal with that Conflict of Interest; and

(c) if the Participating Institution fails to notify UNSW or is unable or unwilling to resolve or deal with the Conflict of Interest as required by UNSW, UNSW exercise may take any of the actions specified in clause 15.

26. Dispute resolution

26.1 No Party may start arbitration, tribunal or court proceedings (except proceedings seeking interlocutory relief in a court of competent and applicable jurisdiction) in respect of a Dispute unless it has first complied with this clause.

26.2 The Parties will use its best endeavours to co-operatively resolve a Dispute.

26.3 A Party claiming that a Dispute has arisen must notify the other Parties in writing. The Dispute must then be referred immediately to the Vice-Chancellor (or delegate) of UNSW and the Participating Institution’s General Manager or equivalent.

26.4 If the Dispute is not resolved within three days of such referral, the Dispute will be referred to a panel (Panel) for resolution. Each Party to the Dispute must nominate a senior representative for the Panel within three days of the referral to the Panel in accordance with this clause.

26.5 If a Dispute is referred to the Panel in accordance with clause 26.4, the Panel will meet to resolve the Dispute unless the Panel agrees to resolve the Dispute without need for a meeting.

26.6 The Panel may determine its own procedures for meetings. Decisions of the Panel may only be made by unanimous agreement of the members of the Panel. Any decision of the Panel will be final and binding on the Parties and will be provided in writing to the Parties.

26.7 If the Panel does not resolve the Dispute within ten days after the Dispute being referred to the Panel, then the Dispute must be referred to mediation in accordance with clauses 26.8 to 26.10.

26.8 The mediator may be appointed either by agreement or failing such agreement within five days after expiry of the period set out in clause 26.7, by reference to the President of the Law Society of New South Wales who will nominate a mediator.

26.9 The Parties agree that:

(a) each Party will bear their respective costs of the mediation save that the mediator’s fee, fees for mediation rooms and costs of shares equipment facilities and services of the mediation will be shared equally;
(b) the venue for the mediation will be agreed between the Parties or, failing such agreement, will be nominated by the mediator;

(c) each Party may be legally represented if they so wish; and

(d) the mediation will be conducted without prejudice and complete confidentiality will be preserved in respect of the mediation and any documents and information used at or in relation to the mediation.

26.10 If the Dispute or difference has not been resolved or mediated within 90 days after receipt of the notice specified in clause 26.3, a Party may terminate the dispute resolution process by giving written notice to the other Parties.

26.11 Prior to the resolution of a Dispute, each Party must continue to perform its obligations under this Agreement.

27. Notices

27.1 A Party giving notice or notifying under this Agreement must do so in writing:

(a) directed to the recipient’s address specified in the Schedule 1 as altered by any written notice; and

(b) hand delivered or sent by prepaid post or facsimile to that address.

27.2 A notice given in accordance with this clause is taken to be received:

(a) if hand delivered, on delivery;

(b) if sent by prepaid post, 3 days after the date of posting; or

(c) if sent by facsimile, when the sender’s facsimile system generates a message confirming successful transmission of the total number of pages of the notice, unless within 8 business hours after that transmission, the recipient informs the sender that it has not received the entire notice.

28. Publications

28.1 Each Party is entitled to Publish the results of the Project provided that no Confidential Information owned by a non-publishing Party is disclosed.

28.2 The publishing Party must provide each other Party with a copy of any Publication.

28.3 Each Party must ensure that:

(a) any Publication by it complies with the acknowledgement requirements for the NHMRC Funding as set out in clause 19; and

(b) it complies with the requirements of clause 12.9 of the NHMRC Funding Agreement in relation to the compliance with public dissemination of research findings.

29. Students

29.1 Parties who have enrolled Students who are involved in the Project agree that:

(a) they must ensure that those Students comply with clause 23 and 24 of this Agreement;
(b) they must ensure that Project Intellectual Property developed by the Student is owned in accordance with clause 11, provided that the Student will own the copyright in his or her thesis;

(c) the only restrictions on publishing a Student’s thesis will be those reasonably necessary to protect Confidential Information or the Project Intellectual Property (which in any case must be no longer than 12 months after completion of the Project);

(d) the Parties must not inhibit the right of a Student to have his or her thesis examined, but an examiner may be required to sign a confidentiality agreement to protect Confidential Information; and

(e) 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 a form approved by UNSW, setting out the terms on which the Student is involved in Project, which must be consistent with the principles in this clause 29.

30. Force Majeure Event

30.1 If a Party (First Party) is partially or wholly precluded from complying with its obligations under this Agreement by Force Majeure Event affecting the First Party, then the First Party’s obligation to perform in accordance with this Agreement will be suspended for the duration of the delay arising out of the Force Majeure Event.

30.2 As soon as possible after a Force Majeure Event arises, the First Party must, if it has not already done so, notify the other Parties of the:

(a) Force Majeure Event;
(b) extent to which the First Party is unable to perform its obligations under this Agreement; and
(c) likely duration of the First Party’s inability to perform.

30.3 If the Force Majeure Event affecting the First Party is likely to or does continue for 60 days or more, the other Parties may terminate this Agreement within immediate or later effect by giving the First Party written notice.

31. No waiver

31.1 A Party’s agreement to waive a right or entitlement under this Agreement is only effective if that Party gives written notice of that waiver to the Party seeking the benefit of the waiver.

31.2 Waiver by a Party of anything that another Party must do under this Agreement is not a waiver of any other right or entitlement under this Agreement.

31.3 A failure or delay in exercising a right arising from a breach of this Agreement is not a waiver of that right.

32. General

32.1 The Participating Institutions acknowledge that UNSW has entered into the NHMRC Funding Agreement which imposes certain obligations on UNSW as the ‘Administering Organisation’ and which apply to the Participating Institutions involvement in the Project. Each Participating Institution:

(a) acknowledges and agrees that it has read and understood the NHMRC Funding Agreement and agrees to comply with the terms (and ensure its Specified Personnel complies with those
NHMRC Partnership Project Collaborative Research Agreement

terms) applicable to the Participating Institution as if those terms were reproduced in full in this Agreement;

(b) agrees to do all things necessary to enable UNSW to comply with its obligations under the NHMRC Funding Agreement; and

(c) must not do anything that may cause UNSW to breach its obligations or prevent or impede UNSW from complying with its obligations under the NHMRC Funding Agreement.

32.2 A Participating Institution must not subcontract its obligations under this Agreement without the prior written consent of UNSW.

32.3 A Party must not assign its rights or obligations under this Agreement without the prior written consent of the other Parties except that UNSW may assign its rights and obligations under this agreement to its wholly owned subsidiary NewSouth Innovations Pty Ltd (ABN 25 000 263 025) by written notice to the other Parties.

32.4 This Agreement constitutes the entire agreement between the Parties in relation to its subject matter and supersedes any previous agreement of the Parties, or any other communication or representation made, in relation to its subject matter.

32.5 If a provision of this Agreement is invalid, illegal or unenforceable, then to the extent of the invalidity, illegality or unenforceability, that provision must be ignored in the interpretation of this agreement. All other provisions of this agreement remain in full force and effect.

32.6 Nothing in this Agreement creates a relationship of employer and employee, principal and agent, or partnership between the Parties. A Party has no authority to act for any other Party or to create or assume a responsibility for an obligation of any other Party.

32.7 A Party may execute this Agreement by signing a counterpart. All counterparts constitute one document when taken together. A signed copy of this agreement made by photocopy, facsimile or PDF Adobe format will be considered an original and execution of this agreement will have occurred when each Party holds such copy signed by the other Party or Parties to this agreement.

32.8 Each Party must:

(a) do or cause to be done all acts and things necessary or desirable to give effect to; and

(b) refrain from doing all acts and things that could hinder performance by any Party of,

this Agreement.

32.9 This Agreement is governed by and must be construed in accordance with the laws of New South Wales. Each Party:

(a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts that have jurisdiction to hear appeals from them; and

(b) waives any right to object to proceedings being brought in those courts for any reason.

33. Definitions and Interpretation

33.1 In this Agreement:

Application means the application for funding under the NHMRC Scheme, submitted by the Parties to, and accepted by, the NHMRC, a copy of which is at Annexure A;
Asset means an item of real or personal property but does not include Intellectual Property Rights;

Background Intellectual Property means Intellectual Property Rights owned by or licensed to a Party as at the Project Start Date, or acquired or developed by a Party during the course of the Project independently of the Project, which that Party has the right to license to third Parties and which are necessary for the performance of the Project, including those specified in Schedule 2 or as subsequently notified in writing by the Parties;

Cash Contribution of a Party means the cash component of the Party’s Contribution to the Project which is specified in Schedule 2;

Commonwealth Material means any Material provided by NHMRC to UNSW or a Participating Institution for the purposes of the Project;

Confidential Information means all know how, financial information and other commercially valuable information in whatever form including unpatented inventions, trade secrets, formulae, graphs, drawings, designs, biological materials, samples, devices, models and other materials of whatever description which a Party claims is confidential to itself and over which it has full control and includes all other such information that may be in the possession of a Party’s employees or management. Information is not confidential if:

(a) it is or becomes part of the public domain unless it came into the public domain by a breach of confidentiality;

(b) it is obtained lawfully from a third Party without any breach of confidentiality;

(c) it is already known by the recipient Party (as shown by its written record) before the date of disclosure to it;

(d) it is independently developed by an employee of the recipient Party who has no knowledge of the disclosure under this Agreement;

(e) required to be disclosed by a court, rule or governmental law or regulation, or the rules of any stock exchange, provided that the Party making the disclosure provides prompt written notice to the other Party of any such requirement; or

(f) it is required to be disclosed pursuant to this Agreement.

Contribution of a Party means the Cash Contribution and In-kind Contribution to the Project which is specified in Schedule 2 (as may be varied by agreement between the Parties and approved by the NHMRC (as required));

Details means the matters set out in the table on the front page(s) of this Agreement;

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;

Force Majeure Event affecting a Party means a circumstance beyond the reasonable control of that Party causing that Party to be unable to observe or perform on time an obligation under this Agreement, including:

(a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and

(b) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, revolution and acts of war and war, general strikes, embargo and power, water or other utility shortage;
Funds or Funding means the amounts payable by UNSW to the Participating Institutions as specified in Schedule 2 for the purpose of carrying out the Project which may consist of:

(a) funds being received by UNSW from NHMRC under the NHMRC Funding Agreement; and/or

(b) a distribution from the Cash Contributions received from Participating Institutions.

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;

In-kind Contribution of a Party means the in-kind component of the Party's Contribution to the Project which is specified in Schedule 2;

Intellectual Property Rights means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity, including copyright, discoveries, inventions, innovations, technical information and data, prototypes, processes, specifications, know-how, patent rights, registered and unregistered trade marks, design rights, circuit layouts, plant varieties, the right to have confidential information kept confidential and all rights and interests of a like nature, together with any and all documentation and other material relating to such rights and interests;

Management Committee means the management committee for the Project that may be established under clause 6;

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;

Moral Rights means all present and future rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute anywhere in the world;

NHMRC means the Commonwealth of Australia, represented by the National Health and Medical Research Council, or any successor organisation undertaking the same or similar functions;

NHMRC Funding Agreement means the agreement between the Commonwealth of Australia and UNSW, a copy of which is at Annexure B;

NHMRC Funding Schedule means the Schedule to the NHMRC Funding Agreement in respect of the Project, a copy of which is at Annexure B;

Panel has the meaning in clause 26.4;

Party means a party to this Agreement. Parties has a similar meaning;

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

Personnel means a Party's officers, employees, students, advisers, contractor staff and agents, including the Specified Personnel;

Project means the research project and activities described in the Details including the creation of Project Intellectual Property, completed in accordance with this Agreement;
Project Completion Date means the scheduled completion date for the Project specified in the Details;

Project Intellectual Property means all Intellectual Property Rights created or developed as part of performing the Project, but does not include Intellectual Property Rights in Background Intellectual Property;

Project Obligations of a Party means that Party's roles, research activities responsibilities, Contributions and other obligations in relation to the Project as specified in:

(a) the Application; and

(b) Schedule 2.

Project Start Date means the start date for the Project specified in the Details;

Publication means to publish by way of a paper, article, manuscript, report, poster, internet posting, presentation slides, abstract, video, outline, instruction material or other disclosure of Project Intellectual Property, in printed, electronic, oral or other form and Publish has a corresponding meaning;

Specified Personnel of a Participating Institution means its Personnel specified in Schedule 2 to perform the Project or as replaced in accordance with the NHMRC Funding Agreement;

Student means a student who is enrolled at UNSW or a Participating Institution and involved in the Project;

Tax Invoice has the same meaning as in the GST Law; and

Taxable Supply has the same meaning as in the GST Law.

Any other defined term will have the meaning given to it in the Details or the NHMRC Funding Agreement.

33.2 Unless that context otherwise requires:

(a) a word which denotes the singular denotes the plural and vice versa;

(b) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

(c) a reference to any legislation includes that legislation as amended, re-enacted consolidated or substituted;

(d) a reference to a person includes a partnership and a body whether corporate or otherwise;

(e) any use of the verb ‘includes’, or of words such as ‘for example’ or ‘such as’, do not limit anything else that is included in general speech; and

(f) a reference to a thing or amount is a reference to the whole and each part of it.

33.3 This Agreement may not be construed adversely to a Party just because that Party prepared it.

33.4 If there is any inconsistency between the terms and conditions of this agreement and the provisions of a schedule or annexure to this agreement, the terms and conditions of the agreement will prevail as between those terms and the provisions of the schedule will prevail as between the schedule and the annexure.
Executed as an agreement

Signed for and on behalf of the University of New South Wales by:

--------------------------------------------------------------------------------
Signature

Name (please print)

Position

Date of signing

Signed for and on behalf of the «Participating Institution 1» by:

--------------------------------------------------------------------------------
Signature

Name (please print)

Position

Date of signing

Signed for and on behalf of the «Participating Institution 2» by:

--------------------------------------------------------------------------------
Signature

Name (please print)
NHMRC Partnership Project Collaborative Research Agreement

Position

Date of signing

Signed for and on behalf of the «Participating Institution 3» by:

Signature

Name (please print)

Position

Date of signing

Signed for and on behalf of the «Participating Institution 4» by:

Signature

Name (please print)

Position

Date of signing
By signing this agreement, each signatory warrants that they have authority to enter into this agreement on behalf of the Party they are stated to represent.
# NHMRC Partnership Project Collaborative Research Agreement

## Schedule 1 – Party Details

### The University of New South Wales/Administering Organisation

<table>
<thead>
<tr>
<th>UNSW</th>
<th>The University of New South Wales ABN 57 1295 873 179, a body corporate established pursuant to the <em>University of New South Wales Act 1989</em> (NSW) of UNSW Sydney NSW 2052 Australia</th>
</tr>
</thead>
</table>
| Notices | Attention: Director, Grants Management Office  
Address: The University of New South Wales, UNSW Sydney NSW 2052  
Fax: (02) 9385 7238  
Email: mygrants.gmo@unsw.edu.au |

### Participating Institutions

| «Participating Institution 1» | ABN «ABNInd1»  
«Address1Ind1» «Address2Ind1» «SuburbInd1» «StateInd1» «PCodeInd1» |
| Notices | Attention: «Contact_firstInd1» «Contact_lastInd1»  
Address: «Address1Ind1» «Address2Ind1» «SuburbInd1» «StateInd1» «PCodeInd1»  
Fax: «FaxInd1»  
Email: [insert] |

| «Participating Institution 2» | ABN «ABNInd2»  
«Address1Ind2» «Address2Ind2» «SuburbInd2» «StateInd2» «PCodeInd2» |
| Notices | Attention: «Contact_firstInd2» «Contact_lastInd2»  
Address: «Address1Ind2» «Address2Ind2» «SuburbInd2» «StateInd2» «PCodeInd2»  
Fax: «FaxInd2»  
Email: [insert] |

| «Participating Institution 3» | ABN «ABNInd3»  
«Address1Ind3» «Address2Ind3» «SuburbInd3» «StateInd3» «PCodeInd3» |
| Notices | Attention: «Contact_firstInd3» «Contact_lastInd3»  
Address: «ABNInd3» «Address1Ind3» «Address2Ind3» «SuburbInd3» «StateInd3» «PCodeInd3»  
Fax: «FaxInd3»  
Email: [insert] |

| «Participating Institution 4» | ABN «ABNInd4» |
**NHMRC Partnership Project Collaborative Research Agreement**

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</thead>
<tbody>
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</tr>
<tr>
<td></td>
<td>Fax: «FaxInd4»</td>
</tr>
<tr>
<td></td>
<td>Email: [insert]</td>
</tr>
</tbody>
</table>

[add further tables, as required]
## UNSW

### Project Obligations

<table>
<thead>
<tr>
<th>Role</th>
<th>Administering Organisation and as set out in the Application.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel</td>
<td>[insert name(s) of Chief Investigator(s), Fellow(s), Scholar(s) as per NHMRC Funding Schedule] (Specified Personnel), [insert name(s) of Associate Investigators] and other Personnel appointed and notified to other Parties.</td>
</tr>
</tbody>
</table>

### UNSW’s Background Intellectual Property

[insert details of UNSW’s Background Intellectual Property relevant to the Project.]

### Contributions

#### In-kind Contribution

<table>
<thead>
<tr>
<th>Year</th>
<th>In-kind Contribution to be supplied in accordance with the Application or as varied by the Parties following mutual agreement and approval by the NHMRC (if required):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1</td>
<td>$[insert]</td>
</tr>
<tr>
<td>Year 2</td>
<td>$[insert]</td>
</tr>
<tr>
<td>Year 3</td>
<td>$[insert]</td>
</tr>
<tr>
<td>Year 4</td>
<td>$[insert]</td>
</tr>
</tbody>
</table>

### Participating Institutions

#### «Participating Institution 1»

### Project Obligations

<table>
<thead>
<tr>
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</tr>
</tbody>
</table>

### Participating Institution’s Background Intellectual Property

[insert details of Participating Institution’s Background Intellectual Property relevant to the Project.]

### Total Contributions

#### Cash Contribution

Invoices for the Cash Contribution will be raised in accordance with clause 5.1(b).

| Year 1 | $«Participating Inst1_cash_Y1» |
| Year 2 | $«Participating Inst1_cash_Y2» |
| Year 3 | $«Participating Inst1_cash_Y3» |
| Year 4 | $«Participating Inst1_cash_Y4» |

#### In-kind Contribution

In-kind Contribution to be supplied in accordance with the Application or as
NHMRC Partnership Project Collaborative Research Agreement

<table>
<thead>
<tr>
<th>Year</th>
<th>Project Obligations</th>
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<tbody>
<tr>
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<td>varied by the Parties following mutual agreement and approval by the NHMRC (if required):</td>
</tr>
<tr>
<td>Year 1</td>
<td>$ « Participating Inst1_InKind_Y1»</td>
</tr>
<tr>
<td>Year 2</td>
<td>$ « Participating Inst1_InKind_Y2»</td>
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<tr>
<td>Year 3</td>
<td>$ « Participating Inst1_InKind_Y3»</td>
</tr>
<tr>
<td>Year 4</td>
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«Participating Institution 2»

Project Obligations

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<th>Role</th>
<th>As set out in the Application.</th>
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</thead>
<tbody>
<tr>
<td>Personnel</td>
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</tr>
<tr>
<td>Participating Institution’s Background Intellectual Property</td>
<td>[insert details of Participating Institution’s Background Intellectual Property relevant to the Project.]</td>
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</table>

Total Contributions

<table>
<thead>
<tr>
<th>Cash Contribution</th>
<th>Invoices for the Cash Contribution will be raised in accordance with clause 5.1(b).</th>
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</thead>
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<td>Year 4</td>
<td>$ « Participating Inst2_cash_Y4»</td>
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<tr>
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<tbody>
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<tr>
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«Participating Institution 3»

Project Obligations

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<tr>
<th>Role</th>
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<td>Total Contributions</td>
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<td>--------------------------------------------------</td>
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<td>Year 2: $ «Participating Inst3_InKind_Y2»</td>
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**«Participating Institution 4»**

### Project Obligations

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<tr>
<th>Role</th>
<th>As set out in the Application.</th>
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<tr>
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<tr>
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<th>[insert details of Participating Institution's Background Intellectual Property relevant to the Project.]</th>
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### Total Contributions

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<td>$ «Participating Inst 4_InKind_Y4»</td>
</tr>
</tbody>
</table>

[Add further tables for each Participating Institution as required]
The Participating Institution will submit relevant tax invoices to UNSW on a quarterly basis. Upon receipt, UNSW will pay the approved amount of Funding to the Participating Institution within 28 days.
Annexure A – Application
Annexure B – NHMRC Funding Agreement

A copy of the current NHMRC Funding Agreement terms can be found on the NHMRC website: http://www.nhmrc.gov.au/grants/administering-grants/nhmrc-funding-agreement

See attached for the NHMRC Funding Schedule.