

Research Services Agreement

AGREEMENT DETAILS

Agreement Date The date that this Agreement is executed by the last party to it.

UNSW

Name The University of New South Wales, a body corporate established pursuant to the University of New South Wales Act 1989 (NSW) (**UNSW**)

Address UNSW Sydney NSW 2052, Australia

ABN 57 195 873 179

Address Director, Research Grants and Contracts
Research Grants and Contracts
Level 3, Rupert Myers Building South
Wing
UNSW NSW 2052, Australia

Email MyResearch.rgc@unsw.edu.au

Phone +61 2 9065 8491

Technical Contact / Agreement Contact [insert]
[This person should be the Chief Investigator (CI), main technical contact or the researcher, project manager or agreement contact for UNSW]

Address [insert]

Email [insert]

Agreement Finance Associate Director, Research Revenue and Accounting

Email researchfinance@unsw.edu.au

Phone +61 2 9065 8577

Client

Name [LEGAL NAME]
[You need to complete the details for the other party in this section, being the legal name, ABN (or other registration detail) and an address below. You should make sure that the correct legal name is used (and it is not a trading name or an unincorporated affiliation).]

Address [REGISTERED ADDRESS OR STREET ADDRESS AND COUNTRY IF A FOREIGN PARTY]

ABN or ACN or other registration number:	[INSERT NUMBER] [You can do a basic ABN search for Australian entities at ABN lookup to make sure the details are correct]	
Notices & Invoices	Attention	[INSERT NAME OF LEGAL CONTACT] [This person should be the organisation contact not the researcher, project manager or agreement contact]
	Address	[insert]
	Email	[insert]
	Phone	[insert]
Agreement Contact	Attention	[insert] [This person should be the main technical contact or the researcher, project manager or agreement contact for the Client]
	Address	[insert]
	Email	[insert]
	Phone	[insert]
Agreement Finance Contact	Attention	[insert]
	Email	[insert]
Commencement Date	[The Agreement Date OR SPECIFIC DATE]	
Completion Date	[DATE OR time period such as three (3) years from the Commencement Date OR On receipt of all Deliverables by the Client OR On submission of the final report for the Project.] [A specific date is preferred for certainty where possible]	
Milestones	Description	Date Due
	[DESCRIBE MILESTONES (IF ANY) AND MILESTONE DATES OR NA] [An example of a milestone would be completion of phase 1 of a project, completion of specific experiments or delivery of results or outcomes (material or data) by a specific date or within a time period. You could list one or many milestones, which can be linked to Payments below.]	
Project	[PROJECT NAME OR IDENTIFIER AND DESCRIPTION]	
UNSW Research Grant (RG) Number	[NUMBER]	
Services	[DESCRIBE OR The services described in Annexure A]	

	[Services may be described in reference to a description or research or project plan, which can be annexed to this agreement]																		
Client Materials	[Describe any specific tangible items (i.e. products, material or goods) and intangible contributions (i.e. services, in-kind contributions or intellectual property) the Client needs to provide to UNSW so it can perform the Services]																		
Deliverables	[List tangible outputs if any or reports, results (information or data) and/or other deliverables to be provided by UNSW and link these to the Milestone Dates (above), as necessary. Include a brief description of the agreed format for reports such as “in writing”, required template or you can say in a format acceptable to UNSW]																		
UNSW Key Personnel	[NAME] [UNSW EMAIL] [List names and details for personnel involved in the Project including students.]																		
Client Key Personnel	[NAME] [EMAIL] [List names and contact details of any of the Client’s personnel involved in the Project.]																		
Client Duties	[Insert any specific duties of the Client other than payment of fees, for example provide access to facilities for UNSW personnel, deliver samples, arrange travel or supply copies of relevant policies if working on their premises – refer to clause 4.1]																		
Ethics/biosafety approval required	<input type="checkbox"/> Yes <input type="checkbox"/> No																		
UNSW Background IP	[DESCRIBE OR NA]																		
Client Background IP	[DESCRIBE OR NA]																		
Fees	<table border="1"> <thead> <tr> <th>Date Due</th> <th>Milestone Description</th> <th>Fee in [currency e.g. AUD\$] (GST exclusive)</th> </tr> </thead> <tbody> <tr> <td>[INSERT DATE]</td> <td>[DESCRIBE]</td> <td>[\$[NUMBER]]</td> </tr> <tr> <td>[INSERT DATE]</td> <td>[DESCRIBE]</td> <td>[\$[NUMBER]]</td> </tr> <tr> <td></td> <td>Subtotal</td> <td>[\$[NUMBER]]</td> </tr> <tr> <td></td> <td>GST</td> <td>[\$[NUMBER]]</td> </tr> <tr> <td></td> <td>Total</td> <td>[\$[NUMBER]]</td> </tr> </tbody> </table>	Date Due	Milestone Description	Fee in [currency e.g. AUD\$] (GST exclusive)	[INSERT DATE]	[DESCRIBE]	[\$[NUMBER]]	[INSERT DATE]	[DESCRIBE]	[\$[NUMBER]]		Subtotal	[\$[NUMBER]]		GST	[\$[NUMBER]]		Total	[\$[NUMBER]]
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	GST	[\$[NUMBER]]																	
	Total	[\$[NUMBER]]																	
Expenses	[LIST PRE-APPROVED EXPENSES OR NA] Expenses are in addition to Fees schedule above.																		
Purchase Order or Reference Number	[NUMBER OR Not known OR NA] [Only list the number if known as this may not be issued until the Agreement is executed]																		
Special Conditions	[SPECIFY ANY SPECIAL CONDITIONS OR NA] [Specific conditions can be related to matters such as intellectual property, publication terms including method of attribution or acknowledgement of UNSW’s contribution. The Special Conditions will take precedence over the General Terms.]																		

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 Client name] by its authorised representative:

Signature Date

Name of authorised representative Position

SAMPLE

GENERAL TERMS

1 Definitions and interpretation

1.1 Definitions

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

Agreement means this agreement between UNSW and the Client once signed by both parties.

Business Day means any day that is not a Saturday, Sunday or public holiday in the jurisdiction where a party is located.

Background IP means all Intellectual Property Rights owned or controlled by a party at the Commencement Date or subsequent to that date but independently of this Agreement, which they have made available to the other party for use in relation to performance of the Services under this Agreement, including any Background IP described in the Agreement Details.

Client Materials includes, without limitation, any equipment, materials, data or information supplied to UNSW or its Personnel by or on behalf of the Client and includes any Client Materials described in the Agreement Details.

Confidential Information means any information disclosed by a party (**Discloser**) to the other party (**Receiving Party**) or which the Receiving Party otherwise becomes aware of during the Term or before the Effective Date, that is:

- (a) imparted in circumstances of confidence, or
- (b) 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.

Deliverables means the deliverables specified in the Agreement Details (if any) to be supplied by UNSW to the Client under this Agreement.

Excluded Information means information that:

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

Expenses means the expenses specified in the Agreement Details and all reasonable expenses incurred by UNSW in performing the Services in addition to Fees.

Fees means the fees specified in the Agreement Details.

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

GST means the tax imposed by *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related tax imposition Acts of the Commonwealth of Australia.

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

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

Insolvency Event means, with respect to a party:

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

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

Nominee means NewSouth Innovations Pty Limited (ABN 25 000 263 025), a wholly owned subsidiary of UNSW responsible for managing and commercialising UNSW's Intellectual Property Rights.

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

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

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

Project IP means all Intellectual Property Rights in the Deliverables if any but for the avoidance of doubt does not include any Background IP of a party incorporated in the Deliverables.

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

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

Services means the services, including any Deliverables UNSW is providing under this Agreement, described in the Agreement Details.

Student means any student who is enrolled at UNSW and engaged in the provision of the Services.

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) dollars means Australian dollars unless otherwise stated.
- (b) "Including" and similar expressions are not words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.
- (e) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day; and
- (f) A reference to a term in the Agreement Details which is not separately defined has the meaning specified in the Agreement Details.

1.3 Order of precedence

This Agreement comprises the:

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

and 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 Term

This Agreement commences on the Commencement Date specified in the Agreement Details and, unless terminated earlier in accordance with its terms, continues in force until the Completion Date.

3 Services

3.1 Performance of Services by UNSW

- (a) Subject to clause 3.1(e), UNSW agrees to provide the Services:
 - (i) in a competent and professional manner to a standard reasonably to be expected of a qualified person providing services that are the same as the Services;
 - (ii) in compliance with all applicable laws and ethical approvals, and
 - (iii) in accordance with the terms of this Agreement.
- (b) Subject to clause 3.1(c), UNSW will ensure that the Services are carried out by the Key Personnel or such other person(s) as agreed by the parties in writing from time to time.
- (c) If, due to circumstances beyond UNSW's control, the UNSW Key Personnel become unavailable to perform the Services, UNSW will use reasonable endeavours to provide a suitably qualified replacement, subject to the Client's approval, which will not be unreasonably withheld. If UNSW is unable to provide a suitably qualified replacement, UNSW will refund Fees paid less any Fees payable for Services already rendered or Expenses or liabilities reasonably incurred by UNSW.
- (d) UNSW will:
 - (i) comply with reasonable instructions and directions issued by the Client to perform the Services;
 - (ii) complete the Services by the Completion Date and any Milestone Dates specified in the Agreement Details, and
 - (iii) supply any Deliverables to the Client by the Completion Date or as otherwise agreed in writing.
- (e) If ethics and/or biosafety committee approval (or similar) is required by a party in relation to the Services, the party must use reasonable endeavours to obtain such approval. UNSW is

not required to commence the Services before such approval is obtained.

3.2 Sub-contracting

- (a) UNSW may subcontract all or part of the performance of the Services to third parties, without notice to the Client.
- (b) Despite clause 3.2(a), UNSW remains liable for the performance of all its obligations under this Agreement.

3.3 Uncertainty of outcome

- (a) The Client acknowledges that where the Services involve research, development, expert opinion or testing, UNSW may produce no results or conclusions, or opinions or results that are unpredictable or unfavourable to the Client.
- (b) UNSW makes no representations, predictions or provides any warranty concerning these conclusions, opinions or results.

3.4 Scope of Services

The Client may reduce the scope of the Services by providing no less than ten (10) Business Days' written notice to UNSW, and provided the Client pays:

- (a) all Fees and Expenses incurred by UNSW in connection with the Services up to the date of receipt by UNSW of notice from the Client; and
- (b) all future unavoidable costs and Expenses UNSW incurs in relation to the Agreement.

4 Client's obligations

4.1 Client to perform Client's duties

The Client will comply with or perform the Client Duties specified in the Agreement Details and will promptly provide:

- (a) the Client Materials required for UNSW to perform the Services, and
- (b) instructions and responses to UNSW's reasonable requests on all matters relating to the Services.

4.2 Use of Client Materials

The Client must ensure, to the extent applicable and to the best of its knowledge, that:

- (a) the Client Materials are accurate, complete and current;
- (b) the use of the Client Materials in connection with the Services is lawful and does not require the consent of any party, including third parties to use their Intellectual Property Rights in the performance of the Services;
- (c) if the Services involve the use, reproduction or adaptation of Client Materials, the Client will obtain all necessary authorisation for that use, reproduction or adaptation;

- (d) the Client Materials are not reasonably capable of constituting a threat to safety, health, life, property or the environment, unless specified otherwise by written notice to UNSW; and
- (e) the Client will give written notice to UNSW of any matters affecting the safe, secure and appropriate transportation, use, storage and disposal of the Client Materials.

4.3 No liability if Client Duties not fulfilled

UNSW will not be responsible for any deficiency or alleged deficiency (including delay) in the performance of the Services attributable to:

- (a) a breach by the Client of a material term of this Agreement (which for the avoidance of doubt includes clause 4.1 and 4.2); or
- (b) a failure by the Client to provide relevant, accurate or timely information or make decisions.

4.4 Work health and safety

The Client will ensure that any UNSW Personnel attending a site inspection or any premises of, or known to the Client in connection with the provision of the Services are provided a safe place of work in compliance with relevant work health and safety legislation or requirements.

5 Payments and invoicing

5.1 Fees

The Client must pay UNSW the Fees in the manner specified in the Agreement Details.

5.2 Expenses

- (a) The Client must pay all reasonable Expenses, which UNSW incurs in performing the Services.
- (b) Where practicable, UNSW will not incur Expenses without first notifying the Client and obtaining approval prior to the relevant expenditure.

5.3 Invoices

- (a) UNSW will submit a tax invoice to the Client in respect of any payments required under this Agreement.
- (b) The Client must pay the Fees and where applicable, Expenses within thirty (30) days of issue of a tax invoice.

5.4 Overdue payments

Without limiting its rights under clause 11, UNSW may suspend performance of the Services or its other obligations under this Agreement until all overdue amounts are paid.

5.5 Taxes

- (a) Unless otherwise stated in the Agreement Details, all Fees, charges and Expenses payable by the Client under this Agreement are exclusive of GST but inclusive of any other

applicable taxes, duties, imposts and other similar charges payable in respect of the Services.

- (b) If GST is payable on any supply made by UNSW under this Agreement, the Client will pay to UNSW an additional amount equivalent to the GST at the time payment to UNSW is due.

6 Intellectual Property Rights

6.1 Background IP

- (a) Each party grants the other party during the term of this Agreement a non-exclusive, non-transferable, sublicensable (in the context of sub-contracting permitted under clause 3.2) royalty and fee free licence to use its Background IP for the performance of the Services on the terms of this Agreement.
- (b) Each party retains its rights in any Background IP, those rights will not be transferred or changed by the use or disclosure of Background IP in connection with the Services under this Agreement to the other party.
- (c) All rights and interests in, and title to, Improvements (including all Intellectual Property Rights subsisting in those Improvements) vest in the party granting a licence of the relevant Background IP, with effect from the date of the creation of the Improvement. Those Improvements form part of the Background IP licensed under clause 6.1(a).

6.2 Ownership of Intellectual Property

- (a) Subject to clause 6.1(b), UNSW or its Nominee will own all Project IP (except that a Student owns copyright in their thesis). For the avoidance of doubt, the Client remains the owner of all rights in the Client Materials and the Client's Background IP.
- (b) UNSW or its Nominee grants to the Client a non-exclusive, non-transferable, perpetual, worldwide licence to use the Project IP for the Client's internal business purposes, provided that the Client:
 - (i) has paid all Fees and Expenses due in accordance with clause 5; and
 - (ii) is not otherwise in breach of any term of this Agreement.
- (c) Client grants to UNSW a non-exclusive, non-transferable, irrevocable, perpetual and royalty-free licence to use Client's Background IP to the extent necessary for UNSW to use the Project IP.

7 Confidential Information

7.1 Confidentiality obligations

Both parties must and must ensure their Personnel (except as may be required by law or with the other party's prior written consent):

- (a) keep secure and maintain the confidentiality of any Confidential Information of the other party;
- (b) refrain from using or directly or indirectly disclosing any Confidential Information of the other party, or attempting to do so, except to the extent necessary to perform the Services or to enjoy the benefit of the Project IP as contemplated by this Agreement; and
- (c) do not disclose the other party's Confidential Information to any third party.

7.2 Consequences of expiry or termination

- (a) The Receiving Party must cease all use of and return to the Discloser, or on the Discloser's instruction, destroy all Confidential Information on expiration or termination of this Agreement.
- (b) Despite 7.2(a), the Receiving Party may retain a copy of the Confidential Information (acting reasonably and only for as long as it is reasonably required):
 - (i) to fulfil legal, regulatory or reporting obligations;
 - (ii) that is stored electronically due to an existing routine data backup, provided the Confidential Information is deleted from local hard drives and no attempt is made to recover it other than as required by law, and

provided the Receiving Party maintains the confidentiality of the Confidential Information in accordance with clause 7.

8 Privacy

The parties agree to:

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

9 Publications

- (a) Each party is entitled to publish the results of the Project provided that no Confidential Information owned by a non-publishing party is disclosed, subject to this clause 9.
- (b) A publishing party must give notice of any proposed Publication in respect of the Project to each other party at least thirty (30) days before the publication date.
- (c) Acting reasonably, each non-publishing party may, within that thirty (30) day period do any one or more of the following:
 - (i) provide comments on the proposed Publication to the publishing party, which

that party must consider but is not obliged to follow;

- (ii) require the publishing party to delay Publication for no more than ninety (90) days to allow the non-publishing party to file patent applications or take other measure to protect its proprietary rights; and/or
 - (iii) require the publishing party to remove specified Confidential Information from the Publication.
- (d) If the publishing party has not received any comments from the non-publishing party (or parties) on the proposed Publication within thirty (30) days of giving notice under clause (b), the publishing party may make the Publication.
- (e) The parties must ensure that all Publications in respect of the Project appropriately acknowledge the contribution of any other party and their specified Personnel who have provided significant intellectual or scholarly contributions in connection with a Publication (or any research relating to the Publication) in accordance with usual academic practice.
- (f) Where applicable, each party must comply with any open access policy that applies to the Project, including the requirement that any Publications arising from a Project must be deposited into an open access institutional repository within twelve months of the date of Publication.
- 9.2 Either party must not use any trade mark, trade name, logo or other designation of the other party in any way without their prior written consent.

10 Liability and warranties

10.1 Warranties

- (a) Each party represents and warrants to the other party that to its actual knowledge at the Commencement Date it has full power and authority to enter into and perform its obligations under this Agreement.

10.2 Non-excludable liability

- (a) Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.
- (b) Subject to clause 10.2(a), any representation, warranty, condition or undertaking which, but for this clause, would be implied in this Agreement by general law or statute is excluded.

10.3 Exclusion of certain losses

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.

10.4 Remedies for terms implied by law

To the extent permitted by law, the liability of UNSW for any claim arising directly or indirectly from a breach of any non-excludable term or condition implied by statute is limited, at the option of UNSW, to one or more of the following:

- (a) the supplying of the Services again; or
- (b) the payment of the cost of having the Services supplied again.

10.5 Liability cap

To the extent permitted by law, the aggregate liability of a party under or in connection with this Agreement, whether in contract, tort (including negligence), statute or any other cause of action, is limited to the total aggregate Fees payable to UNSW under this Agreement, except for any Loss arising from:

- (a) death or personal injury; or
- (b) damage to tangible property.

10.6 Representations and effect of clause

- (a) The Client acknowledges that it has not relied on any representations made by UNSW or its Personnel, which are not set out in this Agreement.
- (b) This clause 10 applies regardless of anything else in this Agreement, to the extent permitted by law.

10.7 Insurance

- (a) Each party must during the Term take out and maintain adequate insurance in relation to the Project in accordance with industry standards.
- (b) Each party may request the other party to provide written evidence of such insurance (including certificates of currency from the insurer).

11 Termination

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

- (a) commits a material breach of this Agreement, which it fails to correct within thirty (30) days of being notified of the breach;
- (b) commits a material breach of this Agreement which is not capable of remedy; or
- (c) becomes the subject of an Insolvency Event.

11.2 Either party may terminate the Agreement for any reason, by no less than thirty (30) days written notice to the other party, provided they pay the non-terminating party any reasonable costs they incur that are directly attributable to the termination of this Agreement.

11.3 If this Agreement is terminated for any reason or on expiry of this Agreement:

- (a) all Fees paid by the Client remain the property of UNSW;

- (b) the Client must within ten (10) Business Days of termination or expiry pay UNSW all Fees and Expenses incurred by UNSW in connection with the Services up to the date of termination, and all future unavoidable costs and Expenses that UNSW incurs in relation to the Agreement; and
- (c) subject to clause 7.2, each party must return all property in their possession belonging to the other party, including Confidential Information and Intellectual Property Rights.

12 Force Majeure

- 12.1 Delay in or failure of performance by a party (other than the payment of money) does not constitute a breach of the Agreement evidenced by this document by that party if and to the extent that the delay or failure is caused by a Force Majeure Event, provided the party claiming to be affected:
- (a) gives notice to the other party within ten (10) Business Days of the occurrence of the Force Majeure Event providing details of the Force Majeure Event and its anticipated likely duration and effect; and
 - (b) uses its best endeavours to resume fulfilling its obligations and gives the other party written notice within five (5) Business Days of the cessation of the Force Majeure Event.
- 12.2 If a delay caused by Force Majeure Event continues for more than sixty (60) days, either party may terminate this Agreement by giving thirty (30) days' written notice to the other party.

13 Dispute Resolution

- 13.1 This clause 13 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.
- 13.2 If a party considers that a Dispute has arisen (**Initiating Party**), it may give notice in writing of the Dispute to the other party (**Receiving Party**), setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- 13.3 Within twenty (20) Business Days of the service of the Dispute Notice by the Initiating Party on the Receiving Party, in the case of UNSW, the Deputy Vice-Chancellor Research (or equivalent) or their delegate and in the case of the Client, its Chief Executive Officer, or their delegates who have appropriate authority to resolve the Dispute (collectively, the **Senior Representatives**), will meet (in person or by telephone or video conference) and attempt to resolve the Dispute in good faith.
- 13.4 If the Dispute is not resolved within twenty (20) Business Days after the Dispute is referred to Senior Representatives, the parties will

endeavour to settle the Dispute by mediation administered by the Australian Disputes Centre (**ADC**) before having recourse to litigation.

- 13.5 Where a Dispute is referred to mediation under clause 13.4 above:
- (a) the mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC (**Guidelines**); and
 - (b) the terms of the Guidelines are hereby deemed incorporated into this Agreement.
- 13.6 Prior to the resolution of a Dispute, each party must continue to perform its obligations under this Agreement:
- (a) unless the nature of the Dispute renders it impossible to do so; or
 - (b) unless and until such obligations are terminated or expire in accordance with this Agreement.
- 13.7 This clause 13 shall survive termination of this Agreement.

14 Notices

A notice or other communication under this Agreement has no legal effect unless it is in writing, and is sent to the postal address and email address for the relevant party specified in the Agreement Details.

15 General

15.1 Assignment

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

15.2 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.

15.3 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.

15.4 Entire Agreement

This Agreement:

- (a) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

15.5 Waiver

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

15.6 Variation

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

15.7 Severability

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

15.8 Survival

Any clause that expressly or by implication continues after termination or expiration of this Agreement, will survive termination or expiry of this Agreement.

15.9 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.

15.10 Governing law and jurisdiction

The laws of New South Wales, Australia governs this Agreement and the parties submit to the exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

SAMPLE

Annexure A

[Insert details of the Services]

[Attach or insert Project or Research Plan as agreed between the Key Personnel/UNSW and the Client. This may be set out in correspondence or other documentation. Do not simply insert correspondence or other documentation without checking to see if it includes material which may conflict with the rest of the Agreement. For example, do not include payment terms as they should be included in the Agreement Details. Only include a description of the Services and delete extraneous material.]

SAMPLE