

**Warning to User – Do not use this template or send it out of Macquarie without:**

1. **Inserting** all information required in highlighted text.
2. **Deleting** all highlighting.
3. **Deleting this text box.**

**Research Collaboration Agreement**

|  |  |
| --- | --- |
| **Parties** | Macquarie University ABN 90 952 801 237 of North Ryde, NSW 2109 (**Macquarie**) |
| **Collaborating Organisations** | The parties specified in Schedule 1. |

|  |
| --- |
| **Details** |
| **Commencement Date** | [insert Commencement Date] |
| **Agreement End Date** | [insert Agreement End Date] |
| **Project** | [insert description of Project. Attach and reference Annexure 1 with a project plan and budget, clearly stating the cash and in-kind contributions of each Collaborating Organisation, and when any cash contributions are due (i.e. annually, quarterly)] |
| **Chief Investigators**  | **Macquarie**[insert name and email]**Collaborating Organisation**[insert name and email] |
| **Option Holder** (clause 6) | [insert]  |
| **Option Period** (clause 6.3) | 30 days from the date of receipt of an Innovation Disclosure  |
| **Special Terms** | This agreement is subject to the following special terms.[insert any special terms (see suggested terms below) or if none applicable, state “Not Applicable”]***[User guide: Special Term A may be used where Assets are purchased or acquired through funding or contributions.]***1. **Assets**

In this Special Term A, **Asset** includes personal, real or incorporeal property, but not Intellectual Property.Except as otherwise provided in the Project Proposal, any Asset purchased for the purpose of the Project is to be owned by [insert]. For the Term of this agreement, each owner of Assets contributed to or acquired for the Project:1. must make the Asset available for use by each party for the purpose of the Project, as reasonably required;
2. must not sell, hire, charge, mortgage or otherwise encumber the Asset; and
3. is responsible for insurance, maintenance and, if required, repair and replacement of the Asset and any other costs and liabilities associated with the Asset.

***[User guide: Special Term B may be used where no separate MTA is entered into.*** ***Note 1: it applies whether any party, not just Macquarie, is the provider of materials.******Note 2: Additional clauses may be required if the provider of materials wishes to carve out any new IP from use of the materials to Project IP, or if the provider wishes to own progeny and unmodified derivatives. In this instance, consider using a Material Transfer Agreement]:*** 1. **Materials**

In this Special Term B, the following definitions also apply: 1. **Materials** means [insert description of Materials to be provided]
2. **Data** means any annotated non-clinical or clinical information including that which accompanies the Material.
3. **Location** means [insert research location where materials will be used]
4. **Supervisor** [insert research supervisor of materials]

A party may supply Material and Data (**Provider**) to the other party (**Receiver**) for the purpose of the Project. All costs relating to the delivery of the Material to a party under this agreement must be borne by the Recipient, unless otherwise specified by the Provider. All risk in the Material transfers to the Recipient upon collection (or delivery) of the Material, as the case may be. The Recipient must:1. use the Material and Data only at the Location;
2. use the Material and Data only for the Project;
3. use the Material and Data only under the supervision of the Chief Investigator; and
4. use, handle, store and dispose the Material and Data in accordance with any conditions of the relevant ethics approval, any applicable laws and regulations and any reasonable directions of the Provider;
5. safeguard the Material and Data against disclosure to other parties with the same degree of care as it exercises with its own material of a similar nature; and
6. maintain the Material under appropriate and safe conditions.

The Recipient must not:1. use the Material or Data for any commercial or profit-making purpose; and
2. sell, loan, or otherwise provide any Materials or Data to any third party without the written consent of the Provider.

Without limiting clause 5.1(a) of this agreement, the Recipient acknowledges that the Provider retains ownership and title to the Material and Data provided to the Recipient under this agreement*[[optional clause – if the University is the provider of Materials, consider whether it should also own Progeny and Unmodified Derivatives*]. *For the avoidance of doubt, the Provider retains ownership (including any Intellectual Property rights) of Progeny and Unmodified Derivatives.* *In this Special Term:* 1. ***Progeny*** *means an unmodified descendant from the Material. For example, a virus from virus, cell from cell or organism from organism; and*
2. ***Unmodified Derivatives*** *means substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the Material.*

The Recipient acknowledges that the Material is experimental in nature and may have hazardous properties, such as viruses, latent viral genomes, or other infectious agents. The Recipient agrees to treat the Materials as if they are contaminated, infectious or may cause life threatening disease in humans and/or animals. The Recipient assumes all liability for damage or loss which may arise from the Recipient’s use, storage or disposal of the Material or Data The Recipient indemnifies the Provider for any liability, loss, costs and damages (including legal costs) incurred or suffered by the Provider from any claim or demand by another person arising from the use, storage or disposal of the Material or Data by the Recipient, except to the extent caused by the gross negligence or wilful misconduct of the Provider. 1. **Data Management**

In this Special Term C, **Data Management Plan** means the plan attached at Annexure 2 of this agreement for the management of research data. The parties agree to comply with the Data Management Plan.*[optional clauses – note it is dependent on what the DMP addresses - alternatively include the data as the background IP of a party and list it in the Project Proposal]:**In this Special Term C,* ***Background Data*** *means data in existence at the date of this agreement or created independently of the Project which a party owns or is licensed to use, and includes without limitation the data listed in the Project Proposal.**The parties agree that the ownership of Background Data is not affected by this agreement and that all Background Data made available remains the property of the party that makes it available.* *Each party grants to each other access to the Background Data for the purpose of the Project.**Data created during the Project (****Project Data****) will be considered Project IP and dealt with in accordance with clauses 5.1(c) and (d) of this agreement.* |

Signed on behalf of **MACQUARIE UNIVERSITY** by its authorised officer:

|  |
| --- |
|  |
| Signature of authorised officer |
|  |
| Name (please print) |
|  |
| Position |
|  |
| Date of signing |

Signed on behalf of **[insert first collaborator name]** by its authorised officer:

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| --- |
|  |
| Signature of authorised officer |
|  |
| Name (please print) |
|  |
| Position |
|  |
| Date of signing |

By signing this agreement, each signatory warrants that they have authority to enter into this agreement on behalf of the party they are stated to represent.

Signed on behalf of **[insert second collaborator name]** by its authorised officer:

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| Signature of authorised officer |
|  |
| Name (please print) |
|  |
| Position |
|  |
| Date of signing |

Signed on behalf of **[insert third collaborator name]** by its authorised officer:

|  |
| --- |
|  |
| Signature of authorised officer |
|  |
| Name (please print) |
|  |
| Position |
|  |
| Date of signing |

By signing this agreement, each signatory warrants that they have authority to enter into this agreement on behalf of the party they are stated to represent.

RECITALS

1. The parties wish to enter into a collaborative research project entitled: “[insert title]” (the **Project**), and more particularly described in Annexure 1.
2. The parties agree to conduct the Project on the terms of this agreement.

GENERAL TERMS

# INTERPRETATION

## Definitions

#### The following definitions apply throughout this agreement.

### **Authority** means any government, statutory, public, or regulatory authority or body.

#### **Background Intellectual Property** means Intellectual Property in existence at the date of this agreement, or obtained or created independently of the Project, which a party owns or is licensed to use, and includes without limitation the items listed in the Project Proposal.

**Business Day** means any day other than:

1. a Saturday, Sunday or public holiday in Sydney, Australia; or
2. 27, 28, 29, 30 or 31 December.

#### **Confidential Information** means information belonging to a party, whether existing prior to the commencement of the Project, or created in the course of the Project, which is disclosed by one party to another for the purposes of the Project, and includes all technical, proprietary and operational information, drawings, techniques, processes, know-how and other commercially valuable information in any form. Confidential Information does not include information that is in the public domain, is already lawfully known to the Receiving Party or that has been independently developed by the Receiving Party.

**Force Majeure Event** means any event that is outside the reasonable control of the affected party and could not have been prevented by that party taking all reasonable steps, including natural disasters such as floods, tornadoes, earthquakes and hurricanes, acts of people (such as acts of terrorism, riots, strikes, wars), epidemics, pandemics, quarantine and government action.

#### **Innovation Disclosure** means a written, confidential and complete disclosure of any Project Intellectual Property that is reported to Macquarie’s Office of Commercialisation and Innovation.

#### **Intellectual Property** means all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and knowhow and circuit layouts), and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

#### **Option** means the right to negotiate a Term Sheet to commercialise the Project Intellectual Property disclosed in the Innovation Disclosure.

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

#### **Project Intellectual Property** means Intellectual Property arising from or developed in the course of the Project by the employees or, in the case of a university party, by Students, of a party.

#### **Project Proposal** means the project proposal attached at Annexure 1 to the agreement, and details without limitation:

### each party’s roles and responsibilities, including the party responsible for obtaining requisite ethics approval;

### the in-kind and cash contributions;

### the budget; and

### any deliverables, milestones and reporting obligations.

#### **Student** means an individual enrolled as a candidate for a postgraduate research degree at a university that is a party to this agreement.

#### **Term** means the period from and including the Commencement Date to and including the Agreement End Date.

#### **Term Sheet** means a document outlining the material terms and conditions of the commercial agreement contemplated under clause 6.4.

#### Other capitalised terms have the meaning given to them in the Details.

## Rules for interpreting this agreement

#### In this agreement, headings are for guidance only and do not affect the interpretation of the clauses. The following rules apply unless the context requires otherwise:

### words importing the singular include the plural and vice versa;

### words importing one gender include all other genders;

### reference to a person includes a body politic, a body corporate, a partnership, an unincorporated association and a natural person, and the person's executors, administrators, successors, transferees, substitutes (including persons taking by novation) and assigns;

### reference to a statute, ordinance, code or other law includes regulations, directions and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

### reference to $, dollar or AUD is to Australian currency;

### any agreement, obligation, representation, right or warranty on the part of or in favour of two or more persons binds or is for the benefit of them severally and not jointly or jointly and severally;

### a term or definition incorporated by reference into this document remains in force even if the document from which it was referred may be no longer in force;

### reference to a clause is a reference to a clause of this agreement and includes all sub-clauses, paragraphs and parts of that clause;

### where a word or phrase has a particular meaning, other parts of speech and grammatical forms of that word have corresponding meanings;

### any reference to “insurance”, “insurance policy” or “insurer” in this agreement includes, mutual risk cover held with a mutual risk provider designed to cover similar insurable risks to insurance and the providers of that risk cover; and

### a reference to an office, department or faculty whose functions are assumed by another office, department of faculty includes the office, department of faculty that assumes all or substantially all of those functions.

# RESEARCH AND RELATIONSHIP

## Project Conduct

#### The parties must conduct the Project in accordance with the terms of this agreement and must use reasonable endeavours to carry out the Project within the Term:

### in accordance with the Project Proposal attached at Annexure 1;

### in a collaborative and professional manner;

1. ethically and in accordance with the *Australian Code for the Responsible Conduct of Research*, its own research code, and as applicable, with the *Montreal Statement on Research Integrity in Cross-Boundary Research Collaborations*, *National Statement on Ethical Conduct in Human Research* (2007, updated 2018), *AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research* (2020), *Ethical conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders* (2018), *Keeping research on track II* (2018), *Protocols for using First Nations Intellectual and Cultural Property in the Arts* (2019) and the *Australian Code for the care and use of animals for scientific purposes* (2013);
2. in compliance with all applicable laws and regulations, including without limitation laws and regulations relating to modern slavery, improper payments, and anti-bribery.

### The parties must, through their Chief Investigators, ensure that any personnel or Student involved in the Project are made aware of the terms of this agreement, particularly those terms relating to the conduct of the Project, intellectual property and the publication and dissemination of research.

## Ethics/Biosafety Approval

#### If the Project requires approval by a party’s ethics and/or biosafety committees (or equivalent), the relevant party must use reasonable endeavours to obtain that approval. The parties acknowledge that the Project cannot commence until the required approvals are obtained.

## General obligations

#### Each party agrees to:

### provide any other related assistance, information, data, equipment, facilities, resources or materials as may be reasonably required to satisfactorily perform the Project; and

### comply with all safety, security and other procedures notified to it by another party while on that party’s site.

## Records

### Each party must maintain reasonable, up to date and accurate records regarding the conduct and conclusions of the Project.

### Without limiting any reporting or meeting obligations specified in the Project Proposal, the parties agree to provide each other with periodic updates in regard to the progress of the Project.

## Conflict of Interest

The parties agree to notify Macquarie on becoming aware of any actual or potential conflict of interest which has the potential to influence, or appear to influence, the Project.

## Reporting Breaches

### The parties agree to promptly notify each other on becoming aware of any actual or potential breaches to the *Australian Code for the Responsible Conduct of Research* or its institution’s code for the responsible conduct of research,relating to the Project or this agreement (**Potential Research** **Breach**).

### The parties agree to work collaboratively to:

1. implement a process for investigating the Potential Research Breach, having regard to the *Guide to Managing and Investigating Potential Breaches of the Australian Code for the Responsible Conduct of Research (2018)* and each party’s policies and procedures;
2. minimise duplication of process; and
3. share relevant information, subject to any applicable laws.

# PAYMENT AND GST

## Cash Contributions

#### Macquarie must invoice each Collaborating Organisation for its cash contributions, if applicable, in accordance with the Project Proposal. The invoice must be in the form of a tax invoice.

* To ensure prompt payment of invoices, please ensure invoices are sent by email to invoices@mq.edu.au.  Where appropriate, Macquarie will provide [XX] with a purchase order number that should be included in the invoice prior to sending via email. Invoices sent by traditional mail will be delayed in payment.

## Payment Terms

#### The Collaborating Organisation must pay Macquarie’s tax invoice within 30 days of the date on which Macquarie submits the invoice.

## GST wording

#### Words defined in *A New Tax System (Goods and* Services *Tax) Act 1999* (Cth) have the same meaning in this clause 3.

## Payment of GST

#### If any supply under this agreement is a taxable supply, the party making the supply may, in addition to any payment for the supply, recover the amount of the GST applicable to the supply. Any amount of GST payable is payable at the same time as the payment for the supply to which it relates.

# PUBLICATION

## Publication Request

#### Should a party wish to publish Project material in a scientific journal or academic paper, the party (**Publishing Party**) must send a written request accompanied by the proposed publication material to each other party (**Reviewing Party**) at least 30 days prior to the proposed submission date (the **Approval Period**).

## Approval Period

#### If, during the Approval Period, the Reviewing Party reasonably requests that:

### the material be amended to remove any of its Confidential Information, the Publishing Party must remove all such Confidential Information; and

### publication of the material or submission of the material for publication is delayed, the Publishing Party must delay publication or submission of the material for a period not exceeding 60 days, to allow the Reviewing Party to seek appropriate registration of its Intellectual Property.

## Deemed Approval

#### The Publishing Party may publish the material if the Reviewing Party does not provide its comments on the proposed material within the Approval Period.

## Student Thesis

#### Despite clauses 4.1-4.3 above, nothing is to delay the submission of a Student thesis, nor require the excision of material from a thesis that represents an essential or significant part of the Student’s work, nor prevent the assessment of a thesis under their university’s usual procedures.  If applicable, public access to a thesis may be restricted for a limited period (not exceeding 12 months) to enable the parties to arrange for protection of any commercial Intellectual Property arising from the results of the Project.

## Acknowledgment and Authorship

### Any publication must acknowledge the role of the other party in the Project.

### All parties agree to assign authorship following the principles outlined in the [*Australian Code for the Responsible Conduct of Research]* or the *[International Committee of Medical Journal Editors]* or *[insert as applicable, eg NHMRC/ARC],* or as otherwise agreed in writing (for example through an authorship agreement).

## Publicity

### Each party must obtain Macquarie’s written consent prior to any media release or public announcement about this agreement or the Project.

###  A party must not use the logo of the other party without that party’s prior written consent. The consent provided may be subject to any conditions.

# INTELLECTUAL PROPERTY

## Ownership and Licence

#### The parties agree that:

### any Background Intellectual Property remains the property of the relevant party;

### each party grants to the other parties a non-exclusive, royalty-free, non-transferable, worldwide, perpetual licence to use its Background Intellectual Property for the purposes of the conduct of the Project;

### any Project Intellectual Property will be owned by Macquarie and (to the extent necessary) each Collaborating Organisation assigns to Macquarie any Intellectual Property rights in the Project Intellectual Property to Macquarie. If requested by Macquarie, the Collaborating Organisation agrees to draft, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 5.1; and

### Macquarie grants each Collaborating Organisation a non-exclusive, non-transferable royalty-free licence to use the Project Intellectual Property for non-commercial, internal business and research purposes.

## Student Intellectual Property

#### Before a Student carries out any part of the Project, the relevant university where the Student is admitted must ensure that the Student has assigned any of their rights in the Project Intellectual Property (other than copyright in their thesis) to that party.

## Copyright in Student Thesis

#### Despite anything to the contrary in this agreement, the parties agree that a Student retains copyright in their thesis.

# COMMERCIALISATION

## Application of Clause 6

#### Subject to the Option Holder not being in breach of any provision of this agreement, clauses 6.2 – 6.4 of this agreement will apply.

## Disclosure of Project Intellectual Property

#### During the Term and for a period of 90 days following the expiration of the Term, Macquarie must, as soon as practicable, provide the Option Holder with any Innovation Disclosure(s) it receives.

## Option Notice

#### The Option Holder must give Macquarie written notice of its decision to exercise the Option (**Option Notice**) before the end of the Option Period, or the Option will lapse.

## Term Sheet

### If the Option Holder exercises its Option in accordance with clause 6.3, the parties will exclusively negotiate a Term Sheet

### The Term Sheet must include the reservation by Macquarie of the right to use the relevant Project Intellectual Property for research, teaching, education and publication, including research funded by a third party.

### If the parties are unable to agree on a Term Sheet within 90 days from the date of the Option Notice, the negotiations with respect to the Term Sheet will terminate (unless otherwise agreed by the parties in writing) and the Collaborating Organisation’s Option immediately ceases.

## Return of Confidential Information

#### Within 5 Business Days of the:

### lapse or cessation of any Option; or

### termination of the negotiations for a Term Sheet,

#### the Option Holder must return to Macquarie all Confidential Information relating to the Project Intellectual Property.

# CONFIDENTIAL INFORMATION

## Disclosure and Use of Confidential Information

#### Each party must not during the Term or for five years after the end of the Term, disclose to any third party, or use for any purpose except carrying out the Project, any of the Confidential Information of another party.

## Obligations on a Receiving Party

#### The party receiving Confidential Information (**Receiving Party**) must:

### take all reasonable steps, and do anything reasonably required by the party disclosing the Confidential Information (Disclosing Party), to keep the Confidential Information under the Receiving Party's control;

### immediately notify the Disclosing Party if the Receiving Party becomes aware of any unauthorised access to, or use or disclosure of, any Confidential Information;

### not use, copy or reproduce, nor cause or allow any other person to use, copy or reproduce, any Confidential Information other than in accordance with this agreement;

### immediately upon completion of the Project or termination of this agreement deliver to the Disclosing Party, or if directed by the Disclosing Party destroy, every copy of Confidential Information in the Receiving Party's possession, except that:

1. they may retain one copy of the Confidential Information to the extent required to comply with applicable law or regulation; and
2. they need not destroy copies of any computer records or files containing the Confidential Information which have been created as a result of automatic archiving or back-up procedures on secured central storage servers and which cannot reasonably be deleted; and

### if any such Confidential Information is retained pursuant to sub-clause 7.2(d), the terms of this agreement remain in full force and effect with respect to such Confidential Information so retained for so long as such Confidential Information is retained.

## Exceptions to Obligations

#### Neither party will be in breach of any obligation to keep any Confidential Information confidential to the extent that it:

### is disclosed to the Receiving Party's employees or agents as necessary for the performance of this agreement and such employees or agents are instructed as to the confidential nature of the information;

### is required to be disclosed by law and the Receiving Party first informs the Disclosing Party of the intended disclosure and cooperates with the Disclosing Party to limit disclosure as reasonably requested;

### is disclosed to the Receiving Party's solicitors, auditors, insurers or accountants; or

### is approved for release in writing by an authorised representative of the Disclosing Party.

# PRIVACY

## Personal Information

#### Where a party has access to Personal Information in order to perform its obligations under this agreement, the party holding the Personal Information must comply with the requirements any privacy legislation applicable to the party, including if applicable, the *Privacy Act 1988* (Cth).

# TERMINATION

## Termination for breach

#### A party may terminate this in writing if another party breaches a term of this agreement and fails to remedy the breach within 20 Business Days after receiving notice requiring it to do so.

##  Termination by Macquarie

#### Macquarie may immediately terminate this agreement by written notice to the other parties if:

### a Collaborating Organisation has entered into any form of insolvency, liquidation or external administration, whether voluntary or involuntary, formal or otherwise;

### a Collaborating Organisation is charged with a breach of any law or is the subject of proceedings or investigations commenced or threatened by the Independent Commission Against Corruption, the NSW Police Force or a similar public body whether of a state, territory or the Commonwealth or in any other country; or

### if a Collaborating Organisation is in breach of any other agreement with Macquarie.

## Termination due to Authority Notice

***User Guide: For high value or complex transactions, please discuss with OGC so that a clause appropriate to the circumstances can be drafted.***

### The parties acknowledge that Macquarie is subject to legislation that may affect the validity or enforceability of this agreement, or may require it to terminate or vary this agreement, if Macquarie receives notice to do so by an Authority (**Authority** **Notice**).

### In the event Macquarie is required to terminate this agreement pursuant to an Authority Notice, then Macquarie may terminate this agreement immediately by written notice to the Collaborating Organisation, and:

1. clause 9.4 will apply; and
2. Macquarie will return to the Collaborating Organisation any unspent or uncommitted cash contributions, within 20 Business Days of termination of this agreement.

### In the event Macquarie is required to vary this agreement pursuant to an Authority Notice, the parties must:

1. meet within 5 Business Days of the date Macquarie notifies the Collaborating Organisation of the Authority Notice; and
2. co-operate in good faith to reach agreement on the variations required pursuant to the Authority Notice.

If the parties cannot agree on a variation within 20 Business Days from the date Macquarie notifies the Collaborating Organisation of the Authority Notice, either party may terminate this agreement immediately by written notice to the other party, and clause 9.4 will apply.

### Without limiting clauses 10.5 or 10.6 of this agreement, the Collaborating Organisation agrees to release Macquarie from any loss or damage suffered of whatever nature (direct, indirect, consequential, or other) as a result of, or in relation to, this clause 9.3.

## Consequences

#### If this agreement is terminated for any reason, then:

### all parties must return all property in their possession belonging to the other party, including Confidential Information and Intellectual Property; and

### the Collaborating Organisations must within 10 Business Days of termination pay Macquarie all cash contributions owing to Macquarie at termination, except if termination is as a result of clause 9.3.

## No prejudice

#### Termination of this agreement is without prejudice to the rights of the terminating party to obtain damages for any breach of this agreement.

## Survival

#### Clauses 4 (Publication), 5 (Intellectual Property), 6 (Commercialisation), 7 (Confidential Information), 8 (Privacy), 9 (Termination), 10 (Warranties and Liability), 11 (Insurance) and all other clauses required to give those clauses effect survive the termination or expiration of this agreement.

# WARRANTIES AND LIABILITY

## Due care and skill

#### The parties agree that due to the inherently uncertain nature of research, the actual outcomes and results of the Project cannot be assured. Each party warrants that it will carry out its individual Project obligations with due care and skill and in a professional manner consistent with generally accepted research and academic practice.

## Background Intellectual Property

#### Each party warrants that to its actual knowledge at the date of this agreement use of its Background Intellectual Property will not infringe the Intellectual Property rights of any third party.

## Project Intellectual Property

#### Each party does not make nor have they made any warranties regarding the Project Intellectual Property. All such warranties including those of merchantability or fitness for a particular purpose are excluded to the maximum extent allowed by the law.

## Implied warranties

#### Each party excludes all implied terms, representations and warranties whether statutory or otherwise, relating to the subject matter of this agreement to the extent allowed by the law.

## Consequential loss

#### No party is liable to the other party for consequential or incidental damages, or loss of profits, revenue, goodwill or opportunities in contract, tort, under any statute or otherwise (including negligence) arising from or in any way related to this agreement or the Project.

## Contributory negligence

#### Each party’s liability under this agreement is reduced to the extent that any damages, liability, loss or costs arise from or are attributable to, any negligent act or omission of another party or its officers, employees, agents or contractors.

# INSURANCE

## Insurance policies

#### Each party must maintain insurances appropriate to its involvement in the Project. On request, a party must provide evidence to the other party of the currency of such insurance policies.

# NOTICES

## Method of giving Notice

#### A notice, request or other communication to a party (**Notice**) under this agreement, must be in writing and be delivered by hand or sent by prepaid post, or email to the notice address, or email address of that party as specified in Schedule 1.

## Effective Service

#### A Notice is given or served:

### if delivered by hand, upon delivery;

### if in the form of a letter sent by prepaid post, three days (eight days if sent from one country to another country) after the date on which it was sent; and

### if by email, when the recipient acknowledges receipt of the Notice by return email to the sender (other than by automatic acknowledgment sent by the recipient's server).

## Notice Serviced Outside Business Hours

#### A Notice that would be given or served on a day which is not a Business Day in the place to which the Notice is sent, or is later than 5:00 p.m. (local time) it will be taken to have been given or served at the commencement of the next Business Day in that place.

## Change of Address for Notices

#### A party may change its Notice address or email address by Notice to the other party.

# FORMAL TERMS

## Jurisdiction

#### This agreement is governed by the laws of New South Wales and any dispute relating to it must only be referred to the courts of New South Wales and the Federal courts of Australia.

## Relationship of Parties

#### Nothing in this agreement constitutes a relationship of employer and employee, principal and agent, or trust, or partnership between the parties. No party has authority or power to bind another party.

## Inconsistency

#### If there is an inconsistency between a provision of the Special Terms, Details, the General Terms or a schedule or annexure then the provisions of the first-mentioned prevail.

## Severability

#### Any provision of this agreement which is unable to be carried out as result of an Authority Notice, is unenforceable or invalid (or becomes unenforceable or invalid as a result of an Authority Notice), is, where possible, to be severed from this agreement (and the terms of which remain in full force and effect), unless this would materially change the effect of this agreement.

## Entire Agreement

#### This is the entire agreement between the parties about its subject matter and replaces all oral and written prior communications and agreements between the parties.

## Sub-contracting

#### A party may sub-contract the performance of any part of the Project for which it is responsible only with the prior written consent of Macquarie, such consent not to be unreasonably withheld. Each party remains responsible and liable for the performance of its individual Project obligations under this agreement and for all costs incurred with respect to its subcontractors.

## Variations must be in Writing

This agreement may only be varied by the parties in writing, including by way of e-mail exchange between all the parties to this agreement confirming the variation.

## No Waiver

#### A waiver by a party of any breach or of a failure to comply with any provision of this agreement by the other party has no effect unless it is in writing.

## Disputes

### In the case of a dispute arising under this agreement (the **Dispute**) a party to this agreement must not commence any court or arbitration proceedings unless the parties have complied with the following paragraphs of this clause except where a party seeks urgent interlocutory relief.

### A party to this agreement claiming that a Dispute has arisen out of or in relation to this agreement must give written notice (the Dispute Notice) to the other party to this agreement specifying the nature of the Dispute.

### Within 10 Business Days of receipt of the Dispute Notice (or such further period as agreed in writing by them) the parties must agree:

1. the dispute resolution technique (e.g. expert determination) and procedures to be adopted;
2. the timetable for all steps in those procedures; and
3. the selection and compensation of the independent person required for such technique.

### If the parties cannot agree to the matters set out in clause 13.9(c) within 10 Business Days, the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales, and, the President of the Law Society of New South Wales or the President’s nominee will select the mediator and determine the mediator’s remuneration.

### If the Dispute has not been resolved within a timeframe agreed under clause 13.9(c)(ii), either party may at their discretion institute legal proceedings.

## Counterparts

This agreement may be signed in counterparts and when taken together constitute the one document. The counter-parts may be exchanged electronically.

## Force Majeure

1. Subject to clause 13.11(b), no party is liable for any breach of its obligations under this agreement to the extent that the breach resulted from a Force Majeure Event provided that it:
2. promptly notifies the other party in writing (with appropriate details including without limitation an estimate of its likely duration and the obligations affected by it); and
3. takes all reasonable steps to work around or reduce the effects of the Force Majeure Event.
4. Despite any provision of this agreement, no party is excused from any obligation to provide payment to another party in accordance with this agreement due to a Force Majeure Event.
5. If a Force Majeure Event continues for more than 20 Business Days or continues beyond the Term, Macquarie may terminate this agreement by giving 5 Business Days written notice to the other party.

**Schedule 1 – Party Details**

|  |
| --- |
| Macquarie University  |
| Macquarie University  | Macquarie University ABN 90 952 801 237 a body corporate established pursuant to or under the *Macquarie University Act 1989* (NSW) with its principal place of business at North Ryde, NSW 2109 |
| Notices | Attention: | Executive Director, Research Services |
| Address | Ground Floor, 16 Wally's Walk, Macquarie UniversityNORTH RYDE NSW 2109 |
| Telephone | +61 2 9850 7737 |
| Email | research.postaward@mq.edu.au |

|  |
| --- |
| Collaborating Organisation  |
| [insert name] | [insert name and details of legal entity entering into this agreement] |
| Notices | Attention: | [Please provide detail] |
| Address | [Please provide detail] |
| Telephone | [Please provide detail] |
| Email | [Please provide detail] |

\*\*duplicate as necessary\*\*

**Annexure 1 – Project Proposal**

**Annexure 2 – Data Management Plan**