## THIRD PARTY AGREEMENT

This **THIRD PARTY AGREEMENT** is made on the Click or tap here to enter date day of

Click or tap here to enter month, 20 Click or tap here to enter year

**BETWEEN:** The Health Translation Queensland (HTQ) partners and Third Parties listed in the Project Schedule.

**BACKGROUND**

1. Health Translation Queensland partners have entered into a Research Agreement providing standard terms for the performance of research projects.
2. The Research Agreement permits Health Translation Queensland partners to carry out agreements with Third Parties under the terms and conditions of the Research Agreement.
3. The Parties now wish to proceed with carrying out a project as described in the Project Schedule on the terms and conditions set out in this Third Party Agreement.

**DEFINITIONS**

Except as expressly set out here, the definitions and interpretation in clauses **22** and **23** of the Extracted Clauses shall apply:

**Health Translation Queensland partners** means the parties to the Research Agreement indicated in the Project Schedule who will participate in the Project under this Third Party Agreement.

**Extracted Clauses** means the clauses of the Research Agreement extracted in the Annexure of this Third Party Agreement.

**Project** means a discrete research project as described in the Project Schedule.

**Project Schedule** means schedule 1 to this Third Party Agreement.

**Third Parties** means the parties listed in the Project Schedule as third parties.

**Third Party Agreement** means this document and all schedules and Annexures hereto.

**Research Agreement** means the Research Agreement signed between the Health Translation Queensland Partners.

**VERSION CONTROL**

|  |  |  |
| --- | --- | --- |
| v1 | 2020 | Original version |
| v1.2 | 2020 | Removal of Brisbane South PHN from partners |
| v1.3 | 2020 | Inclusion of CSIRO as a partner |
| v2 | n/a | No version 2 moved to version 3 so inalignment with the Research Passport Agreement. |
| v3 | 2021 | Change from Brisbane Diamantina Health Partners to Health Translation Queensland.  Inclusion of version control table.  ‘Umbrella Research Agreement’ changed to ‘Research Passport Agreement’ |
| v3.1 | 2022 | Change in clause 5.8.3 to include the word ‘or’ |
| v4.0 | 2024 | Footer changed from v3.1 to v4.0 June 2024  Removed word ‘umbrella’ before the words Research Agreement  Extracted clauses from the Research Passport – footer refers to the Research Passport not 3rd party.  Inclusion of Griffith University and Gold Coast Health into the schedule. |

## OPERATIVE PROVISIONS

Project Schedule

* 1. The Parties agree to perform the Project on the terms and conditions set out in this Third Party Agreement, including in order of priority:

1. The Special Conditions set out in the Project Schedule;
2. The remainder of the Project Schedule; and,
3. The Extracted Clauses.
   1. The Parties confirm this Third Party Agreement shall not constitute accession of the Third Parties to the Research Agreement.

Provision of Research Agreement extract

* 1. The Third Parties acknowledge and accept the Extracted Clauses.
  2. The parties agree and acknowledge that a summary of the Project will be reported to Health Translation Queensland in accordance with the terms of the Research Agreement.

General

* 1. The failure of a party to enforce at any time any clause of this Agreement will in no way be interpreted as a waiver of that clause.
  2. This Agreement is governed by the laws of Queensland and each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the court of the state of Queensland.
  3. Part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this Deed and the remaining provisions of this Agreement continue in force.
  4. This Agreement may be altered or modified only in writing signed by each party.

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**EXECUTED AS A THIRD PARTY AGREEMENT**

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| --- | --- |
| **[Insert Execution Method]** for and on behalf of the **[Insert Party Identifier]** | |
| **by an authorised officer:**  Click or tap here to enter authorised officer’s name. | **in the presence of:**  Click or tap here to enter witness name. |
| **Authorised Officer Signature:** | **Witness signature:** |
| **Date:** Click or tap to enter today’s date. | |

|  |  |
| --- | --- |
| **[Insert Execution Method]** by **[Insert Party Identifier]** | |
| **by an authorised officer:**  Click or tap here to enter authorised officer’s name. | **in the presence of:**  Click or tap here to enter witness name. |
| **Authorised Officer Signature:** | **Witness signature:** |
| **Date:** Click or tap to enter today’s date. | |

|  |  |
| --- | --- |
| **[Insert Execution Method]** by **[Insert Party Identifier]** in accordance with section 127 of the *Corporations Act 2001* (Cth) | |
| **Signature of the Director:** | **Signature of the Director/Secretary:** |

## Schedule 2 - Template Project Schedule

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| **HEALTH TRANSLATION QUEENSLAND PROJECT SCHEDULE**  This Project Schedule to the Research Passport Agreement dated December 2023 incorporates the relevant Terms of the Research Passport Agreement and upon execution, constitutes a separate agreement between the Collaborators [and Third Party Collaborators] named below.   |  |  | | --- | --- | | ***Mouse over the***  ***symbol to view instructions for completing each section.*** | | | **Project Title** | Click or tap here to enter Project Title. | | [**Project Description** i](#ProjectDescription) | Click or tap here to enter Project Description. | | **[Partners](#Partners" \o "PartnersSelect all Parties participating on the Project________________)** [i](#Partners" \o "PartnersSelect all Parties participating on the Project________________) | Children’s Health Queensland Hospital and Health Service  The Commonwealth Scientific and Industrial Research Organisation  Gold Coast Hospital and Health Service  Griffith University  Mater Misericordiae Limited  Metro North Hospital and Health Service  Metro South Hospital and Health Service  QIMR Berghofer Medical Research Institute  The State of Queensland acting through Queensland Health  Queensland University of Technology  The University of Queensland  Translational Research Institute  West Moreton Hospital and Health Service | | **[Third Party](#ThirdParty" \o "Third Party CollaboratorsInsert details of third party legal name, ABN and address for notices ________________)** [i](#ThirdParty" \o "Third Party CollaboratorsInsert details of third party legal name, ABN and address for notices ________________)  **[Collaborators](#ThirdParty" \o "Third Party CollaboratorsInsert details of third party legal name, ABN and address for notices ________________)** | **Name:** Click or tap here to enter text.  **ABN:** Click or tap here to enter text.  **Address:** Click or tap here to enter text.  **Attention:** Click or tap here to enter text.  **Postal address (if different from above):** Click or tap here to enter text.  **Telephone number:** Click or tap here to enter text.  **Fax number:** Click or tap here to enter text.  **Email:** Click or tap here to enter text. | | **Head Agreement** | Please select: | | **[Commencement Date](#Commencement_Date" \o "Commencement Date or such later date as is confirmed by approving HREC or authorising RGO________________)** [i](#Commencement_Date" \o "Commencement Date or such later date as is confirmed by approving HREC or authorising RGO________________) | Click or tap to enter the Commencement Date. | | **Completion Date** | Click or tap to enter the Completion Date. | | **[Ethics Approval](#Ethics_Approval_Reference_Number" \o "Ethics Approval Reference Number HREC Reference Number________________)** [i](#Ethics_Approval_Reference_Number" \o "Ethics Approval Reference Number HREC Reference Number________________)  **Reference Number** | Click or tap here to enter the Ethics Approval Reference Number. | | **SSA Reference Number** *(if applicable)* | Click or tap here to enter the SSA Reference Number (if applicable). | | **Coordinating Principal Investigator / Chief Investigator** | Click or tap here to enter the Coordinating Principal Investigator / Chief Investigator. | | **[Investigator/s](#Investigators" \o "Investigator/sInvestigators means the personnel specified in the Project Schedule, or any other person that may be nominated by Party from time to time during the Project.Insert name of each Party’s researcher that will lead and administer the project. Include title, phone, email and school.Repeat row/s as required. ________________)** [i](#Investigators" \o "Investigator/sInvestigators means the personnel specified in the Project Schedule, or any other person that may be nominated by Party from time to time during the Project.Insert name of each Party’s researcher that will lead and administer the project. Include title, phone, email and school.Repeat row/s as required. ________________) | Click or tap here to enter the Investigator/s. | | **[Student(s)](#Students" \o "Student(s)means a student of a Party, as specified in the Project Schedule including undergraduate, postgraduate and PhD  researchers carrying out the Project for the purpose of obtaining research data/information towards a higher degree) and students who are acting as volunteers for the puposes of this Project.Students will include any person identified as replacement or additional students approved by the parties in accordance with their respective policies and procedures applicable at the time of replacement or addition.[Note to enrolling institution: confirm student IP, confidentiality and supervision arrangements prior to entry into Project Schedule] ________________)** [i](#Students" \o "Student(s)means a student of a Party, as specified in the Project Schedule including undergraduate, postgraduate and PhD  researchers carrying out the Project for the purpose of obtaining research data/information towards a higher degree) and students who are acting as volunteers for the puposes of this Project.Students will include any person identified as replacement or additional students approved by the parties in accordance with their respective policies and procedures applicable at the time of replacement or addition.[Note to enrolling institution: confirm student IP, confidentiality and supervision arrangements prior to entry into Project Schedule] ________________) | Click or tap here to enter the Student(s). | | **Student Supervisor** | Should be investigator but provide alternate details | | **[Address for service](#Address_Service_Parties" \o "Address for service of PartiesClause 20.2 The addresses of the Parties for the purpose of giving notices in relation to each Project will be as set out in the Project Schedule.Address for service of Parties:Insert the address for each Party - include investigator(s), governance officer or research manager, as appropriate.________________)** [i](#Address_Service_Parties" \o "Address for service of PartiesClause 20.2 The addresses of the Parties for the purpose of giving notices in relation to each Project will be as set out in the Project Schedule.Address for service of Parties:Insert the address for each Party - include investigator(s), governance officer or research manager, as appropriate.________________)  **of Parties** | **Attention:** Click or tap here to enter text.  **Postal address:** Click or tap here to enter text.  **Telephone number:** Click or tap here to enter text.  **Email:** Click or tap here to enter text. | | **[Activities to be](#Activities_Conducted_byParties" \o "Activities to be conducted by Parties Enter details to describe the role each party will undertake for the duration of the project. It is recommended you assign this on a per party basis for readibility: Institution A- Ethics and Governance submission- Participant recruitment and consent- Sample and data collection- Sample and data analysisInstitution B- Sample and data analysis- Publication and dissemination of resultsRepeat row/s as required ________________)** [i](#Activities_Conducted_byParties" \o "Activities to be conducted by Parties Enter details to describe the role each party will undertake for the duration of the project. It is recommended you assign this on a per party basis for readibility: Institution A- Ethics and Governance submission- Participant recruitment and consent- Sample and data collection- Sample and data analysisInstitution B- Sample and data analysis- Publication and dissemination of resultsRepeat row/s as required ________________)  **conducted by Parties** | Click or tap here to enter the Activities to be conducted by Parties. | | **[Funding](#Funding" \o "Funding Ensure this description is consistent with the Funding Application and attach copy at Appendix 3 if applicable. Include invoicing details.Clause 3.5 A Party will make the Funding available to the other Parties as set out in the Project Schedule. Each Party receiving Funding agrees to ensure it will be spent only on the Project and in accordance with the budget approved under the Application, unless otherwise agreed in writing between the Parties and approved by the relevant funding body (if required).________________)** [i](#Funding" \o "Funding Ensure this description is consistent with the Funding Application and attach copy at Appendix 3 if applicable. Include invoicing details.Clause 3.5 A Party will make the Funding available to the other Parties as set out in the Project Schedule. Each Party receiving Funding agrees to ensure it will be spent only on the Project and in accordance with the budget approved under the Application, unless otherwise agreed in writing between the Parties and approved by the relevant funding body (if required).________________) | Click or tap here to enter Funding details. | | **[Address for Finance](#Address_Funding" \o "Address for finance department)** [i](#Address_Funding" \o "Address for finance department) | **Attention:** Click or tap here to enter text.  **Postal address:** Click or tap here to enter text.  **Telephone number:** Click or tap here to enter text.  **Email:** Click or tap here to enter text. | | **[Contributions](#Contributions" \o "Contributions Insert details of what each party is providing, both cash and in-kind, e.g., equipment, facilities, consumables, salary time. Relevant to factors under clause 10.3 about calculating the Revenue Sharing Percentages. Clause 10.3Include details of payments made by one party to another that are not set out under Funding section above e.g., $200 per sample, $2000 per patient.Clause 3.6Each Party will make their respective Contributions to the Project, including providing all equipment, consumables, services and facilities necessary for the conduct of the Project, as set out in the Project Schedule.________________)** [i](#Contributions" \o "Contributions Insert details of what each party is providing, both cash and in-kind, e.g., equipment, facilities, consumables, salary time. Relevant to factors under clause 10.3 about calculating the Revenue Sharing Percentages. Clause 10.3Include details of payments made by one party to another that are not set out under Funding section above e.g., $200 per sample, $2000 per patient.Clause 3.6Each Party will make their respective Contributions to the Project, including providing all equipment, consumables, services and facilities necessary for the conduct of the Project, as set out in the Project Schedule.________________) | Click or tap here to enter the Contributions. | | **[Collecting Party](#Collecting_Party" \o "Collecting Party Clauses 4 and 5means the Party nominated in the Project Schedule to collect either Study Participant Data or Human Biological Material State Research Collaborator Investigator or Hospital Collaborator Investigator or other person as applicable.________________)** [i](#Collecting_Party" \o "Collecting Party Clauses 4 and 5means the Party nominated in the Project Schedule to collect either Study Participant Data or Human Biological Material State Research Collaborator Investigator or Hospital Collaborator Investigator or other person as applicable.________________) | Click or tap here to enter the Collecting Party. | | **[Human Biological](#Biological_Material" \o "Human Biological Material Clause 4means physical samples of biological material of a Study Participant provided for the purpose of the Project, such as tissue, saliva or blood samples, and includes any unmodified material that is propagated from, derived from or based upon that biological material, which may be more specifically described in a Project Schedule.Insert details of materials including whether these materials are deidentified before transfer and who does this, transport from and to details, delivery period, list third parties to receive material. ________________)** [i](#Biological_Material" \o "Human Biological Material Clause 4means physical samples of biological material of a Study Participant provided for the purpose of the Project, such as tissue, saliva or blood samples, and includes any unmodified material that is propagated from, derived from or based upon that biological material, which may be more specifically described in a Project Schedule.Insert details of materials including whether these materials are deidentified before transfer and who does this, transport from and to details, delivery period, list third parties to receive material. ________________)  **Material** | Click or tap here to enter Human Biological Material details.  **Delivery Address:** Click or tap here to enter the Delivery Address.  **Transfer Date:** Click or tap to enter the Transfer Date. | | **[Study Participant](#Study_Participation" \o "Study Participant DataClause 5Insert details e.g., patient records, raw data, scans, including delivery period and third parties to receive data. ________________)** [i](#Study_Participation" \o "Study Participant DataClause 5Insert details e.g., patient records, raw data, scans, including delivery period and third parties to receive data. ________________)  **Data** | Click or tap here to enter Study Participant Data details.  **Delivery Address:** Click or tap here to enter the Delivery Address.  **Transfer Date:** Click or tap to enter the Transfer Date. | | **[Material Transfer](#Material_Transfer" \o "Material Transfer Clause 6Insert details of materials (for e.g. medical devices, equipment or tools), approved use, transport from and to details, delivery period, list Partner organisation(s) and third parties to receive material. ________________  )** [i](#Material_Transfer" \o "Material Transfer Clause 6Insert details of materials (for e.g. medical devices, equipment or tools), approved use, transport from and to details, delivery period, list Partner organisation(s) and third parties to receive material. ________________  ) | **Approved purpose:** Click or tap here to enter the Approved purpose.  **Delivery Address:** Click or tap here to enter the Delivery Address.  **Transfer Date:** Click or tap to enter the Transfer Date. | | **[Background IP](#Human_BackgroundIP" \o "Background IPClause 7of a Party means the Intellectual Property that is made available by that Party for the purposes of the Project that is either: (a) created before the date of the relevant Project Schedule; (b) created or developed by that Party during the Term independently of the Project; (c) assigned or licensed to that Party during the Term independently of the Project; or (d) specified in the relevant Project Schedule as being made available by that Party and, unless specified in the Project Schedule as not included, includes any Improvements to any Intellectual Property contemplated in (a), (b), (c) or (d). For clarity, Background IP does not include Medical Records or Study Participant Data. State details of any party’s Background IP where use of that Background IP by other Parties during or after the Project Terms may trigger any prior encumbrances or restrictions.If definition of Background IP is NOT to include ‘Improvements’, specify this here.________________)** [i](#Human_BackgroundIP" \o "Background IPClause 7of a Party means the Intellectual Property that is made available by that Party for the purposes of the Project that is either: (a) created before the date of the relevant Project Schedule; (b) created or developed by that Party during the Term independently of the Project; (c) assigned or licensed to that Party during the Term independently of the Project; or (d) specified in the relevant Project Schedule as being made available by that Party and, unless specified in the Project Schedule as not included, includes any Improvements to any Intellectual Property contemplated in (a), (b), (c) or (d). For clarity, Background IP does not include Medical Records or Study Participant Data. State details of any party’s Background IP where use of that Background IP by other Parties during or after the Project Terms may trigger any prior encumbrances or restrictions.If definition of Background IP is NOT to include ‘Improvements’, specify this here.________________) | Click or tap here to enter Background IP details. | | [**Project IP Owner** i](#ProjectIP) | Click or tap here to enter Project IP Owner. | | **[Health and Hospital](#HealthAndHospitalPurpose" \o "Health and Hospital PurposeClause 8.3.2 Internal Purposes means: (a) the internal, non-commercial research and education purposes of a Party, such as carrying out future research making use of such Intellectual Property under a competitive grants or public good scheme or for teaching award courses; (b) if elected in the Project Schedule, the Public Health and Hospital Purposes of a Party. ________________)** [i](#HealthAndHospitalPurpose" \o "Health and Hospital PurposeClause 8.3.2 Internal Purposes means: (a) the internal, non-commercial research and education purposes of a Party, such as carrying out future research making use of such Intellectual Property under a competitive grants or public good scheme or for teaching award courses; (b) if elected in the Project Schedule, the Public Health and Hospital Purposes of a Party. ________________)  **Purpose** | Click or tap here to enter the Health and Hospital Purpose. | | **[Commercialisation](#CommercialisationLead" \o "Commercialisation LeadClauses 8, 9 and 10means the Party identified in the Project Schedule as the commercialisation lead, or such other party as subsequently agreed to by the parties in writingInsert entity e.g., UniQuest, bluebox, other  ________________)** [i](#CommercialisationLead" \o "Commercialisation LeadClauses 8, 9 and 10means the Party identified in the Project Schedule as the commercialisation lead, or such other party as subsequently agreed to by the parties in writingInsert entity e.g., UniQuest, bluebox, other  ________________) | Click or tap here to enter the Commercialisation Lead details. | | **[Revenue Sharing](#RevenueSharingPercentages" \o "Revenue Sharing PercentagesClause 10.2Insert what percentages of net revenue each relevant Party shall be entitled to from Commercialisation of Project IP. ________________)** [i](#RevenueSharingPercentages" \o "Revenue Sharing PercentagesClause 10.2Insert what percentages of net revenue each relevant Party shall be entitled to from Commercialisation of Project IP. ________________) | Click or tap here to enter the Revenue Sharing Percentages. | | **[Other](#OtherCommercialisationTerms" \o "Other Commercialisation TermsClause 10.2Insert any other agreed terms with respect to Commercialisation of Project IP by Commercialisaiton Lead – e.g. calculation of commercialisaiton costs, reporting and timing of distribution of net revenue. ________________)** [i](#OtherCommercialisationTerms" \o "Other Commercialisation TermsClause 10.2Insert any other agreed terms with respect to Commercialisation of Project IP by Commercialisaiton Lead – e.g. calculation of commercialisaiton costs, reporting and timing of distribution of net revenue. ________________)  **[Commercialisation Terms](#OtherCommercialisationTerms" \o "Other Commercialisation TermsClause 10.2Insert any other agreed terms with respect to Commercialisation of Project IP by Commercialisaiton Lead – e.g. calculation of commercialisaiton costs, reporting and timing of distribution of net revenue. ________________)** | Click or tap here to enter any Other Commercialisation Terms. | | **[Moral Rights](#MoralRights" \o "Moral Rights Clause 11 means as described in Part IX of the Copyright Act 1968 (Cth) and any analogous rights arising under statute that exist, or may come to exist, anywhere in the world. If a Party  may require another Party to sign a Moral Rights waiver under a head funding agreement, specify details here.________________)** [i](#MoralRights" \o "Moral Rights Clause 11 means as described in Part IX of the Copyright Act 1968 (Cth) and any analogous rights arising under statute that exist, or may come to exist, anywhere in the world. If a Party  may require another Party to sign a Moral Rights waiver under a head funding agreement, specify details here.________________) | Click or tap here to enter the Moral Rights. | | [**Special Conditions** i](#SpecialConditions) | Click or tap here to enter any Special Conditions. | | **Appendix A** | [Research Plan or Protocol to be attached.] | | **Appendix B** | [Proof of Funding to be attached if required or state N/A.]  Click or tap here to enter text. | |

## Annexure – Extract of Research Agreement

## Performance of Projects

* 1. The Parties to the Project Schedule agree:
     1. that the Project will be performed in compliance with:
        1. the terms and conditions of this Agreement;
        2. the applicable Project Schedule;
        3. the Ethics Approval, Protocol and Application;
        4. the principles of good scientific practice, good clinical practices and good manufacturing practices;
        5. all applicable local, state and federal laws, legislation, regulations, rules, by-laws, including without limitation the Relevant Privacy Laws; and
        6. the relevant Ethics Approval.
     2. to ensure that their Investigators follow the relevant research governance procedures for the notification and management of breaches of the *Australian Code for the Responsible Conduct of Research* *(2018)* or instances of Research Misconduct; and to cooperate with each other in relation to any allegations of Research Misconduct;
     3. to co-operate and do all things reasonably required in assisting a Party to meet its obligations under any Head Agreement including providing all information that a Party requires to provide in compiling the reports as a condition of any Funding, as well as any other reporting, compliance and financial management obligations relating to the Funding; and
     4. to keep complete and accurate records and accounts for their conduct of the Project, to be sufficient to enable a complete understanding of all Project IP and expenditure by a Party of the Funding.
  2. Notwithstanding clause 3.1, each Party acknowledges and agrees that the Project involves research of a speculative nature, and that the Project may not result in any particular outcome or Project IP, which may or may not be able to be commercialised by a Party.
  3. Where applicable, the Investigators will meet regularly to discuss the progress and conduct of the Project, including:
     1. any outcomes or developments related to analysis of the Human Biological Material, Study Participant Data or Material;
     2. any actual or potential Project IP and whether to engage the Commercialisation Lead to Commercialise the Project IP;
     3. any Improvements to Background IP as a result of its use in the Project; or
     4. any actual or anticipated amendment or variation to a Project Schedule.
  4. The timing and agenda for the meetings described in clause 3.3 will be agreed between the Parties from time to time, or the absence of agreement, as directed by the Coordinating Principal Investigator.
  5. A Party will make the Funding available to the other Parties as set out in the Project Schedule. Each Party receiving Funding agrees to ensure it will be spent only on the Project and in accordance with the budget approved under the Application, unless otherwise agreed in writing between the Parties and approved by the relevant funding body (if required).
  6. Each Party will make their respective Contributions to the Project, including providing all equipment, consumables, services and facilities necessary for the conduct of the Project, as set out in the Project Schedule.
  7. The Parties acknowledge that the safety and well-being of Study Participants is paramount and nothing in this Agreement will require a Party to take a step in the course of the Project which would inhibit the care, safety or well-being of those Study Participants.

## Human Biological Material Transfer

1. 1. Subject to consent of the Study Participant and obtaining of Ethics Approval, the Collecting Party will collect and provide Human Biological Material to the Recipient Party as described in the Project Schedule by provision to the Delivery Address on the Transfer Date as set out in the Project Schedule.
   2. Where Human Biological Materials are being collected from a Study Participant under a Project Schedule:
      1. the Collecting Party will provide clear advice to Study Participants that:
         1. the Project is being performed in collaboration with the Parties to the Project Schedule;
         2. whether the Human Biological Material will be provided on an identified or de-identified basis;
         3. the Parties to the Project Schedule will have access to the Human Biological Material for the purposes of conducting the Project;
         4. whether the Human Biological Material will be used for any future purpose other than the Project; and,
         5. it is at the discretion of each the Study Participant as to whether they consent to participate in the Project.
      2. the Collecting Party will obtain the written express consent of the Study Participant for use of the Human Biological Material as contemplated in the Project;
      3. where the Recipient Party is to receive the identified Personal Information or Sensitive Information of a Study Participant, the Collecting Party will provide the Recipient Party with a copy of the consent.
      4. the Recipient Party will only use or transfer the Human Biological Material in accordance with the written consent of the Study Participant.
   3. Where Human Biological Material are to be provided under the Project Schedule, all transport, freight and delivery will be organised by the Recipient Party and the Recipient Party will bear all costs in relation to same. The risk in relation to such transport of the materials will rest with the Recipient Party.
   4. The Parties agree and acknowledge, except as otherwise provided in clauses 4 to 4.3:
      1. the Collecting Party provides no warranty or representation in relation to the use, accuracy, viability or quality of the Human Biological Material and Recipient Party acknowledges and agrees that all use of the Human Biological Material will be at the Recipient Party’s own risk; and
      2. the obligation of the Collecting Party to provide the Human Biological Material is subject to the availability of consenting Study Participants.
   5. The Coordinating Principal Investigator must obtain any Ethical Approval necessary to use the Human Biological Material for the Project.
   6. Unless anticipated in the consent of the Study Participant, and set out in a Project Schedule for a Third Party Collaborator, the Recipient Party will not transfer the Human Biological Material to a third party.
   7. The Recipient Party must store, handle, use and dispose of the Human Biological Material in compliance with all relevant legislative and regulatory requirements and applicable codes of conduct and guidelines and any conditions (if any) specified by the Collecting Party as set out in the Project Schedule.
   8. The Recipient Party must:
      1. when Recipient Party has completed the performance of the Project,
      2. upon termination of a Project Schedule other than under clause 4.8.1; or
      3. where reasonably requested to do so by the Collecting Party, promptly return to the Collecting Party, or destroy if requested by the disclosing Party to do so, any remaining Human Biological Material supplied by the Collecting Party to the Recipient Party.

## Study Participant Data

1. 1. The Collecting Party will collect the Study Participant Data described in the Project Schedule.
   2. The Collecting Party will provide the Study Participant Data to another Party as described in the Project Schedule, on the Transfer Date and to the Delivery Address.
   3. The Collecting Party will comply with all requirements of the Ethics Approval and Relevant Privacy Laws in collection of the Study Participant Data.
   4. Where consent of the Study Participants is required in the Project Schedule:
      1. the Collecting Party will provide clear advice to Study Participants that:
         1. the Project is being performed in collaboration with the Parties to the Project Schedule;
         2. whether the Study Participant Data will be provided on an identified or de-identified basis;
         3. the Parties to the Project Schedule will have access to the Study Participant Data for the purposes of conducting the Project;
         4. whether the Study Participant Data will be used for any future purpose other than the Project; and,
         5. it is at the discretion of each the Study Participant as to whether they consent to participate in the Project.
      2. the Collecting Party will obtain the written express consent of the Study Participants for use of the Study Participant Data as contemplated in the Project;
      3. where the Recipient Party is to receive the identified Personal Information of the Study Participant, the Collecting Party will provide the Recipient Party with a copy of the consent; and
      4. the Recipient Party will only use or disclose the Study Participant Data in accordance with the written consent of the Study Participant and any conditions (if any) specified by the Collecting Party as set out in the Project Schedule.
   5. Except as provided under clauses 5 to 5.4, the Parties agree the Collecting Party provides no further warranty or representation in relation to the use, accuracy, viability or quality of the Study Participant Data and Recipient Party acknowledges and agrees that all use of the Study Participant Data will be at the Recipient Party’s own risk.
   6. If Study Participant Data is being obtained by the Collecting Party pursuant to a public health application under the Public Health Act 2005 (Qld), the Parties agree that the obligation to provide the Study Participant Data will be conditional on approval of that application.
   7. The Recipient Party must store, handle and use the Study Participant Data in compliance with:
      1. Relevant Privacy Laws;
      2. all relevant legislative and regulatory requirements and applicable codes of conduct and guidelines;
      3. the terms of approval under the Public Health Act 2005 (Qld); and
      4. the terms of the Study Participant’s consent and any conditions (if any) specified by the Collecting Party as set out in the Project Schedule.
   8. The Recipient must:
      1. when Recipient has completed the performance of the Project,
      2. upon termination of a Project Schedule other than under clause 5.8.1; or
      3. where reasonably requested to do so by the Collecting Party; promptly return to the Collecting Party, or destroy if requested by the Collecting Party to do so, any Study Participant Data supplied by the Collecting Party to the Recipient (whether in electronic or hard copy and in any storage device).

## Non Human Biological Material Transfer

* 1. Any Party (Material Owner) may provide Material (Material) to another Party as described in the Project Schedule (Approved Purpose) by provision to the Delivery Address on the Transfer Date as set out in the Project Schedule.
  2. The Recipient must:
     1. only use the Material for the Approved Purpose;
     2. only use the Material for the purpose of non-commercial research;
     3. not provide the Material to any third party other than Third Party Collaborators named in the Project Schedule;
     4. not use the Material in humans;
     5. not seek any form of registration of Intellectual Property or other statutory protection of the Material (subject to clause 6.5);
     6. not seek to reverse engineer the Material or otherwise determine the origin of the Material;
     7. comply with all laws and applicable codes of conduct in relation to use of the Material;
     8. obtain the Ethics Approval necessary or desirable to use the Material for the Approved Purpose; and
     9. co-operate with the Material Owner and act reasonably in connection with this Agreement and receipt of the Material.
  3. The Recipient acknowledges and agrees that, as between the Parties, the Material Owner retains title to the Material provided to the Recipient under this Agreement until it is extinguished as a result of its use in a Project.
  4. The Recipient must acknowledge the Material Owner’s provision of the Material and any personnel notified by the Material Owner as being involved in the development of the Material in any Publications relating to the Material.
  5. The Recipient must notify the Material Owner of any new Intellectual Property created as a result of use of the Material, upon creation. Ownership of new IP under clause 6.5 will vest in the Recipient, unless the new Intellectual Property is reliant upon the Material or Background IP in the Material, in which case the new IP will be deemed as Project IP and clauses 7 to 10 of this Agreement will apply.
  6. Any Background IP in the Material will remain with the Material Owner. For clarity, nothing in this clause 6 limits the ability of the Material Owner to continue to use the Material for its own purposes at its absolute discretion, provided such use does not prevent the conduct or completion of a Project anticipated by a Project Schedule.
  7. The Recipient acknowledges and agrees that:
     1. the Material Owner does not make any representation or give any warranty that the Material is fit for any particular purpose;
     2. the Material Owner does not make any representation or give any warranty that the use of the Material by the Recipient or transfer of the Material to the Recipient will not infringe the Intellectual Property or other rights of any third party; and
     3. the Material is provided on an “as is” basis; and
     4. except as provided for in clause 6.5, nothing in this Agreement grants the Recipient a licence or assigns to the Recipient any Intellectual Property of the Material Owner.
  8. The Recipient must:
     1. when Recipient has completed the performance of the Project,
     2. upon termination of a Project Schedule other than under clause 6.8.1 or
     3. where reasonably requested to do so by the Collecting Party; or promptly return to the Material Owner, or destroy if requested by the Material Owner to do so, any remaining Material supplied by the disclosing Party to the Recipient Party.

## Background IP

* 1. Each Party grants to the other Party a non-exclusive, worldwide, royalty free licence to use that Party’s Background IP:
     1. during the Term for the purpose of conducting the Project in accordance with this Agreement;
     2. if use of the Project IP is reliant upon the Background IP, to the extent required for each Party to use the Project IP as contemplated by this clause during and after the Term; and
     3. If Commercialisation of Project IP is reliant upon the Background IP, then clause 7.2 will apply.
  2. Subject to clause 7.3, each party agrees to negotiate in good faith with each other party in relation to the terms of a licence (including a right to sub-license) to use that party’s Background IP or Background Material where such Background IP or Background Material is required by the other party for Commercialisation of the Project IP or Project Material.
  3. The terms of the licence contemplated by clause 7.2 must be negotiated in good faith, using best endeavours and taking into account the factors specified in clause 10.3 and must not be less favourable than the terms that Party would offer to any third party in an arm’s length commercial dealing.
  4. If the parties are unable to agree terms of the licence under clause 7.2 within three months, the matter will be referred for expert determination in accordance with clause 7.5.
  5. Any dispute in relation to licensing of Background IP under this clause 7 will be referred for expert determination by the disputing Party, and subsequent proceedings of determination will be undertaken at the equally shared expense of the Parties by a patent attorney registered in Australia who is experienced in the field as agreed by the parties or, if the parties cannot reach agreement, as appointed by the Australian president of the Licensing Executives Society.
  6. If a Party notifies the other Party that any encumbrances or prior licences apply to particular Background IP at the time that Background IP is made available for the purpose of performing the Project, including by details in the relevant Project Schedule, then the licence contemplated by clause 7.5 is limited with respect to that Background IP to the extent of that encumbrance or prior licence.
  7. Each Party must:
     1. take all reasonably necessary steps to protect, maintain and enforce Background IP made available for the purpose of carrying out the Project;
     2. give the other Party prompt notice of any infringement of Background IP that comes to that Party’s attention; and
     3. give the other Party all assistance which is reasonably required by the other Party to protect Background IP of the other Party at the other Party’s cost.

## Project IP Ownership

1. 1. Project IP shall vest immediately upon its creation in Parties or Parties specified as the Project IP Owner/s in the Project Schedule.
   2. If no Project IP Owner is specified in the Project Schedule, the Project IP Owner shall be the Parties listed in the Project Schedule as tenants in common in shares proportionate to their respective inventive contribution to the development or creation of that Project IP. For clarity, provision of Student Participant Data, Human Biological Material or Material alone does not constitute an inventive contribution to Project IP.
   3. Subject to Clause 8.4 below, the Project IP Owner/s grant to the other Parties to the relevant Project Schedule a non-exclusive, non-transferable, royalty-free, worldwide licence to exercise all rights in the Project IP for:
      1. the purposes of performing the Project; and
      2. Internal Purposes.

For clarity, the licence under this clause 8.3 is non-transferable except to the extent it is required for a Third Party Collaborator to participate in the Project as set out in a Project Schedule

* 1. The Commercialisation Lead, as directed by the relevant Project IP Owner, may upon notice to the other Parties revoke the licence at clause 8.3.2 if such revocation is deemed necessary or desirable by the Commercialisation Lead in order to Commercialise the Project IP. The licence shall terminate on the date specified in that notice, which shall be no less than three (3) months from the date of the notice or such other date as agreed in writing between the Parties.
  2. Each Party shall enter into all agreements with all relevant personnel and Students to ensure the terms of this clause 8 are given full effect. To the extent necessary, each Party agrees to do all things and sign all documents necessary to give effect to this clause.

## Project IP Protection and Registration

A. Framework

* 1. Where the Parties have identified a Commercialisation Lead and that Commercialisation Lead is also the sole Project IP Owner, clauses 9.3 to 9.9 do not apply, and the Commercialisation Lead may make decisions in its sole discretion regarding registration and protection of Project IP.
  2. Where no Commercialisation Lead has been agreed, or the Commercialisation Lead is not the sole Project IP Owner, then clauses 9.3 to 9.9 apply with respect to registration and protection of Project IP.

B. IP Registration

* 1. A Project IP Owner may at any time give notice to the other Project IP Owners that it intends to register rights in respect of Project IP.
  2. Within two (2) months of giving notice under clause 9.3, the Project IP Owners shall agree to terms of IP protection, including division of costs of obtaining such IP protection and the scope of proposed registration of Project IP.
  3. A Project IP Owner shall not unreasonably withhold giving permission under clause 9.4 to another Project IP Owner to register rights in respect of the Project IP.
  4. All Project IP rights shall be registered in the names of the Project IP Owners, unless otherwise agreed in writing by the Parties.
  5. If the Project IP Owners cannot agree to terms of IP protection as required in clause 9.4, then the matter may be referred by a Project IP Owner for Expert Determination.

C. IP Protection

* 1. In the event that a Project IP Owner wishes to commence any proceeding in respect of infringement or registration of the Project IP, then that Project IP Owner shall give notice to the other Project IP Owners, and shall not take a step in the matter unless it receives the consent of those other Parties, such consent not to be unreasonably withheld.
  2. A Party (the “surrendering party”) may surrender its rights in the Project IP to the other co-owners of the Project IP in order to avoid being joined to potential proceedings initiated under clause 9.8, and that surrendering party shall have no liability to the other Project IP Owners in respect of those proceedings.

## Commercialisation

* 1. Each Party:
     1. subject to Clauses 10.2 and 10.4 (as applicable), and to the extent necessary given each Party’s ownership rights in any Project IP, grants to the Commercialisation Lead an exclusive, worldwide licence to Commercialise the Project IP; and
     2. agrees that it will not do anything that will prejudice the protection or Commercialisation of the Project IP.
  2. The Parties may agree Revenue Sharing Percentages in the Project Schedule. If Revenue Sharing Percentages are agreed, the Commercialisation Lead shall distribute net revenue generated from Commercialising any Project IP in accordance with the Revenue Sharing Percentages. The Commercialisation Lead shall also comply with any Other Commercialisation Terms agreed by the Parties. If no Other Commercialisation Terms are specified in the Project Schedule, the Parties will negotiate in good faith and using all best endeavours to agree such other terms.
  3. In calculating the Revenue Sharing Percentages, the Parties may take into account the following factors, acting in good faith and using best endeavours:
     1. the respective inventive contributions of each Party to Project IP;
     2. the respective intellectual contributions of each Party to the Project to the extent such contributions add value to the Project IP;
     3. the relative cash and In Kind Contributions by each Party to the development of Project IP;
     4. the total cash and In Kind Contributions of each party to the Project;
     5. the degree to which a Party’s Background IP contributed to the development of the Project IP to be Commercialised;
     6. the competitive environment;
     7. the historic costs for similar technology;
     8. whether any Commercialisation licence granted will be exclusive or non-exclusive;
     9. the geographic coverage of any such licence;
     10. the relative balance between licence fees and royalties;
     11. all Commercialisation and protection costs associated with Project IP and the parties which contributed those costs; and
     12. any other factors that the Parties consider relevant to the negotiation.
  4. If Revenue Sharing Percentages are not agreed in the Project Schedule, and the Commercialisation Lead (or, if no Commercialisation Lead is agreed, a Project IP Owner) wishes to Commercialise any Project IP, the Parties may negotiate the terms of any program of Commercialisation arising from the Project IP so as to fairly share in any commercial return associated with the Project and the Project IP. In doing so, the parties will act in good faith and use all best endeavours.

## Moral Rights

* 1. Unless otherwise agreed, or where required by the Head Agreement, the Parties will respect the Moral Rights of authors of Background IP and Project IP.

## Publication

* 1. If a Party (Publishing Party) wishes to make a disclosure of Confidential Information, Material, Project IP or another Party’s Background IP by means of a Publication, the Publishing Party must first obtain the unanimous consent of the other Parties (Reviewing Party), which may not be unreasonably withheld or delayed.
  2. The Publishing Party must submit a draft version of the proposed Publication to the Reviewing Party at least thirty days prior to the date upon which it is intended the draft be submitted for Publication.
  3. The Reviewing Party must respond within fourteen days of receiving a request contemplated by clause 12.2 by:
     1. providing unanimous consent to the Publication;
     2. requesting removal from or anonymity in the Publication;
     3. providing unanimous consent to the Publication subject to that Party’s Confidential Information being removed from the draft; or
     4. requesting a delay of no greater than 3 months in disclosure of the Publication so as not to prejudice protection of Intellectual Property or Commercialisation of Project IP.
  4. Any person, including an Investigator, Student, Collaborator or Third Party Collaborator, who is named as an author or co-author on a Publication will be given a reasonable opportunity to review the final Publication in the form intended to be submitted for publication and request the removal of his or her name from the Publication.
  5. If the Publishing Party has not received a response from the Reviewing Party within fourteen days it will be entitled to assume consent has been granted by the Reviewing Party to publish the draft in the form in which it was submitted for review.
  6. If the Reviewing Party responds as contemplated by clauses 12.3.3 or 12.3.4, the Reviewing Party must provide notice of reasons to justify not providing unconditional consent.
  7. Where a Reviewing Party is asked by the Publishing Party to review reasons given as contemplated by clause 12.6, that Party must do so in good faith and in a timely manner and provide notice of their feedback to each other Party.
  8. Each Party will acknowledge the contribution of the other Parties in Publications in the form agreed between the Parties and in accordance with the version of the Australian Code for the Responsible Conduct of Research current as at the date of notice under clause 12.2.

## Confidentiality

* 1. Each Party must not, without the prior written approval of another Party:
     1. make public or disclose to any person (other than to that Party’s personnel or Students who need to have access to such information for the purposes of this Agreement) any information about this Agreement or any Confidential Information of another Party or of any Study Participants;
     2. use the Confidential Information of another Party or Personal Information or Sensitive Information of any Study Participants, other than for the purpose of conducting the activities under this Agreement, and in giving its written approval, the other Party may impose such terms and conditions as it thinks fit.
  2. The obligations of each Party in relation to Confidential Information will not be taken to be breached where Confidential Information is legally required to be disclosed provided that the Recipient Party notifies the other Party as soon as possible of the proposed disclosure of that Confidential Information.
  3. Each Recipient Party must:
     1. where requested to do so by a disclosing Party; or
     2. when the Recipient Party has completed the performance of the Project, promptly return to the other Party, or destroy if requested by the disclosing Party to do so, any Confidential Information supplied by the disclosing Party to the Recipient Party (whether in electronic or hard copy and in any storage device).
  4. A Recipient Party may disclose the terms of this Agreement and any Confidential Information of a disclosing Party to the Recipient Party’s solicitors, auditors, insurers or accountants, provided that the Recipient Party disclosing that Confidential Information must ensure that every person to whom disclosure is so made uses the same solely for the purpose for which it was disclosed and treats the Confidential Information as confidential.

## Privacy

* 1. Each Party agrees to comply with the Relevant Privacy Laws as applicable to their respective conduct of a Project.
  2. Each Party agrees not to do anything that would cause a breach of the Relevant Privacy Laws and agrees not to do anything that would cause any other Party to breach a Relevant Privacy Law applicable to that Party.
  3. Each Party must
     1. only use Personal Information or Sensitive Information held in connection with this Agreement for fulfilment of the Parties’ obligations under this Agreement.
     2. return or destroy (at the election of the owner of the Personal Information or Sensitive Information) the Personal Information and/or Sensitive Information upon the expiration or termination of this Agreement; and
     3. ensure that Personal Information or Sensitive Information in its possession or control is protected against loss and unauthorised access, use, modification or disclosure in accordance with Relevant Privacy Laws.
  4. Where a Party has any Personal Information, Sensitive Information and Study Participant Data arising from the Project or provided by a Party for the purposes of the Project, that Party must ensure that any Personal Information, Sensitive Information and Study Participant Data will be stored, used and disclosed in accordance with the Relevant Privacy Laws, and any data security and confidentiality measures that may be notified to that Party by the Party providing the information from time to time during the Term.

## Students

* 1. A Party must ensure that any of its Students participating in the Project is aware of and complies with the obligations of that Party (in particular in relation to the Personal Information, Sensitive Information and Study Participant Data requirements) as set out in this Agreement.
  2. A Party is responsible for any acts or omissions of its Students in relation to the use and disclosure of Study Participant Data and for any other acts or omissions of the Student in connection with the Project.
  3. The supervision of that Student will be in accordance with the relevant Party’s regulations, policies and procedures.
  4. Subject to clause 15.5, the Parties agree that a Student may include the results of the Project in whole or in part in their Thesis.
  5. Upon the reasonable request of a Party, a Party responsible for the Student will use its reasonable endeavours to ensure that the Thesis is kept confidential for a period of up to 12 months from the completion of the Student’s involvement in the Project. Nothing in this clause permits the publication or disclosure of the Confidential Information of a Party.

## Liability

1. 1. Each Party is liable for its own acts and omissions in relation to the conduct of a Project.
   2. The Parties acknowledge that any Collaborator may agree to additional clauses in relation to indemnities and limitation or limitation of liability as set out in the Special Conditions of a Project Schedule, and in the event of inconsistency between this clause 16 and the Special Conditions, the Special Conditions will prevail.

## Insurance

1. 1. Each Party must, for as long as any obligations remain arising from this Agreement, effect and maintain valid, enforceable and adequate:
      1. public liability insurance of $20,000,000 per claim limited to $20,000,000 in the aggregate of all claims made in a calendar year;
      2. workers compensation insurance as required by statute;
      3. general insurance in respect of all property and equipment that is used in connection with the Project, including all buildings, fixtures and fittings and contents contained thereon or therein, against all loss and damage caused by or resulting from accident, fire, theft, malicious damage or storms and any other insurable risk which property of a similar nature is commonly insured against; and
      4. professional indemnity insurance of $10,000,000 per claim limited to $10,000,000 in the aggregate of all claims made in a calendar year.
   2. Proof of adequate levels of self-insurance or other protection by a Party are acceptable as an alternative to the insurances required under clause 17. For clarity, a Party satisfies the requirements of 17 if it holds insurance through the Queensland Government Insurance Fund or through protections provided by Unimutual Limited, which is a discretionary mutual regulated by ASIC as a financial services provider of miscellaneous mutual risk products and holding an Australian Financial Services Licence number 241142.

## Dispute Resolution

* 1. A Party must not commence legal proceedings relating to this Agreement unless the Party wishing to commence proceedings has complied with this clause 18. However, this clause 18 will not apply where a Party seeks urgent interlocutory relief from a court.
  2. The Parties will co-operate with each other and use their best endeavours to resolve by mutual agreement any differences between them and all other difficulties which may arise from time to time relating to this Agreement.
  3. If a dispute arises between the Parties relating to or arising out of this Agreement (the Dispute) then:
     1. the Party alleging the Dispute must notify the existence and nature of the Dispute to the other Party within 30 days of the dispute arising (the Notification);
     2. upon receipt of a Notification the Parties must request a senior executive of a Party (or equivalent, or their nominee) to resolve the Dispute;
     3. if the Dispute is not resolved as provided in clause 18.3.2 with 30 days of receipt of the Notification then any Party may refer the Dispute to mediation as provided in clause 18.3.4 and must do so before initiating proceedings in a court to resolve the Dispute;
     4. any Dispute which is referred to mediation must be referred to the Resolution Institute and be conducted in accordance with the Mediation Rules of the Resolution Institute;
     5. The Parties must co-operate with Resolution Institute as facilitator;
     6. if within 10 business days after referral of the dispute to Resolution Institute the parties have not agreed upon the mediator or other relevant particular the mediator and any other relevant particular will be determined in accordance with Resolution Institute’s Facilitation Rules; and
     7. if the Dispute is not resolved within 60 days of referral to the Resolution Institute any Party is free to initiate proceedings in a court in respect of the Dispute.
  4. Compliance with the provisions of this clause 18 is a condition precedent to seeking relief in any court or tribunal in respect of the Dispute.

## GST

* 1. Words or expressions including the term “Tax Invoice” used in this clause 19 which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (the “GST Law”) or, if not so defined, then which are defined in the Competition and Consumer Act 2010 (Cth), have the same meaning in this clause 19.
  2. Unless stated otherwise in a Project Schedule, all amounts payable under or in connection with this Agreement are expressed on a GST exclusive basis.
  3. If a Contribution made under this Agreement is a taxable supply, the recipient must pay to the supplier, in respect of that taxable supply, an additional amount equal to the GST payable by the supplier in respect of that taxable supply.
  4. The recipient must pay the amount payable under clause 19.3 at the same time as payment must be made for the taxable supply, provided the supplier has given the recipient a Tax Invoice for that payment stating the amount of GST paid or payable by the supplier in respect of the supply to which the Tax Invoice relates.
  5. If, at any time, an adjustment event arises in respect of any supply made by a party under this Agreement, a corresponding adjustment must be made between the parties in respect of any amount paid pursuant to clause 19.3.
  6. Payments to give effect to the adjustment must be made between the parties and the supplier must issue a valid adjustment note in relation to the adjustment event.
  7. If an amount that would otherwise be payable under this Agreement is calculated by reference to or otherwise relates to a cost, expense or other amount incurred by a party (“Payee”), then that amount will be reduced by the amount of any input tax credit to which the Payee is entitled in respect of that amount.
  8. The Payee will be assumed to be entitled to a full input tax credit unless it demonstrates that its entitlement is otherwise prior to the date on which the payment must be made.
  9. If a Party is a member of a GST group, references to GST for which the Party is liable and to input tax credits to which the Party is entitled include GST which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.

## Notices

* 1. The addresses of the Parties for the purposes of giving legal notices under this Umbrella Agreement are set out in Schedule 1.
  2. The addresses of the Parties for the purpose of giving notices in relation to each Project will be as set out in the Project Schedule.
  3. A notice, consent, approval or other communication (each a notice) under this Agreement must be:
     1. delivered to the Party’s address;
     2. sent by pre-paid mail to the Party’s address; or
     3. sent by fax or email to the Party’s email address.
  4. A notice given by a Party in accordance with this clause is treated as having been given and received:
     1. if delivered to a Party’s address, on the day of delivery if a business day, otherwise on the next business day;
     2. if sent by pre-paid mail, on the third business day after posting;
     3. if sent by fax or email, upon read receipt.
  5. Any notice or communication given to a Party under this Agreement may be made by email if, prior to any notice or communication being given, the Parties have done the following:
     1. agreed that email is to be an acceptable form of communication.
     2. notified each other of their respective email addresses and any other information required to enable the sending and receipt of information by email.
  6. Any email is to be treated as given when received in readable form addressed in the manner specified in clause 20.3.3, or as notified under clause 20.5.
  7. Each Party must promptly notify the other Party of any change to their addresses as appearing in a Project Schedule and this Umbrella Agreement.

## General

* 1. The Parties agree that termination of this Agreement will not affect any clause of this agreement which is expressly or by implication intended to come into force or continue on or after the termination including this clause and clauses 4.8, 5.8, 6.8, 7.1.2, 7.1.3, 8.3.2, 8.4, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21.2 and 21.3.
  2. Each Party is responsible for its own costs of entering into and performing this Agreement, unless specifically stated under a clause of this Agreement or in a Project Schedule.
  3. Each Party will do anything (include execute any document and perform all acts) that the other Party may reasonably require to give full effect to this Agreement.
  4. This Agreement may be executed in any number of counterparts, including by exchange of facsimile or electronic copy. All counterparts taken together will be taken to constitute one agreement.
  5. No variations of this Umbrella Agreement or a Project Schedule are legally binding on any Party unless evidenced in writing signed by both Parties. For the sake of clarity, the Terms of the Umbrella Research Agreement that apply to a Project Schedule may not be varied by a Project Schedule except as expressly provided for in the Special Conditions of the relevant Project Schedule.
  6. Unless specified in a Project Schedule, a Party may not sub contract, assign or novate its rights or obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld.
  7. This Agreement is governed by the laws of Queensland. The Parties agree to submit to the exclusive jurisdiction of the courts exercising jurisdiction within Queensland.
  8. Excepting as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and in addition to any other rights of that Party.
  9. Unless otherwise expressly contemplated, where a provision of this Agreement contemplates that a party may exercise its discretion then that party is entitled to exercise that discretion absolutely, with or without conditions and without being required to act reasonably or give reasons.
  10. No right under this Agreement is waived or deemed to be waived except by notice in writing signed by the Party waiving the right. A waiver by any Party in respect of any breach of a condition or provision of this Agreement will not be deemed to be a waiver in respect of any other breach. Failure or delay by any Party to enforce any provision of this Agreement will not be deemed to be a waiver by that Party of any right in respect of any other such breach.
  11. Except to the extent that a warranty is expressly given in this Agreement or is implied by an applicable law and cannot be excluded, the Parties give no representation, warranty, statement or promise, either express or implied, as to any matter whatsoever concerning the conduct of the Project. The Parties agree that no Party has relied on any representation made to it by another Party prior to entry into this Agreement.
  12. If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of this Agreement.
  13. The obligations and liabilities of the Parties under this Agreement are several and not joint or joint and several unless specified otherwise in the Special Conditions of a Project Schedule.
  14. Nothing in this Agreement creates a relationship of employer and employee, principal and agent, joint venture or partnership between the Parties and no Party will hold itself out as an agent for another. For the avoidance of doubt, the Parties agree that the Collaborator Investigator is participating in the Project exclusively as an employee of Collaborator and participation in the Project does not:
      1. for any purpose make the Collaborator Investigator an employee, agent or contractor of Hospital Collaborator;
      2. for any purpose, allow the Collaborator Investigator to act for, or on behalf of, Hospital Collaborator or to enter into any agreement, arrangement or understanding on behalf of Hospital Collaborator.
  15. If any Party is delayed or prevented from the performance of any act required under this Agreement by a Force Majeure Event, the affected Party will promptly notify the other Party in writing, giving details of the Force Majeure Event, the acts affected by the Force Majeure Event and the extent to which they are affected, and performance of such acts will be excused for the period of such event provided that if such interference lasts for any period in excess of 30 days each Party may, by written notice to the other, terminate this Agreement.
  16. This Agreement constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

## Definitions

**Agreement** means this Umbrella Research Agreement and separately, each individually executed Project Schedule.

**Application** means any application forming the basis for the grant of Funding to a Party that is a Contribution towards a Project.

**Background IP** of a Party means the Intellectual Property that is made available by that Party for the purposes of the Project that is either: (a) created before the date of the relevant Project Schedule; (b) created or developed by that Party during the Term independently of the Project; (c) assigned or licensed to that Party during the Term independently of the Project; or (d) specified in the relevant Project Schedule as being made available by that Party and, unless specified in the Project Schedule as not included, includes any **Improvements** to any Intellectual Property contemplated in (a), (b), (c) or (d). For clarity, Background IP does not include **Medical Records** or **Study Participant Data**.

**Collaborator** means the Parties identified in a Project Schedule.

**Collecting Party** means the Party nominated in the Project Schedule to collect either Study Participant Data or Human Biological Material.

**Commencement Date** means the date specified as such in the Project Schedule.

**Commercialisation** means the provision of rights in Intellectual Property or services including the exploitation of Intellectual Property in exchange for any benefit, whether monetary or otherwise, but excludes **Internal Purposes**.

**Commercialisation Lead** means the Party identified in the Project Schedule as the commercialisation lead, or such other party as subsequently agreed to by the parties in writing.

**Completion Date** means the date specified as such in the Project Schedule.

**Confidential Information** means financial, business and strategic information of a Party, any ideas, concepts, technical and operational information, scientific or technical processes and techniques, methodology and processes of a Party used in the Project, and other valuable information of whatever description and in whatever form but does not include:

1. information which is lawfully in the public domain before its disclosure to a Party under this Agreement;
2. information which enters the public domain otherwise than as a result of an unauthorised disclosure;
3. information which is or becomes available to a Party from a third person lawfully in possession of it who has the lawful power to disclose the information on a non-confidential basis; or
4. information which is rightfully known by the Recipient Party (as shown by its written record) before the date of disclosure to it under this Agreement.

**Contributions** means the cash and In Kind contributions of a Party to a particular Project as set out in the Project Schedule.

**Coordinating Principal Investigator** means the Investigator identified in the Project Schedule as responsible for coordinating the Project, including obtaining Ethics Approval.

**Delivery Address** means that address for delivery of Human Biological Material or Material to a Party as stated in the Project Schedule.

**Ethics Approval** means the ethics application form for a Project submitted by a Collaborator together with the approval of that application and any conditions of approval provided by the HREC.

**Force Majeure Event** means any act of god, act of nature, including any epidemic or outbreak of pandemic disease, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining raw material, energy or other supplies, labour disputes of whatever nature or whatever reason beyond the control of the affected Party.

**Funding** means the funding which a Party receives under the Head Agreement towards the conduct of the Project, as set out in the Project Schedule.

**Head Agreement** means the agreement between a Party and a funding body for the Project.

**HREC** means the Ethics Committee specified in the Ethics Approval and identified in the Project Schedule.

**HTQ Board** means the governing board of the members of the Health Translation Queensland.

**HTQ Executive Director** means that person appointed to the role from time to time by the HTQ Board.

**Human Biological Material** means physical samples of biological material of a Study Participant provided for the purpose of the Project, such as tissue, saliva or blood samples, and includes any unmodified material that is propagated from, derived from or based upon that biological material, which may be more specifically described in a Project Schedule.

**Improvements** mean any improvements, variations, modifications, developments or adaptions made to a Party’s Background IP as a result of its use in the Project.

**In kind Contributions** by a Party to a Project means all Contributions that are not cash, including the following:

1. the commercial value of Background IP provided by each Party in the Project;
2. time of personnel and Students (if applicable);
3. access to equipment and facilities of a Party;
4. supply of consumables and services to the Project by a Party;
5. access to Study Participants; or
6. access to Medical Records and Study Participant Data.

**Intellectual Property** or **IP** means all intellectual property rights, including but not limited to:

1. trade and service marks (including goodwill in those marks), patents, inventions, discoveries, copyright, rights in circuit layouts, designs, moral rights, domain names, registrable plant varieties, processes, trade secrets and know-how;
2. any application or right to apply for registration of any rights referred to in paragraph (a); and
3. all rights of a similar nature to any of the rights in paragraph (a) and (b) which may subsist anywhere in the world (including Australia), whether or not such rights are registered or capable of being registered.

**Internal Purposes** means: (a) the internal, non-commercial research and education purposes of a Party, such as carrying out future research making use of such Intellectual Property under a competitive grants or public good scheme or for teaching award courses; (b) if elected in the Project Schedule, the Public Health and Hospital Purposes of a Party.

**Investigators** means the personnel specified in the Project Schedule, or any other person that may be nominated by Party from time to time during the Project.

**Material** means physical samples of a thing or substance, such as biological material, and includes any unmodified derivatives and progeny of that material, but excludes Human Biological Materials.

**Medical Records** means a clinical record or note created by a medical or health professional for inclusion in an official record of treatment of a Study Participant.

**Moral Rights** means as described in Part IX of the Copyright Act 1968 (Cth) and any analogous rights arising under statute that exist, or may come to exist, anywhere in the world.

**Other Commercialisation Terms** means, as specified in the Project Schedule, any other relevant commercialisation terms, such as the basis upon which commercialisation costs are calculated, and terms on reporting and timing for distribution of net revenue.

**Party** means a party to this Agreement, including either, some or all of them as the context dictates and, for the purposes of a Project Schedule, includes any Third Party Collaborators who may be party to that Project Schedule. Where a Party is named in a Project Schedule, they will be identified as a **Collaborator**.

**Personal Information** has the same meaning as in the Privacy Act 1998 (Cth).

**Privacy Act** means either or both of the Information Privacy Act 2009 (Qld) and the Privacy Act 1988 (Cth) (including the Australian Privacy Principles under that Act), as amended from time to time.

**Project** means the research project to be conducted under the auspices of an agreement formed under this Umbrella Research Agreement.

**Project IP** means the Intellectual Property developed by either Party as a direct result of undertaking the Project, but excludes Background IP, Student IP, Medical Records, and Study Participant Data.

**Project IP Owner** means the Party or Parties who will own Project IP in accordance with clauses 8 or 8.2 of this Agreement (as applicable).

**Project Schedule** means each individual Project Schedule for the performance of a Project, the template form of which is set out in Schedule 2.

**Protocol** means the research plan or protocol for the Project, as applicable, as attached to the Project Schedule.

**Public Health and Hospital Purpose** means provision of hospital or health service.

**Publication** means a paper, article, manuscript, report, poster, Internet posting, presentation, abstract, outline, video, instruction material or other public disclosure, in printed, electronic, oral or other form, but excludes a Thesis.

**Recipient Party** means a Party who receives Confidential Information, Human Biological Material, Study Participant Data or Material in connection with the Project.

**Relevant Privacy Laws** means the Information Privacy Act 2009 (Qld), Hospital and Health Boards Act 2011 (Qld), Privacy Act 1998 (Cth), Public Health Act 2005 (Qld) and any other legislation (including delegated and subordinate legislation such as regulations), code or guideline which applies in the jurisdiction where the Project is to be conducted, or as a condition of the Funding, and which relates to the protection of Personal Information or Sensitive Information.

**Research Misconduct** has the same meaning as set out in the Australian Code for the Responsible Conduct of Research (2018), as updated from time to time.

**Research Passport Agreement** means this Agreement, excluding the Project Schedules.

**Revenue Sharing Percentages** means, as specified in the Project Schedule, the percentages of net revenue generated from Commercialisation of Project IP to be distributed to each relevant Party by the Commercialisation Lead.

**Sensitive Information** has the same meaning as in the Privacy Act 1998 (Cth).

**Special Conditions** means any changes to clauses 0 to 17 of this Umbrella Research Agreement, as set out in a Project Schedule.

**Student** means a student of a Party, as specified in the Project including undergraduate, postgraduate and PhD researchers carrying out the Project for the purpose of obtaining research data/information towards a higher degree) and students who are acting as volunteers for the puposes of this Project.

Students will include any person identified as replacement or additional students approved by the parties in accordance with their respective policies and procedures applicable at the time of replacement or addition.

**Student IP** means copyright in any Thesis.

**Study Participant** means a person that is directly or indirectly a subject of study in the course of a Project.

**Study Participant Data** means the Study Participant data or any other data or information of a Study Participant provided for the purpose of the Project, as described in a Project Schedule.

**Term** means the period of time specified in clause 1.

**Terms** means the terms set out in this Umbrella Research Agreement.

**Thesis** means any work submitted by a Student to a Party as enrolling institution for examination for the award of a degree.

**Third Party Collaborator** means any person or entity who is not a Party to the Umbrella Research Agreement, or personnel or Student of a Party to the Umbrella Research Agreement, and who is nominated in the Project Schedule as participating in the Project.

**Transfer Date** means that date for delivery of Human Biological Material, Study Participant Data or Material to a Party as stated in the Project Schedule.

## Interpretation

In this Agreement:

* 1. the singular includes the plural and vice versa;
  2. a reference to a gender includes the other genders;
  3. headings are for reference only and do not affect the meaning of any provision;
  4. other grammatical forms of each defined word or expression will have a corresponding meaning;
  5. a reference to this Agreement includes any schedules or annexures to this Agreement;
  6. a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement;
  7. a reference to a document or agreement, including a reference to this Agreement, includes a reference to that document or agreement as novated, varied or replaced from time to time;
  8. a reference to “$”, “$A”, “dollar” or “A$” is a reference to Australian currency;
  9. a reference to a month is a reference to a calendar month;
  10. a reference to any legislation, regulation or other statutory instrument includes a reference to any enactment, amendment, substitution or consolidation and any statutory instrument issued pursuant to such legislation, regulation or other statutory instrument;
  11. a reference to writing includes all physical and electronic methods of visibly representing or reproducing words, figures or symbols;
  12. no rule of construction applies to the disadvantage of the party that drafts this Agreement on the basis that the party suggested the relevant drafting;
  13. words such as “includes” and “including” do not impose any limitation on the construction of general language that is followed by specific examples.

## Schedule 1 – Notices

(clause 20)

|  |  |
| --- | --- |
| CHQHHS | Attention: Health Service Chief Executive Postal address:   Executive Suite, Level 7, Queensland Children’s Hospital, 501 Stanley Street, South Brisbane, Qld 4101 Email: [CHQ\_HSCE@health.qld.gov.au](mailto:CHQ_HSCE@health.qld.gov.au) |
| CSIRO | Attention: David Hansen, Chief Executive Officer Postal address: Level 7 Surgical Treatment and Rehabilitation Service, RBWH Campus, Herston, Qld 4006 Email [David.Hansen@csiro.au](mailto:David.Hansen@csiro.au) |
| GCHHS | Attention: Health Service Chief Executive Postal address: Gold Coast Hospital and Health Service 1 Hospital Boulevard, Southport, Qld 4125 Email: [GCESOCEO@health.qld.gov.au](mailto:GCESOCEO@health.qld.gov.au) |
| GU | Attention: Director, Office for Research  Postal address: Level 0 Building N54, 170 Kessels Road, Nathan, Griffith University, Qld 4111 Email: [T.Sheil@griffith.edu.au](mailto:T.Sheil@griffith.edu.au) |
| Mater | Attention: Group Chief Executive Officer  Postal address: Raymond Terrace, South Brisbane, Qld 4101 Email: [peter.steer@mater.org.au](mailto:shane.kelly@matr.org.au) |
| MNHHS | Attention: Chief Executive Officer Postal address: Metro North Hospital and Health Service, Level 14, Block 7, RBWH Campus, Herston Qld 4006  Email: [CE\_MNHS@health.qld.gov.au](mailto:CE_MNHS@health.qld.gov.au) |
| MSHHS | Attention:  Chief Executive Officer, Metro South Hospital and Health Service       Postal address: Metro South Hospital and Health Service, 199 Ipswich Road Woolloongabba, Qld 4102   Email: [MD05-MetroSouthHSD@health.qld.gov.au](mailto:MD05-MetroSouthHSD@health.qld.gov.au) |
| QIMR Berghofer | Attention: Chief Executive Officer  Postal address: 300 Herston Road, Herston Qld 4006  Email: [Directors\_Office@qimrberghofer.edu.au](mailto:Directors_Office@qimrberghofer.edu.au) |
| QH | Attention:  Postal address: 33 Charlotte Street, Brisbane, Qld 4000 Email: [Melissa.Hagan@health.qld.gov.au](mailto:Melissa.Hagan@health.qld.gov.au) |
| QUT | Attention: Executive Director, Office of Research Services Postal address: GPO Box 2434, Brisbane, Qld 4001 Email: [m.mcardle@qut.edu.au](mailto:c.melvin@qut.edu.au) |
| TRI | Attention: Director - Legal Services  Postal address: 37 Kent St, Woolloongabba, Qld 4102 Email: [OGC@tri.edu.au](mailto:OGC@tri.edu.au) |
| UQ | Attention: Director, Research Partnerships Postal address: The University of Queensland, Brisbane Qld 4072 Email: [director.partnerships@research.uq.edu.au](mailto:director.partnerships@research.uq.edu.au) |
| WMHHS | Attention: Chief Executive Officer  Postal address: Chelmsford Avenue, Ipswich, Qld 4305  Email: [WM\_HSCE@health.qld.gov.au](mailto:kerrie.freeman@health.qld.gov.au) |