

COMMERCIAL RESEARCH AGREEMENT

Between

University of South Australia (ABN: 37 191 313 308), a body corporate by virtue of the *University of South Australia Act 1990* (SA) as amended
(**University**)

And *[insert Collaborating Partner(s) details – name, registered company number, address]*

(each a **Collaborating Partner**)

(collectively the **Parties** and each individually a **Party**)

RECITALS

- A The Parties have identified a particular commercial research and development activity as outlined in Item 3 of the Schedule (**Project**) in which they desire to collaborate.
- B The Parties acknowledge that the Project is research-orientated and that the outcome of the Project and its ability to produce commercially useful results are not guaranteed.
- C UniSA Ventures is the wholly owned subsidiary and authorised agent of the University with a mandate to protect and Commercialisation University Intellectual Property.
- D The Parties agree to contribute to and undertake the Project in accordance with the following terms and conditions.

OPERATIVE PART

1. Definitions

In this Agreement the following definitions apply:

- 1.1 **'Background Material'** means Material developed prior to or independently of the Project which a Party has agreed to contribute to the Project, including such Material:
 - 1.1.1 identified in the Schedule; or
 - 1.1.2 contributed by a Party after the commencement of the Project, with the written agreement of the University.
- 1.2 **'Business Day'** means a day that is not a Saturday, Sunday or public holiday in South Australia.
- 1.3 **'Commercialisation'** means use for commercial purposes or results, and includes the use, sale, marketing, distribution, production, licensing, practical application or other commercial application of Project Material including the provision or exploitation of a product, process, or service reliant on that IP or to license a third party to do any of these things.
- 1.4 **'Confidential Information'** means and includes any information that by its nature is confidential, is designated by a Party as confidential, or the recipient knows or ought to know is confidential but does not include information which:
 - 1.4.1 is or becomes public knowledge other than by breach of this Agreement;
 - 1.4.2 was known by the recipient as at the date of this Agreement; or
 - 1.4.3 has been independently developed or acquired by the recipient without reference to the a disclosing Party's Confidential Information,

where the burden of establishing any of the exceptions referred to in 1.4.1 to 1.4.3 shall be upon the recipient.

- 1.5 **'Contribution'** means the financial and in-kind (including, but not limited to, staffing, use of resources, premises and facilities, capital equipment purchases and Background Material) contributions that each Party has agreed to devote to the Project as set out in the Schedule.
- 1.6 **'GST Legislation'** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any associated, amendment, replacement or repealing legislation thereof.
- 1.7 **'Intellectual Property'** or **'IP'** includes all statutory and other proprietary rights including but not limited to copyright and neighbouring rights, all rights in relation to inventions (including registered and not yet registered patent rights), plant varieties, circuit layouts, registered and unregistered trademarks, designs, the right to have Confidential Information (including trade secrets and know-how) kept confidential, and all other rights resulting from intellectual activity in industrial, scientific, literary or artistic fields;
- 1.8 **'Material'** means any Intellectual Property and any information, documents, equipment, software, goods, computer files, designs, transferable knowhow and data, stored by any means, whether or not in material form and includes any IP rights in such material.
- 1.9 **'Project'** means the project described in Item 3 of the Schedule.
- 1.10 **'Project Material'** means all Material arising out of, developed or otherwise brought into existence for the purpose of performing or pursuant to, the Project, including Material copied or derived from that Material.
- 1.11 **'Project Start Date'** means the date set out in Item 1 of the Schedule or an alternative date as agreed by the Parties in writing.
- 1.12 **'Review Period'** has the meaning referred to in Item 7 of the Schedule (and if no period is specified, is 30 days from date of receipt of proposed publication).
- 1.13 **UniSA Ventures** means UniSA Ventures Pty Ltd (ABN 54 154 270 167) of Building GP 1.15, University of South Australia, Mawson Lakes Boulevard, Mawson Lakes, South Australia, Australia 5095.

2. Term

- 2.1 The term of this Agreement shall be the period specified in Item 2 of the Schedule, or for such other period as agreed by the Parties, unless terminated earlier in accordance with clause 12.

3. Conduct of the Project

- 3.1 The Parties agree to undertake and work diligently towards the successful completion of the Project in accordance with the Schedule.
- 3.2 The Project shall commence on the Project Start Date.
- 3.3 Any variation to the Project, including to a Party's Contributions, must be agreed to by the Parties in writing.

4. Project Contributions

- 4.1 The Parties agree to contribute, or make available, their Contribution in the forms and at the times detailed in Item 4 of the Schedule.
- 4.2 Where any Contribution is overdue by more than 14 days, and without limiting any other available remedies, the non-defaulting Party may suspend the Project or withhold progress reports until the Contribution is made.

5. Background Material

- 5.1 Nothing in this Agreement shall transfer or affect the ownership of a Party's Background IP.
- 5.2 Unless otherwise specified in Item 9 of the Schedule, each Party hereby grants a non-exclusive royalty free licence to each other Party to use its Background IP for the purposes of undertaking the Project, but not for Commercialisation.
- 5.3 A separate written agreement with respect to the use of a Party's Background Material for Commercialisation may be negotiated in good faith between the relevant Parties and UniSA Ventures.

6. Ownership and Commercialisation of Project Material

- 6.1 The Project Material and all IP rights associated with Project Material, vest in the University upon creation, unless otherwise agreed between the Parties and UniSA Ventures and set out in Item 5 of the Schedule.
- 6.2 The Party owning the Project Material hereby grants to each other Party a non-exclusive royalty free licence to use Project Material for the purposes of undertaking the Project and internal research and development but not for Commercialisation.
- 6.3 The Collaborating Partner shall have the right to Commercialise the Project Material on the terms of a separate written agreement ("**Commercialisation Licence**") to be entered into within 6 months of completion of the Project, and negotiated in good faith between the Parties and UniSA Ventures, including the terms (if any) set out in Item 6 of the Schedule.

7. Protection of Project Material

- 7.1 Each Party agrees to promptly notify each other Party of:
 - 7.1.1 any development which that Party believes may require that action be undertaken to ensure the protection of any commercially valuable Project Material, under a statutory regime or in any other manner; and
 - 7.1.2 any actual or suspected infringement of the Project Material of which it becomes aware.
- 7.2 The Parties shall in consultation with UniSA Ventures use their best endeavours to agree upon the necessity and manner for protecting Project Material and the action required to address any infringements of Project Material.
- 7.3 Each Party will prepare and execute all documents reasonably required to ensure the appropriate protection of Project Material and action against infringements of Project Material.
- 7.4 All costs associated with any course of action agreed between the Parties shall be borne by the Parties in a manner to be agreed, or in absence of an agreement in the same proportions as their Contributions to the Project.

8. Publications

- 8.1 Any Party may publish the results of work performed in relation to the Project provided that a draft of the proposed publication is first submitted to each other Party for approval prior to publication.
- 8.2 A Party receiving a proposed publication has the Review Period starting from the date upon which it receives the draft, to review the draft and provide written reasons for any embargo of or requested alterations to the proposed publication. If a written notification is not received within the Review Period, consent to publish the proposed publication shall be deemed to have been provided.
- 8.3 A Party may embargo a publication or otherwise withhold their approval only if that Party reasonably believes that the publication discloses Confidential Information owned by it, discloses commercially sensitive information or is materially inaccurate or misleading. Publication of Project Material may only be restricted for a period of up to two years or the full protection of that Project Material, whichever is the earlier.
- 8.4 Where possible, the Parties will negotiate in good faith amendments or redactions to a Publication in order to facilitate its expeditious release.
- 8.5 Where a researcher is also a student of the University nothing in this Agreement shall restrict the right of that student to have their thesis or work examined, provided that the University will enter into confidentiality arrangements with the student's supervisors, assessors or examiners as required to fulfil its obligations under this Agreement.
- 8.6 Each publication shall make reference, if requested by a Party, to the involvement of that Party in the Project.

9. Confidential Information

- 9.1 Each Party acknowledges that the Confidential Information of a Party is valuable and will take all necessary steps to protect Confidential Information from unauthorised disclosure.

- 9.2 A Party that receives Confidential Information (**'Recipient'**) from another Party (**'Discloser'**) agrees that it will only use Confidential Information for the purposes of this Agreement and will:
- 9.2.1 keep the Confidential Information confidential and secret;
 - 9.2.2 not to disclose the Confidential Information to any person except in accordance with this Agreement, unless with the Discloser's prior written consent;
 - 9.2.3 use the Confidential Information only to the extent necessary for the purposes of this Agreement and not for any other purpose;
 - 9.2.4 take proper and effective precautions to prevent persons from accessing any of the Confidential Information;
 - 9.2.5 notify the Discloser immediately it becomes aware of any person using the Confidential Information other than for the purposes of and in accordance with this Agreement; and
 - 9.2.6 only disclose Confidential Information to those of its employees, contractors or agents who have a need to know the Confidential Information for the purposes of this Agreement, and who have been informed of and have agreed to be bound by the obligations of that Party pursuant to this Agreement.
- 9.3 All documents and other materials containing the Discloser's Confidential Information will be returned to the Discloser immediately upon written request.
- 9.4 The obligations imposed upon a Party by this clause shall not apply where:
- 9.4.1 that Party has received the prior written permission of the other Party with respect to the disclosure of that Confidential Information;
 - 9.4.2 the Confidential Information has been disclosed in the process of protection of Project Material pursuant to clause 7; or
 - 9.4.3 the Confidential Information is disclosed as required by law provided that the disclosing Party discloses the minimum Confidential Information required and immediately inform the other Party of such disclosure.
- 9.5 The obligations of confidentiality imposed on a Party by this clause 9 will survive the termination of this Agreement.

10. Reasonable Delay

A Party will not be responsible for any delay in performance or non-performance due to any cause beyond the reasonable control of that Party provided that upon such event, the affected Party will promptly notify the other Party in writing stating the cause of the delay and the effect upon that Party's performance, and take all action within its power to comply with this Agreement as fully and promptly as possible.

11. Warranties and Limitation of Liability

- 11.1 To the greatest extent permitted by law, the Parties agreed to exclude all statutory or other warranties or implied terms binding upon the parties except for those expressly set out in this Agreement.
- 11.2 No Party will be liable to any other Party for consequential or indirect loss or damage including, but not limited to, loss of profits, arising from a breach of this Agreement.
- 11.3 Each Party (the **Indemnifier**) indemnifies each other Party, its officers, employees and agents (in this referred to as the **Indemnified Parties**) from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability reasonably incurred or suffered by any of the Indemnified Parties, arising from any reasonable claim, demand, action or proceeding, by any person against any of the Indemnified Parties where such loss or liability was caused by a willful, unlawful or negligent act or omission by the Indemnifier, its officers, employees or agents in connection with this Agreement.
- 11.4 An Indemnifier's liability to the Indemnified Parties under clause 11.3 will be reduced proportionally to the extent that any unlawful or negligent act or omission by the Indemnified Parties caused or contributed to such loss or liability.
- 11.5 Each Party warrants that it will maintain or cause to maintain at its own cost adequate public liability insurance and professional indemnity insurance as appropriate in connection with its activities under this Agreement and workers' compensation insurance in accordance with applicable legislation. Each Party shall provide certificates of currency for all relevant insurances upon request by the other Party.

12. Termination

- 12.1 This Agreement may be terminated by the mutual agreement of the Parties in writing.
- 12.2 Without limiting the generality of any other clause in this Agreement, a Party (**'terminating Party'**) may terminate this Agreement where:
- 12.2.1 any other Party (**'defaulting Party'**) is in breach of any term of this Agreement and such breach is not remedied within 28 days of the terminating Party notifying the defaulting Party of the breach;
 - 12.2.2 any other Party is unable to pay its debts when such debts fall due or becomes subject to any form of administration; or
 - 12.2.3 any other Party ceases or threatens to cease to carry on its business in the normal manner

13. Disputes

- 13.1 Any unresolved dispute between the Parties must be referred to, and determined by a mediator. If the Parties are unable to resolve a dispute between themselves within a period of 30 days of the dispute arising, the Parties will agree an appropriate mediator to mediate the dispute, or failing agreement on a mediator within 7 days of the end of the 30 day period, the President of the Law Society of South Australia shall appoint a mediator and the costs shall be borne equally unless otherwise determined by the mediator. Nothing in this clause shall prevent any Party from seeking urgent interlocutory relief from a court.

14. Notices

- 14.1 Any notice required to be sent to a Party under this Agreement shall be delivered to the Party at that Party's address as set out in Item 8 of the Schedule. A Party may change its notice details from time to time by notice in writing addressed to the other Parties.
- 14.2 Notices will be taken to be duly given, in the case of:
- 14.2.1 delivery in person - when delivered;
 - 14.2.2 delivery by post - 2 Business Days after the date of posting; and
 - 14.2.3 delivery by email - deemed to be received by the recipient on the date and at the time that the intended sender's information system shows that the notice has been successfully transmitted to the email address of that recipient.
- 14.3 If the result under this clause 14 is that a notice would be taken to be given on a day that is not a Business Day in the place to which the notice is sent, then it will be taken to have been given on the next Business Day in that place.

15. GST

- 15.1 Words or expressions used in this clause 15 which are defined in the GST Legislation have the same meaning in this clause 15.
- 15.2 The Parties acknowledge that all amounts payable (including cash contributions) under or in connection with this Agreement are expressed on a GST-exclusive basis.
- 15.3 If any supply made under this Agreement is a taxable supply, the recipient must pay to the supplier, in respect of that taxable supply, an additional amount equal to the GST payable by the supplier.
- 15.4 The recipient must pay the amount payable under clause 15.3 at the same time as payment must be made for the taxable supply, provided the supplier has given the recipient a tax invoice for that payment stating the amount of GST paid or payable by the supplier.
- 15.5 If, at any time, an adjustment event arises in respect of any supply made by a Party under this Agreement, a corresponding adjustment must be made between the Parties in respect of any amount paid pursuant to clause 115.3. Payments to give effect to the adjustment must be made between the Parties and the supplier must issue a valid adjustment.

16. Miscellaneous

- 16.1 Any provision of this Agreement that is or becomes invalid, unlawful, void or unenforceable shall be capable of severance without affecting the validity of any remaining provisions.
- 16.2 This Agreement may be executed in counterparts, all of which taken together constitute one document. An executed counterpart may be delivered by any electronic means.
- 16.3 A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right and the exercise of a power or a right does not preclude its future exercise or the exercise of any other power or right.
- 16.4 Nothing in this Agreement or in the relationship of the Parties will, without more, constitute any partnership, joint venture, employer / employee or agency relationship between the Parties and no Party has any authority to bind any other Party except with the express written approval of that other Party.
- 16.5 This Agreement shall be binding upon the Parties and their successors and permitted assigns. No Party may sell, assign or otherwise dispose of any of its rights or obligations hereunder without the prior written consent of the other Party, provided that the University may assign its rights and obligations under this Agreement to UniSA Ventures.
- 16.6 This Agreement is governed by laws of South Australia and the Commonwealth of Australia and the Parties submit themselves to the exclusive jurisdiction of the Courts of South Australia for all proceedings arising from this Agreement.

17. Interpretation

- 17.1 In this Agreement, unless the context otherwise requires:
- 17.1.1 a word denoting an individual (such as a '**person**') shall include a corporation, firm, authority, unincorporated association or instrumentality;
- 17.1.2 where a word or phrase is given a defined meaning, any other part of speech or grammatical form of the word or phrase shall have a corresponding meaning;
- 17.1.3 a reference to this Agreement shall be a reference to this Agreement as amended, varied, novated or substituted from time to time;
- 17.1.4 a reference to a Party shall include that Party's successors and permitted assigns;
- 17.1.5 if any time limit pursuant to this Agreement falls on a day which is not a Business Day, that time limit shall be deemed to have expired at the same time on the next Business Day;
- 17.1.6 a reference to a Recital or Schedule shall be to a recital to, or schedule attached to, this Agreement;
- 17.1.7 the Recitals and Schedules shall form part of this Agreement;
- 17.1.8 a reference to a statute, proclamation, regulation or order shall include all amendments and revisions made to it from time to time and any statute, proclamation, regulation or order brought into operation in substitution of it or incorporating any of its provisions or made under it from time to time;
- 17.1.9 a reference to a party's determination, satisfaction, consent, agreement, authorisation or approval shall mean its determination, satisfaction, consent, agreement, authorisation or approval in its absolute discretion;
- 17.1.10 the meaning of general words or provisions shall not be limited by reference to specific matters that follow them (for example, introduced by words such as 'including' or 'in particular' or 'further to'); and
- 17.1.11 if a party to this Agreement is made up of more than one person, or a term is used in this Agreement to refer to more than one party, an obligation of those persons is several (and not joint or joint and several), a right of those persons is held by each of them separately, and any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

EXECUTED as an agreement this

day of

2016.

Signed for and on behalf of)
[insert name of the 1st)
Collaborating Partner])
by its authorised signatory)
and in the presence of:)

Signature

Name of Signatory:

Capacity/Position:

Date:

Signature of Witness

Name of Witness:

Signed for and on behalf of)
[insert name of the 2nd)
Collaborating Partner])
by its authorised signatory)
and in the presence of:)

Signature

Name of Signatory:

Capacity/Position:

Date:

Signature of Witness

Name of Witness:

Signed on behalf of)
University of South Australia)
in accordance with the)
Vice-Chancellor's authorisations)
and in the presence of:)

Signature

Name of Signatory:

Capacity/Position:

Date:

Signature of Witness

Name of Witness:

SCHEDULE

1. **Project Start Date:** *[Insert date]*.

2. **Term of Agreement**

This Agreement commences on the Project Start Date and will expire on *[Insert date]*.

3. **Description of Project**

Title

[insert the Project title]

Description of Project

[insert a description of the Project]

Researchers

[list the researchers involved in the project]

Milestones and time-frames

[insert details of any milestones and timeframes for the Project]

Reports or Scheduled Project Reviews

[insert details of any reports and scheduled reviews for the Project]

4. **Party Contributions**

University of South Australia	CASH	IN-KIND
2016	<i>[Contribution in \$]</i>	<i>[Contribution in \$]</i>
2017	<i>[Contribution in \$]</i>	<i>[Contribution in \$]</i>
2018	<i>[Contribution in \$]</i>	<i>[Contribution in \$]</i>
TOTALS	<i>[Contribution in \$]</i>	<i>[Contribution in \$]</i>

<i>[Collaborating Partner]1</i>	CASH	IN-KIND
2016	<i>[Contribution in \$]</i>	<i>[Contribution in \$]</i>
2017	<i>[Contribution in \$]</i>	<i>[Contribution in \$]</i>
2018	<i>[Contribution in \$]</i>	<i>[Contribution in \$]</i>
TOTALS	<i>[Contribution in \$]</i>	<i>[Contribution in \$]</i>

<i>[Collaborating Partner]</i> ¹	CASH	IN-KIND
2016	<i>[Contribution in \$]</i>	<i>[Contribution in \$]</i>
2017	<i>[Contribution in \$]</i>	<i>[Contribution in \$]</i>
2018	<i>[Contribution in \$]</i>	<i>[Contribution in \$]</i>
TOTALS	<i>[Contribution in \$]</i>	<i>[Contribution in \$]</i>

[Insert or attach details of any specific IP, personnel, materials, information, documents, equipment, facilities or other resources to be made available by each Party for the Project].

5. Ownership of Project Material

[If UniSA does not wholly own, insert agreed ownership arrangements]

6. Commercialisation Licence

The Commercialisation Licence to the Collaborating Partner shall be in the form of the licence template: <http://www.itek.com.au/news-resources/templates/item/licence.html>

The Commercialisation Licence shall include the following:

[Insert agreed commercial arrangements or 'Not applicable']

7. Publications Review Period:

[Insert number of days]

8. Address for Notices:

University of South Australia

Address: University of South Australia, Mawson Lakes Campus, GP2-01B
 Postal Address: GPO Box 2471, Adelaide, SA 5001
 Attention: Dr Ross McLennan, Director: Research and Innovation Services
 Telephone: (08) 830 23471
 Fax: (08) 8302 3921
 Email: Ross.McLennan@unisa.edu.au

Collaborating Partner: *[insert name]*

Address: *[insert address]*
 Postal Address: *[insert postal address]*
 Attention: *[insert name/position]*
 Telephone: *[insert phone number]*
 Fax: *[insert fax number]*
 Email: *[insert email address]*

Collaborating Partner: *[insert name]*

Address: *[insert address]*
 Postal Address: *[insert postal address]*
 Attention: *[insert name/position]*
 Telephone: *[insert phone number]*
 Fax: *[insert fax number]*
 Email: *[insert email address]*