



Australian Government
Department of Industry and Science
IP Australia

Business



MINI AUSTRALIAN IP TOOLKIT FOR COLLABORATION Model Contract

September 2015

[INSERT SPONSOR ORGANISATION NAME]

[[insert ACN/ABN]]

and

[INSERT RESEARCH ORGANISATION NAME]

[[insert ACN/ABN]]

SHORT FORM RESEARCH COLLABORATION CONTRACT

[INSERT PROJECT TITLE]

Note:

Purpose

This model Short Form Research Collaboration Contract (the Mini Model 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. This 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 intended for low value (i.e. \$100,000 or less) and low risk projects and should not be used for other purposes.

Structure

This model Contract includes three Parts:

- Part 1 – Contract Terms;
- Part 2 – Contract Details; and
- 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. Please delete all highlighted notes prior to signing the completed Contract.

Please note that the parties should seek their own tax advice, as clauses 25 and 26 of the Contract Terms may not be appropriate in all circumstances.

Disclaimers and conditions of use

The law referred to in this model Contract is current as at June 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 model 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



This model Short Form Research Collaboration Contract created by the Commonwealth of Australia is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).

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 – Contract Terms;
- (b) Part 2 – Contract Details;
- (c) Attachment A – Template IP Register; and
- (d) any other documents incorporated by reference.

3 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 8 of the Contract 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 4.1 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 17 of the Contract 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 Short Form Research Collaboration Contract, including its Parts and Attachments and any other documents incorporated by express reference.
Contract Details	means Part 2 – Contract Details of this Contract.
Contract Terms	means Part 1 – Contract Terms of this Contract.
Contributing Party	has the meaning given in clause 12.2 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 Contract 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 19 of the Contract Details. If no place is specified in clause 19 of the Contract Details, the Governing Jurisdiction is New South Wales.
In-kind Contribution	has the meaning given in clause 10 of the Contract 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 of 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, trade marks (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 Contract Details.
Loaned Equipment	has the meaning given in clause 7 of the Contract 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 9 of the Contract 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 other Party.
Owning Party	means the Party which owns Project IP, as specified in this Contract.
Parties	means the parties to this Contract specified in clause 1 of the Contract Details 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 3 of the Contract Details.
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 12.2 of the Contract Terms.
Representative	means a person authorised to manage this Contract on behalf of a Party.
Research Organisation	has the meaning given in clause 1 of the Contract Details.

Special Conditions	means the special conditions specified in clause 20 of the Contract Details, if any.
Sponsor	has the meaning given in clause 1 of the Contract Details.
Term	has the meaning given in clause 4.2 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	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.

4 Interpretation

- 4.1 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.

5 Commencement

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

6 Role of each Party

- 6.1 Each Party must undertake the Project by performing the obligations which it is required to perform as set out in the Contract Details and by meeting all its other obligations under this Contract, including the Special Conditions.
- 6.2 The Sponsor must:
- (a) provide Funds and In-kind Contributions, including Loaned Equipment, in accordance with the Contract 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.

6.3 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 Contract 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 Contract Details;
- (f) provide Funds and In-kind Contributions, including Loaned Equipment, in accordance with the Contract Details;
- (g) provide Deliverables, including reports, in accordance with the Contract Details;
- (h) comply with the Special Conditions;
- (i) commence the Project on the Commencement Date;
- (j) complete the Project as specified in the Contract 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.

6.4 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.

6.5 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.

7 Representatives

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

8 Key Persons

8.1 Each Party must ensure that each of its Key Persons performs the duties specified for that person in clause 6 of the Contract Details.

8.2 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 Contract 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.

9 Obligations regarding Personnel

9.1 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 Equipment

10.1 Each Party must provide the Loaned Equipment it has agreed to provide as specified in clause 7 of the Contract Details or as agreed by the Parties in writing from time to time. The provision and use of the Loaned Equipment is subject to the conditions specified in clause 7 of the Contract Details, and each Party must comply with those conditions.

10.2 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.

10.3 The Research Organisation may use the Funds to purchase Project Equipment if specified in clause 7 of the Contract Details or otherwise with the prior, written consent of the Sponsor.

10.4 The Party specified in clause 7 of the Contract Details as the owner of particular Project Equipment will own that Project Equipment.

10.5 Unless specified otherwise in clause 7 of the Contract 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;
- (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;
- (c) keep accurate records of the Project Equipment and Loaned Equipment, including details of serial numbers, location, condition and maintenance records; and
- (d) provide any such records to the Sponsor upon request.

11 Material

11.1 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.

11.2 The Deliverables created for the purposes of this Contract will be owned as set out in clause 12 of the Contract Details or as otherwise agreed by the Parties in writing.

12 Background IP and Third Party IP

12.1 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

- 12.2 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.
- 12.3 The terms which must be disclosed by the Contributing Party for the purposes of clause 12.2 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.
- 12.4 If no terms are disclosed as described in clause 12.3 of the Contract Terms, the terms set out in clause 14 of the Contract Details will apply.
- 12.5 After receiving an offer described in clause 12.2 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.
- 12.6 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.
- 12.7 If the Recipient Party rejects the Use of Material containing Background IP or Third Party IP in accordance with clause 12.5(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

- 12.8 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.
- 12.9 A Party which becomes aware that either of the circumstances described in clauses 12.8(a) or 12.8(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

- 12.10 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.
- 12.11 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.
- 12.12 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.

- 12.13 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.

13 Project IP

- 13.1 Project IP vests on its creation with the Sponsor, unless otherwise provided in clause 15 of the Contract Details.
- 13.2 Each Party must cooperate 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 13.1 of the Contract Terms.
- 13.3 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).
- 13.4 Commercialisation of Project IP is only permitted as specified in clause 16 of the Contract Details.

14 IP Register

[insert 'not used' and delete text below if an IP Register is not required]

- 14.1 Unless specified otherwise in clause 13 of the Contract 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 clause 12 of the Contract Details.

15 Moral Rights

[If the Research Organisation is required to obtain written consents from personnel, insert a Special Condition in clause 20 of the Agreement Details, as indicated.]

- 15.1 Unless specified otherwise in the Special Conditions, each Party must respect the Moral Rights of the Personnel of the other Party as required by law.
- 15.2 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 15.1 of the Contract Terms, to the extent the other Party is required by this Contract to do so.

16 Confidentiality

- 16.1 Subject to clause 16.2 of the Contract Terms, an Obtaining Party must keep strictly confidential all Confidential Information provided to it by the Disclosing Party in connection with this Contract.
- 16.2 Clause 16.1 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; and
- (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.

16.3 If a Party becomes aware that it has or may have breached this clause 16 of the Contract Terms, that Party must immediately notify the other Party and take all reasonable steps to prevent or stop the breach.

17 Announcements and publication

17.1 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 16 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 18 of the Contract Details.

18 Payment

18.1 Subject to clause 18.2 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 9 of the Contract Details.

18.2 The Research Organisation must deliver to the Sponsor correctly-rendered invoices in accordance with the payment schedule in clause 9 of the Contract 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.

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

19 Liability

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

20 Privacy

20.1 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.

20.2 Without limitation to clause 20.1 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.

20.3 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.

- 20.4 Each Party must notify the other Party immediately if it becomes aware that it has breached or may have breached of any of its obligations under this clause 20 of the Contract Terms.

21 Work health and safety

- 21.1 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, cooperating and coordinating 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.
- 21.2 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.
- 21.3 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 and 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 10 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 21.3(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.
- 21.4 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.

22 Conflict of Interest

- 22.1 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.
- 22.2 If, during the Term, a Conflict of Interest arises or appears likely to arise in respect of the 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.
- 22.3 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 22.2(a) of the Contract Terms, or is unable or unwilling to resolve or deal with the Conflict of Interest as required in accordance with clause 22.2(b) of the Contract Terms, the Sponsor may terminate this Contract for breach of a material term in accordance with clause 29.1(b) of the Contract Terms.

23 Notices

- 23.1 Each notice under this Contract must be in writing, addressed to the recipient at the Representative's address set out in clause 2 of the Contract Details, and left at, or sent by pre-paid post, facsimile or email to, that address.
- 23.2 Notices given in accordance with clause 23.1 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.

24 Force Majeure Events

- 24.1 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.
- 24.2 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.

25 Withholding tax

- 25.1 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.

26 Goods and services tax

- 26.1 For the purposes of this clause 26 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.
- 26.2 Unless otherwise stated, all consideration to be paid or provided under or in connection with this Contract is expressed exclusive of GST.
- 26.3 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 26.3 of the Contract Terms will not apply if the GST on the supply is reverse charged and payable by the recipient.
- 26.4 Notwithstanding any other provision, 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).
- 26.5 If an adjustment event arises in respect of a supply to which clause 26.3 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.
- 26.6 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.
- 26.7 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).

26.8 This clause 26 will survive the termination or expiry of this Contract.

27 Variations

27.1 Neither Party may vary this Contract, including the scope of the Project, without the prior written agreement of the other Party.

27.2 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 27.1 of the Contract Terms.

28 Dispute resolution

28.1 A Party claiming that a dispute has arisen must give the other Party a notice of the dispute, providing details. 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 the dispute.

28.2 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 28.1 of the Contract Terms, or such longer period agreed by the Parties, then the Parties must refer the dispute to an expert for determination in accordance with The Institute of Arbitrators and Mediators Australia Expert Determination Rules. The Parties agree that any expert determination will be binding on all Parties.

29 Termination

29.1 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; or
- (c) 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.

29.2 Termination of this Contract by a Party does not limit or affect any right of action or remedy which has accrued to that Party.

30 General provisions

30.1 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.

30.2 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.

30.3 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.

30.4 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.

- 30.5 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.
- 30.6 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.
- 30.7 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.
- 30.8 Neither the Sponsor nor the Research Organisation may make representations on behalf of the other Party.
- 30.9 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.
- 30.10 This Contract may be executed in any number of counterparts. All counterparts when exchanged will be taken to constitute one document.
- 30.11 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 – Contract Details;
 - (b) Part 1 – Contract Terms;
 - (c) Attachment A – Template IP Register; and
 - (d) any other documents incorporated by reference.

Part 2 – Contract Details

1 Parties (clause 3.1 of the Contract Terms)

Sponsor:

Name: [insert]

ACN/ABN: [insert]

Registered Address: [insert]

Research Organisation:

Name: [insert]

ACN/ABN: [insert]

Registered Address: [insert]

2 Representatives (clause 7 of the Contract Terms)

Sponsor:

Name: [insert]

Address: [insert]

Email: [insert]

Phone: [insert]

Research Organisation:

Name: [insert]

Address: [insert]

Email: [insert]

Phone: [insert]

3 Project (clause 6.1 of the Contract Terms)

3.1 [Insert Project title, and any details of the Project not included elsewhere in this Contract.]

3.2 [Insert anticipated major outputs/results of the Project.]

4 Commencement (clause 5.1 of the Contract Terms)

4.1 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.']

4.2 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 Contract Details have been performed under this Contract']

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

5 Schedule of work and role of each Party (clause 6 of the Contract Terms)

5.1 The Parties must complete the following activities:

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

6 Key Persons (clause 8 of the Contract Terms)

No	Name of person	Position and Party	Qualifications	Role
1	[insert]	Principal Investigator, Research Organisation	[insert]	[insert]
2	[insert]	Project Manager, Research Organisation	[insert]	[insert]

7 Equipment (clause 10 of the Contract Terms)

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

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

No	Party	Description	Conditions
1	[insert]	[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.]

8 Budget (clause 18.3 of the Contract Terms)

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 27 of the Contract Terms.

9 Payments (clause 18 of the Contract Terms)

The planned schedule for, and dates for making, payments are as set out in the following table.

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]]	

10 In-kind Contributions (clause 6 of the Contract Terms)

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		

11 Reporting (clause 6.3(g) of the Contract Terms)

The Research Organisation must provide the following reports:

No	Report	Requirements
1	[Insert title and description]	[Insert format or other requirements]
2		

12 Deliverables (clauses 6.3(g) and 11 of the Contract Terms)

The Research Organisation must create and deliver the following:

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

13 IP Register (clause 14 of the Contract Terms)

- 13.1 [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.

14 Background IP and Third Party IP (clause 12.4 of the Contract Terms)

- 14.1 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.

15 Project IP (clause 13.1 of the Contract Terms)

- 15.1 [If the Owning Party will not be the Sponsor, state that clause 13.1 does not apply and insert the alternative ownership model here - e.g 'Project IP vests on its creation with the Research Organisation' OR insert details of different categories of Project IP and specify an Owning Party for each category.]
- 15.2 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.
- 15.3 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.
- 15.4 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.
- 15.5 [Optional]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.

16 Commercialisation of Project IP (clause 13.4 of the Contract Terms)

[Insert one of the following options and delete the other option. Note: neither option contemplates co-owned Project IP.]

- 16.1 **Option A** - The Owning Party is the only Party that may Commercialise Project IP and may Commercialise the Project IP in accordance with this Contract.

16.2 Option B - The Owning Party has the first right to Commercialise the Project IP and may Commercialise the Project IP in accordance with this Contract. If the Owning Party has not commenced Commercialising its Project IP within a period of [insert years - e.g. 5 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.

16.3 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;
- (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.]

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

16.4 Option A - 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.

16.5 Option B - 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.]

16.6 Any reference in this clause 16 of the Contract 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.

17 Confidential Information (clause 16 of the Contract Terms)

The following is Confidential Information as at the Commencement Date:

No	Description	Party	Period of confidentiality
1	[Insert, e.g. Budget amount, names of Personnel, etc.]	[Sponsor or Research Organisation]	[insert period of time]
2			

18 Publication (clause 17 of the Contract Terms)

18.1 [Note: The Parties must check that rights in Third Party IP will not prevent publication before completing this clause and exercising these rights.]The Parties agree that the Research Organisation may publish the following Material:

- (a) [**Option A** - 'all Project research outcomes and deliverables except those relating to patent or design applications, either planned or in progress']

- (b) [Option B - insert a description of the Material that the Research Organisation may publish],

subject to the following conditions:

- (c) [insert conditions or insert 'nil'].

19 Governing Jurisdiction (clause 3.1 of the Contract Terms)

- 19.1 This Contract is governed by the laws of: [Insert an Australian State or Territory. If no State or Territory is specified, the laws of New South Wales will apply.]

20 Special Conditions (clause 6.1 of Contract Terms)

- 20.1 The following Special Conditions apply to this Contract [Insert any additional terms agreed by the Parties e.g.:

- (a) if the Research Organisation is required to provide Moral Rights consents from its Personnel (i.e. clause 15.1 of the Contract Terms does not apply);
- (b) any warranties;
- (c) whether subcontractors or students may be used by the Research Organisation and whether they must be approved by the Sponsor (noting that appropriate IP and confidentiality arrangements must be included in the relevant subcontract or participation agreement); and
- (d) limitations on liability, etc.]

EXECUTED AS AN AGREEMENT

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

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

Executed by [NAME OF CORPORATION]

[ABN/ACN] 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 a Party is an individual, insert the following signature block:]

Signed by [NAME OF PARTY] in the
presence of:

.....
Signature of witness

.....
Signature of [insert name of Party]

.....
Name of witness (print)

Attachment A – Template IP Register

NOTE:

Refer to clause 14 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	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 [...]	BIP	Sponsor	For Research Organisation to develop a methodology as described in clause 3 of the Contract 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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