The clauses of this agreement are not to be changed. Contact for template: HNELHD-ResearchOffice@health.nsw.gov.au

Research Collaboration Agreement

The date of this Agreement is the date on which the last party signs this Agreement (the “**Effective Date”**)

Between

Hunter New England Local Health District, Lookout Road, New Lambton Heights NSW 2305 Australia ABN: 63 598 010 203 ***(‘HNELHD’)***, and

The Other Party specified in Schedule 1 *(hereafter referred to as* ***“Other Party”)***

* *(Each referred to as a “****Party****” or together with HNELHD as the “****Parties****”)*

Background

1. HNELHD is a provider of healthcare services and undertakes research in health for development of prevention, treatment and cures for humans and has developed the Protocol for the Project.
2. HNELHD has asked the Other Party(s) to collaborate with HNELHD on the Project and to conduct the Project in accordance with the Protocol.

It is agreed, and for valuable consideration that the Parties will comply with the following:

1. Definitions and Interpretation
	1. Definitions

In this Agreement unless the context indicates otherwise, the following words shall have the following meanings:

**ACRCR** means the Australian Code for Responsible Conduct of Research which for the purposes of this definition, means the joint code issued by the National Health and Medical Research Council, the Australian Research Council and Universities Australia as amended, updated and published by them from time to time;

**Agreement** means this agreement including any schedules or annexures and any amendment to this Agreement agreed to in writing.

**Background Intellectual Property** means any industrial and intellectual property, inventions, technology, know-how and Confidential Information and all Intellectual Property Rights belonging to or under the control of a Party as at the Commencement Date or developed or created by a Party after the Commencement Date but independently to and separately from the Project, which are made available for the conduct of the Project, details of which may have been provided by a Party to the collaboration as at the Effective Date by way of inclusion in Schedule 1.

**Business Day** means a week day that is not a public holiday or bank holiday in New South Wales.

**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 which does not include carrying out future research making use of such Intellectual Property under a competitive grants or public good scheme or for teaching award courses.

**Confidential Information** means all information or data that is disclosed by or obtained from a Party for the purposes of this Agreement or the Project before, on or after the Effective Date of this Agreement relating to the operations, business, research and technology of a disclosing Party, includes but is in no way limited to the Project Materials and/or any Intellectual Property Rights or Personal Information or which is information that is by its nature confidential or any information that may be agreed in writing by the Parties as confidential but which doesn’t include information:

1. in the public domain at the time of disclosure to a Party; or
2. published or otherwise becomes part of the public domain but not in breach of any other obligations of confidence; or
3. agreed in writing during the Term by the Parties as not being Confidential information

**Contributions** means equipment, facilities, **resources**, or any other materials (but excludes the Project Materials), like notes, research books, documents, **data**, software, computers, clinical equipment, **biological and / or human samples** or even **Background Intellectual Property** that are contributed by a Party to the collaboration for use by all Parties, all of which are contributions that may or may not contain Intellectual Property Rights and that may be specifically identified and listed in **Schedule 1** or of which may be specified in the Protocol. In some cases these may include **cash contributions** made by a Party in order to support and facilitate completion of certain activities.

**Co-ordinating Investigator** means the person named as the co-ordinating or chief investigator in the Protocol and who is identified in the Schedule and otherwise replaced during the Term by agreement between the Parties.

**End Date** means the date specified in Schedule 1 and of which may be amended by the Parties under clause 2.

**Ethics Committee** means the human research ethics committee specified in Schedule 1.

**Governance and Ethics Approvals** means the respective approvals provided by the applicable Site’s governance office for authorisation of the Project at the Site and the approval provided by the Ethics Committee for the conduct of the Project in accordance with the Protocol, and includes all relevant documentation submitted and approved including any National Ethics Application Form.

**Governmental Agency** means any governmental, semi‑governmental, administrative, fiscal, statutory, judicial or quasi‑judicial body, department, commission, authority, tribunal, agency or entity.

**Health and Privacy Legislation** means all laws and legislation governing the collection, use or disclosure of Personal Information and includes Privacy Act 1988 (Cth), Privacy and Personal Information Act 1998 (NSW), Health Records & Information Privacy Act 2002 (NSW) and all other equivalent legislation of any other state or territory relating to privacy to the extent that such legislation is relevant to a Party including any approved privacy code adopted by HNELHD, or by NSW Health and any of HNLEHD’s privacy policies, practices and instructions as issued by HNELHD and/or NSW Health dealing with Personal Information.

**Improvements** means, in relation to any Intellectual Property, any technical information or improvements (including any patents, discoveries, patentable inventions and know‑how, trade secrets or confidential information) developed or acquired by a party relating to that Intellectual Property.

**Insolvent** means in relation to Party that is a body corporate, when it is wound up or is dissolved or when it enters into or resolves to enter into any arrangement, administration, composition or compromise with or assignment for the benefit of its creditors generally or any class of its creditors or proceedings are commenced to sanction any such arrangement, composition, compromise or assignment;

**Insurances Policies** means the insurances required pursuant to clause 9 and for the purposes of this definition means professional indemnity insurance, public liability insurance, product liability insurance and workers compensation insurance for employer’s liability for themselves and their Personnel in the amounts advised by HNELHD from time to time.

**Intellectual Property** includes copyright, trademarks, trade names, business names, software, circuit layout rights; inventions, and patents granted in respect of such inventions and applications for such patents, including unpatented know-how, which comprise an invention or a way of doing something which is not public knowledge; confidential information and trade secrets, know-how, concepts, techniques, secret processes; registered and unregistered designs and applications for registered designs; registered and unregistered trademarks and applications for registration of trademarks; get-up and trade dress associated with products and services and includes the Project Intellectual Property and any Background Intellectual Property.

**Intellectual Property Rights** means any and all current and future, existing or otherwise inherent, registered and unregistered rights in respect of the Intellectual Property and includes any applications for the registration or granting of any of the above including the rights to apply or otherwise be granted such rights. Intellectual Property Rights are rights to the protection of intellectual activity or the protection of ideas and information that have been created; the right to control distribution of such activity, ideas or information; the right to receive benefits from such activities, ideas or information by way of exploitation and Commercialisation, any rights similar to all of the above, arising (or capable of arising) under statute or at law in Australia or anywhere else in the world and the rights to recognition and acknowledgement.

**Internal Purpose** means the internal purposes for which a Party may use the Project Materials (and only within the jurisdiction of that Party) and of which incudes for teaching, research, academic, educational and/or patient care purposes without disclosure or dissemination to any third party other than Students only within the context of the above and does not include Commercialisation but may or not provide for an additional permitted purpose if specified for a particular Party in Schedule 1.

**Investigators** mean the research investigators of a Party including any Principal Investigators.

**National Statement** means the National Statement on Ethical Conduct in Human Research (2007) in force as at the Effective Date and as amended, updated and published by them from time to time during the Term.

**NHMRC** means the National Health and Medical Research an independent statutory agency established under the National Health and Medical Research Act 1992 (Cth). NHMRC brings together within a single national organisation the functions of research funding and development of advice. The NHMRC contributed to the development of the National Statement for medical research which the terms shall be complied with under this Agreement.

**Personal Information** means information that may contain information, data or opinions (health related or otherwise, whether true or not), about individuals whose identities are apparent or can be ascertained from the information, data or opinions.

**Personnel** means personnel of a Party who is either an employee, contingent worker, approved subcontractor and / or agent, a Student, an Investigator or any other person within the direct control and supervision of that Party;

**Principal Investigator** means the investigator or investigators identified in Schedule 1 who may be replaced by agreement between the Parties during the Term.

**Project** means the project or study described in Schedule 1;

**Project Intellectual Property** means all Intellectual Property created in the course of the Project including but not limited to all Intellectual Property arising out of the conduct of the Project and the creation of all Project Materials and includes but is not limited to any processes, formulae, designs, research results including new data subsets or other forms of research data, but does not include Background Intellectual Property or any Intellectual Property in any materials unless otherwise specified.

**Project Materials** means all and any material and information brought into existence during the Term by HNELHD or by the Other Party(s) individually or through collaboration between them, including but not limited to any of the results or milestones achieved or of any activities completed as per the Protocol and whether embodied in physical, electronic or in other form whatsoever and however incorporated, whether in a project report, Publication, or otherwise, and includes any tangible form of Project Intellectual Property created or otherwise invented. For avoidance of doubt, this definition excludes the Protocol.

**Protocol** means the document which describes the objective(s), design, methodology, statistical considerations and organisation of the Project, and of which may be annexed to this Agreement as reflective of the protocol as at the Effective Date, but of which may be amended from time to time by agreement of the Parties, and of which is always the document most recently approved by the reviewing Ethics Committee for the Project.

**Publication** means the disclosure of research results in any form of public dissemination such as articles, abstracts, poster sessions, both informal and formal seminars, talks, information posted on the Internet, and grant applications. Publish will have a corresponding meaning.

**Representative** means someone appointed by each of the Parties, capable of ensuring the respective Party operates within the requirements of this Agreement

**Site(s)** mean the site(s) and/or premises on which the Parties are authorised to carry out the Project pursuant to applicable Governance and Ethics Approvals;

**Student** means a person admitted as a student with a Party under the rules and policies of that Party.

**Term** has the meaning contained in clause 2.

* 1. Interpretation

Unless the contrary intention appears, a reference to the following in this Agreement will be interpreted as follows:

### A Party means either the other Party or HNELHD;

### The Parties means the Other Party and HNLEHD;

### The Other Party means the other party but not HNELHD;

### The singular includes the plural and vice versa, for example, “Other Party” means “Other Party(s)” and vice versa;

###  An obligation held by each “Other Party(s)” will be the same obligation under by all “Other Party(s); and

### A clause or schedule is a reference to a clause of, or a schedule to, this Agreement and each form part of this Agreement, including any terms and conditions contained in that Schedule; and

### A person includes an individual, corporation, partnership, venture, association, authority, trust, state or government entity; and

### Time is to time in Sydney, Australia; and

### The words “include” or “including” are to be construed without limitation;

### legislation or a provision of legislation will include a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it; and

### Unless otherwise expressly stated that an individual has such a right, where a provision is to the effect that a Party owns any Intellectual Property Rights, such provision will be read to mean that the Party owns such Intellectual Property Rights by virtue of its policies and any applicable agreement with its Personnel, respective of its creation by that Personnel,

### An “agreement” or “document” is a reference to the agreement or document as amended, replaced or otherwise varied, except to the extent prohibited by this Agreement or by that other agreement or document; and

### Writing includes reference to printing, typing and other methods of producing words in a tangible and permanently visible form; and

### If a word or expression is given a meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;

### Headings are for convenience only and do not affect interpretation; and

### An obligation of a Party not to do a thing includes an obligation not to permit that thing to be done by any of its Personnel; and

### In the event of any conflict between the terms and conditions contained in the clauses of the Agreement and any part of the Schedules and annexures (if any) including those terms contained in the Protocol then the terms and conditions of the clauses will take precedence; and

### This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

1. TERM

Unless otherwise earlier terminated under clause 11 this Agreement commences on the Effective Date and continues in force until the End Date. If the Parties agree to extend the duration of the Agreement they will agree to a new End Date in writing.

1. CONDUCT OF THE PARTIES

Each Party must conduct the Project in accordance with the Protocol and under the direction of the Coordinating Investigator. The Parties also agree to act in a diligent and professional and co-operative manner and to:

### Conduct the Project in accordance with the Protocol; and

### Use the Protocol in connection with the Project and not for any other use; and

### Use the Project Materials for its Internal Purposes only and not for any other purpose (unless already specified in Schedule 1) without first seeking the prior written consent of HNELHD. HNLEHD will consult with any other Parties with regards to any licences or consents a Party may require in order to use the Project Materials for such purpose however, HNLEHD has the right to withhold its consent to such use in its absolute discretion; and

### Appoint Personnel, including Principal Investigator(s), with the necessary skills, qualifications and experience to conduct or otherwise participate in the Project and to effectively ensure that their respective Personnel are supervised at all times by their appointed Principal Investigator; and

### Co-operate and comply with the Co-coordinating Investigator’s directions; and

### Make their Investigators available at all times and if they are not available, to notify HNELHD immediately, including proposing any suitable replacement for approval by all Parties. HNELHD agrees to do the same; and

### Comply with all Governance and Ethics Approvals and not do anything in conflict with those approvals unless a prior written amendment to the Governance and Ethics Approvals has been sought and obtained; and

### Comply with all applicable laws governing the conduct of the Project including WHS Legislation and all Health and Privacy Legislation; and

### Comply with, and ensure its Personnel comply with the standards set by the ACRCR, the NHMRC and any other polices advised by HNELHD to the Other Party(s) with regards to good ‘research conduct’; and

### Bear their own respective costs associated with their decision to participate in the Project and to provide for their compliance with their obligations under this Agreement, and

### Obtain and maintain all requisite licences, certificates required at law or by relevant industry regulations so as to allow for participation in the Project; and

### Make the Contributions in Schedule 1 or otherwise required during the Term;

### Comply with any corresponding terms and conditions that may be identified in Schedule 1 as required in connection with any Party’s Contributions (and if any Contributions constitute cash to be made a Party then the Parties agree to comply with any terms regarding payment to be made by a Party those of which will contained in the Annexure B; and

### Maintain complete and accurate records that reflect all work done by that Party on the Project and make those records accessible to HNELHD on request;

### Notify HNELHD and each other (and ensure their Personnel notify) immediately on becoming aware of the creation of new Intellectual Property Rights; and

### Meet at times and places that HNELHD and/or the Co-Ordinating Investigator reasonably requires the Parties to meet to discuss the Project; and

### Not sub-contract any part of the Project or performance of any part of the Project without seeking the prior written consent of HNELHD. HNELHD agrees not to subcontract without first seeking prior written consent of Other Party(s); and

### Not engage, and ensure their Personnel do not engage in any other interest, activity, project or agreement with a third party similar to the activities being carried out in this Project without first notifying the other Party; and

### Not knowingly infringe, and ensure its Personnel do not knowingly infringe, the Intellectual Property rights of any person in carrying out the Project; and

### Not do anything that would hinder the conduct of the Project or that would cause any Party to breach their respective obligations under any applicable laws or do anything contrary or harmful to the reputation or interests of a Party. In relation to HNELHD, the Other Party(s) must have regards to HNELHD as a Governmental Agency with public sector obligations, and therefore must comply with any applicable and reasonable Commonwealth, Department of Health, or NSW Health policy either expressly referred to in this Agreement or in any document that HNELHD may provide the Other Party(s) from time to time.

1. BACKGROUND INTELLECTUAL PROPERTY

### Each Party grants to the other Party for the Term a royalty free, non-transferable, nonexclusive licence to use that party’s Background IP for the Term and for the purposes of conducting the Project only. No Party will be grated with a right to use another Party’s Background Intellectual Property independently of the Project Material and no Party will have a right to use another Party’s Background Intellectual Property after the Term unless otherwise provided for as part of the permitted Internal Purpose. The Parties acknowledge that the Internal Purpose for one Party may vary from another Party’s permitted Internal Purpose.

### The Parties acknowledge that the use of another Party’s Background Intellectual Property will not transfer to it any right of ownership, automatic licence or interest to that other Party’s Background Intellectual Property.

### The Parties acknowledge all Improvements made to a Party’s Background Intellectual Property will vest in that Party absolutely.

1. PROJECT INTELLECTUAL PROPERTY

### Unless the Parties have otherwise agreed in writing, the Parties agree that ownership of, and all right title and interest in all Project Intellectual Property (except for copyright in a Student thesis) however arising will vest in in the manner specified in Schedule 1 and the Parties further agree to comply with any terms of such ownership also specified in Schedule 1.

### Depending on whether or not the requirement for such an arrangement is applicable, the Parties agree that the Party responsible for any Student or any third party visitor for that matter, must ensure that the Student and /or visitor enters into a written agreement prior to the Student or third party visitor commencing any Project activities which contains terms that are both consistent with the terms of ownership for Project Intellectual Property specified in the Schedule and with the use of those Project Materials (that incorporate the Project Intellectual Property) by each respective Party for their Internal Purposes.

1. WARRANTIES

### Each Party warrants that it either owns, or is properly licensed to use, its Background IP and that it has the right to grant the licences in clause 4(a).

### The Parties warrant that they will each carry out their respective obligations in this Agreement using all due care and skill expected of a party conducting research for a project not unlike the Project being conducted by the Parties.

### Each Party warrants to the other Party that the person signing this Agreement on behalf of a Party has full power and the authority to enter into this Agreement and to bind that Party to the obligations set out in this Agreement. Each Party also warrants to the other Party that they each have full power and capacity, including all resources required of that Party to support the collaboration and to participate in the conduct of the Project.

### Each Party warrants that it is not aware of any matter, fact or circumstance that is likely to adversely affect its ability to meet its obligations in relation to the conduct of the Project, but if, during the term of this Agreement an event or thing occurs that may hinder or affect the Project in any way, or a conflict of interest arises, or a Party becomes aware of the potential for either occurring, it will notify the other Party immediately in writing.

1. CONFIDENTIAL INFORMATION AND PRIVACY

### Subject to the remaining provisions of this clause 7, each Party will treat the Project Materials and all information of the other Party as confidential and will not, without the consent of the other Party disclose or permit the other Party’s information to be disclosed to anyone other than its Personnel on a need to know basis or allow the Confidential Information to be used, except for the sole purpose of a Party being able to conduct the Project and to comply with their respective obligations.

### The Parties must keep Confidential Information secure and comply at all times (and ensure their Personnel also comply), with Health and Privacy Legislation relating to collection, storage, use or disclosure of Personal Information. If a Party is required to disclose or provide Confidential Information or any part of the Confidential Information pursuant to an applicable law or regulation that Party agrees to immediately notify the other Party of the intended disclosure and provide that Party with a reasonable opportunity to either contest to the disclosure, to limit the scope of disclosure or to otherwise subject the disclosure to obligations of confidence where it is possible. The exception here will be a permitted disclosure of Personal Information if such disclosure is required of a Party under order or request of the applicable Health and Privacy Legislation or any other Confidential Information disclosed by a Party for the purposes of monitoring by the relevant Ethics Committee.

1. PUBLICITY AND PUBLICATIONS

### A Party must not use the other Party’s name or other indicia (including without limitation, logos) of that other Party and must not generate any publicity about this Agreement or the conduct of the Project without seeking the prior written consent of HNELHD. HNELHD will do the same by seeking consent of all.Other Parties with regards to the same.

### During the conduct of the Project, the Parties acknowledge that either Party may wish to publicise or otherwise publish any or all of the Project Materials. However the Parties agree that prior to a Party being permitted to do so, that Party wanting to publish must provide a copy of the proposed form of publication including details as to where and how it will be published, to each other Party at least 20 Business Days prior to the Publication occurring.

### The other Parties may provide comments and/or reasonable amendments to the Publication to protect their Confidential Information and/or their Intellectual Property provided the comments are in writing given to the Party wanting to publish, no later than 10 Business Days before the Publication is proposed. If no such comments or amendments are provided within those 10 Business Days the Party wanting to publish can publish. The Party wanting to Publish will co-operate with any reasonable request made by a Party wanting to make amendments or seeking to delay Publication as a result of a possible need to protect any potential unregistered Intellectual Property Rights.

### All Publications will recognise the contribution by the Parties to the Project.

1. INSURANCE

### Each Party will effect and maintain the Insurance Policies to cover their conduct and that of their Personnel’s conduct during the Project, including any of its own losses and liabilities that it may incur during this time as a result of its participation in the Project

### Each of them, agree to make adjustments to the Insurance Policies as necessary to reflect changes in the nature of the Project activity being conducted and will make changes to the levels of any indemnity limits or implement additional insurances polices if reasonably requested by HNELHD.

### The Other Party(s) acknowledges that HNELHD is a Governmental Agency and as such is covered by an appropriate NSW treasury fund, the terms of which are confidential. A certificate of currency may be provided by HNELHD on request by any Other Party.

1. LIABILITY AND INDEMNITY

### The Parties agree to be responsible for any loss or liability arising out their acts, errors or omissions including the acts, errors or omissions of their Personnel and of any other person or third party engaged by them (whether in compliance or in breach of this Agreement).

### Subject to always using best efforts to comply with their obligations and other than as expressly stated in this Agreement, the Parties agree (to the extent it is permitted at law to exclude) to exclude all implied terms, warranties and representations. Neither Party warrants to the other that the activities and outcomes set out in the Protocol or Project will be successfully achieved or that they will be achieved within the expected time-frames.

### Without undermining the scope of the indemnity in (d) below, the Parties acknowledge that if certain laws apply to this Agreement, the effect of which would be to imply certain warranties, conditions or guarantees to the benefit of a Party deemed to be a consumer of services provided by any other Party conducting the Project or performing the Research Activities in this Agreement , the Parties agree that where those particular laws cannot be excluded, to the extent permitted at law, a Party’s liability to that Party for a breach of those implied warranties, conditions, or guarantees will be limited, at the option of that Party, to resupply its performance of the Research Activities, or to pay for the cost of having that performance resupplied.

### To the extent permitted at law, given the potential application of laws outlined in clause (c), the Parties agree that each Party (Indemnifying Party) agrees to indemnify (and keep indemnified) each other Party (Indemnified Party) against all losses or liabilities (including all legal costs and expenses on a full indemnity basis that are associated with an Indemnified Party seeking to enforce this indemnity against the Indemnifying Party(s), but excluding at all times any indirect or consequential loss or damage that is economic loss, loss of profit, loss of contract or loss of goodwill) incurred by the Indemnified Party, that directly or indirectly arises out of, relates to, or results, from any act, error or omission (whether negligent or not) by an Indemnifying Party (or its Personnel) that is in breach of its obligations in this Agreement, of any duty at law, or that places the Indemnified Party in breach of a third party agreement.

### The liability of the Indemnifying Party will be reduced proportionately to the extent that any act, error or omission (whether negligent or not) was caused by the Indemnified Party or by any other Indemnifying Party.

1. TERMINATION
	1. Termination for convenience

Either Party may terminate this Agreement without cause and at any time on (20) Business Days written notice to the other.

* 1. On the End Date or otherwise on a date of termination of this Agreement

The Parties agree on the End Date or on the date of a termination of this Agreement, each Party will return to each other all Confidential Information in their possession to each other and the obligations imposed on a Party under this Agreement of which are intended to survive the Term or a termination will continue. For avoidance of doubt this includes but is not limited to (if otherwise applicable) clause 10 indemnity, clause 7 Confidential Information where the obligations of confidentiality will continue for any additional period specified in Schedule 1 and clause 12 Dispute Resolution.

1. DISPUTE RESOLUTION

### No party may commence legal proceedings against another in respect of a dispute arising in relation to this Agreement unless the Parties have first complied with this clause. Nothing in this clause however, prevents a Party from seeking interlocutory / injunctive relief (without having to prove any loss or damage) to protect its interests in the event of a breach or a threatened breach of this Agreement where damages may be an inadequate or inappropriate remedy, and/or to seek an order for specific performance.

### A Party alleging a dispute against another Party must provide notice of the dispute to that Party using the process in clause 14 and setting out the nature of and all details of the alleged dispute.

### The Parties must each use their best efforts to try and resolve the dispute with the other Party within 15 Business Days of the giving of that notice referred to in (a) above. The Parties agree to appoint Personnel who have the full power and authority at the time of the dispute to conduct negotiation and to resolve disputes on behalf of that Party. The Parties must ensure that the Personnel they appoint acts with due respect for the intent of the bargain made by the Parties on entry into this Agreement and that they do not act arbitrarily or capriciously or with an intention to cause harm.

### If the dispute is not resolved after 15 Business Days referred to (a) above, the Parties will refer the dispute to mediation administered by Australian Commercial Disputes Centre (ACDC) and the Mediation will be conducted in accordance with the Guidelines for Commercial Mediation which operates at the time the matter is referred to ACDC. The Guidelines will set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are deemed to be incorporated into this agreement. The Parties agree to be responsible for their own costs of mediation. Any documents produced for the mediation are to be kept confidential and cannot be used except for the purpose of settling the dispute

### To the extent it is reasonably possible to do so; the Parties agree to continue performing their obligations under this Agreement irrespective of a dispute.

1. FORCE MAJEURE

### Where a Party is unable, wholly or in part, by reason of an event unable to carry out any obligation under this Agreement (“Force Majeure”), that Party will provide written notice of the Force Majeure to the other Party and include all reasonable particulars of the Force Majeure including the extent and period to which that Party will be unable to perform an obligation. The Parties agree that the obligation will be suspended so far as the Party is affected by Force Majeure and that during the continuance of that Force Majeure the Party will not be in breach of the Agreement with regards to not having performed that obligation. The Party will be given a reasonable extension of time to perform its obligations by the other Party subject to the affected Party using all reasonable efforts to remove that Force Majeure as quickly as possible.

### If, after thirty (20) Business Days, the Force Majeure has not ceased, the parties must use all reasonable efforts to discuss the situation in order to achieve a mutually satisfactory resolution.

1. NOTICES

### A notice or other communication connected with this Agreement, including a request for consent arising under any provision of this Agreement has no legal effect unless it is in writing.

### In addition to any other method of service provided by law, the notice may be sent electronically by email or by pre-paid post to the address of the addressee as set out in Schedule 1 or to any other address or number last notified by a Party as their point of contact.

### If posted to an address within Australia, the date of delivery will be deemed to have occurred on the third Business Day after posting, if posted to an address outside of Australia, the date of delivery will be deemed to have occurred on the seventh Business Day after posting. If sent electronically then the date and time of delivery will be when the notice provided by the Party’s server or mail box has confirmed that the notice has been sent or otherwise delivered. If transmission is completed after 5.00pm on a Business Day or is sent on a day that is not a Business Day, the message is taken to have been received at 8.00am on the next Business Day. The report must be in readable form and capable of being reproduced on paper.

1. GENERAL

### This agreement can only be amended, supplemented, replaced or novated by another agreement signed by the parties.

### A party may not assign its rights under this Agreement unless prior written consent has been provided by HNELHD to the proposed assignment.

### Each Party is expected to incur its own costs negotiating and executing this Agreement.

### As at the Effective Date, the Parties acknowledge that they are each independent research collaborators and that nothing contained in this agreement constitutes them as joint venturers, agents, partners or trustees of each other. A Party (including its Personnel) does not have any authority or power to act for, or to create or assume any responsibility or obligation on behalf of any other Party.

### Each Party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that HNELHD or any Other Party may reasonably require to give full effect to this agreement.

### Any right that a person may have under this agreement is in addition to, and does not replace or limit, any other right that the person may have.

### A right may only be waived in writing, signed by the party giving the waiver, and an exercise of such waiver will not preclude a Party from any further exercise of that right or of any other right.

### This agreement contains the entire agreement. Any previous understanding, agreement, representation or warranty relating to the subject matter of this Agreement is replaced by this Agreement and has no further effect.

### Any provision of this agreement which is unenforceable or partly unenforceable is, where possible, either to be read down, or be severed to the extent necessary to make this agreement enforceable, unless this would materially change the intended effect of this agreement.

### Unless otherwise stated in this Agreement, if this Agreement is inconsistent with any other document or agreement between the Parties (including any term of any document annexed to this Agreement), this Agreement prevails to the extent of the inconsistency.

### This Agreement may be executed in any number of counterparts. All counterparts taken together will be taken to form one Agreement. The Parties may execute this Agreement and all other documents contemplated by this Agreement and exchange counterparts of those documents by electronic mail. The Parties agree that the receipt of such executed counterparts will be binding on the Parties and be construed as originals.

### This agreement is governed by the law in force in New South Wales and the parties submit to the non‑exclusive jurisdiction of the courts of the State of New South Wales, and any court that may hear appeals from these courts.

1. **ELECTRONIC ACCEPTANCE**

### This Agreement may be executed and delivered in counterparts, or via appropriate electronic platforms, each of which shall be deemed to be an original, and all such counterparts shall constitute one instrument.

1. EXECUTED as an Agreement.

|  |  |
| --- | --- |
| **Executed** for and on behalf of Hunter New England Local Health District by its authorised representative but not so as to incur any personal liability in the presence of: ………………………………………………. Signature of Authorised Representative ……………………………………………… Print Name of Authorised Representative …………………………………………… Position of Authorised Representative**Date of Signing: …………………………** | **Acknowledgment:** Hunter New England Local Health District Principal Investigator:………………………………………………. Signature of HNELHD Principal Investigator ……………………………………………… Print Name of HNELHD Principal Investigator **Date of Signing: …………………………**  |
|  |
| **Executed for and on behalf of**  [insert details of other Party] by its authorised officer / representative [insert name of person]\* : ………………………………………………. Signature of Authorised Representative *\* I warrant that I have the power and authority to enter into this Agreement on behalf of the [insert details of other Party]* ………………………………………… Print Name of Authorised Representative ……………………………………………… Position of Authorised Representative**Date of Signing: ……………………………..** |   |

Schedule 1 - Details

|  |  |
| --- | --- |
| ***Legal entity details of the Other Party***  | ***[insert legal name, ABN/ACN and registered address] (“Other Party”)***  |
| ***End Date*** | [insert date] |
| ***Project***  | [insert name of the Project and the description of the Project] |
| ***Ethics Committee***  | [provide details]  |
| ***Project IP***  | ***Cross out what will not apply in A. and B. below*****Ownership** 1. *Ownership of all Project Intellectual Property created during the Term will vest in HNELHD;*
2. *All Parties will jointly own any or all Project Intellectual Property created during the Term and accordingly will hold shares as tenants in common in equal proportions;*
3. *All Parties will jointly own any or all Project Intellectual Property created during the Term and accordingly will hold shares as tenants in common in proportions according to their contributions to and/or creative efforts in the Project Intellectual Property created during the Term. The Parties agree to negotiate in good faith and will not act unfairly or arbitrarily. If they cannot agree they will refer to the Dispute Resolution process under this Agreement.*

**Terms of Ownership***Terms that will apply to both 2 and 3 are as follows – delete if HNELHD owns:**The Parties agree to grant to each other a licence to the other Party to use its share of any Project Intellectual Property created; and agree not to grant a licence of its share of any Project Intellectual Property to any other party or to assign its share of Project Intellectual Property without the written consent of all Parties, which will not be unreasonably withheld.* *The Parties will notify each other of any Project Intellectual Property that might have commercial potential and the parties will negotiate in good faith and will not act unfairly or arbitrarily to determine the terms of any Commercialisation of the Project Intellectual Property so as to share fairly in any associated commercial return. The Parties agree this must be negotiated under a further but separate agreement.* |
| ***Investigators / Principal Investigators / personnel***  | **Party**  | **Name** | **Status** |
| **HNELHD** |  |  |
| **Other Party** |  |  |
| ***Internal Purposes (other than as defined)***  | **Party**  | **During Term**  | **After Term** |
| **HNELHD**  | Internal Purposes plus [insert if any] | Internal Purposes |
| **Other Party** | Internal Purposes | Internal Purposes |
| ***Contributions*** *(see definition) these could be raw materials, equipment procured by third parties or owned by a Party, Background IP to be provided by a Party for use by all Parties or if a party is making small cash contributions please identify the source and the purpose for it being made)* ***Example:*** *[Include any terms that govern the security and management of any Material that is raw data provided by a Party or terms governing the return and / or destruction of Material on the date or otherwise termination of this Agreement]* | **Party**  | **Contribution – (identify the nature of the materials, equipment, or cash being provided)***A party does not have to but may wish to (for abundance of clarity) identity and accurately describe its Background IP)* | **Terms** *(include any terms of use that a party making the contribution wants the other Parties to comply with or acknowledge*  |
| **HNELHD**  | **Eg:.. 1. data,**  | **Eg: All Parties must use securely and store within a X database**  |
| **Eg: 2. HNELHD will make payments to all Other Parties / or certain party**  | **These payments are terms set out in Annexure B**  |
| **Other Party**  |  |  |
| ***Notice Details*** | **Party**  | **Attention to:** | **Address (Phone, email and postal address)** |
| **HNELHD**  | HNE PI/staff details | Hunter New England Local Health District,Lookout Road, New Lambton Heights NSW 2305 Australia ABN: 63 598 010 203 Email: HNE PI/staff detailsPhone: HNE PI/staff details |
| **Other Party** |  |  |

Annexure A - Protocol

[Annex Protocol]

Annexure B- Payment Terms