



Research Agreement

PARTIES		
UNSW	The University of New South Wales ABN 57 195 873 179, a body corporate established pursuant to the <i>University of New South Wales Act 1989</i> (NSW) of UNSW Sydney NSW 2052, Australia	
Sponsor	[insert name] ABN [insert] of [insert]	
DETAILS		
KEY DATES		
Project Start Date (clause 1.1)	[insert]	
Project Completion Date (clause 1.1)	[insert]	
CONTACT DETAILS		
Address for notices (clause 13.1)	UNSW address: Attention: Mr Warwick Dawson Director, Research Strategy & Partnerships Office Address: Level 4, Rupert Myers Building (South Wing) UNSW, Sydney NSW 2052, Australia Email: research.partnerships@unsw.edu.au Phone: (02) 9385 7929	
	Sponsor address: Attention: [insert] Address: [insert] Email: [insert] Phone: [insert]	
Address for invoices (clause 3)	Insert or As above for notices	
PAYMENT		
Payment (clause 3)	Payment invoicing dates	Fee payable (excluding GST)
	milestone	amount
	milestone	amount
	milestone	amount
	Subtotal:	
	GST	
TOTAL		

PROJECT	
Project (clause 1)	Insert project name
Project Plan (clause 1.2(a))	<input type="checkbox"/> Attached at Schedule 1; or <input type="checkbox"/> As above under 'Project'.
Key Personnel (clause 1.2(b))	[insert]
UNSW Background Intellectual Property (clause 4)	[insert details of UNSW's existing Intellectual Property Rights (if any) which are relevant to the Project]
Sponsor Background Intellectual Property (clause 4)	[insert details of the Sponsor's existing Intellectual Property Rights (if any) which are to be used by UNSW for the purposes of the Project]
Sponsor Contribution (clause 2.1(a))	[insert details of information, resources, access to personnel, facilities and other in-kind contributions of the Sponsor to the Project]
Ethics/biosafety approval required (clause 1.6)	<input type="checkbox"/> YES <input type="checkbox"/> NO

SAMPLE

Terms

1. The Project

- 1.1 UNSW must:
- (a) start the Project on the Project Start Date; and
 - (b) use reasonable endeavours to complete the Project on or near the Project Completion Date.
- 1.2 UNSW must carry out the Project:
- (a) in accordance with the Details and the Project Plan;
 - (b) using Key Personnel;
 - (c) with due skill and care in accordance with generally accepted professional, scientific and ethical principles and standards applicable to the Project; and
 - (d) in compliance with all applicable laws and regulations.
- 1.3 The parties acknowledge that research work is of its nature uncertain and that particular outcomes or results from the Project cannot be guaranteed. UNSW makes no undertakings or representations that the Project will lead to any particular outcome or result. UNSW will not be liable to the Sponsor for any loss or damage whether arising from UNSW's failure to perform work under this agreement on time or within the estimated costs of the Project, or otherwise, provided that UNSW has used its reasonable endeavours in all respects in carrying out the Project.
- 1.4 UNSW:
- (a) must notify the Sponsor if any of its Key Personnel (other than a Student) become unable to perform the Project; and
 - (b) must use reasonable endeavours to replace its Key Personnel (other than a Student) with other suitable personnel acceptable to the Sponsor.
- 1.5 If UNSW is unable to replace its Key Personnel (other than a Student) in accordance with clause 1.4 resulting in UNSW being unable to complete the Project, this will constitute a Force Majeure Event. If UNSW is unable to replace a Student, UNSW may opt to continue to perform the Project without the Student.
- 1.6 If the Project requires approval by UNSW's ethics and/or biosafety committees (or similar), UNSW must use reasonable endeavours to obtain that approval. Before such approvals are obtained, UNSW is not required to commence the Project.
- 1.7 UNSW must maintain complete and accurate records regarding the conduct and conclusions of the Project.
- 1.8 UNSW may subcontract the performance of any part of the Project but UNSW will remain responsible to the Sponsor for the performance of the Project.

2. Sponsor's obligations

- 2.1 The Sponsor must:
- (a) provide to UNSW the Sponsor Contribution;
 - (b) co-operate with and give all other assistance, Material, equipment, facilities and resources to UNSW as may be reasonably necessary to satisfactorily perform the Project;
 - (c) grant all rights to UNSW including licences to Intellectual Property Rights;

- (d) provide any of Sponsor's Background Intellectual Property to UNSW; and
- (e) provide timely instructions and responses to UNSW's reasonable requests on all matters related to the performance of the Project,

necessary for UNSW to conduct the Project and otherwise discharge its obligations under this agreement.

- 2.2 The Sponsor must ensure that it and its employees and the employees of its subcontractors (if any) attending UNSW's premises comply with all relevant legislation and UNSW's policies and practices regarding staffing, security and work health and safety practices. Compliance includes, but is not limited to, obeying directions on official signs affixed at UNSW's premises and any directions given by authorised UNSW employees or contractors.
- 2.3 The Sponsor must not, without UNSW's prior written consent, make any representation to the effect that UNSW has evaluated, tested, recommended, approved or endorsed any product or service.

3. Payment

- 3.1 Unless specified otherwise, all monetary amounts expressed in this agreement are exclusive of GST.
- 3.2 The Sponsor must pay to UNSW the amount specified on any Tax Invoice issued in accordance with the Details by the due date specified on that Tax Invoice, or if no due date is specified, within 30 days after the Tax Invoice is issued.
- 3.3 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.
- 3.4 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.
- 3.5 Any Asset purchased wholly or partly with the Payment is owned by UNSW. UNSW is responsible for insurance and maintenance of the Asset and any other costs and liabilities associated with the Asset.

4. Intellectual Property

- 4.1 Each party grants to the other party a non-exclusive, irrevocable, non-transferable, royalty-free licence for the duration of the Project to use their Background Intellectual Property solely for the purpose of conducting the Project.
- 4.2 Except as otherwise specified in this agreement, each party acknowledges that nothing in this agreement assigns any Intellectual Property Rights in either party's Background Intellectual Property to the other party.
- 4.3 All Project Intellectual Property will vest in UNSW upon creation (except that a Student owns copyright in his/her thesis). The Sponsor assigns to UNSW all its right, title and interest in the Project Intellectual Property and agrees to do all things reasonably necessary to give effect to such ownership and assignment (including ensuring its employees, contractors and agents do the same).
- 4.4 UNSW grants to the Sponsor an irrevocable, non-exclusive, non-transferable, royalty-free, perpetual licence (not including a right to sub-licence) to use the Project Intellectual Property for the purpose of conducting the Project for the duration of the Project and for the Sponsor's internal purposes (not including Commercialisation) following completion of the Project.

5. Confidentiality and privacy

- 5.1 Each party:
- (a) may use Confidential Information of the other party solely for the purposes of performing its obligations under this agreement;
 - (b) except as permitted under clauses 5.1(c) and 5.1(d), must keep confidential all Confidential Information of the other party;
 - (c) may disclose Confidential Information of the other party only to employees, contractors and Students who:
 - (i) are aware and agree that the Confidential Information of the other party must be kept confidential; and
 - (ii) either have a need to know (and only to the extent that each has a need to know), or have been specifically approved by the other party; and
 - (d) may disclose Confidential Information if required 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 notice to the other party of any such requirement.
- 5.2 If a party wants to disclose the other party's Confidential Information to a person other than that other party, its employees, contractors or Students (Third Person) or other than in accordance with clause 5.1(d), that party must require the Third Person to enter a confidentiality agreement on substantially similar terms to those confidentiality requirements specified in clause 5.1.
- 5.3 Each party must comply with:
- (a) the reasonable directions of the other party in relation to the handling of any Personal Information that the party holds or has held; and
 - (b) the *Privacy Act 1988* (Cth).

6. Publications

- 6.1 Each party is entitled to Publish the results of the Project. The publishing party must give notice of any proposed Publication to the non-publishing party at least 30 days before the proposed submission date for the publication.
- 6.2 The non-publishing party may, acting reasonably, within that 30 day period do any one or more of the following:
- (a) provide comments on the proposed Publication to the publishing party which that party must consider but is not obliged to follow;
 - (b) require the publishing party to delay Publication for no more than 30 days to allow the non-publishing party to file patent applications or take other measures to preserve its proprietary rights; or
 - (c) require the publishing party to remove specified Confidential Information from the Publication.
- 6.3 If the publishing party has not received any comments from the non-publishing party on the proposed Publication within 30 days of giving notice under clause 6.1, the publishing party may make the Publication.

7. Students

- 7.1 The Sponsor acknowledges that UNSW has obligations under its governing statutes to ensure that Students involved in the Project are able to complete the requirements of their candidature and that this obligation extends to submitting a Student's thesis for examination

and depositing in the library a copy of the Student's complete thesis of work submitted for a higher degree. Nothing in this agreement affects the operation of UNSW's relevant statutes, regulations, or policies or creates any obligations contrary to those statutes, regulations or policies.

8. Warranties and liability

8.1 UNSW excludes:

- (a) 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);
- (b) all liability to the Sponsor in contract for consequential or indirect damages suffered by the Sponsor, 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 UNSW knew they were possible or they were otherwise foreseeable; and
- (c) all liability to the Sponsor in negligence or other non-contractual causes of action in respect of which liability can be excluded for acts or omissions of UNSW, its employees, agents, contractors and Students arising out of or in connection with this agreement.

8.2 To the extent permitted by law, UNSW's total liability to the Sponsor for breach of a Non-excludable Condition is limited to any one of the following at UNSW's option:

- (a) supplying, replacing or repairing the goods;
- (b) paying the cost of supplying, repairing, or replacing the goods;
- (c) supplying again; or
- (d) paying the cost of supplying again, the services in respect of which the breach occurred.

8.3 Subject to clause 8.2, the total liability of UNSW to the Sponsor 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 Payment.

8.4 UNSW'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 Sponsor, its employees, agents or contractors.

8.5 The Sponsor indemnifies UNSW and its officers, employees, subcontractors, agents and Students (together, 'those indemnified'), and agrees to keep them indemnified, against all liability, loss, costs, damages or expense (including legal costs and expenses) incurred or suffered by any of those indemnified as a result of a breach of this agreement by the Sponsor or its officers, employees, subcontractors or agents, or wilful misconduct, negligent act or omission, or unlawful act or omission on the part of the Sponsor or its officers, employees, subcontractors or agents connected with this agreement.

9. Insurance

9.1 Each party must 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.
- 9.2 On request, a party must provide evidence to the other of the terms and currency of all insurance policies required under this agreement.
- 9.3 A party may act as its own insurer but only to the extent that it will be able to adequately meet its obligations under this agreement.

10. Dispute resolution

- 10.1 Neither party may start arbitration, tribunal or court proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless it has first complied with this clause.
- 10.2 A party claiming that a Dispute has arisen must notify the other party.
- 10.3 Within 7 days after a notice is given under clause 10.2 each party must nominate in writing to the other party a person of sufficient seniority authorised to settle the Dispute on its behalf.
- 10.4 During the 30 day period after a notice is given under clause 10.2 (or if the parties agree a longer period, that longer period) each party's nominee must use his or her best efforts to resolve the Dispute.
- 10.5 If a Dispute is still not resolved within 30 days after the notice is given under clause 10.2 (or if the parties agree a longer period, that longer period), the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales, and, the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.
- 10.6 Nothing in this clause affects a party's rights to terminate this agreement.
- 10.7 Prior to the resolution of a Dispute, each party must continue to perform its obligations under this agreement.

11. Termination

- 11.1 This agreement commences on the date the last party signs this agreement and expires three (3) months after the Project Completion Date unless terminated earlier in accordance with clause 11.
- 11.2 This agreement terminates if:
- (a) the parties agree to terminate the agreement in writing at any time;
 - (b) a party terminates this agreement in accordance with clause 11.3;
 - (c) a party terminates this agreement in accordance with clause 14.3; or
 - (d) UNSW terminates this agreement in accordance with clause 11.4.
- 11.3 A party may terminate this agreement with immediate effect by giving notice to the other party if:
- (a) that other party breaches any material term of this agreement not capable of remedy; or
 - (b) that other party breaches any material term of this agreement capable of remedy and fails to remedy the breach within 30 days after receiving notice requiring it to do so.

- 11.4 UNSW may terminate this agreement with immediate effect by giving notice to the Sponsor if any event of insolvency occurs in relation to the Sponsor (whether or not notified) including any step to appoint a receiver, administrator, trustee in bankruptcy or liquidator.

12. Consequences of termination

- 12.1 On termination:
- (a) the Sponsor must pay UNSW for any work undertaken by UNSW in relation to the Project up to the effective date of termination which will not exceed an amount equivalent to the Payment;
 - (b) if requested by a party (Requesting Party), the other party must return to the Requesting Party all:
 - (i) Background Intellectual Property of the Requesting Party in the other party's possession or control;
 - (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 the Requesting Party.
 - (c) If UNSW terminates this agreement under clauses 11.2(a), 11.2(b) or 11.2(d), the Sponsor must pay UNSW any reasonable costs incurred by UNSW directly attributable to the termination of this agreement.
- 12.2 Clauses 1.3, 2.3, 3, 4, 5, 6, 7, 8 and 12 and all clauses required to give them effect survive termination of this agreement.

13. Notices

- 13.1 A party giving notice or notifying under this agreement must do so in writing (including by facsimile or email):
- (a) directed to the recipient's address, as varied by any notice; and
 - (b) hand delivered or sent by prepaid post, facsimile or email to that address.
- The parties' address details (until varied) are as specified in the Details.
- 13.2 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, 5 working days after the date of posting (or 7 working days after posting if posted to or from a place outside Australia);
 - (c) if sent by facsimile, at the time the sender receives notification that the notice has been transmitted satisfactorily; or
 - (d) if sent by email;
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) twenty four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered
- whichever happens first.

14. Force Majeure Event

- 14.1 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.

- 14.2 As soon as possible after a Force Majeure Event arises, the First Party must, if it has not already done so, notify the other party 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.
- 14.3 If the Force Majeure Event affecting the First Party is likely to or does continue for 60 days or more, the other party may terminate this agreement within immediate or later effect by giving the First Party written notice.

15. No waiver

- 15.1 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.
- 15.2 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.
- 15.3 A failure or delay in exercising a right arising from a breach of this agreement is not a waiver of that right.

16. General

- 16.1 This agreement may only be varied in writing by the parties.
- 16.2 A party must not assign its rights or obligations under this agreement without the prior written consent of the other party except that UNSW may assign its rights and obligations under this agreement to NSi by notice in writing to the Sponsor.
- 16.3 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.
- 16.4 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.
- 16.5 The parties acknowledge that:
- (a) UNSW will perform this agreement as an independent contractor; and
 - (b) this agreement does not create a relationship of employer and employee, principal and agent, or partnership between UNSW and the Sponsor, any employees of UNSW's subcontractors, or any of UNSW or its subcontractors.
- 16.6 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.
- 16.7 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.

16.8 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.

17. Definitions and Interpretation

17.1 In this agreement:

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 licence to third parties and which are necessary for the performance of the Project including those specified in the Details or as subsequently notified in writing by a party to the other party;

Commercialisation in relation to Project Intellectual Property, means to manufacture, sell, hire or otherwise exploit a product or process, or to provide a service, incorporating the Project Intellectual Property, or to license Project Intellectual Property to any third party to do any of those things;

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

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;

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;

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, 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 relating to such rights and interests;

Key Personnel means the people specified as such in the Details that UNSW must use to perform the Project;

Material means all materials in any form including all data, information, records, documents, databases and software (including source code and object code) and other works and material;

NSi means NewSouth Innovations Pty Limited (ABN 25 000 263 025), a wholly owned subsidiary of UNSW responsible for managing and for entering into agreements in relation to Commercialisation of UNSW's Intellectual Property Rights;

Payment means UNSW's total charge for performing the Project specified in the Details;

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;

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;

Project means the research project and activities described in the Details including the creation of Project Intellectual Property undertaken in accordance with this agreement;

Project Completion Date means the scheduled date for completing 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 Background Intellectual Property;

Project Plan means the plan for performing the Project (if any) in Schedule 1 of this agreement;

Project Start Date means the scheduled date for starting the Project specified in the Details;

Sponsor Contribution means the contribution of the Sponsor to the Project specified in the Details;

Student means any student of UNSW engaged 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.

17.2 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.

17.3 This agreement may not be construed adversely to a party just because that party prepared it.

17.4 If there is any inconsistency between the terms and conditions of this agreement and the provisions of the schedule(s) or annexure(s) to this agreement, the terms and conditions of the agreement will prevail as between those terms and conditions and the schedule(s) and the provisions of the schedule(s) will prevail as between the schedule(s) and annexure(s).

SAMPLE

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

SAMPLE

Signed for and on behalf of **[insert]** 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.

SAMPLE

Schedule 1 - Project Plan

[Attach copy of project proposal]

SAMPLE