

NSW Decarbonisation Innovation Hub (Stage 2) Project Agreement

For PFHN Projects

PARTIES

UNSW (or Network Lead)	Name	The University of New South Wales, a body corporate established pursuant to the University of New South Wales Act 1989 (NSW) (UNSW)	
	Address	UNSW Sydney NSW 2052, Australia	
	ABN	57 195 873 179	
Notices & Invoices	Attention – NSW Decarbonisation Hub - Network Lead	Prof Rose Amal Powerfuels Including Hydrogen Network (PFHN)	
	Address		
	Email		
	Phone	+61 2 XXXX XXXX	

and the following other Project Participants

[Hub Partner #1]	Name	[LEGAL NAME]	
	Address	[REGISTERED ADDRESS]	
	ABN:	[INSERT NUMBER]	
Notices & Invoices	Attention	[INSERT NAME OF LEGAL CONTACT] <i>[This person should be the organisation contact not the researcher, project manager or agreement contact]</i>	
	Address	[insert]	
	Email	[insert]	
	Phone	[insert]	
[Hub Partner #2]	Name	[LEGAL NAME]	
	Address	[REGISTERED ADDRESS]	

[#Delete if only 1 other partner will be involved in the Project]	ABN:	[INSERT NUMBER]	
	Notices & Invoices	Attention	[INSERT NAME OF LEGAL CONTACT] <i>[This person should be the organisation contact not the researcher, project manager or agreement contact]</i>
		Address	[insert]
	Email	[insert]	
	Phone	[insert]	
[Collaborator #1]	Name	[LEGAL NAME]	
[#Delete if not required]	Address	[REGISTERED ADDRESS]	
	ABN:	[INSERT NUMBER]	
	Notices & Invoices	Attention	[INSERT NAME OF LEGAL CONTACT] <i>[This person should be the organisation contact not the researcher, project manager or agreement contact]</i>
		Address	[insert]
	Email	[insert]	
Phone	[insert]		

BACKGROUND

- A The Crown in right of New South Wales, acting through the Office of NSW Chief Scientist and Engineer (OCSE) has funded the establishment of the Decarbonisation Innovation Hub (the *Hub*) with a vision to support a mature and collaborative decarbonisation innovation community in NSW, by fostering the research, development, commercialisation and adoption of decarbonised technologies and services to reduce emissions to net zero by 2050 and provide economic benefits to NSW.
- B The Hub acts as an ‘umbrella’ with sector and technology-specific Networks within the Hub, which the Hub will coordinate to share knowledge and maximise efficiencies and minimise duplication.
- C The Hub’s Networks are:
 - (a) the Electrification and Energy Systems Network (**EESN**) and the Power Fuels including Hydrogen Network (**PFHN**), which are led by UNSW; and
 - (b) the Land & Primary Industries Network (**LPIN**), which is led by Western Sydney University.
- D UNSW has entered into a grant agreement with OCSE to establish and operate the Hub. UNSW has entered into agreements with various partners that will have an ongoing involvement in the Hub (the **Hub Partners and the Hub Partner Agreements**). Additionally, other organisations may collaborate with UNSW and Hub Partners on a particular Hub or Network project.
- E The Hub contemplates that the research and commercialisation activities of the Networks would be undertaken through discrete projects.
- F The Project has been approved through the governance processes of the Hub and the relevant Network.
- G This Agreement records the terms on which the project participants have agreed to carry out the Project as part of the Hub and the relevant Network.
- H This Agreement consists of the following Project Details, the attached Project Terms and any Schedules that are attached to this Agreement.

PROJECT DETAILS

Project	Title:	
	Summary of Objectives of Project:	
Network	Powerfuels Including Hydrogen Network (PFHN)	
Project Lead	[specify which party is going to be the Project lead]	
Project Reference	[must be cited in all correspondence]	
Project Duration	Project Start Date	The date this Agreement is executed by all parties to this Agreement OR [INSERT DATE IF APPLICABLE]
	Project Completion Date	[DATE] OR [EVENT]

Project Details and Activities As per the Project Proposal.

Milestones and Deliverables	Milestone or deliverable	Responsible Party	Due Date

Reporting Requirements As per the Project Proposal or as specified in a schedule to this Agreement

Cash Contributions to the Project

Paying Party	Funding Source	Payable to:	When payable	Amount (GST exclusive)
---------------------	-----------------------	--------------------	---------------------	-------------------------------

Allocation of Hub Funds

Network Lead	Hub Funds	[Project Lead]
---------------------	-----------	----------------

Additional Project Funds

[Hub Partner #1]	Hub Partner #1's Cash Contributions paid direct for the Project that are additional to its contributions under its Hub Partner Agreement.	[Project Lead]
[Hub Partner #2]	Hub Partner #2's Cash Contributions paid direct for the Project that are additional to its contributions under its Hub Partner Agreement.	[Project Lead]
[Collaborator #1]	Collaborator's Cash Contributions to Project	[Project Lead]

In-kind contributions to the Project (if any)	Network Lead	
	[Hub Partner #1]	

	[Hub Partner #2]	
	[Collaborator #1]	
Specified Personnel (if any)	Network Lead	
	[Hub Partner #1]	
	[Hub Partner #2]	
	[Collaborator #1]	

Ethics/Biosafety approval required (clause 2.4) " YES " NO

Insurances (clause 11) Insurances held by Project Lead

- Public liability:
- Professional indemnity insurance (if applicable):
- Worker's compensation insurance:

Project IP Ownership (if different from default position in Project Terms)

DRAFT SUBJECT TO AMENDMENT

EXECUTION

Executed as an agreement

Signed for and on behalf of **UNSW** by its authorised representative:

.....
Signature

.....
Name

.....
Title

Date:

Signed for and on behalf of **[#Hub Partner]** by its authorised representative:

.....
Signature

.....
Name

.....
Title

Date:

Signed for and on behalf of **[#Hub Partner – Project Lead]** by its authorised representative:

.....
Signature

.....
Name

.....
Title

Date:

Signed for and on behalf of **[#Collaborator]** by its authorised representative:

.....
Signature

.....
Name

.....
Title

Date:

DRAFT SUBJECT TO AMENDMENT

PROJECT TERMS

1 Definitions and interpretation

1.1 Definitions

In this Agreement, any capitalised term in the Project Details or the Background have the meaning given to them in those sections. The following other capitalised words have the following meaning.

Activities of a party are the discrete tasks, roles and responsibilities specified in the Project Details to be performed by that party for the Project.

Background IP means Intellectual Property Rights owned or controlled by a party as at the Project Start Date, including any or acquired or developed by a party (whether alone or jointly with any other person) independently of the Project, in each case which that party makes available to the other parties for the performance of the Project.

Business Day means any day that is not a Saturday, Sunday or public holiday in New South Wales, Australia.

Business Plan has the meaning given to it in the Funding Agreement. Relevant sections of the Business Plan can be provided to the Hub Partner if requested.

Cash Contribution is the financial support, including any allocation of Hub Funds, a party has agreed to provide for the Project which is payable to the Project Lead. The Cash Contribution amount, source of funding and details of payment are specified in the Project Details.

Collaborator is the party or parties to this Agreement identified as such in the Project Details.

Commercialise means, in relation to Intellectual Property, to deal with the Intellectual Property in any way for a financial gain or benefit (whether or not such gain or benefit is ultimately obtained) including:

- (a) to use the Intellectual Property to provide a service for which a financial gain or benefit is received;
- (b) to use the Intellectual Property to create, or as part of, a product which is, or is to be, sold, hired, leased, distributed or made available to others for financial gain or benefit; or
- (c) to grant others rights to use the Intellectual Property for a financial gain or benefit.

Commercialisation does not include the use of Intellectual Property in a research project that may be funded by a third party.

Committed in relation to the Cash Contributions, means, at a particular date, funds that the Project Lead:

- (a) is contractually and irrevocably obliged to pay to a third party in respect of the Project; and

- (b) are identified in a written contractual arrangement between the Project Lead and that third party.

Confidential Information means information disclosed by or on behalf of one party (Discloser) to the other party (Recipient) or of which the Recipient becomes aware, during the Term that:

- (a) is designated as confidential by the Discloser; or
- (b) by its nature should reasonably be considered confidential information of the Discloser or of a person to whom the Discloser owes a duty of confidence

which may be provided in writing, electronically, verbally or otherwise, but does not include any information which the Recipient can prove was

- (c) in the public domain; or
- (d) known by the Recipient,

at the time of disclosure, other than through a breach of this Agreement or any other obligations of confidentiality.

Conflict of Interest means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through a party engaging in any activity, participating in any association, holding any membership or obtaining any interest that is likely to conflict with or restrict that party participating in the Project.

Control has the meaning given to that term in section 50AA of the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Dispute means a dispute arising out of or relating to this Agreement including a dispute about the breach, termination, validity, or subject matter of this Agreement, or a claim in equity or in tort relating to the performance or non-performance of this Agreement.

Excluded Loss means any special, indirect or consequential Loss arising under or in connection with this Agreement, including any loss of profits, loss of anticipated savings or loss of reputation.

Force Majeure Event means an event outside the reasonable control of the affected party (except for a lack of funds) and that could not have been prevented by that party taking all reasonable steps, and includes without limitation natural disasters (i.e. floods, tornadoes, earthquakes, hurricanes), acts of people (i.e. acts of terrorism, riots, strikes, wars), epidemics, pandemics, quarantine and government action.

Funding Agreement the funding agreement between UNSW and the OCSE. A copy of which can be provided to parties on request.

Government Agency means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or replaced from time to time.

Hub Partner is the party or parties to this Agreement identified as such in the Project Details.

Hub Partner Agreement is the separate agreement entered into between UNSW and a Hub Partner setting out the terms for the participation in the Hub and its overall governance.

Hub Funds means the Hub funding administered by UNSW consisting of a Hub Partner's cash contributions paid to UNSW under its Hub Partner Agreement and the OCSE grant funding paid under the Funding Agreement.

Improvement means any modification, enhancement, development or improvement to any Background IP made by a party in the course of performing the Project.

In-kind Contribution means an in-kind component specified in the Project Details.

Insolvency Event means, with respect to a party:

- (a) a liquidator is appointed to the party;
- (b) the party applies to be voluntarily deregistered;
- (c) the party resolves to wind itself up; or
- (d) the party receives a notice from the Australian Securities and Investments Commission that it is to be deregistered, unless the deregistration process is stopped within one month after that notice.

Intellectual Property Rights means any inventions, patents, trade marks, service marks, design rights, database rights (whether registered or otherwise) and any applications, renewals and extensions for these, copyright, know-how, trade or business names and all other intellectual or industrial property rights anywhere in the world, whether or not registered or capable of registration and any associated goodwill.

Law means any applicable statute, regulation, by-law, ordinance, rule, proclamation, subordinate legislation, order in council, any other instrument of a legislative character, and court rules, that are in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government) or elsewhere, and includes the common law and rules of equity as applicable from time to time.

Loss means liabilities, expenses, charges, claims, losses, damages and costs (including legal cost on a full indemnity basis) whether incurred by or awarded against a party.

Material means all materials in any form including all data, information, records, documents, databases and

software (including source code and object code), other works and material and the subject matter of any category of Intellectual Property Rights.

OCSE the Crown in right of New South Wales, acting through the Office of NSW Chief Scientist and Engineer.

Personal Information means personal information as defined in the *Privacy Act 1988* (Cth).

Personnel means any employee, officer, principal, agent, contractor, student or volunteer of a party.

Privacy Laws means the *Privacy and Personal Information Protection Act 1998* (NSW), the *Privacy Act 1988* (Cth) and laws, principles, codes and policies relating to the collection, use, disclosure, storage and access to Personal Information in the jurisdiction where a party is located.

Project means the project described in the Agreement Details, including any Project Proposal.

Project Details are the variable details for the Project that are attached to these terms.

Project IP means all Intellectual Property Rights created or developed as part of performing the Project but does not include Intellectual Property Rights in Background IP, Improvements, and copyright in a Student's thesis.

Project Lead is the party specified in the Project Details as being the Project lead.

Project Participants are the parties to this Agreement, being the Network Lead and the Hub Partners and Collaborators specified in the Project Details.

Project Proposal is the proposal for the Project that has been approved by the Hub and which is attached to this Agreement as Schedule 1.

Publication means any manuscript, abstract, article, thesis, paper or other work intended for publication; any visual or oral presentation; or any poster, electronic or web presentation.

Related Body Corporate has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth).

Specified Personnel means those Personnel specified in the Project Details to perform the Project or as replaced in accordance with this Agreement.

Student means a student who is enrolled at UNSW or another Hub Partner and involved in the Project.

Tax Invoice has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Taxable Supply has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Term means the period commencing on the Project Start Date and ending on the Project Completion Date, unless terminated earlier in accordance with clause 12.

1.2 Interpretation

Unless the context requires otherwise:

- (a) Reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes a partnership, a joint venture, an unincorporated association, a corporation and a government or statutory body or authority;
 - (iv) this or any other document includes the document as novated, varied or replaced and despite any change in a party's identity;
 - (v) a party includes the party's executors, administrators, successors and permitted assigns;
 - (vi) dollars means Australian dollars unless otherwise stated.
- (b) "Including" and similar expressions are not words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.
- (e) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (f) A reference to a term in the Agreement Details which is not separately defined has the meaning specified in the Agreement Details.

2 The Project

2.1 Term

The parties must:

- (a) start the Project on the Project Start Date, and
- (b) use reasonable endeavours to complete the Project on or near the Project Completion Date or other date agreed by the parties in writing.

2.2 Conduct of the parties

- (a) The parties agree to carry out the Project:
 - (i) in accordance with the terms of this Agreement including the Project Details and the Project Proposal;
 - (ii) in compliance with all applicable Laws, accepted professional and scientific standards, ethical principles, codes and guidelines; and

- (iii) using the Specified Personnel. If for any reason any Specified Personnel become unavailable before completion of the Project, the relevant party will promptly notify the other parties in writing and provide a suitable replacement.

2.3 General obligations

Each party must:

- (a) give each other party's Specified Personnel access to its premises for the purpose of carrying out the Project, where necessary, provided they comply with:
 - (i) applicable work, health and safety, security, and other policies and procedures relating to the premises accessed as notified; and
 - (ii) any reasonable directions notified in writing by the party providing access.
- (b) perform its Activities for the Project;
- (c) co-operate with each other party and provide all other assistance, Material, equipment, facilities, resources as may be reasonably necessary to perform the Project; and
- (d) maintain complete and accurate records on the conduct and results of the Project during the Term.

2.4 Ethics and other approvals

- (a) If the Project Details specify that ethics and/or biosafety approvals are required for the Project, the relevant party must use reasonable endeavours to promptly obtain that approval.
- (b) The parties are not required to commence the Project before such approvals are obtained.
- (c) If a party is unable to obtain any required approval, it will notify each other party and this Agreement may be immediately terminated on written notice by a party.

2.5 Conflicts of Interest

- (a) Each party warrants that it has disclosed in writing to each other party all actual, potential or perceived Conflicts of Interest of which it is aware, relating to it, or any of its Specified Personnel, at the Project Start Date.
- (b) Each party agrees to:
 - (i) notify UNSW and each other party immediately in writing on becoming aware of any actual, potential or perceived Conflict of Interest during the Term; and
 - (ii) comply with any reasonable directions of UNSW (in capacity of administrator of the Hub) to manage or avoid that Conflict of Interest.

- (c) Each party acknowledges that clauses 2.5(a) and (b) are material terms of this Agreement for the purpose of clause 12.

2.6 Subcontracting

A party may only subcontract its obligations under this Agreement to a third party with the prior written consent of each other party. If each other party consents to a party subcontracting in accordance with this clause, the party who subcontracts:

- (a) remains responsible for its obligations and the acts of its subcontractor under this Agreement; and
- (b) must ensure that it enters into an agreement with such subcontractor on terms consistent with this Agreement.

2.7 Project Lead

The Project Lead is to be responsible for managing the Project and the conduct of the Activities to meet the milestones and deliverables as detailed in the Project Proposal. Each other party agrees to work collaboratively with the Project Lead.

2.8 Reporting

Each Project Participant agrees to provide to the Network Lead the reports and information:

- (a) specified in the Project Details; and
- (b) as reasonably requested by UNSW on an ad hoc basis to the extent necessary for UNSW to fulfill its reporting obligations under the Funding Agreement.

3 Contributions and OCSE Funding

3.1 In-kind Contributions

Each party agrees to provide its in-kind contributions (if any) for the Project in the manner set out in the Project Details.

3.2 Cash Contributions

- (a) Subject to clauses 3.2(b) and 3.2(c), the Project Details sets out the Cash Contributions including any allocation of Hub Funds that a party has agreed to make for the Project. The Cash Contribution is payable to the party that is the Project Lead at the time and in the amounts specified in the Project Details. If the Project Details specify that the funding source for a Cash Contribution is Hub Funds, then the Project Lead must ensure that those funds are only expended as allowed under the Funding Agreement.
- (b) A party may suspend the payment of its Cash Contribution if it reasonably believes that the party receiving the Cash Contribution has failed to perform its obligations under this Agreement and that progress of the Project is unsatisfactory. Prior to exercising its right to suspend under this clause, the party providing the Cash Contribution must discuss its

concerns with the party receiving the Cash Contribution.

- (c) The Network Lead's obligation to pay any Hub Funds to a party under this Agreement is subject to the Network Lead receiving sufficient OCSE funding and, to the extent the Network Lead is paying a Hub Partner from the cash contributions payable by the Hub Partner under its Hub Partner Agreement, the Hub Partner has made sufficient payments to UNSW.

3.3 Invoices

- (a) The Project Lead will provide a Tax Invoice for taxable supplies due under this Agreement.
- (b) Any party liable to pay a Cash Contribution must pay the Project Lead the amount specified in a validly issued Tax Invoice within 30 days after the Tax Invoice is issued.
- (c) Contact details for invoices for the parties are set out in the Project Details.

3.4 Taxes

- (a) Unless specified otherwise, all monetary amounts expressed in this Agreement are exclusive of GST and any other applicable taxes, duties, imposts and other similar charges payable in respect of services provided.
- (b) If any supply under this Agreement is a Taxable Supply, the party making the supply may, in addition to any payment for the supply, recover the amount of the GST applicable to the supply.
- (c) Any amount of GST payable for a supply will be payable at the same time as the payment for the supply to which it relates.

4 Compliance with Funding Agreement Obligations

- 4.1 Each party (other than UNSW) acknowledges that:

- (a) the Hub is only able to be established because of the OCSE funding granted by the OCSE;
- (b) UNSW (in its capacity as the lead organisation for the Hub) has entered into the Funding Agreement; and
- (c) even though it is not a party to the Funding Agreement, it has read and understands the terms of the Funding Agreement that relate to the Hub Partner's Activities in the Hub.

- 4.2 In performing its Activities, each party (other than UNSW) must:

- (a) act in a manner that is consistent with, and enables UNSW to give effect to, all of UNSW's obligations under the Funding Agreement; and
- (i) not to in any way impede or prevent the UNSW from complying with any of its

obligations under the Funding Agreement.

5 Intellectual Property

5.1 Background IP

- (a) A party may (in its absolute discretion) make its Background IP available for the conduct of the Project. If a party makes its Background IP available, it grants to the other parties a non-exclusive, revocable, non-transferable, royalty-free licence for the duration of the Project to use their Background IP solely for the purpose of conducting the Project.
- (b) Each party acknowledges that:
 - (i) the Background IP of a party remains the property of that party (or a third party licensor, as the case may be) and nothing in this Agreement assigns any right, title or interest in or to any Background IP of a party; and
 - (ii) nothing in this Agreement prevents a party from Commercialising its Background IP or using its Background IP to conduct research (including collaborative, contract or other external research) outside the scope of this Agreement.
- (c) All rights and interests in, and title to, Improvements (including all Intellectual Property Rights subsisting in those Improvements) vest in the party granting a licence of the relevant Background IP, with effect from the date of the creation of the Improvement. Those Improvements form part of the Background IP licensed under clause 5.1(a).

5.2 Project Intellectual Property

- (a) Nothing in this Agreement affects the ownership of the copyright in a Student's thesis, which will be owned by that Student.
- (b) Unless an alternative ownership arrangement is specified in the Project Details, all Project IP will be owned as follows:
 - (i) Project IP that is created or developed solely by a party will be owned by that party; and
 - (ii) Project IP created or developed jointly by two or more parties, will be owned jointly by those parties as tenants in common in shares proportionate to their inventive contribution.
- (c) Each party agrees to do all acts and things (including execute any documents) reasonably required by the owner of Project IP for the purpose of vesting ownership of Project IP in accordance with clause 5.2(b) or the Project Details.

- (d) The parties must use reasonable endeavours to ensure that their Personnel promptly notify each other on creation of Project IP.

5.3 Licence of Project IP

- (a) An owner of Project IP grants to each other party an irrevocable, sub-licensable, non-transferable, non-exclusive, free of cost licence to use the Project IP for:
 - (i) the purposes of conducting the Project, for the duration of the Project; and
 - (ii) non-Commercial research and education purposes following completion of the Project.

5.4 Commercialisation of Jointly Owned Project IP

A joint owner of Project IP may only use the jointly owned Project IP for a Commercial purpose by agreement in writing with the other joint IP owners.

5.5 Licences to comply with the Funding Agreement

Notwithstanding anything to the contrary in the Project Details, for any Project IP not owned by UNSW, the owner of that Project IP grants UNSW a right to grant a sub-licence to OCSE for the OCSE to use and sub-licence the Project IP in accordance with the rights granted to the OCSE under the Funding Agreement.

6 Confidentiality

6.1 Confidentiality obligations

- (a) Each party may use Confidential Information of each other party solely for the purposes of this Agreement.
- (b) A Receiving Party must and must ensure their Personnel:
 - (i) keep secure and maintain the confidentiality of any Confidential Information of a Discloser;
 - (ii) refrain from using or directly or indirectly disclosing any Confidential Information of a Discloser, or attempting to do so, except for the purposes of this Agreement;
 - (iii) take all action necessary to maintain the confidential nature of the Confidential Information;
 - (iv) take reasonable steps to keep the Confidential Information:
 - (A) within its possession and control, and
 - (B) secure and properly stored to protect it from unauthorised access, disclosure or use, or loss, damage or destruction;
 - (v) notify the Discloser as soon as the Receiving Party becomes aware of a breach of this Agreement or any actual, suspected or likely unauthorised access

to, or use or disclosure of the Confidential Information; and

- (vi) not disclose Confidential Information to any third party without the Discloser's prior written consent, except where otherwise permitted under this Agreement.
- (c) The parties must comply with the confidentiality obligations under this clause 6 until the later of:
 - (i) six (6) months after the expiry of the Term; or
 - (ii) the date five (5) years from the Project Start Date.

6.2 Permitted disclosures

- (a) During the Term, the Receiving Party may disclose the Confidential Information to its Personnel and Related Bodies Corporate who have a specific need to access the Confidential Information for the Project and provided they are made aware of the confidential nature of the Confidential Information and the terms of this Agreement before they are provided with or given access to Confidential Information.
- (b) If a Receiving Party wants to disclose Confidential Information to a person other than their Personnel, the Discloser may require the Receiving Party to enter into a confidentiality agreement with the third party on substantially similar terms to those confidentiality requirements specified in this Agreement.

6.3 Disclosure required by Law

The Receiving Party may disclose Confidential Information if required by any Law or order of any Government Agency provided that it:

- (a) only discloses the minimum amount of information necessary to comply with the requirement;
- (b) takes all reasonably available legal measures to avoid such disclosure;
- (c) notifies the Discloser as soon as practicable after such disclosure is ordered so that the Discloser may seek an appropriate protective order or other remedy, and
- (d) consults with the Discloser as to the form of disclosure to be made and takes account of any reasonable comments of the Discloser.

6.4 Consequences of expiry or termination

- (a) A Receiving Party must cease all use of and return to the Discloser, or on the Discloser's instruction, destroy all Confidential Information on expiration or termination of this Agreement.
- (b) Despite clause 6.4(a), the Receiving Party may retain a copy of the Confidential Information (acting reasonably and only for as long as it is reasonably required):
 - (i) to fulfil legal, regulatory or reporting obligations;

- (ii) that is stored electronically due to an existing routine data backup, provided the Confidential Information is deleted from local hard drives and no attempt is made to recover it other than as required by Law, and

provided the Receiving Party maintains the confidentiality of the Confidential Information in accordance with clause 6.1.

7 Privacy

7.1 The parties agree to:

- (a) comply with the relevant Privacy Laws;
- (b) not do anything with any Personal Information it receives or holds that will cause another party to be in breach of any Privacy Laws; and
- (c) assist and co-operate with the other parties in resolving any complaints made under any Privacy Laws.

8 Publications and publicity

8.1 Publications

- (a) Each party is entitled to publish the results of the Project in a Publication provided that no Confidential Information owned by a non-publishing party is disclosed, subject to this clause 8.
- (b) A publishing party must give notice and a copy of any proposed Publication in respect of the Project to each other party at least 30 days before the publication date.
- (c) Acting reasonably, each non-publishing party may, within that thirty (30) day period:
 - (i) provide comments on the proposed Publication to the publishing party, which that party must consider but is not obliged to follow;
 - (ii) require the publishing party to delay Publication for no more than ninety (90) days to allow the non-publishing party to file patent applications or take other measure to protect its proprietary rights; or
 - (iii) require the publishing party to remove specified Confidential Information from the Publication.
- (d) If the publishing party has not received any comments from the non-publishing party (or parties) on the proposed Publication within thirty (30) days of giving notice under clause 8.1(b), the publishing party may make the Publication.
- (e) The parties must ensure that all Publications in respect of the Project appropriately acknowledge the contribution of any other party and their Specified Personnel who have provided significant intellectual or scholarly contributions in connection with a Publication

(or any research relating to the Publication) in accordance with usual academic practice.

- (f) Where applicable, each party must comply with any 'Open Access' policy that applies to the Project, including the requirement that any Publications arising from a Project must be deposited into an open access institutional repository within twelve months of the date of Publication.

8.2 Use of name and logo

A party must not use another party's trademark, name, trade name, logo or other designation in any way without:

- (a) their prior written consent, and
(b) complying with any guidelines or other reasonable directions issued by that party for the proposed use.

8.3 Public announcements

Except for the research Publications contemplated by clause 8.1, each party must not make a public statement or announcement in any press release, advertising or other promotional material, including by social media, in connection with this Agreement without the prior written consent of the other parties. The parties may agree on a communications protocol from time to time that sets out the circumstances in which a party may make a public statement (such as a social media post) without the need to obtain prior consent on each occasion.

8.4 Compliance with OCSE Acknowledgement

Any Publication or public statement by a party in connection with the Project must:

- (a) acknowledge the OCSE's and The Environmental Trust support for the Hub and the Project in the form and manner required under the Funding Agreement; and
(b) comply with the requirements to invite and acknowledge representatives from the OCSE and the Environmental Trust to any public events associated with the Project in accordance with the Funding Agreement.

9 Students

9.1 Each party who has a Student involved in carrying out the Project agrees that:

- (a) they will ensure that such a Student will comply with the terms of this Agreement;
(b) they will ensure that Project IP developed by a Student is owned in accordance with clause 5,
(c) the only restrictions they will impose on publishing a Student's thesis will be those reasonably necessary to protect Confidential Information or any Project IP;
(d) any restrictions imposed under clause 9(c) must be no longer than twelve (12) months after completion of the Project;

- (e) the parties must not inhibit the right of a Student to have their thesis examined, but an examiner may be required to sign a confidentiality agreement to protect a party's Confidential Information; and

- (f) before a Student becomes involved in the Project, the parties may require that the Student and the institution in which the Student is enrolled enter into a written agreement, in an approved form, setting out the terms on which the Student will be involved in the Project, which must be consistent with the principles in this clause 9.

9.2 Each party acknowledges and agrees that:

- (a) notwithstanding any provision in this Agreement to the contrary, copyright in the thesis of a Student involved in the Project will belong to that Student; and
(b) a Student of a party will have a right to have a thesis examined and published in accordance with that party's internal statutes, policies, procedures and guidelines including, without limitation, the right for a copy of such thesis to be deposited into the library of the relevant party, subject to, and provided that the Student and relevant party comply with:
(i) the notification and approval process for proposed Publications set out in clause 8; and
(ii) the Confidential Information disclosure obligations set out in clause 6.

10 Indemnity and limitations on liability

10.1 Warranties

- (a) Each party represents and warrants to the other party that to its actual knowledge at the Project Start Date it has:
(i) full power and authority to enter into and perform its obligations under this Agreement; and
(ii) taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into this Agreement and perform the Project.
(b) The parties agree that:
(i) the Project is speculative and that the outcomes of the Project and its ability to produce commercially useful results are not guaranteed; and
(ii) the results are the result of experimental research and as such, each party must use its own judgement as to the applicability and fitness for purpose of the results for that party's intended use of the results.
(c) A party disclosing Background IP in connection with this Agreement makes no warranty or representation that the Background IP:

- (i) is suitable for any particular use or application;
 - (ii) has certain qualities of accuracy, precision or life expectancy; or
 - (iii) does not infringe any third party's Intellectual Property Rights.
- (d) Each party excludes all terms, conditions and warranties implied by custom, the general law or statute into this Agreement except for any implied warranty, the exclusion of which would contravene any statute or which would cause this clause to be void or unenforceable (**Non-Excludable Condition**).
- (e) A party's liability to the other party for breach of any Non-Excludable Condition is limited, at the first party's option, to:
- (i) services:
 - (A) providing those services again; or
 - (B) paying the cost of having those services provided again;
 - (ii) for goods:
 - (A) replacing the goods; or
 - (B) paying the cost of replacing the goods.

10.2 Excluded Loss

No party is liable to any other party under or in connection with this Agreement for any Excluded Loss.

10.3 Indemnity

- (a) Each party (**Indemnifying Party**) indemnifies the other parties (each an **Indemnified Party**) and their Personnel against all Loss, where such Loss was caused by a negligent act or omission of the Indemnifying Party, or its Personnel in connection with this Agreement.
- (b) The Indemnifying Party's liability to indemnify the Indemnified Party and their Personnel under this Agreement will be reduced proportionally to the extent that any negligent act or omission of the Indemnified Party or its Personnel caused or contributed to the Loss.

11 Insurance

- 11.1 Each party must have or take out, maintain and keep current, at its own cost, the insurances specified in the Funding Agreement. The Project Details may specify that a Project Participant is only required to hold lower insurance levels if those levels are commensurate with the risks associated with

that Project Participant's contributions and Activities for the Project.

- 11.2 A party may act as its own insurer but only to the extent that it will be able to adequately meet its obligations under this Agreement.

12 Termination

12.1 Termination for cause

If:

- (a) a party breaches any material term of this Agreement not capable of remedy;
- (b) a party breaches any material term of this Agreement capable of remedy and fails to remedy the breach within 30 days after receiving written notice requiring it to do so;
- (c) a party reasonably believes that another party has provided misleading information that has a material adverse impact on the Project, including in the Project Proposal or in any report provided under this Agreement;
- (d) a party has not been able to provide a suitable replacement Specified Personnel under clause 2.2 within 30 Business Days of it notifying that the current Specified Personnel has become unavailable; or
- (e) an Insolvency Event occurs in relation to a party (whether or not notified),

then:

- (f) the other party or parties may terminate this Agreement immediately by written notice; or
- (g) the other party or parties may terminate the defaulting or insolvent party's involvement in the Project and continue to perform the Project.

12.2 Termination if Hub Disestablished

This Agreement may be terminated by a party by notice in writing to each other party if the Funding Agreement is terminated for any reason.

12.3 Consequences of termination

On expiration or termination of this Agreement for any reason:

- (a) a party will not be required to make any further Cash Contributions and the Project Lead must cease to spend any Cash Contributions except for any amounts Committed prior to expiration or the notice of termination;
- (b) the Project Lead must within 30 days of expiration or termination return to each party making a Cash Contribution any portion of those Cash Contributions that is unspent and not Committed as at expiration or the date of the termination notice;
- (c) if this Agreement is terminated because the Project Lead has not spent Cash Contributions in accordance with this Agreement, the Project Lead must repay those Cash Contributions to

the party that made them within 30 days of notice of termination;

- (d) the Project Lead must provide a final report containing the information reasonably required by UNSW to fulfill its reporting obligations under the Funding Agreement;
- (e) all rights of a Party that have accrued prior to termination or expiration will continue; and
- (f) if requested by a party (**Requesting Party**), the other parties must return to the Requesting Party all property in their possession or control belonging to another party, including Background IP and Confidential Information.

13 Notices

- 13.1 A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.
- 13.2 In addition to any other method of service provided by Law, a Notice may be sent to a party's contact for Notices at the address or email address set out in the Project Details or as subsequently notified, by:
 - (a) prepaid priority post;
 - (b) email; or
 - (c) delivery.
- 13.3 If the Notice is sent or delivered in a manner provided by clause 13.2, it must be treated as given to and received by the party to which it is addressed:
 - (a) if sent by post to an address:
 - (i) in the same country as the place of sending, on the 3rd Business Day; or
 - (ii) in a different country to the place of sending, on the 10th Business Day,
 - (iii) (at the address to which it is posted) after posting;
 - (b) if sent by email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt, or
 - (c) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

14 Dispute Resolution

- 14.1 This clause 14 applies to any dispute which arises between the parties in connection with this Agreement (**Dispute**). Each party must follow the dispute resolution process in this clause before it commences litigation or takes

similar action, except to seek an urgent injunction or declaration.

- 14.2 Each party must use its best endeavours to co-operatively resolve any Dispute.
- 14.3 If a party considers that a Dispute has arisen (**Initiating Party**), it must give notice in writing of the Dispute to the other party (**Receiving Party**), setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- 14.4 Within twenty (20) Business Days of the service of the Dispute Notice by the Initiating Party on the Receiving Party, in the case of a party that is a University, the Deputy Vice-Chancellor Research (or equivalent) or their delegate and in the case of the other parties, their Chief Executive Officer(s), or their delegates who have appropriate authority to resolve the Dispute (collectively, the **Senior Representatives**), will meet (in person or by telephone or video conference) and attempt to resolve the Dispute in good faith.
- 14.5 If the Dispute is not resolved within twenty (20) Business Days after the Dispute is referred to Senior Representatives, the parties will endeavour to settle the Dispute by mediation administered by the Australian Disputes Centre (**ADC**) before having recourse to litigation.
- 14.6 Where a Dispute is referred to mediation under clause 14.5 above:
 - (a) the mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC (**Guidelines**).
 - (b) the terms of the Guidelines are hereby deemed incorporated into this Agreement.
- 14.7 Prior to the resolution of a Dispute, each party must continue to perform its obligations under this Agreement:
 - (a) unless the nature of the Dispute renders it impossible to do so; or
 - (b) unless and until such obligations are terminated or expire in accordance with this Agreement.
- 14.8 This clause 14 shall survive termination of this Agreement.

15 Delays and Force Majeure Events

- 15.1 Subject to the rest of this clause if a delay is caused by a Force Majeure Event, the Project Lead will use its best efforts to co-ordinate the inputs of the other parties so the Project is conducted in accordance with the timeframes specified in the Project Details. If a party becomes aware of an actual or potential delay in the performance of its obligation, it must promptly notify the other parties and: the affected party must take all necessary steps

within its reasonable control to avoid or mitigate the actual or potential delay.

15.2 Delay in or failure of performance by a party (other than the payment of money) does not constitute a breach of the Agreement evidenced by this document by that party if and to the extent that the delay or failure is caused by a Force Majeure Event, provided the party claiming to be affected:

- (i) gives notice to the other party within ten (10) Business Days of the occurrence of the Force Majeure Event providing details of the Force Majeure Event and its anticipated likely duration and effect, and
- (ii) uses its best endeavours to resume fulfilling its obligations and gives the other party written notice within five (5) Business Days of the cessation of the Force Majeure Event.

15.3 If a delay caused by Force Majeure Event continues for more than sixty (60) days, either party may terminate this Agreement by giving thirty (30) days' written notice to the other party.

16 General

16.1 Assignment

A party must not assign, novate, or otherwise deal with this Agreement without the prior written consent of the other party.

16.2 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary to give full effect to this Agreement.

16.3 No relationship

Nothing in this Agreement may be construed as creating a relationship of partnership, joint venture, employment, principal and agent or trustee and beneficiary between the parties.

16.4 Entire Agreement

This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.

16.5 Waiver

The failure by a party to require performance of an obligation under this Agreement by the other party will not operate as a waiver of the obligation and the other party remains liable to perform all its obligations under this Agreement.

16.6 Variation

Any variation to this Agreement is not effective unless it is made in writing and signed by the parties to it.

16.7 Severability

Any term of this Agreement which is wholly or partially unenforceable, illegal or void is severed to the extent

that it is void or unenforceable, and the rest of this Agreement is not affected and remains in force.

16.8 Survival

Clauses 5, 6, 7, 9, 10, 13, 14 and any other clause that expressly or by implication continues after termination or expiration of this Agreement, will survive termination or expiry of this Agreement.

16.9 Counterparts

This Agreement may be executed in any number of counterparts each of which may be executed electronically or in handwriting and will be deemed an original whether kept in electronic or paper form. All counterparts together constitute one agreement.

16.10 Governing law and jurisdiction

The Laws of New South Wales, Australia govern this Agreement and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

Schedule 1 - Special Conditions related to UNSW Compliance Requirements

In this Schedule:

PID Act means the *Public Interest Disclosures Act 2022* (NSW).

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

1 Public Interest Disclosures

1.1 In this clause SC1 (Public Interest Disclosures), words and expressions:

- (a) which are not defined in this Agreement, but which have a defined meaning in the PID Act, have the same meaning as in the PID Act; and
- (b) which are defined in this Agreement but, by such a definition, are given a different meaning in other clauses of this Agreement to the meaning given in the PID Act, take the same meaning as in the PID Act in this clause.

1.2 Each Hub Partner and Collaborator must ensure that all individuals involved in providing services under this Agreement are made aware of the following:

- (a) that those individuals are public officials for the purposes of the PID Act;
- (b) UNSW's Public Interest Disclosure Policy, available at <https://www.unsw.edu.au/governance/policy/browse-a-z>;
- (c) that the above policy describes how to make a voluntary public interest disclosure (as described in such policy); and
- (d) the fact that a person who is dissatisfied with the way in which a voluntary public interest disclosure has been dealt with may be entitled to take further action under the PID Act or another Act or law.

1.3 Each Hub Partner and Collaborator must notify UNSW of a voluntary public interest disclosure of which that party becomes aware where either:

- (a) the disclosure relates to UNSW; or
- (b) the maker of the disclosure is known to be a public official associated with UNSW.

1.4 A Hub Partner and Collaborator must notify UNSW of serious wrongdoing committed, or alleged to be committed, by an individual providing services under this Agreement.

1.5 Each Hub Partner and Collaborator must use its best endeavours to assist in an investigation of serious wrongdoing if requested to do so by a person dealing with a voluntary public disclosure on behalf of UNSW or any other UNSW (as defined in the PID Act).

1.6 Each Hub Partner and Collaborator acknowledges that:

- (a) UNSW has an obligation to take corrective action under section 66 of the PID Act; and
- (b) UNSW has a right to terminate the Agreement in response to a finding of serious wrongdoing or other misconduct involving the Hub Partner or the Collaborator (as the case may be) or an individual providing services under this Agreement.

1.7 The parties acknowledge that the regulations made under the PID Act may make further provision about terms that must, or must not, be included in an UNSW service contract or a class of UNSW service contracts.

2 GIPA Right of Access to Information

2.1 This clause SC2 applies only where the carrying out of the Activities by a Hub Partner or an Collaborator constitutes the provision of services to the public on behalf of UNSW in accordance with the GIPA Act (**GIPA Services**).

2.2 If this clause applies:

- (a) the Hub Partner or Collaborator must, within 7 days of receiving a written request by UNSW, provide UNSW with immediate access to the following information contained in records held by the Hub Partner or the Collaborator :
 - (i) information that relates directly to the performance of the GIPA Services provided to UNSW by the Hub Partner or the Collaborator pursuant to the Agreement;
 - (ii) information collected by the Hub Partner or the Collaborator from members of the public to whom it provides, or offers to provide, the services pursuant to the Agreement; and
 - (iii) information received by the Hub Partner or the Collaborator from UNSW to enable Hub Partner or the Collaborator to provide the GIPA Services pursuant to the Agreement.

2.3 For the purposes of clause SC2.2, information does not include:

- (a) information that discloses or would tend to disclose the Hub Partner or the Collaborator's financing arrangements, financial modelling, cost structure or profit margin;
- (b) information that the Hub Partner or the Collaborator is prohibited from disclosing to UNSW by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
- (c) information that, if disclosed to UNSW, could reasonably be expected to place the Hub Partner or the Collaborator at a substantial commercial disadvantage in relation to UNSW, whether at present or in the future.

2.4 Each Hub Partner and Collaborator will provide copies of any of the information in clause 2.2 as requested by UNSW, at the their own expense.

2.5 Any failure by the Hub Partner or Collaborator is to comply with any request pursuant to clause 2.2 or 2.4 will be considered a breach of an essential term and will allow UNSW to terminate the Agreement by providing notice in writing of its intention to do so with the termination to take effect 7 days after receipt of the notice. Once the Hub Partner or the Industry Collaborator receives the notice, if it fails to remedy the breach within the 7 day period to the satisfaction of UNSW, then the termination will take effect 7 days after receipt of the notice.

Schedule 2 - Project Proposal

DRAFT SUBJECT TO AMENDMENT