



Australian Government
Department of Industry and Science
IP Australia

Business



AUSTRALIAN IP TOOLKIT FOR COLLABORATION Model Contract

September 2015

[INSERT SPONSOR ORGANISATION NAME]

[(insert ACN/ABN)]

and

[INSERT RESEARCH ORGANISATION NAME]

[(insert ACN/ABN)]

FULL RESEARCH COLLABORATION CONTRACT

[INSERT PROJECT TITLE]

Notes:

Purpose

This model Full Research Collaboration Contract is intended to be used when a Sponsor (i.e. a sponsoring organisation such as a company) will be providing money or other assistance to a Research Organisation (such as a university or other research institution) to conduct research. The research may result in Intellectual Property or other outputs (e.g. other material covered under 'Deliverables') which can be commercialised (i.e. licensed or sold).

This model Contract is designed for higher value (i.e. \$100,000 or more) and higher risk projects (as compared to the *Mini IP Toolkit Model Contract*) and should not be used for other purposes.

Government agencies may also elect to use this contract (or a variation) if it is appropriate for their purposes.

Structure

This model Contract comprises three Parts and an attachment:

- Part 1 - Contract Terms (standard legal terms which apply to this Contract);
- Part 2 - Contract Details (the variable legal terms which must be agreed and completed by the Parties); and
- Part 3 - Project Details (the specific details of the Project which must be agreed and completed by the Parties).
- Attachment A - Template IP Register.

Please complete all highlighted sections in this Contract, ensuring that only one option is selected in each clause and that the other option(s) are deleted, unless the instructions provide that more than one option may be selected.

Attachment A must be completed and maintained by the Research Organisation after the Contract has been signed, unless the Parties agree otherwise.

Please delete all highlighted notes, such as this note, prior to signing the completed Contract.

Disclaimers and conditions of use

The law referred to in this model Contract is current as at May 2015. Please exercise caution in using this model Contract beyond that date as the law may have changed.

This model Contract refers to Australian law and has not been designed for use outside Australia, including that it has not been designed for use by Parties located outside Australia.

This model Contract does not constitute legal or financial advice. Please consider whether you require legal or financial advice to complete this Contract.

This model Contract is made available for use on the condition that the Commonwealth of Australia and its officers, employees, contractors and agents expressly disclaim all responsibility (including responsibility for negligence) for the content of this model Contract to the extent permitted by law. By using this model Contract, users are deemed to have consented to this condition and agree that this model Contract is used entirely at their own risk.

Licence



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A complete and current version of the model Contract is available at <https://www.ipaustralia.gov.au/tools-resources/ip-toolkit>

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Part 1 - Contract Terms

1 Parties

1.1 This Contract is made between the Sponsor and the Research Organisation.

2 Operative provisions

2.1 This Contract comprises:

- (a) Part 1 - the Contract Terms;
- (b) Part 2 - the Contract Details;
- (c) Part 3 - the Project Details; and
- (d) any other documents incorporated by reference.

3 Definitions and interpretation

Definitions

3.1 In this Contract:

Background IP	means any Intellectual Property: (a) existing prior to the execution of this Contract; or (b) obtained or created after the execution of this Contract by a Party other than as a result of the performance of this Contract.
Budget	means the agreed budget for the Project, as set out in clause 4 of the Project Details.
Business Day	means a day other than a Saturday, Sunday or public holiday in the Governing Jurisdiction.
Claims	means claims, loss, damages, costs and expenses including legal costs on a solicitor and own client basis.
Commencement Date	has the meaning given in clause 9 of the Contract Details.

Commercialise	includes, without limitation: (a) to manufacture, sell, license, assign or hire for commercial benefit or otherwise exploit a product or process or other subject matter in which Intellectual Property rights subsist; (b) to provide a service for commercial benefit; (c) to license or authorise any person to do any of the above for commercial benefit; or (d) any acts that are related to the acts set out in (a), (b) or (c), but excludes a Party licensing Intellectual Property to a person merely to have that person perform activities on behalf of that Party and for that Party's own non-commercial purposes, and Commercialisation is similarly construed.
Confidential Information	means the following information provided by or for one Party to another in any way in relation to this Contract: (a) information designated as confidential by the Party which provides the information (including in clause 20 of the Project Details); (b) information imparted in circumstances of confidence; or (c) information that the recipient of the information knows, or ought to know, is confidential; but does not include information which is already known by the receiving Party at the time it is disclosed, or which is or becomes public knowledge other than by breach of this Contract.
Conflict of Interest	means an actual, potential or perceived conflict of interest.
Contract	means this Full Research Collaboration Contract, including its Parts and Attachment/s and any other documents incorporated by express reference.
Contract Details	means Part 2 - Contract Details of this Contract.
Contributing Party	has the meaning given in clause 13.3 of the Contract Terms.
Deliverable	means an item of Material which is or will be created or provided during the Project, including those Deliverables specified in clause 12 of the Project Details.
Disclosing Party	means a Party which discloses Confidential Information to the other Party.
Force Majeure Event	means an event beyond the reasonable control of a Party.

Funds	means the financial contributions payable by the Sponsor in accordance with, and subject to, this Contract.
Governing Jurisdiction	means the place specified in clause 18 of the Contract Details. If no place is specified in clause 18 of the Contract Details, the Governing Jurisdiction is New South Wales.
In-kind Contribution	has the meaning given in clause 5 of the Project Details.
Insolvency Event	means the happening of any of the following events in relation to a Party: (a) an application is made to a court for an order, or an order is made, that the Party be wound up; (b) a liquidator, receiver, receiver and manager, administrator or controller is appointed in respect of the Party; (c) the Party enters into a deed of company arrangement, a scheme of arrangement or composition with, or assignment for the benefit of, its creditors; (d) the Party resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so; (e) the Party is insolvent or is presumed to be insolvent within the meaning of the <i>Corporations Act 2001</i> (Cth); or (f) anything having a substantially similar effect to any of the events specified above happens under any law or any applicable jurisdiction.
Intellectual Property or IP	includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields recognised anywhere in the world, but does not include Moral Rights and the rights of performers.
Internal Purposes	means internal and non-commercial research, record-keeping, reporting, auditing, teaching and training purposes.
IP Register	means a register of all Project IP, Background IP and Third Party IP created or Used in connection with the Project and which is substantively in the form of Attachment A.
Key Person	means a person specified in clause 6 of the Project Details.
Loaned Equipment	has the meaning given in clause 9 of the Project Details.

Material	Includes: (a) property including samples and prototypes; (b) information including conclusions, techniques, know-how, methods, raw data and undocumented findings; (c) documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions; and (d) the subject matter of any category of Intellectual Property rights.
Milestone	means a milestone specified in clause 10 of the Project Details.
Moral Rights	has the meaning given in the <i>Copyright Act 1968</i> (Cth), as amended or replaced from time to time.
Obtaining Party	means a Party which receives Confidential Information from the Disclosing Party.
Owning Party	means the Party which owns Project IP, as specified in this Contract.
Parties	means the parties to this Contract, being the Sponsor and the Research Organisation, and their respective successors and permitted assigns and Party means any one of them.
Personnel	means, in relation to a Party, any employee, officer, agent, contractor, subcontractor, student or volunteer of that Party, and any employee, officer, agent, contractor, subcontractor, student or volunteer of a contractor or subcontractor, but excludes the other Party and its Personnel.
Principal Investigator	means the principal researcher who directs the Project on behalf of the Research Organisation.
Project	means the project described in clause 5 of the Contract Details.
Project Details	means Part 3 - Project Details of this Contract.
Project IP	means any Intellectual Property created by or on behalf of a Party for the purposes of the Project or this Contract.
Recipient Party	has the meaning given in clause 13.3 of the Contract Terms.
Representative	means a person authorised to manage this Contract on behalf of a Party.

Research Organisation	means the Party specified in clause 3 of the Contract Details.
Special Conditions	means the special conditions specified in clause 19 of the Contract Details and clause 22 of the Project Details, if any.
Sponsor	means the Party specified in clause 1 of the Contract Details.
Term	has the meaning given in clause 10 of the Contract Details.
Third Party IP	means IP which is owned by a person other than the Sponsor or the Research Organisation, and is Used, or proposed to be Used, for the Project.
Use	means to exercise any or all rights subsisting in Intellectual Property, including to license or sub-license those rights.
Work, Health and Safety (WHS) Law	[Note: WHS laws vary between different States and Territories of Australia. The parties should seek legal advice if they are uncertain of their obligations.] means all of the work health and safety and occupational health and safety laws, including regulations and codes of practice, which are applicable to the Parties and the Project.

Interpretation

3.2 In this Contract, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to an individual or person includes a corporation;
- (c) a reference to any gender includes all genders;
- (d) a reference to either Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (e) a reference to any legislation includes any regulations or rules made under that legislation and any amendment, modification to or replacement of that legislation which may be made from time to time;
- (f) a reference to a clause, Part or Attachment means, unless otherwise specified, a clause, Part or Attachment of this Contract;
- (g) a reference to an amount of money means a reference to Australian currency unless otherwise indicated; and
- (h) words of inclusion will be interpreted as being without limitation.

4 Commencement

4.1 This Contract will commence on the Commencement Date and will continue for the Term, unless extended or terminated in accordance with this Contract.

5 Role of each Party

- 5.1 Each Party must undertake the Project by performing the obligations which it is required to perform as set out in the Project Details and by meeting all its other obligations under this Contract, including the Special Conditions.
- 5.2 The Sponsor must:
- (a) provide Funds and In-kind Contributions, including Loaned Equipment, in accordance with the Project Details;
 - (b) comply with the Special Conditions;
 - (c) at all times act in good faith in relation to the other Party with respect to all matters relating to the Project;
 - (d) to the extent practicable, act consistently with the interests of the Project; and
 - (e) perform all its other obligations as specified in this Contract.
- 5.3 The Research Organisation must:
- (a) comply with all laws;
 - (b) in conducting research, comply with generally accepted professional, scientific and ethical principles and standards including, if the Project involves human beings or animals, the codes adopted for that purpose by the National Health and Medical Research Council;
 - (c) perform all work in connection with the Project in a safe manner and in a way that, so far as is practicable, is without risk to the health, safety and welfare of any person and assists the other Party to meet its own obligations and responsibilities under WHS Law;
 - (d) carry out the Project at the places specified in the Project Details, if any, or such other places agreed by the other Party in writing;
 - (e) meet each Milestone and other deadlines as set out in the Project Details;
 - (f) provide Funds and In-kind Contributions, including Loaned Equipment, in accordance with the Project Details;
 - (g) provide Deliverables, including reports, in accordance with the Project Details;
 - (h) comply with the Special Conditions;
 - (i) commence the Project on the Commencement Date;
 - (j) complete the Project as specified in the Project Details;
 - (k) at all times act in good faith in relation to the other Party with respect to all matters relating to the Project;
 - (l) to the extent practicable, act consistently with the interests of the Project; and
 - (m) perform all its other obligations as specified in this Contract.
- 5.4 Except as otherwise provided in this Contract or agreed in writing between the Parties, each Party will be fully responsible for all costs and expenses that it incurs in relation to the Project.
- 5.5 In respect of the phrases **In-kind Contributions** and **Loaned Equipment**, the Parties acknowledge and agree:

- (a) the phrases are used as a convenient reference to assets, resources or equipment which are owned by a Party and which have been set aside by that Party for use in connection with the Project; and
- (b) the phrases are not a reference to any actual contribution or loan.

6 Representatives

- 6.1 Each Party must appoint one Representative.
- 6.2 The Representatives as at the Commencement Date are those persons specified in clauses 2 and 4 of the Contract Details.
- 6.3 Each Party may, at any time and from time to time, replace its Representative by giving written notice to the other Party.

7 Key Persons

- 7.1 Each Party must ensure that each of its Key Persons performs the duties specified for that person in clause 6 of the Project Details.
- 7.2 If a Key Person is unable at any time during the Project to continue to perform his or her duties and functions as specified in the Project Details, the applicable Party must:
 - (a) notify the other Party of that inability within 10 Business Days; and
 - (b) ensure that a replacement person is appointed, with the consent of the other Party, to perform the relevant duties as soon as practicable and in any event within a further 10 Business Days, unless agreed otherwise. Such consent must not be unreasonably withheld by the other Party.

8 Students and volunteers

- 8.1 The Research Organisation may only permit students or volunteers to be involved in the Project if:
 - (a) the students and volunteers are listed in clause 7 of the Project Details, or the Research Organisation has otherwise obtained the prior written consent of the Sponsor to their involvement; and
 - (b) [Note: assignments of IP can give rise to legal and stamp duty issues. The Parties should obtain advice on the best way to assign IP if an assignment is required.] the students and volunteers have signed a deed of confidentiality in a form acceptable to the Sponsor and have agreed in writing to assign their rights in Project IP (if any) to the Owning Party at no cost or have otherwise agreed that their rights in Project IP vest on creation in the Owning Party.
- 8.2 Any student thesis that is developed as part of the Project will not form part of the Project Deliverables and any Intellectual Property in that thesis will not form part of the Project IP.

9 Subcontracting

- 9.1 A Party may only subcontract its obligations under this Contract with the prior written consent of the other Party, which consent must not be unreasonably withheld, but may be given subject to conditions.

- 9.2 If a Party subcontracts its obligations in accordance with clause 9.1 of the Contract Terms, it must ensure that the subcontract is in writing, and imposes on the subcontractor obligations which are consistent with, and no less onerous than, the obligations of that Party under the provisions of this Contract.
- 9.3 A Party is fully responsible for the performance of its obligations under this Contract even if it has subcontracted the performance of any or all of its obligations under this Contract.

10 Obligations regarding Personnel

- 10.1 Each Party must ensure that its Personnel who are undertaking the Project:
- (a) are properly trained and qualified to perform their roles;
 - (b) are appropriately supervised, having regard to their qualifications; and
 - (c) comply with all lawful directions when on the other Party's premises.
- 10.2 Each Party must provide the total number of Personnel for the Project which it is required to provide, as specified in clause 8 of the Project Details.

11 Equipment

Provision of Loaned Equipment

- 11.1 Each Party must provide the Loaned Equipment it has agreed to provide as specified in clause 9 of the Project Details or as agreed by the Parties in writing from time to time.
- 11.2 The provision and use of the Loaned Equipment is subject to such conditions as are specified in clause 9 of the Project Details, and each Party must comply with those conditions.
- 11.3 Unless clause 9 of the Project Details provides for the return of Loaned Equipment at an earlier date, a Party which is in possession of Loaned Equipment provided by the other Party must return the Loaned Equipment to the other Party as soon as practicable after the end of the Term.

Purchasing Project Equipment

- 11.4 The Research Organisation may use the Funds to purchase Project Equipment if specified in clause 9 of the Project Details or otherwise with the prior written consent of the Sponsor.
- 11.5 The Party specified in clause 9 of the Project Details as the owner of particular Project Equipment will own that Project Equipment.

Responsibility for Equipment

- 11.6 Unless specified otherwise in the Project Details, the Research Organisation must, at its own expense:
- (a) insure and maintain in good condition (subject to fair wear and tear) all Project Equipment and Loaned Equipment for the Term, and effect all necessary repairs; and
 - (b) comply with the duties under WHS Law that apply to persons who control plant or equipment used at a workplace including, but not limited to, any duties that apply in relation to supplying, importing, registering, licensing, safeguarding, installing, examining, testing, altering, repairing, providing signage for, maintaining or dismantling Project Equipment or Loaned Equipment.

Equipment records

11.7 The Research Organisation must:

- (a) keep accurate records of the Project Equipment and Loaned Equipment, including details of serial numbers, location, condition and maintenance records; and
- (b) provide any such records to the Sponsor upon request.

12 Material

- 12.1 Each Party must promptly make available to the other Party all Material in its possession or control which is reasonably required by the other Party to exercise its rights, and particularly its Intellectual Property rights, under this Contract.
- 12.2 The Deliverables created for the purposes of this Contract will be owned as set out in clause 12 of the Project Details or as otherwise agreed by the Parties in writing.

13 Background IP and Third Party IP

Ownership

13.1 Nothing in this Contract affects the ownership of Background IP or Third Party IP.

Process for offering Material containing Background IP or Third Party IP

- 13.2 The process described in clauses 13.3 – 13.8 of the Contract Terms applies except if clause 13 of the Project Details provide otherwise.
- 13.3 A Party (**Contributing Party**) may offer any Material containing Background IP or Third Party IP to be Used for the performance of the Project or this Contract, on terms which must be disclosed by the Contributing Party to the other Party (**Recipient Party**) in writing at the time that the Material is offered.
- 13.4 The terms which must be disclosed by the Contributing Party for the purposes of clause 13.3 of the Contract Terms include:
- (a) details of any restrictions, conditions or encumbrances, that apply, or may apply, to the Use of the Background IP or Third Party IP, including fees or royalties for Third Party IP; and
 - (b) any other information as is reasonably requested by the Recipient Party.
- 13.5 If no terms are disclosed as described in clause 13.4 of the Contract Terms, the terms set out in clause 13 of the Project Details will apply.
- 13.6 After receiving an offer described in clause 13.3 of the Contract Terms, the Recipient Party may, acting reasonably:
- (a) consent to the Use of any Material containing Background IP or Third Party IP (which consent may be subject to conditions); or
 - (b) reject the Use of any of the Material containing Background IP or Third Party IP, giving reasons.
- 13.7 If a fee or royalty is payable in order to acquire a Third Party IP licence, then the Parties must agree in writing the proportion in which the Parties will pay the fee or royalty.
- 13.8 If the Recipient Party rejects the Use of Material containing Background IP or Third Party IP in accordance with clause 13.6(b) of the Contract Terms, the Contributing Party must not Use

that Background IP or Third Party IP in connection with the performance of the Project or this Contract.

Risk issues regarding Background IP or Third Party IP

- 13.9 Each Party must take reasonable steps to ensure that it does not, without giving prior written notice, offer or provide to the other Party Material that:
- (a) presents a substantive risk to persons or property; or
 - (b) breaches, or may cause the other Party to breach, any applicable laws or regulations.
- 13.10 A Party which becomes aware that either of the circumstances described in clauses 13.9(a) or 13.9(b) of the Contract Terms apply in respect of any Material must give the other Party prompt written notice of those circumstances.

Use and protection of Background IP and Third Party IP

- 13.11 A Recipient Party must not, without the prior express written consent of the Contributing Party, Use the Contributing Party's Background IP or Third Party IP other than in accordance with this Contract or a separate agreement signed by both Parties, or as permitted by law.
- 13.12 Each Recipient Party represents and warrants to the other Party that it will not assign, encumber or otherwise deal with, dispose of or Commercialise the Contributing Party's Background IP or Third Party IP, except in accordance with this Contract or a separate agreement signed by both Parties.
- 13.13 Each Party must take all reasonable steps to protect the other Party's Background IP and Third Party IP from misuse and must give the Contributing Party prompt written notice of any actual or potential claims concerning infringement of Background IP or Third Party IP which come to their attention.
- 13.14 The Recipient Party must give the Contributing Party all assistance which it reasonably requests in order to protect the Contributing Party's Background IP or Third Party IP, at the Contributing Party's expense.

14 Project IP

Ownership of Project IP

- 14.1 Project IP vests on its creation as set out in clause 14 of the Project Details.
- 14.2 Each Party must co-operate and promptly do all acts and things and execute all documents which may be necessary or desirable for the purpose of vesting ownership of the Project IP as described in clause 14.1 of the Contract Terms.

Use and Protection of Project IP

- 14.3 Unless clause 15 of the Project Details provides otherwise, the Owning Party grants to the other Party a perpetual, irrevocable, world-wide, non-exclusive royalty free and fee-free licence to Use the Project IP for the purposes of the Project and for Internal Purposes. This licence excludes the right to Commercialise (however, such a licence may be provided elsewhere in this Contract).
- 14.4 The registration of the Project IP is only permitted as specified in clause 16 of the Project Details.

Commercialisation of Project IP

- 14.5 Commercialisation of Project IP is only permitted as specified in clause 17 of the Project Details.

15 IP Register

- 15.1 Unless specified otherwise in clause 18 of the Project Details, the Research Organisation must maintain an IP Register throughout the Term in respect of all Project IP, Background IP and Third Party IP, and must ensure that updated and complete copies of the IP Register are provided to the Sponsor in accordance with clauses 12 of the Project Details.

16 Moral rights

[Moral rights will be owned by the persons who create Material for the purposes of this Contract, including reports, software, etc, which is subject to the provisions of copyright law. Moral Rights cannot be assigned or transferred. If a person has Moral Rights then they should be recognised as the author of their work by the Sponsor and Research Organisation, including by having their name appear on their work. They may also be able to prevent certain uses of their work (such as editing). If this may be problematic for one or both Parties, the Research Organisation may be required to obtain written consents from those personnel, by selecting the optional clause 19 of the Project Details. For more information on Moral Rights, please refer to the Toolkit.]

- 16.1 Moral rights will be addressed in accordance with clause 19 of the Project Details.
- 16.2 When providing Material to the other Party for the purposes of this Contract, each Party must ensure that the Material contains, or is provided with, correct attribution of authorship, if applicable, so as to enable the other Party to comply with clause 16.1 of the Contract Terms, to the extent the other Party is required by this Contract to do so.

17 Confidentiality

- 17.1 Subject to clause 17.2 of the Contract Terms, the Sponsor and the Research Organisation (**Obtaining Party**) must each keep strictly confidential all Confidential Information provided to it by the other Party (**Disclosing Party**) in connection with this Contract.
- 17.2 Clause 17.1 of the Contract Terms does not prevent:
- (a) use or disclosure of information lawfully obtained from any third person or lawfully developed by the Obtaining Party, other than as a result of a breach of confidentiality obligations;
 - (b) disclosure of information required to be disclosed by the Obtaining Party by law or pursuant to the rules of any securities exchange;
 - (c) disclosure by the Obtaining Party to its legal or other advisers, subject to the relevant adviser being subject to confidentiality obligations or a confidentiality undertaking in a form reasonably satisfactory to the Disclosing Party;
 - (d) disclosure of information which is necessary to perform the Project, but only to the extent necessary to perform the Project;
 - (e) disclosure of information for the purposes of, or in connection with, the registration, protection, exercise or Commercialisation of any Project IP, Background IP or Third Party IP, if such registration, protection, exercise or Commercialisation is permitted by this Contract;

- (f) disclosure of information to an auditor solely for the purposes of an audit; or
- (g) use or disclosure of information by the Obtaining Party which the Disclosing Party has agreed in writing may be used or disclosed by the Obtaining Party, provided such use or disclosure is in accordance with the terms of that agreement.

17.3 If a Party becomes aware that it has or may have breached this clause 17 of the Contract Terms, that Party must immediately notify the other Party and take all reasonable steps required to prevent or stop the breach.

18 Announcements and publication

18.1 Without limiting any other rights granted under this Contract, the Parties may make or issue public statements concerning this Contract only:

- (a) to the extent permitted by clause 17 of the Contract Terms;
- (b) with the prior written consent of the other Party, such consent not to be unreasonably withheld; or
- (c) in accordance with clause 21 of the Project Details.

19 Payment

19.1 Subject to clause 19.2 of the Contract Terms and the Research Organisation's proper performance of this Contract, the Sponsor must pay the Research Organisation the Funds up to the amount of the Budget, and as specified in, and subject to, clause 10 of the Project Details.

19.2 The Research Organisation must deliver to the Sponsor correctly-rendered invoices in accordance with the payment schedule in clause 10 of the Project Details. The Sponsor is not obliged to make a payment of any amount to the Research Organisation until 30 days after it has received a correctly-rendered invoice in respect of that amount, or within such other time period agreed by the Parties in writing.

19.3 The Research Organisation must only spend the Funds in accordance with the Budget.

19.4 Unless agreed otherwise by the Parties in writing, the Sponsor is not responsible for the provision of additional money to meet any expenditure in excess of the Budget, even if additional money is required to complete the Project.

20 Insurance

20.1 Each Party must maintain, and ensure its subcontractors maintain, for the duration of the Project, insurance:

- (a) as set out in clause 11 of the Contract Details; and
- (b) as required by all relevant laws relating to worker's compensation, for its Personnel engaged in the conduct of the Project.

20.2 Each Party must promptly provide to the other Party evidence of the insurances it maintains and its subcontractors maintain, for the purposes of clause 20.1 of the Contract Terms, when requested.

21 Liability

Liability

[To ensure that costs and resources (such as the cost of insurance) are minimised, liability under an agreement should generally be borne by the party best placed to manage it. In this Contract, this will generally be the Research Organisation, as it is responsible for undertaking the research activities, which are likely to give rise to the most risk. Each Party should complete a risk assessment prior to negotiating this clause to assist in assessing the risks of the Project. A risk assessment will help the Parties to determine if risk treatment strategies (such as additional insurance) may be appropriate.]

- 21.1 The liability of the Parties under this Contract will be determined in accordance with clause 12 of the Contract Details, subject to any limitation of liability specified in clause 22 of the Contract Terms.
- 21.2 The rights, duties, obligations and liabilities of the Parties under this Contract are in every case several and not joint or joint and several.

22 Limitation of liability

- 22.1 The Parties' liability arising from or in connection with this Contract is limited as specified in clause 13 of the Contract Details.

23 Warranties

- 23.1 In addition to, and without limiting, the warranties provided elsewhere in this Contract, the Parties provide the warranties specified in clause 14 of the Contract Details, subject to the exclusions specified in clause 14 of the Contract Details, if any.

24 Privacy

- 24.1 Each Party must comply with the *Privacy Act 1988* (Cth) (**Privacy Act**) in respect of all **personal information** (as defined in the Privacy Act) that it collects, uses, holds or discloses, whether by itself directly or through another person, including the other Party.
- 24.2 Without limitation to clause 24.1 of the Contract Terms, the Research Organisation must comply, in respect of all personal information provided to it by the Sponsor or other third parties on behalf of the Sponsor and all personal information collected, used, held or disclosed by the Research Organisation in the performance of its obligations under this Contract (collectively **Information**), with the privacy policy of the Sponsor as notified to the Research Organisation by the Sponsor from time to time.
- 24.3 The Research Organisation must not use any of the Information for any purpose other than to perform its obligations under this Contract and must comply with all of the Sponsor's reasonable directions in respect of that Information, provided such directions are not contrary to the Privacy Act or the Sponsor's privacy policy.
- 24.4 Each Party must notify the other Party immediately if it becomes aware that it has breached or may have breached any of its obligations under this clause 24 of the Contract Terms.

25 Work health and safety

- 25.1 Each Party must fully comply, and ensure that its Personnel comply, with its obligations under the WHS Law when performing this Contract, including by consulting, co-operating and co-

ordinating activities with the other Party and any other person who, concurrently with the Parties, has a work health and safety duty under the WHS Law in relation to the same matter.

25.2 The Research Organisation represents and warrants that:

- (a) it has given careful and prudent consideration to the work health and safety implications of the performance of the Project and its obligations under this Contract; and
- (b) the proposed method of performance of those obligations complies with, and includes a system for proactively identifying and managing work health and safety risks in a documented fashion which complies with, WHS Law.

25.3 Without limiting the Research Organisation's obligations under this Contract or at law, the Research Organisation must:

- (a) ensure, so far as is practicable, the health and safety of Sponsor Personnel and Research Organisation Personnel any other person who may be put at risk from work that the Research Organisation carries out under this Contract;
- (b) provide to the Sponsor within ten days of a request by the Sponsor (or such longer period agreed by the Parties) any information or copies of documentation held by the Research Organisation or its Personnel to enable the Sponsor to comply with its obligations under the WHS Law in relation to this Contract;
- (c) provide to the Sponsor within ten days of a request by the Sponsor (or such longer period agreed by the Parties) written assurances specifying, and the documents supporting, that:
 - (i) to the best of the Research Organisation's knowledge it and its Personnel are compliant with WHS Law; and
 - (ii) the Research Organisation has made all reasonable enquiries before providing the assurances in clause 25.3(c)(i) of the Contract Terms;
- (d) promptly provide to the Sponsor copies of any formal notices or written communications issued to the Research Organisation by a regulator or agent of a regulator under or in compliance with the WHS Law relating to the Project or this Contract, and any document prepared by the Research Organisation in response to any such notice or communication;
- (e) immediately report to the Sponsor any notifiable or reportable incident under the WHS Law relating to the Project or this Contract, and provide the Sponsor with a copy of the notice provided to the relevant regulator as a result of the notifiable or reportable incident; and
- (f) provide to the Sponsor such other information as may be required by the Sponsor to satisfy its obligations under WHS Law.

25.4 If Research Organisation Personnel are required to be physically located at the Sponsor's premises for the purposes of the Project or this Contract (including Sponsor premises licensed to the Research Organisation, but excluding Sponsor premises managed by the Research Organisation) the Sponsor must manage the physical work environment and facilities in which those persons are required to work, in accordance with WHS Law.

26 Conflict of interest

- 26.1 Each Party warrants that at the Commencement Date, to the best of its knowledge and after making diligent inquiry, no Conflict of Interest exists or is likely to arise in the performance of its obligations under this Contract.
- 26.2 If, during the Term, a Conflict of Interest arises or appears likely to arise in respect of a Research Organisation, the Research Organisation must:
- (a) immediately notify the Sponsor in writing of all relevant information relating to the Conflict of Interest, and the steps that it proposes to take to resolve or otherwise deal with the Conflict of Interest; and
 - (b) promptly take any and all steps that the Sponsor reasonably requires to resolve or otherwise deal with the Conflict of Interest.
- 26.3 If the Research Organisation fails to notify the Sponsor that a Conflict of Interest has arisen or appears likely to arise in accordance with clause 26.2 of the Contract Terms, or is unable or unwilling to resolve or deal with the Conflict of Interest as required in accordance with clause 26.2 of the Contract Terms, the Sponsor may terminate this Contract for breach of a material term in accordance with clause 33(b) of the Contract Terms.

27 Notices

Obligation for notices

- 27.1 Each notice under this Contract must be:
- (a) in writing;
 - (b) addressed to the recipient at the applicable address for notices set out in clause 15 or 16 of the Contract Details; and
 - (c) left at, or sent by pre-paid post, facsimile or email to, that address.

Deemed receipt

- 27.2 Notices given in accordance with clause 27.1 of the Contract Terms will be deemed to have been received:
- (a) if delivered by hand, on the day of delivery (or the next Business Day if the day of delivery is not a Business Day);
 - (b) if sent by post, five Business Days after being sent;
 - (c) if sent by facsimile, on the day of transmission provided that no error report is received in respect of the transmission (or on the next Business Day if the day of transmission is not a Business Day); or
 - (d) if sent by email, when the sender receives a confirmation of receipt from the intended recipient's computer demonstrating that the email has been received.

28 Force Majeure Events

- 28.1 Where, by reason of a Force Majeure Event, a Party is delayed in performing, or is unable, wholly or in part, to perform, any obligation under this Contract, and that Party:
- (a) gives the other Party prompt, written notice of that Force Majeure Event including reasonable particulars, and, in so far as known, the probable extent to which it will be unable to perform, or be delayed in performing that obligation; and

- (b) uses reasonable endeavours to remove, or mitigate the effects of, that Force Majeure Event as quickly as possible,

that obligation is suspended so far as it is affected by the Force Majeure Event during the continuance of that Force Majeure Event and that Party will be allowed a reasonable extension of time to perform its obligations.

- 28.2 If, after 30 days, a Force Majeure Event has not ceased, the Parties must meet in good faith to discuss the situation and endeavour to achieve a mutually satisfactory resolution to the problem.

29 Withholding tax

- 29.1 [Note: The Parties should seek their own advice on the tax implications of entering this Contract and the appropriateness of the following clause to their particular circumstances.] If a Party is required by law to make a deduction or withholding from an amount payable to the other Party under or in connection with this Contract, whether for tax or otherwise, it must do the following:
 - (a) notify the other Party as soon as reasonably practicable that it is required to make the deduction or withholding;
 - (b) promptly make the deduction or withholding and pay the amount in the manner required to the authority entitled to receive it; and
 - (c) if requested by the other Party, as soon as reasonably practicable, deliver evidence satisfactory to the other Party that the payment has been made.

30 Goods and services tax

- 30.1 For the purposes of this clause 30 of the Contract Terms:
 - (a) unless otherwise stated, terms that have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the same meaning as in the GST Act;
 - (b) in addition to its meaning in the GST Act, the term **GST** includes any notional liability to pay GST;
 - (c) the term **consideration** takes its ordinary meaning, rather than its defined meaning in the GST Act; and
 - (d) if a supply is treated as a periodic or progressive supply under the GST Act, each periodic or progressive component of the supply will be treated as if it is a separate supply.
- 30.2 Unless otherwise stated, all consideration to be paid or provided under or in connection with this Contract is expressed exclusive of GST.
- 30.3 If GST applies to a supply made under or in connection with this Contract, for consideration that is not stated to include GST, the recipient must pay to the supplier an additional amount equal to the GST payable on the supply (**GST Amount**). The GST Amount is payable at the same time that the first part of the consideration for the supply is to be provided. However, this clause 30.3 of the Contract Terms will not apply if the GST on the supply is reverse charged and payable by the recipient.

- 30.4 Notwithstanding any other provision of this Contract, the recipient need not pay the GST Amount until it has received from the supplier a tax invoice or adjustment note (as the case may be).
- 30.5 If an adjustment event arises in respect of a supply to which clause 30.3 of the Contract Terms applies, the GST Amount must be adjusted to reflect the adjustment event and a payment must be made by the supplier to the recipient, or by the recipient to the supplier, as the case may be.
- 30.6 If a Party is entitled to be reimbursed or indemnified for a cost or expense under or in connection with this Contract, the amount to be reimbursed must be reduced to the extent that the Party (or the representative member for a GST group of which that Party is a member) is entitled to an input tax credit for the cost or expense.
- 30.7 Unless otherwise stated, if an amount payable under or in connection with this Contract is to be calculated by reference to:
- (a) the consideration to be received for a supply; or
 - (b) the consideration to be provided for an acquisition;
- then, for the purposes of that calculation, the consideration is to be reduced to the extent that it includes any amount on account of GST (regardless of whether the amount is separately identified or included as part of the consideration).
- 30.8 This clause 30 will survive the termination or expiry of this Contract.

31 Variations

- 31.1 Neither Party may vary this Contract, including the scope of the Project, without the prior written agreement of the other Party.
- 31.2 The Sponsor is not liable to pay for work undertaken or expenditure incurred by the Research Organisation as a result of a variation to this Contract or the Project, except if it has occurred in accordance with clause 31.1 of the Contract Terms.

32 Dispute resolution

- 32.1 A Party claiming that a dispute has arisen must give the other Party a notice of the dispute, providing details.
- 32.2 The Sponsor and the Research Organisation, represented by their respective directors or chief executive officers or equivalent Personnel, must promptly and in good faith attempt to resolve any dispute referred to in clause 32.1 of the Contract Terms.
- 32.3 If a dispute is not resolved by the respective directors or chief executive officers or equivalent Personnel of the Parties within 20 Business Days of the date of the notice referred to in clause 32.1 of the Contract Terms, then the Parties must comply with clause 17 of the Contract Details before commencing proceedings in a court or tribunal.
- 32.4 This clause 32 of the Contract Terms and clause 17 of the Contract Details do not preclude either the Sponsor or the Research Organisation from seeking urgent interlocutory relief in a court.

33 Termination and expiry

- 33.1 Without limiting any other right of termination that the Parties may have under law or equity, this Contract may be terminated:
- (a) at any time by the mutual written agreement of the Parties;
 - (b) immediately by a Party giving notice in writing, if the other Party experiences an Insolvency Event or breaches a material term of this Contract which breach cannot be remedied;
 - (c) by a Party if the other Party has reached a limit of liability described in clause 22 of the Contract Terms; or
 - (d) by a Party (**First Party**) if a breach of this Contract occurs by the other Party (**Breaching Party**) and the Breaching Party fails to remedy that breach within 20 Business Days after the date on which the First Party notified it of that breach.
- 33.2 Termination of this Contract by a Party does not limit or affect any right of action or remedy which has accrued to that Party.

34 General provisions

Survival of obligations

- 34.1 The termination or expiry of this Contract for any reason will not extinguish the obligations of the Parties which, either expressly or by their nature, are intended to survive termination or expiry, including those clauses concerning perpetual rights in Intellectual Property and Confidential Information.

Governing law

- 34.2 This Contract will be governed by and construed in accordance with the laws of the Governing Jurisdiction. Each Party submits to the non-exclusive jurisdiction of the courts of the Governing Jurisdiction in connection with matters concerning this Contract.

Entire agreement

- 34.3 This Contract constitutes the entire agreement between the Parties and supersedes all prior communications, negotiations, arrangements and agreements, whether oral or written, with respect to the subject matter of this Contract.

Assignment

- 34.4 Neither Party may assign the benefit of, or its rights under, this Contract, including rights to Project IP, without the prior written consent of the other Party, which consent must not be unreasonably withheld.

Clause severance

- 34.5 Any provision of this Contract that is held void by a court, or is or becomes at any time unlawful or unenforceable, will, to the extent to which it is void, unlawful or unenforceable, be deemed to be excluded from this Contract without affecting the validity or enforceability of the remaining provisions.

Waiver

- 34.6 No failure to exercise, or any delay in exercising, any right, power or remedy by a Party operates as a waiver of that right, power or remedy.

Relationship

- 34.7 The relationship between the Parties is that of independent contractors. Unless expressly stated otherwise, the Parties are not partners, joint venturers or principal and agent.
- 34.8 Neither the Sponsor nor the Research Organisation may make representations on behalf of the other Party.

Further assurances

- 34.9 Each Party agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of this Contract and the transactions contemplated in this Contract.

Costs

- 34.10 Each Party must bear its own costs arising out of the negotiation, preparation and execution of this Contract.

Counterparts

- 34.11 This Contract may be executed in any number of counterparts. All counterparts when exchanged will be taken to constitute one document.

Inconsistency

- 34.12 If there is any inconsistency in relation to the documents which comprise this Contract, it will be resolved in the following descending order of precedence:
- (a) Part 2 - the Contract Details;
 - (b) Part 3 - the Project Details;
 - (c) Part 1 - the Contract Terms; and
 - (d) any other documents incorporated by reference.

Part 2 - Contract Details

1 Sponsor (clause 3.1 of the Contract Terms)

Name: [insert]
ACN/ABN: [insert]
Registered Address: [insert]

2 Sponsor's Representative (clause 6 of the Contract Terms)

Name (Title): [insert]
Address: [insert]
Email: [insert]
Telephone: [insert]

3 Research Organisation (clause 3.1 of the Contract Terms)

Name: [insert]
ACN/ABN: [insert]
Registered Address: [insert]

4 Research Organisation's Representative (clause 6 of the Contract Terms)

Name (Title): [insert]
Address: [insert]
Email: [insert]
Telephone: [insert]

5 Project (clause 3.1 of the Contract Terms)

5.1 [insert Project title.]

6 Objectives

6.1 [Insert the objectives of the Parties in undertaking the Project, if desired.]

7 Background

7.1 [Insert any relevant background information only. Do not include any obligations here.]

8 Outcomes

8.1 [Insert anticipated major outputs/results, eg improved service through creation of new software for use at point of sale.]

9 Commencement Date (clause 4 of the Contract Terms)

9.1 The Commencement Date is:

Option A

[If the Parties have agreed that this Contract will commence on a particular date, insert that date.]

Option B

[Insert 'the date on which the last Party to sign this Contract signs this Contract.']

10 Term (clause 4 of the Contract Terms)

10.1 The Term is the period between the Commencement Date and:

Option A

[If the Parties have agreed that this Contract will end on a particular date, insert that date.]

Option B

[Insert 'the first date on which all the parties' obligations set out in the Project Details have been performed under this Contract,']

unless the Term is extended or this Contract is terminated earlier in accordance with the provisions of this Contract.

11 Insurance (clause 20 of the Contract Terms)

[Insert insurance requirements (including \$ amounts) for each Party. Consider whether public liability, professional indemnity, products liability or other insurances are relevant and whether a common insurer for both Parties is appropriate to lessen potential delay. Ensure that the details include whether the amounts are per claim or in aggregate (i.e. total). If any insurance must be maintained after the Term, ensure this is specified.]

12 Liability option (clause 21 of the Contract Terms)

[Insert Option A, B or C or insert an alternative clause.]

Option A - General legal principles

[This option means that general legal principles apply to this Contract. If an issue arises, then liability may not be clear from this Contract and the Parties may need to obtain legal advice.]

12.1 The Parties agree that common law principles of liability will apply to this Contract.

Option B - Mutual

[This option may be appropriate if both Parties will be actively engaged in the Project and the Parties do not wish to leave liability issues to be determined by general legal principles.]

12.2 Each Party (**Indemnifier**) must indemnify, and keep indemnified, the other Party and its Personnel (collectively, **Indemnified Persons**) from and against any and all Claims suffered or incurred by, or brought or made against, Indemnified Persons resulting from:

- (a) any breach by the Indemnifier of this Contract or any law;
- (b) the infringement or alleged infringement of any Intellectual Property rights arising from the use, as contemplated by this Contract, of the Background IP or Third Party IP provided by the Indemnifier (whether owned by the Indemnifier or another person);
- (c) any malicious, fraudulent, negligent, unlawful or wilful act or omission by the Indemnifier or its Personnel; or
- (d) any damage to any property, or injury or death to any person, to the extent caused or contributed to by the Indemnifier or its Personnel.

Option C - Research Organisation indemnifies

[This option may be appropriate if the Research Organisation will be undertaking all activities, or almost all activities, with minimal or no activities being performed or overseen by the Sponsor.]

12.3 The Research Organisation must indemnify, and keep indemnified, the Sponsor and its Personnel (collectively, **Indemnified Persons**) from and against any and all Claims suffered or incurred by, or brought or made against, an Indemnified Person resulting from:

- (a) any breach by the Research Organisation of this Contract or any law;
- (b) the infringement or alleged infringement of any Intellectual Property rights arising from the Use as contemplated by this Contract of the Project IP or any Background IP or Third Party IP provided by the Research Organisation (whether owned by the Research Organisation or another person);
- (c) any malicious, fraudulent, negligent, unlawful or wilful act or omission by the Research Organisation or its Personnel; or
- (d) any damage to any property, or injury or death to any person, to the extent caused or contributed to by the Research Organisation or its Personnel.

13 Limitation of liability (clause 22 of the Contract Terms)

13.1 [If the Parties have agreed to cap their liability under this Contract, insert the amount of the cap or caps here. For example, 'The maximum liability of each Party is capped at \$20 million ex GST'. The amount of the cap should be based on the Parties' risk assessments.]

14 Warranties (clause 23 of the Contract Terms)

[Insert any warranties required by either Party which are not set out elsewhere in this Contract. Note: The following options are examples of different warranty provisions and may be included in whole, in part, as required, or replaced with other warranties. More than one option may be selected. Drafters should ensure that if using parts of optional clauses, or more than one optional clause, that the parts or clauses are not inconsistent. Drafters may also leave this clause blank.]

Option A - Warranties relating to Background IP

14.1 Each Contributing Party represents and warrants to the Recipient Party that, to the best of its knowledge and belief and subject to any limitations set out in the IP Register, the use of the Contributing Party's Background IP as permitted by this Contract will not infringe the Intellectual Property rights or Moral Rights of any person.

Option B - Warranties given by the Research Organisation

[Note: many of the following could also be given by the Sponsor, if required.]

14.2 The Research Organisation represents and warrants to the Sponsor that:

- (a) **[Option B1]** it has the power to enter into this Contract and to carry out the Project;
- (b) **[Option B2]** carrying out the Project will not breach any applicable laws;
- (c) **[Option B3]** to the best of its knowledge and belief:
 - (i) all information provided by it to the Sponsor in relation to the Project will be, at the time it is provided correct, complete and not misleading in any respect; and

- (ii) any and all Personnel engaged in the Project activities are properly qualified to perform their roles and do not have any Conflict of Interest or obligation to the Sponsor or any other entity which might prevent them from fully performing their obligations under this Contract;
- (d) **[Option B4]** it has the right to grant all licences required to be granted by the Research Organisation under this Contract;
- (e) **[Option B5]** it has disclosed to the Sponsor in writing prior to the Commencement Date any matter that may affect the Research Organisation's reputation, capability or ability to fully perform its obligations under this Contract;
- (f) **[Option B6]** it has and will be deemed to have done everything possible to inform itself fully and completely as to the requirements in this Contract, the law and the conditions, risks, contingencies and all other factors which may affect the timing, scope, cost or effectiveness of performing this Contract, and all things necessary for the performance of the Research Organisation's obligations under this Contract;
- (g) **[Option B7]** it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations, including as to the sufficiency of the Budget; and
- (h) **[Option B8]** it does not rely on any representation, warranty, condition or other conduct, information, statement or document which may have been made by the Sponsor or any person purporting to act on behalf of the Sponsor in entering into this Contract, other than an express warranty contained in this Contract.

Option C - Warranty regarding patentability of Project outcomes

[Note: the following option may be included if the Project outcomes may be patentable. It should be amended as required to reflect the checks or searches that will be undertaken.]

14.3 The Research Organisation represents and warrants to the Sponsor that it will undertake [insert requirement - e.g. basic checks of publicly available information or patent searches] to ascertain whether the Project outcomes are patentable and will promptly inform the Sponsor of any Third Party IP Rights in relation to the Project outcomes of which it is aware or any other matters of which it is aware which may adversely affect the Commercialisation of Project outcomes as contemplated by this Contract.

Option D - Exclusion of other warranties

- 14.4 **[Option D1]** No Party gives any warranty that the objectives of the Project will be achieved.
- 14.5 **[Option D2]** No Party gives any warranty that Project outcomes will be accurate (except that this will not limit a Party's liability for inaccuracies caused by its negligence).
- 14.6 **[Option D3]** No Party gives any warranty that Project outcomes will be commercially valuable, patentable, reliable, safe or fit for any purpose.
- 14.7 **[Option D4]** No Party gives any warranty that Project outcomes will not infringe any Third Party IP Rights.
- 14.8 **[Option D5]** Where any law implies any condition or warranty and that law does not allow the exclusion or limitation of that condition or warranty, then such condition or warranty is deemed included in this Contract. The application or effect of such condition or warranty is limited to the maximum extent permitted by law.

14.9 [Option D6] Except as otherwise provided in this Contract, each party uses Background IP and Third Party IP entirely at its own risk.

Option E - General

[Insert the following clause unless this clause 14 of the Contract Details has been left blank.]

14.10 The warranties provided in this clause 14 of the Contract Details:

- (a) will survive the termination or expiry of this Contract; and
- (b) are in addition to, do not limit and are not limited by, any other warranties provided under this Contract.

15 Sponsor's address for notices (clause 27 of the Contract Terms)

Address: [insert]

Phone: [insert]

Fax: [insert]

Email: [insert]

16 Research Organisation's address for notices (clause 27 of the Contract Terms)

Address: [insert]

Phone: [insert]

Fax: [insert]

Email: [insert]

17 Dispute resolution (clause 32 of the Contract Terms)

17.1 If the process described in clause 32.2 of the Contract Terms does not result in the resolution of the dispute: [Insert Option A, B, C OR D and delete the other options] Contract:

Option A - Expert Determination

17.2 The Parties must refer the dispute to an expert for determination in accordance with The Institute of Arbitrators and Mediators Australia Expert Determination Rules and agree to be bound by the determination.

Option B - Mediation

17.3 The Parties must appoint a mediator to mediate the dispute and participate in mediation in accordance with The Institute of Arbitrators and Mediators Australia Mediation Rules.

Option C - Arbitration

17.4 The Parties must refer the dispute to arbitration in accordance with The Institute of Arbitrators and Mediators Australia Fast Track Arbitration Rules. If the value of the dispute is less than \$50,000, arbitration must take place using the submission of documents alone.

Option D - Non-specific

17.5 The Parties may, but are not required to, refer the dispute for alternative dispute resolution.

18 Governing Jurisdiction (clause 34.2 of the Contract Terms)

18.1 This Contract is governed by the laws of [insert an Australian State or Territory (e.g. New South Wales). This should generally be the location in which the research will primarily be performed. If no State or Territory is specified, the laws of New South Wales will apply.]

19 Special Conditions (clause 5.1 of the Contract Terms)

19.1 [Insert any additional terms agreed by the Parties (or these can be added to Part 3 – Project Details if more appropriate).]

Part 3 - Project Details

[Note: this Part can be substituted with a document in a different format and structure if preferred by the Parties.]

1 Project details

- 1.1 [Insert any details of the Project not included elsewhere in this Contract, such as a description of potential outcomes, definitions for any additional defined terms used in this Part, etc.]

2 Schedule of work and role of each Party (clause 5 of the Contract Terms)

- 2.1 The Parties must complete the following activities:

[Insert details of work to be performed, including which Party will perform it, the methodology to be used, the location of the activity, etc.]

No	Description	Location	Responsible Party	Due date
1	[insert]	[insert]	[insert]	[insert]
2				

3 Location

- 3.1 [Insert location of Project activities].

4 Budget (clause 19.3 of the Contract Terms)

- 4.1 The Budget for the Project is:

No	Expenditure	20--/20--	20--/20--	Total
1	Salaries	[insert]	[insert]	[insert]
2	Travel			
3	Operating			
4	Capital			
5	[insert other]			
	Total			

Note: This table contains the total Budget for the Project and will only be varied in accordance with clause 31 of the Contract Terms.

5 In-kind Contributions (clauses 5.2(a) and 5.3(f) of the Contract Terms)

- 5.1 The Parties must provide the following In-kind Contributions:

Sponsor:

In-kind Contribution	Due date	Agreed value (\$)
[Insert details e.g. description of resources, description of facilities, Loaned Equipment model numbers, etc.]	[insert]	[insert]
Total Sponsor In-kind Contribution		

Research Organisation:

In-kind Contribution	Due date	Agreed value (\$)
[Insert details e.g. description of resources, description of facilities, Loaned Equipment model numbers, etc.]	[insert]	[insert]
Total Research Organisation In-kind Contribution		

6 Key Persons (clause 7 of the Contract Terms)

Sponsor:

No	Name of person	Position	Qualifications	Role
1	[insert]	Principal Investigator	[insert]	Principal researcher who directs the Project on behalf of the Research Organisation.
2				

Research Organisation:

No	Name of person	Position	Qualifications	Role
3	[insert]	[insert]	[insert]	[insert]
4				

7 Student and volunteer involvement (clause 8 of the Contract Terms)

7.1 The Parties have agreed that the following students/volunteers may assist the Research Organisation with the Project as part of the Research Organisation Personnel:

[Insert details of student/volunteer, including the work that they may perform.]

No	Name	Work to be performed
1		
2		

8 Total Personnel (clause 10 of the Contract Terms)

The Parties will provide the following total numbers of Personnel for the Project:

Total number of Personnel to be provided by the Sponsor:

Full-time: [insert]

Part-time: [insert]

Total number of Personnel to be provided by the Research Organisation:

Full-time: [insert]

Part-time: [insert]

9 Equipment (clause 11 of the Contract Terms)

9.1 The [insert either Sponsor OR Research Organisation] will own the Project Equipment.

9.2 The Loaned Equipment and Project Equipment are subject to the following conditions:

Sponsor Loaned Equipment:

	Description	Conditions
1	[insert]	[insert]
2		

Research Organisation Loaned Equipment:

	Description	Conditions
3	[insert]	[insert]
4		

Project Equipment:

	Description	Conditions
1	[insert]	[insert]
2		

[Note: The Parties must also specify in the table above if Project Equipment owned by the Sponsor will be purchased by the Research Organisation as an agent for the Sponsor. This can affect which Party claims the input tax credit.]

10 Payments (clause 19 of the Contract Terms)

10.1 Subject to this Contract, payments will be made by the Sponsor as follows:

Milestone	Milestone Achievement Criteria	Milestone Payment Amount	Milestone Due Date
MS [# e.g. 1] [e.g. Delivery of working prototype]	[insert details e.g. Prototype functioning as specified in the Contract.]	[\$[amount]]	[insert]
MS [#]			
Total		[\$[amount]]	

11 Reporting (clause 5.3(g) of the Contract Terms)

No	Report	Requirements
1	[Insert title and description e.g. progress report, or final report.]	[Insert format or other requirements]
2		

12 Deliverables (clauses 5.3(g) and 12.2 of the Contract Terms)

12.1 The Research Organisation must create and deliver the following:

[Insert details of Deliverables, including which Party will own the Deliverable, if applicable. Examples of Deliverables that may be listed are property including samples and prototypes, information including conclusions, techniques, know how, methods, raw data and undocumented findings, documentation of all kinds or other material in whatever form and the subject matter of any category of Intellectual Property rights. The IP Register, including updates, should be included in this list, unless it will not be applicable for the Project. Project Plans and reports are also Deliverables.]

No	Description	Owner (if applicable)	Due date
1	[Insert details e.g. The reports specified in clause 11 of the Project Details.]	[insert]	As specified in clause 11 of the Project Details.
2	[insert, if applicable: IP Register]	[insert]	[insert]

13 Background IP and Third Party IP (clause 13 of the Contract Terms)

13.1 Unless the Parties have agreed otherwise in writing, the Recipient Party is granted by the Contributing Party a non-exclusive, perpetual, irrevocable, worldwide, royalty-free and licence fee free licence to Use the Contributing Party's Background IP and Third Party IP for:

- (a) carrying out the Project;

- (b) **[Optional]** Internal Purposes; and
- (c) **[Optional]** insert any other purposes,
- and for all other purposes permitted by this Contract.

14 Ownership of Project IP (clause 14 of the Contract Terms)

Ownership

14.1 The owner of Project IP is:

- (a) if the table below provides that a Party will own particular Project IP, then that Party in respect of that particular Project IP upon its creation; and
- (b) for all other Project IP, upon its creation: **[insert only one option from the options below and delete all other options. Option C should only be selected if the Parties are willing to manage the Project IP together for the long term and accept the risk that this may result in additional resourcing and expense and increase the potential for disputes to arise.]**

[Option A] the Sponsor

[Option B] the Research Organisation

[Option C] both parties as tenants in common in the following proportions: **[insert percentage proportions for the Parties (e.g. 50% Sponsor/50% Research Institution)]**.
[Note: The agreed percentage is often based on the respective financial and In-kind Contributions made by the Parties.]

No	Details of Project IP/Material comprising Project IP	Owner
1	[If applicable, insert details of particular Project IP that will be owned by one Party (and this could refer to improvements to Background IP). For example, this could be IP in a particular Deliverable, such as a report, or database.]	[insert either 'Sponsor' or 'Research Organisation']
2		

15 Use of Project IP (clause 14.3 of the Contract Terms)

15.1 **[Note: If the Owning Party wishes to vary the licensed rights granted to the other Party from those set out in clause 14.3 of the Contract Terms, it should specify those rights here. Otherwise this clause should be marked 'not used'.]**

16 Protection of Project IP (clause 14 of the Contract Terms)

Protection of Project IP (other than co-owned Project IP)

- 16.1 Clauses 16.2 and 16.6 of the Project Details apply only in respect of Project IP that is not co-owned by the Parties.
- 16.2 The Owning Party may choose whether or not to pursue registration or other protection in respect of its Project IP in its own name and at its own expense, **[Note: The remainder of this sentence provides an optional obligation which is appropriate if the other Party's rights may**

be affected by the Owning Party registering or protecting Project IP] but must first consult with the other Party.

- 16.3 Each Party must take all reasonable steps to protect the Project IP and must give the other Party prompt written notice of any actual or potential claims concerning infringement of Project IP which comes to their attention.
- 16.4 **[Optional]** The Owning Party may not dispose of or encumber the whole or any part of its interest in any Project IP, except with the prior written consent of the other Party, which must not be unreasonably withheld.
- 16.5 The other Party must give the Owning Party all assistance which it reasonably requests in order to protect the Owning Party's Project IP, at the Owning Party's expense.
- 16.6 [Insert one of the following options, and delete the option which is not used:
- [Option A]** The Owning Party may choose whether or not to pursue registration in respect of its Project IP in its own name and at its own expense but must first consult with the other Party.
- [Option B]** The Owning Party may not apply for registration of Project IP except with the other Party's prior written consent.

Protection of co-owned Project IP

[Include the following clauses only if Option C has been selected in clause 14.1(b) of the Project Details above or the table in clause 14.1 of the Project Details provides for co-ownership (sometimes referred to as 'joint' ownership) of the Project IP by both Parties.]

[Note: The following clauses provide that the Parties must agree various obligations in writing. There is a risk that such agreement will not be able to be reached at the relevant time. To minimise this risk, the Parties may wish to enter into a separate Commercialisation agreement or Commercialisation strategy which addresses these issues prior to commencing any Commercialisation.]

- 16.7 In respect of all Project IP which is co-owned, the Parties must:
- (a) agree in writing to obtain registration or protection for that Project IP;
 - (b) agree in writing any action required to defend or enforce their rights in that Project IP;
 - (c) agree in writing which of them will be responsible for implementing the chosen method of registration, protection, defence or enforcement; and
 - (d) unless agreed otherwise in writing, share the cost of registering, protecting, defending or enforcing that Project IP in proportion to their percentage of ownership of the Project IP.
- 16.8 If one Party does not wish to, or is unable to, pay its share of the costs of the registration, protection, defence or enforcement of the co-owned Project IP, the other Party may pay the costs of the registration, protection, defence or enforcement at its absolute discretion. The Party paying such costs will be entitled to recoup these costs from the proceeds of any Commercialisation of such Project IP prior to the proceeds being distributed.
- 16.9 Neither Party may dispose of or encumber the whole or any part of its interest in any Project IP, except with the prior written consent of the other Party, which must not be unreasonably withheld.

17 Commercialisation of Project IP (clause 14 of the Contract Terms)

Right to Commercialise

[Insert one of the following options and delete the other options or insert an alternative option. Note: Options A and B are only intended for use if the Project IP is not co-owned.]

Option A - Owning Party has exclusive right to Commercialise Project IP

[Note: this option may be appropriate if, for example, the Owning Party is the Sponsor and the Sponsor has fully funded the research.]

17.1 The Owning Party is the only Party that may Commercialise Project IP and may Commercialise the Project IP in accordance with this Contract.

Option B - Owning Party has first right to Commercialise Project IP

[Note: this option may be appropriate if, for example, both Parties have an interest in seeing the Project outcomes Commercialised, but one Party is in a better position to undertake the Commercialisation (for example, because its core business involved Commercialisation).]

17.2 The Owning Party has the first right to Commercialise the Project IP and may Commercialise the Project IP in accordance with this Contract.

17.3 If the Owning Party has not commenced Commercialising its Project IP within a period of [insert years - e.g. 3 years from the end of the Term], the other Party may request a licence to Commercialise that Project IP on reasonable commercial terms, and the Owning Party must negotiate the terms of that licence in good faith.

Option C - Either Party may Commercialise Project IP subject to a right of refusal

[Note: this option is generally used for co-owned Project IP only.]

17.4 Either Party may Commercialise the Project IP in accordance with the terms of this Contract, provided that:

- (a) it has provided the other Party with no less than [insert time period] prior written notice of the Commercialisation (providing full details of the proposed Commercialisation); and
- (b) the other Party has not provided written notice of its refusal within [insert time period] of receiving the notice .

Option D - Commercialisation agreement/strategy

[Note: this option is used if the Parties choose to agree the Commercialisation details at a later date. This option results in a risk that the Parties may not be able to agree the terms at a later date. If this option is chosen, the separate agreement or strategy should be agreed as soon as possible.]

17.5 A Party may only Commercialise Project IP in accordance with a Commercialisation agreement or Commercialisation strategy agreed by the Parties in writing.

Option E - Either Party may Commercialise Project IP as agreed

[Note: this option is generally used for co-owned Project IP only.]

17.6 Either Party may Commercialise the Project IP, subject to the following conditions:

[Insert agreed terms, including how the income will be apportioned - e.g. will each Party be entitled to keep its own income or will the Parties share the net income derived from the Commercialisation of co-owned Project IP in proportion to their percentage of ownership of the Project IP (e.g. 50/50)? If

the income is shared, then generally each Party will be entitled to recoup costs of registration/protection/Commercialisation as a first charge from the proceeds of Commercialisation. If so, this should be stated.]

Commercialisation conditions

17.7 The following conditions apply to any Party which Commercialises Project IP:

[Insert any conditions which apply if a Party wishes to Commercialise Project IP or insert 'nil'.]

Examples of conditions include that:

- (a) the Commercialising Party must notify the other party or consult with the other Party in relation to the proposed Commercialisation strategy; or
- (b) the other Party must provide its prior written consent to the terms and conditions of any agreements entered into by the Commercialising Party for the purposes of Commercialising Project IP;
- (c) Commercialisation may only occur in accordance with a Commercialisation agreement or Commercialisation strategy agreed by the Parties in writing; and/or
- (d) the Commercialising Party must pay to the other Party a fee - of a specified amount, or on reasonable commercial terms as agreed by the Parties in writing.]

Commercialisation of Background IP

[Insert one of the following options and delete the other option.]

Option A - terms to be agreed

17.8 If a licence to Commercialise a Contributing Party's Background IP in conjunction with, or as part of, Commercialising Project IP, is requested by the Recipient Party, both Parties must negotiate in good faith to agree the reasonable commercial terms of that licence.

Option B - terms agreed

17.9 If a Recipient Party is permitted by this Contract to Commercialise Project IP it is hereby granted by the Contributing Party and accepts a perpetual, irrevocable, world-wide, non-exclusive [**Optional:** royalty-free and fee-free] licence to Use the Contributing Party's Background IP for the purposes of Commercialising Project IP, [**Optional:** if nil fees or royalties are payable, delete the remainder of this clause] but must pay the Contributing Party: [insert details of royalty or licence fee, including when and how it is payable.]

Reasonable commercial terms

17.10 Any reference in this clause 17 of the Project Details to **reasonable commercial terms** requires regard to be given both to the value of the applicable Intellectual Property and the respective contributions of the Parties to the Project.

18 IP Register (clause 15 of the Contract Terms)

18.1 [An IP Register is likely to be required unless no Commercialisation will occur and the Project will not result in any substantial Project IP.] An IP Register [insert 'must be kept' OR 'may not be kept'] by the Research Organisation.

19 Moral Rights (clause 16 of the Contract Terms)

[Insert one of the following options and delete the other option.]

Option A - Compliance

Each Party must respect the Moral Rights of the Personnel of the other Party as required by law.

Option B - Consent

19.1 The Research Organisation must:

- (a) use its best endeavours to obtain from its officers, employees, contractors, agents, students and volunteers; and
- (b) require its subcontractors to use their best endeavours to obtain from their officers, employees, contractors, agents, students and volunteers,

who, in the performance of the Project, are or may be engaged in the creation of Material in which copyright subsists, a genuine consent in writing to the use of that Material for the purposes contemplated by this Contract, even if such use would otherwise be an infringement of their Moral Rights.

19.2 If the Research Organisation or any of its subcontractors are unable to obtain a consent described in clause 19.1 of the Project Details, the Research Organisation must promptly notify the Sponsor in writing.

20 Confidential Information (clause 17 of the Contract Terms)

[Due to the operation of clause 17 of the Contract Terms, Confidential Information can be disclosed in a number of circumstances, including if disclosure is necessary to exercise Intellectual Property rights, such as patenting or Commercialising Project IP. Therefore, including information in this table will not prevent all disclosures. Sometimes patenting may not be the best choice to protect Project IP as it necessitates the disclosure of Confidential Information.]

20.1 The following is Confidential Information as at the Commencement Date:

No	Description	Party	Period of confidentiality
1	[Insert description e.g. Budget amount, names of Personnel, etc.]	[Insert the name of the Party that has provided the information – either 'Sponsor' or 'Research Organisation'.]	[insert period of time.]
2			

21 Publication (clause 18 of the Contract Terms)

[Note: Research Organisations which are universities or similar institutions may have responsibilities to broadly disseminate teaching or research outcomes. The outcomes of publicly funded research, in particular, should generally be made available to the public. However, the Parties must be mindful that disclosure of certain information may adversely affect the ability to patent Project IP or otherwise Commercialise Project IP and may result in the disclosure of Confidential Information. Publication may also be prevented by Third Party IP rights in Material. Therefore, publication must be considered and managed carefully by the Parties. The following optional clause may be included to permit publication of research outcomes.]

- 21.1 The Parties agree that the Research Organisation may publish the following Material: [insert Option A, B or C and delete the other options, or insert an alternative option.]
- [Option A] insert 'all Project research outcomes and Deliverables except those relating to Patent or Design applications planned or in progress.'
- [Option B] insert a list of Project research outcomes or Deliverables.
- [Option C] insert 'all material in which Project IP is owned by the Research Organisation'.
- 21.2 Publication under clause 21.1 of the Contract Details is subject to the following conditions:
- [Insert one or more options or alternative options. For example:]
- [Option A] insert 'nil.'
- [Option B] insert 'Publication may not occur until [insert e.g. 18 months] after the end of the Project Term.'
- [Option C] insert 'Prior written approval by the Sponsor of the publication is required on a case-by-case basis.'
- [Option D] insert 'Publication may not occur until after an application for registration of Project IP has been made.'
- [Option E] insert 'Publication may only occur in [insert journal].'

22 Special Conditions (clause 5.1 of the Contract Terms)

- 22.1 [Insert any Special Conditions that have not been included elsewhere in this Contract. For example, these may include particular requirements concerning:
- (a) the maintenance of laboratory books and security;
 - (b) work health and safety;
 - (c) whether the Sponsor's prior written consent is required by the Research Organisation to recruit additional Personnel;
 - (d) any contingency arrangements or additional obligations which apply to the Research Organisation if Milestones are not met; or
 - (e) access requirements for facilities.]

EXECUTED AS AN AGREEMENT

[Insert appropriate signature blocks for both the Sponsor and the Research Organisation]

[If the Party is a corporation insert the following signature block:]

Executed by **[name of corporation]** ACN
[ACN] acting by the following persons in
accordance with s127 of the *Corporations*
Act 2001 (Cth):

.....
Signature of director

.....
Signature of director/company secretary

.....
Name of director (print)

.....
Name of director/company secretary (print)

[If the Party is an individual insert the following signature block:]

Signed by **[name of Party]** in the presence
of:

.....
Signature of witness

.....
Signature of **[name of Party]**

.....
Name of witness (print)

Attachment A - Template IP Register

NOTE:

Refer to clause 15 of the Contract Terms.

BIP = Background IP

PIP = Project IP

TPIP = Third Party IP

A	B	C	D	E	F	G	H	I	J
No	Title	Description	Type of IP (e.g. BIP, PIP, TPIP)	Owner	If BIP or TPIP, how will IP be used in Project?	For BIP or TPIP, date contributed	For FIP, date created	Is IP registered? (If yes, provide details)	Restrictions on use of IP (e.g. licence conditions, encumbrances, fees, etc)
<i>Example</i>									
1	ABC database	Database containing details of [...]	Background	Sponsor	For Research Organisation to develop a methodology as described in clause 2 of the Project Details.	01 Oct 2014	Not applicable	No	Licensed for the Term and only for the purposes described in column F. No rights to sublicense.

Your feedback on using the IP Toolkit is welcomed.

Please send suggestions to IPToolkit@industry.gov.au

For more information:

www.business.gov.au/ip toolkit
www.ipaustralia.gov.au

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