# **RESEARCH PARTNERSHIPS PROGRAM**

Note: This document contains WSU’s preferred terms to govern a project. However, if a project is awarded a Research Partnerships grant, WSU will negotiate the applicable terms with the Partner and consider any requested amendments at this time.

# **PROJECT AGREEMENT**

**DETAILS**

|  |  |
| --- | --- |
| WSU | Western Sydney UniversityABN 53 014 069 881of Great Western Highway, Werrington, NSW 2747 |
| Partner | [Insert name of Partner]ABN [insert ABN if applicable]of [insert address] |
| Project | [Insert title of the research project] as described in the Project Proposal |
| Start Date | [Insert date, or] The date on which the last party to sign this agreement does so. |
| End Date | [Insert date] |
| Project Proposal | Attached as Annexure 1 |
| Key Personnel | [insert names of Key Personnel of WSU and the Partners] |
| Ownership of Project IP | [insert] |
| Project IP Licence Terms | Purpose: [insert, e.g. further non-commercial research, education and publication]Conditions: [insert, e.g. permanent/temporary, revocable/irrevocable, exclusive/non-exclusive, within certain geographical area, commercialisation/non-commercial purposes, etc.] |
| WSU contact for notices | Stephen HannanExecutive Director, Research Engagement, Development and InnovationGround Floor, Building BA, Werrington South Campus, Werrington, NSW 2747Post: Locked Bag 1797, Penrith, NSW 2751Telephone: (02) 9852 5149Email: s.hannan@westernsydney.edu.au |
| Partner contact for notices | [Insert title of contact person][Insert address]Telephone: [insert telephone number]Email: [insert email] |
| Special Conditions | [Insert special conditions or state ‘Nil’ if none] |

**BACKGROUND**

1. WSU and the Partner (each a **Party** and collectively the **Parties**) developed the Project Proposal.
2. WSU, with the agreement of the Partner, successfully applied for funding through the Western Sydney University Research Partnerships Program to support the conduct of the Project.
3. The Parties want to collaborate in accordance with the terms of this Agreement to undertake the Project.

**TERMS**

1. Definitions and Interpretation

Definitions

* 1. A reference in this Agreement to a term in the first column of the table in the Details is a reference to the particulars adjacent to that term in the second column.
	2. In this Agreement:

**Background IP** means a Party’s IP which existed prior to the Start Date or is developed independently of the Project and which that Party makes available to undertake the Project.

**Confidential Information** means all information directly or indirectly related to this Agreement which one Party (Disclosing Party) discloses to another Party (Receiving Party) which:

* + 1. is by its nature confidential;
		2. is designated by the Disclosing Party as confidential; or
		3. the Receiving Party knows or a reasonable person in the Receiving Party’s position would know is confidential,

but does not include information which:

* + 1. is already in the public domain or enters the public domain other than as a result of an unauthorised disclosure;
		2. is known by the Receiving Party (as shown by its written record) prior to the date of disclosure; or
		3. the Receiving Party receives from a third party on a non-confidential basis.

**Invoice Timetable** means the timetable appearing in the Schedule setting out the timing of invoices to be issued for Partner Funds.

**IP** means all intellectual property of any nature including, but not limited to, copyright, patents, trade marks, business names, domain names, designs, circuit layouts, plant breeds, trade secrets, know-how and similar industrial, commercial or intellectual property, whether or not registered or registrable, and includes all ownership rights in respect of such intellectual property and the right to apply for registration of intellectual property in Australia or elsewhere.

**Law** means all applicable statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time in any relevant jurisdiction and, where the context permits, includes the common law and equity.

**Moral Rights** has the same meaning as in the *Copyright Act 1968* (Cth).

**Partner Funds** means the cash contribution the Partner committed to make to the Project as detailed in the Project Proposal and identified in the Schedule.

**Personnel** means, in relation to a Party, any employee, officer, agent, contractor, student or volunteer of that Party.

**Project IP** means the IP which is created or developed by a Party (or jointly by the Parties) in the course of undertaking the Project.

**Research Partnerships Program Funds** means the cash Funds awarded to the Project by WSU’s Research Engagement, Development and Innovation office.

Interpretation

* 1. In this Agreement, unless the context requires otherwise:
		1. Headings and bold type are for convenience only and do not affect the interpretation of this Agreement.
		2. The singular includes the plural and vice-versa.
		3. The word ‘includes’ in any form is not a word of limitation.
		4. Other grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning.
		5. An expression importing a person includes a company, partnership, association, body corporate or government agency.
		6. A reference to the Details or a clause, Party, schedule or annexure is a reference to the Details or a clause, Party, schedule or annexure of, or to, this Agreement.
		7. A reference to any legislation includes subordinate legislation and amendments, consolidations, replacements or re-enactments of any of them.
		8. A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
		9. A reference to a party to a document includes that party’s successors and permitted assignees.
		10. No provision of this Agreement will be construed adversely to a Party because that Party drafted this Agreement or that provision.
		11. A reference to a body, other than a Party to this Agreement, whether statutory or not:
			1. which ceases to exist; or
			2. whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

1. Operation of this Agreement

**Term**

* 1. This Agreement starts on the Start Date and ends on the End Date, unless terminated (under clause 14.1) or extended (in accordance with clause 16.1(g)).

**Special conditions**

* 1. Any Special Conditions in the Details are binding terms of this Agreement and prevail to the extent of inconsistency with another term.
1. Conduct of the Project

**Parties to undertake Project**

* 1. The Parties must undertake the Project:
		1. as described in the Project Proposal and in accordance with the Research Partnership Program Guidelines and this Agreement;
		2. ethically, diligently, competently and with due care and skill; and
		3. in accordance with applicable Laws and any applicable industry codes and standards.

**Ethics and other approvals**

* 1. The Parties must obtain any necessary approvals of an ethics or safety committee or other oversight or regulatory body prior to commencing any part of the Project for which such approval is required and, unless the Parties agree otherwise, responsibility for obtaining ethics committee approval rests with WSU.
1. Partner Funds & Research Partnerships Program Funds
	1. WSU will issue invoices to the Partner for payment of the Partner Funds in accordance with the Invoice Timetable and the Partner will pay an invoice within 14 days of receiving it.
	2. WSU will apply the Research Partnerships Program Funds in accordance with the Project Proposal.
2. Key Personnel

**Use of Key Personnel**

* 1. Each Party must undertake the Project by or under the supervision of its Key Personnel identified in the Details and any other Personnel identified in the Project Proposal.

Key Person not available

* 1. If a Party’s Key Personnel become unavailable, the Party will use reasonable endeavours to appoint a replacement with appropriate qualifications and experience.
1. Record keeping
	1. Each Party must make and keep detailed and accurate written records of its undertaking of the Project.
2. Confidential Information

**Use of Confidential Information**

* 1. Subject to clause 7.3, each Party must treat the Confidential Information of another Party confidentially and use it only for the purpose for which it was given.
	2. Subject to clauses 7.3 and, at the request of the other Party, a Party in possession or control of Confidential Information of the other Party must immediately return it and/or destroy and erase it as the other Party directs.

**Exceptions**

* 1. A Party may retain one copy of Confidential Information of another Party for its own internal compliance, audit and risk purposes, providing it is stored securely and treated confidentially.
	2. A Party may disclose Confidential Information of another Party:
		1. with the consent of the other Party;
		2. to its legal or prefessional advisers, in confidence;
		3. to comply with the terms of this Agreement; or
		4. as required by Law.
	3. This clause 7 survives expiration or termination of this Agreement.
1. Background IP

**Ownership of Background IP**

* 1. Ownership of Background IP is unaffected by its use in the Project.

**Background IP Licence**

* 1. Each Party grants to each other Party a non-exclusive, irrevocable, non-transferrable, free licence to use its Background IP to undertake the Project and, to the extent necessary, to use the Project IP.
	2. Each Party warrants that to the best of its knowledge and belief, its grant of a licence under this clause 8 does not infringe the IP or Moral Rights of any third party.
1. Project IP

**Ownership of Project IP**

* 1. Project IP will vest in and be owned by the Party, or by the Parties jointly, as specified in the Details.

**Project IP Licence**

* 1. Each owner of Project IP grants to each non-owner of Project IP a licence to use the Project IP for the purposes and in accordance with the conditions comprising the Project IP Licence Terms specified in the Details.

**Moral Rights**

* 1. Each Party must use reasonable endeavours to obtain from its relevant Personnel consent in writing to the use of Project IP by another Party to the extent permitted under this Agreement that would otherwise be an infringement of its Personnel’s Moral Rights, except such consent will not be required to extend to false attribution of authorship.
1. Students
	1. Students may be involved in the Project at the reasonable discretion of WSU, providing that WSU ensures the Student abides by the terms of this Agreement.
	2. A student’s thesis is not Project IP; copyright in a student’s thesis belongs to the student.
2. Publication

Personnel may publish

* 1. The Personnel of the Parties may freely make scientific or scholarly publication associated with the Project, however each Party must ensure that any publication of its Personnel will not cause a Party to breach its obligations of confidentiality under this Agreement.
	2. Scientific or scholarly publications prepared by a Party’s Personnel are not Project IP.

Authorship

* 1. Each Party must ensure its Personnel attribute authorship of publications in accordance with generally accepted principles, which in Australia are those specified in the *Australian Code for the Responsible Conduct of Research*.
1. Insurance
	1. Each Party must take out and maintain appropriate insurance cover (or equivalent liability protection) to cover the Party’s conduct of its Project activities, and which may include (but is not limited to):
		1. general/public liability cover;
		2. professional indemnity cover; and
		3. workers’ compensation insurance as required by Law.
2. Indemnity and Liability

Liability

* 1. Each Party is liable for its own acts and omissions and those of its Personnel and is not liable for the acts and omissions of any other Party or any other Party’s Personnel.

Indemnity

* 1. Each Party (**Indemnifier**) will indemnify each other Party and each other Party’s Personnel (**Indemnified**) against any loss, damages, costs and expenses including legal costs incurred by the Indemnified, but only to the extent directly attributable to the Indemnifier or the Indemnifier’s Personnel:
		1. breaching this Agreement or any Law;
		2. infringing IP rights or Moral Rights of a third party; or
		3. acting negligently or wilfully.

Exclusions

* 1. To the extent permitted by Law, the Parties exclude:
		1. liability to each other for indirect and consequential loss, including loss of profit, revenue, goodwill, a bargain, opportunity, benefit, anticipated savings or data; and
		2. all implied conditions, warranties and terms.
1. Termination

Right to terminate

* 1. This Agreement may be terminated:
		1. by written agreement of the Parties; or
		2. immediately by a Party if another Party breaches this Agreement and the breach is not remedied within 14 days of the breach being notified to the Party in breach.

Reservation of rights and remedies

* 1. Termination of this Agreement will not affect the rights or remedies accrued to a Party prior to termination.
1. Dispute Resolution
	1. The Parties must attempt to resolve any dispute or disagreement under this Agreement by committing reasonable efforts to each stage of the following process, in the following order:
		1. direct negotiation between the Parties in dispute; but if unresolved within a reasonable time then,
		2. direct negotiation between a senior officeholder (e.g. Director, Deputy Vice-Chancellor) of each Party in dispute; but if unresolved within a reasonable time then,
		3. mediation with an agreed mediator, or otherwise with a mediator appointed by the Australian Disputes Centre; but if unresolved within a reasonable time then,
		4. proceedings in a competent court.
	2. Clause 15.1 does not stop a Party from seeking urgent injunctive relief from a court.
2. General
	1. Under, for the purposes of, or in connection with, this Agreement:
		1. (**GST**) unless otherwise indicated, monetary amounts do not include GST and GST may be added to an amount due if a Party is required by Law to do so;
		2. (**Notices**) a notice must be in writing, and delivered to another Party’s Contact for Notices;
		3. (**Assignment and Subcontract**) a Party must not transfer, assign or subcontract any of its rights or obligations without the prior written consent of each other Party;
		4. (**Waiver**) rights can only be waived in writing signed by the waiving Party and failure or delay does not constitute a waiver;
		5. (**Relationship**) the Parties are independent contractors and not a partnership, joint venture or principal and agent;
		6. (**Severability**) a void, illegal or unenforceable clause in any jurisdiction is severed but only in that jurisdiction;
		7. (**Variation**) any variation must be in writing and signed by each Party’s authorised representative;
		8. (**Entire agreement**) these terms constitute the entire agreement between the Parties for the Project;
		9. (**Governing law**) these terms are to be read and understood based on the laws of New South Wales;
		10. (**Jurisdiction**) the Parties submit to the non-exclusive jurisdiction of New South Wales courts;
		11. (**Counterparts**) the Parties may sign separate copies and exchange those copies by email (PDF) which, together, constitute one Agreement; and
		12. (**Costs**) each Party is responsible for its own costs of preparing this Agreement.

**EXECUTION**

**Executed** as an agreement

|  |  |
| --- | --- |
| Signed by an authorised person of **Western Sydney University**:……..……………………………………………………Signature of authorised person……..……………………………………………………Name (print)……..……………………………………………………PositionDate: ……..……………………………….. | Signed by an authorised person of [**Insert name of Partner**]:……..……………………………………………………Signature of authorised person……..……………………………………………………Name (print)……..……………………………………………………PositionDate: ……..……………………………….. |

**SCHEDULE**

Partner Funds: $[insert] (see clause 4.1)

Research Partnership Program Funds: $[insert] (see clause 4.2)

Invoice Timetable

Timing of invoices to be issued by a recipient of Funds to the payer of Funds (if any):

|  |  |
| --- | --- |
| **Invoice Date / Milestone** | **Invoice Amount** |
| [insert] | [insert] |
|  |  |
|  |  |

Partner Contact for Invoices

Invoices to be delivered to: [insert Partner email address]

For the attention of: [Insert Partner name, position, email and phone number of appropriate contact for invoices]

**ANNEXURE 1 – Project Proposal**

See Attached.