RESEARCH AGREEMENT

THIS AGREEMENT is made on the    day of     200 .

BETWEEN

The University of Melbourne [ABN 84 002 705 224] of Parkville, Victoria 3010, a body politic and corporate pursuant to the provisions of the Melbourne University Act 1958 (“the University”)

and

RESEARCH SPONSOR

RECITALS

A. The University has a research interest and expertise in the field of interest to the Research Sponsor.

B. RESEARCH SPONSOR has requested the University to participate in the Research Project with the RESEARCH SPONSOR in accordance with the terms of this Agreement.

C. The objective of this agreement ("the Agreement") is to set out the framework under which the Parties will work together to conduct the Research Project and to set out the rights and obligations of each Party.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

‘Agreement’ means this agreement together with any schedules or annexures and any amendments made in accordance with this agreement.

‘Background Intellectual Property’ means Intellectual Property owned or controlled by a Party, including but not limited to Intellectual Property developed prior to or independently of this Agreement, which the Party determines, in its sole discretion, to make available for the carrying out of the Research Project.

‘Business Day’ means any day other than a Saturday, Sunday or public holiday at the place where the activity in question occurred or is to occur.

‘Cause Beyond the Reasonable Control’ includes an act of God, strike, lockout, other industrial disturbance or labour difficulty, war, act of public enemy, blockade, riot, insurrection, civil commotion, lightening, storm, flood, fire, earthquake, explosion, embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation, or anything done or not done by or to a person, government or other competent authority, except where any of the foregoing is caused or contributed to by the party relying on such cause.

‘Commencement Date’ means the date specified in Item 2 of Schedule 1.

‘Commercialise’, in relation to the Research Project Intellectual Property, means to manufacture, sell, hire or otherwise exploit a Product, process, or to provide a service incorporating the Research Project Intellectual Property, or to licence any third party to do any of those things and Commercialisation is to be similarly construed.

‘Confidential Information’ means and includes all unpatented inventions, ideas, know-how, concepts, trade secrets, processes, techniques, software, products and any and all other unregistered or unpatented intellectual property, financial and business information and all other commercially valuable information of the Disclosing Party which the Disclosing Party regards as confidential to it or which is evident by its nature to be confidential and all copies, notes and records and all related information generated by the Receiving Party based on or arising out of any such disclosure.

Commercial-in-Confidence
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‘Disclosing Party’ means the Party that is disclosing Confidential Information.

‘Field’ means the defined product area or service delivery market or part thereof as described in Item 4 of Schedule 1 over which the Research Sponsor has rights pursuant to clause 7.1.

‘Improvement’ means any improvement, advancement, modification, adaptation or the like arising from a Party’s use or Commercialisation or both of Background Intellectual Property or Research Project Intellectual Property.

‘Intellectual Property’ means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity and including copyright, discoveries, inventions, patent rights, registered and unregistered trade marks, design rights, circuit layouts and plant varieties and all rights and interests of a like nature including but not limited to methods and techniques, together with any documentation relating to such rights and interests.

‘Moral Rights’ has the meaning given in section 189 of the Copyright Act 1968 (Cth) as amended.

‘Notice’ means any notice, demand, consent or other communication whatsoever given or made under this Agreement and must be in writing.

‘Option Period’ has the meaning given in clause 8.2

‘Parties’ means the parties to this Agreement and their respective successors and permitted assigns, and Party means any one of them.

‘Personnel’ means the employees, agents, contractors, consultants, directors, officers and sub-licensees of a Party involved in the conduct of the Research Project but does not involve students of the University in the case of the University.

‘Product’ means any product or process arising from Commercialisation or developed using Research Project Intellectual Property in any manner whatsoever.

‘Project Manager’ means the project manager of the Research Project identified in Schedule 2.

‘Research Project’ means the research and research related activities to be conducted by the Parties in accordance with this Agreement.


‘Resources’ means the cash payments and in-kind contributions to be provided by the Parties for the conduct of the Research Project but excludes Intellectual Property.

‘Research Project Intellectual Property’ means the Intellectual Property which is created, developed or discovered as a result of conducting the Research Project.

‘Receiving Party’ means the Party that is receiving Confidential Information.

‘Research Sponsor’ means the research sponsor described in Item 1 of Schedule 1.

‘Term’ means the term specified in Item 3 of Schedule 1, subject to clause 17.

‘Territory’ means the territory detailed in Item 5 of Schedule 1.

‘$’ means Australian dollars.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

(a) The singular includes the plural and conversely.

(b) A gender includes all genders.

(c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
A reference to a person, corporation, trust, Sponsorship, unincorporated body or other entity includes any of them.

(e) A reference to a clause or schedule is a reference to a clause of, or a schedule to, this Agreement.

(f) A reference to an agreement or document is to the agreement or document as amended, replaced or otherwise varied, except to the extent prohibited by this Agreement or that other agreement or document.

(g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

(h) A reference to “writing” includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.

(i) A reference to “GST”, “input tax credit”, “supply”, “tax invoice” and “taxable supply” have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*.

2. **TERM**

This Agreement shall commence on the Commencement Date and, unless extended or terminated earlier in the manner set out in this Agreement, will remain in effect for the Term.

3. **OBLIGATIONS OF THE PARTIES**

3.1 The Parties shall provide the Resources that are required from each of them to conduct the Research Project in accordance with the Research Project Specification as set out in Schedule 2.

3.2 The University shall have the primary responsibility for conducting the Research Project in accordance with clause 5, but RESEARCH SPONSOR agrees to provide or ensure the provision of all necessary assistance, which may reasonably be required for the conduct of the Research Project, in a timely and diligent manner, in addition to its obligations under clauses 3 and 4 of this Agreement.

4. **PAYMENT SCHEDULE**

RESEARCH SPONSOR is responsible for making payments to the University for the Research Project as set out in Schedule 2.

5. **CONDUCT OF THE RESEARCH**

5.1 The University shall carry out the Research Project in accordance with the Research Project Specification and with all reasonable professional, scientific and ethical principles and standards.

5.2 The University shall provide reports on the progress of the Research Project to RESEARCH SPONSOR as required by the Research Project Specification set out in Schedule 2.

6. **INTELLECTUAL PROPERTY**

6.1 Each Party

(a) agrees that it will not have any claim, ownership or interest in the other Party’s Background Intellectual Property or Improvements in such Background Intellectual Property.

(b) grants the other Party a non-exclusive, royalty-free licence for the use of any Background Intellectual Property made available by the granting Party for the purpose of carrying out the Research Project.

(c) agrees that if Background Intellectual Property which has been made available pursuant to sub-clause (b) is required for the Commercialisation of Research Project Intellectual Property, then such Background Intellectual Property must be made available on commercial terms to be negotiated in good faith by the Parties.
If the Parties cannot reach agreement on commercial terms, the matter must be dealt with in accordance with clause 19 [Dispute Resolution].

6.2 In consideration of the rights granted in this Agreement it is agreed that the University:

(a) is and shall be at all times the absolute owner of the Research Project Intellectual Property. Subject always to the rights granted to the RESEARCH SPONSOR pursuant to the terms of this Agreement, the University may deal with Research Project Intellectual Property as it determines to be appropriate in the circumstances.

(b) Shall grant a royalty-free, non-transferable, non-exclusive licence to the RESEARCH SPONSOR to use the Research Project Intellectual Property for its non-commercial internal operations only. The RESEARCH SPONSOR agrees that it will not release any Product to any third party as a result of its use of the Research Project Intellectual Property as allowed by this clause.

7. OPTION TO EXCLUSIVE LICENCE

7.1 The University hereby grants to the RESEARCH SPONSOR an option to acquire from the University an exclusive licence to Commercialise the Research Project Intellectual Property within the Field and in the Territory, subject to the terms of clause 7 of this Agreement.

7.2 The option may be exercised by the RESEARCH SPONSOR giving Notice to the University at any time during the Term or within one hundred and eighty (180) days after the expiration or termination of this Agreement (“Option Period”).

7.3 During the Option Period, the RESEARCH SPONSOR may exercise the option on one occasion only by notifying the University that it intends to Commercialise some or all of the Research Project Intellectual Property within the Field and in the Territory. Upon receipt of such notification, and subject to this Agreement, including without limiting the University’s rights under clause 7.5, the University must grant the RESEARCH SPONSOR the exclusive right to Commercialise and the right to sub-licence others to Commercialise the Research Project Intellectual Property or part of the Research Project Intellectual Property, as identified in the notification.

7.4 Upon receipt of notification from the RESEARCH SPONSOR that it intends to exercise its option to Commercialise part or all of the Research Project Intellectual Property, the Parties must negotiate, in good faith, the commercial terms of and execute a licence agreement within ninety (90) days or such other period of time as agreed in writing. If the Parties fail to agree on the commercial terms in such period of time, the Parties must execute a licence agreement on reasonable commercial terms as determined by the person appointed under clause 19.2.

7.5 Irrespective of all other provisions of this clause 7, the University retains the right to use the Research Project Intellectual Property within the Field for its teaching, research and scholastic endeavours.

7.6 The RESEARCH SPONSOR must maintain, and on reasonable request make available to the University, written, complete, true and accurate records of its Commercialisation of the Research Project Intellectual Property.

7.7 The University has the right once per year to carry out, with the assistance of its accountants and auditors, an audit of the records maintained by the RESEARCH SPONSOR pursuant to clause 7.6.

7.8 If notification under clause 7.4 is not received during the Option Period, or if a RESEARCH SPONSOR notifies the University that it does not intend to Commercialise the Research Project Intellectual Property, then the University may Commercialise the Research Project Intellectual Property. If, during the Option Period, the RESEARCH SPONSOR notifies the University that it intends to Commercialise only part of the Research Project Intellectual Property, the University may at its discretion Commercialise the Research Project Intellectual Property that was not the subject of the notification.
8. PROTECTION OF RESEARCH PROJECT INTELLECTUAL PROPERTY

8.1 The Parties must consult each other and agree on the best methods to protect any Research Project Intellectual Property to ensure that Research Project Intellectual Property is protected, to the extent practicable, in a manner which is beneficial to the Parties and to Australia. Any application for monopoly protection of Research Project Intellectual Property must be filed in the name of the University.

8.2 Costs incurred under clause 8.1 in obtaining protection as agreed must be borne by the RESEARCH SPONSOR. The RESEARCH SPONSOR has the right to recoup as a first charge all such costs and expenses and outgoings relating to such protection from any income or other gains whatsoever derived from the Commercialisation of Research Project Intellectual Property by a Party.

8.3 If the Parties cannot agree on the best methods to protect any Research Project Intellectual Property, the University may proceed with protection, and will have priority as under clause 8.2 to recoup all costs, expenses and outgoings relating to such protection.

8.4 If the Parties cannot agree on the best methods to protect any Research Project Intellectual Property and as a result the RESEARCH SPONSOR does not bear any costs referable to the protection of the Research Project Intellectual Property, the RESEARCH SPONSOR shall forego its Commercialisation rights under clauses 7.3 and 7.4 in relation to the relevant Research Project Intellectual Property and the University shall have full rights to the relevant Research Project Intellectual Property as the absolute owner thereof.

9. MORAL RIGHTS

To the extent permitted by law, each Party will endeavour to procure its Personnel’s consent to the other Party using any work or subject matter arising from the Research Project in any manner, whether or not the use would but for this clause infringe any person’s Moral Rights.

10. IMPROVEMENTS

Subject to clause 6.1(a) Improvements are owned by a Party in proportion to its respective contribution to the development of such Improvements.

11. FURTHER RESEARCH OF PROJECT INTELLECTUAL PROPERTY

Where the Research Project Intellectual Property requires further research, the University has a first option to undertake such further research. Any arrangement negotiated between the University and RESEARCH SPONSOR for such further research is outside the scope of this Agreement and must be the subject of a separate agreement.

12. WARRANTIES

12.1 The University warrants that to the best of its knowledge the Background Intellectual Property provided by the University will not infringe the Intellectual Property rights of any third party.

12.2 RESEARCH SPONSOR warrants that:

(a) to the best of its knowledge the Background Intellectual Property provided by it will not infringe the Intellectual Property rights of any third party;

(b) it will not use the name of the University in any manner unless expressly approved by the University in writing;

(c) it will not use, nor allow, explicitly or implicitly, the use by third parties of the University name and logo on any Products, unless the University has expressly agreed in writing;

(d) it will ensure that all reasonable endeavours are deployed in the conduct of the Research Project so that its application is to the benefit of Australia;

(e) except as provided under this Agreement, it will not institute any proceedings against the University or join in any legal proceedings against the University brought by another person with respect to the Research Project, Research Project Intellectual Property or the use of any Products; and
(f) it will do all things reasonably within its capacity to ensure that the University is not exposed to any liabilities that might arise, directly or indirectly from the Commercialisation or use of the Research Project Intellectual Property or any Products.

13. LIMITATION OF LIABILITY

13.1 The University does not warrant that the Research Project or Research Project Intellectual Property or any part thereof is or will be valid or of any commercial value. Subject to the foregoing, all conditions and warranties of any type are excluded to the maximum extent allowed by the law and the University has no liability whatsoever in respect of its participation in the Research Project or the Research Project Intellectual Property.

13.2 Where the University's liability cannot be lawfully excluded, it is limited at the option of the University, to re-performing the Research Project or part thereof, or paying RESEARCH SPONSOR the reasonable cost of having the Research Project or part thereof re-performed by another research provider.

14. INSURANCE

14.1 Each Party shall obtain, pay for and maintain the following insurance for the duration of this agreement:

(a) public liability and professional indemnity insurance cover appropriate and sufficient to cover the activities of that Party anticipated under the terms of this Agreement; and

(b) workers' compensation insurance covering any liability, loss, claim or proceedings whatsoever, whether arising by virtue of any law relating to workers' compensation insurance, employers' liability or accident compensation legislation, or at law, by any person employed by the Party for the purpose of performing obligations of that Party under this Agreement.

14.2 Each Party must provide the other, if requested, with details of the name of the applicable insurers and satisfactory evidence that the insurance policies referred to in this clause are current.

14.3 The existence of insurance cover as required under this clause shall not, in any way, limit the obligations or responsibilities of the Parties under this Agreement. Each Party agrees that the insurance policies referred to in this clause and for which that Party is responsible shall be in force for the Term of this Agreement.

15. CONFIDENTIALITY

15.1 When receiving Confidential Information, the Receiving Party must:

(a) keep all Confidential Information of the Disclosing Party confidential unless strictly required otherwise by law;

(b) limit access to those of its Personnel reasonably requiring the Confidential Information on a strictly need to know basis;

(c) not use any Confidential Information in any way other than for the Research Project or as otherwise contemplated by this Agreement without the prior written permission of the Disclosing Party; and

(d) ensure that all Personnel to whom Confidential Information is disclosed are legally bound under the terms and conditions of their employment agreements or otherwise to keep the Confidential Information confidential and not to use the Confidential Information except for the Research Project.

15.2 Confidential Information excludes, or as the case requires, ceases to include information, which is, or becomes:

(a) available to the public at or after the date of its disclosure to the Receiving Party otherwise than through the default of the Receiving Party;
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(b) properly in the possession of the Receiving Party in written form otherwise than by prior confidential disclosure from the Disclosing Party;

(c) properly available to the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party;

(d) demonstrated by the Receiving Party to be independently developed by an employee or agent of the Receiving Party having no knowledge of such information which is the subject of the disclosure.

15.3 At the termination or expiration of this Agreement and upon the written request of the Disclosing Party, the Receiving Party must return to the Disclosing Party any documents originating from the Disclosing Party which embody Confidential Information and must not keep any copies in any form.

16. PUBLICATION

16.1 Each Party agrees that it will obtain prior approval to publish or disclose from the other Party before submitting any manuscript relating to the Research Project for publication or making any public disclosure relating to the Research Project.

16.2 A Party must not withhold such approval unless it reasonably believes that such publication or disclosure would harm, prejudice or in any other way injure the interest which that Party has in the Intellectual Property under this Agreement.

16.3 RESEARCH SPONSOR will not have editorial rights over the content of work to be published by a member of staff of the University in relation to the Research Project.

16.4 Each Party agrees that it will acknowledge the other Party's contribution in any publication or public disclosure made in respect of the Research Project.

17. TERMINATION

17.1 The University may terminate this Agreement immediately upon the giving of Notice to RESEARCH SPONSOR if:

(a) RESEARCH SPONSOR is insolvent within the meaning of the Corporations Act 2001;

(b) an application or order is made, or other steps are taken for RESEARCH SPONSOR’S winding up or dissolution, or RESEARCH SPONSOR enters into an arrangement, for the benefit of its creditors or any of them;

(c) an administrator is appointed over all or any of RESEARCH SPONSOR’S assets or undertakings, or a controller within the meaning of section 9 of the Corporations Act 2001 or similar officer is appointed to all or any of RESEARCH SPONSOR’S assets or undertakings.

17.2 Either RESEARCH SPONSOR or the University may terminate this Agreement if the other Party is in default of the terms and conditions of this Agreement and fails to remedy the default within twenty (20) Business Days after Notice requiring the remedy of the default is received or otherwise on giving ninety (90) days notice without cause.

17.3 Termination of this Agreement for whatever cause shall be without prejudice to any rights or obligations that have accrued and are owing prior to such termination, including but not limited to payments of money.

18. NOTICES

18.1 Any Notice given under this Agreement and must either be delivered to the intended recipient by post or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

To: The University of Melbourne
   Attn: Deputy Vice-Chancellor (Research)
   The University of Melbourne,
   Parkville 3010

Fax No: (03) 9347 9326
Notice will be taken to have been given or made when delivered in person; three (3) Business Days after the date of posting if sent within Australia or seven (7) days if international; and on receipt by the sender of a transmission control report from the despatching machine if sent by fax.

19. DISPUTE RESOLUTION

19.1 If any dispute or difference arises in connection with this Agreement, then the Parties shall negotiate in good faith using their best endeavours to resolve the dispute or difference. If the dispute or difference cannot be resolved in the first instance, the Parties agree to refer the dispute to, in the case of the University, the Deputy Vice-Chancellor (Research) and, in the case of RESEARCH SPONSOR, its Chief Executive Officer, or their nominees.

19.2 If the Parties are unable to resolve any dispute or difference in accordance with clause 19.1 within thirty (30) days, then the matter may be submitted by either Party to a person agreed by the Parties (or failing agreement to a person appointed by the President of the Law Institute of Victoria or any similar or successor organisation) for determination. The costs of submission to the person appointed pursuant to this clause 19.2 will be met equally by the Parties.

19.3 Nothing in this clause 19 will prevent a Party from seeking interlocutory relief from a court of appropriate jurisdiction. However, a Party shall not otherwise commence legal action in the event of a dispute or difference unless it has first complied with clauses 19.1 and 19.2.

20. ASSIGNMENT

A Party may not assign its rights or obligations arising under this Agreement without the prior written consent of the other Party.

21. RELATIONSHIP OF PARTIES

The Parties are independent contracting parties, and nothing in this Agreement shall make any Party the agent, partner or legal representative of the other Party for any purpose whatsoever, nor does it grant either Party any authority to assume or to create any obligation on behalf of or in the name of the other Party on any account whatsoever.

22. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the Parties with respect to its subject matter and supersedes all prior oral or written representations and agreements.

23. FURTHER ASSURANCES

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

24. SEVERABILITY

If any provision of this Agreement is invalid or unenforceable, such provision shall be deemed deleted but only to the extent necessary and the remaining provisions of this Agreement shall remain in full force and effect.

25. NO IMPLIED WAIVER

A waiver by either Party of a breach of any provision of this Agreement does not constitute a waiver of any succeeding breach of the same or any other provision.

26. GOODS AND SERVICES TAX (“GST”)

For the purposes of this clause 26, the value of supplies made by each Party under this Agreement is as follows:
(a) unless expressly stated to the contrary, the consideration to be provided for any taxable supply made by one party to the other under this Agreement has been calculated without regard to, and is exclusive of, GST;

(b) the consideration referred to in paragraph (a) shall be increased by the amount of any GST;

(c) the Party receiving any payment for a taxable supply under this Agreement shall provide to the Party making a payment for a taxable supply a tax invoice in respect of that payment; and

(d) the Party receiving any payment under this Agreement for a taxable supply shall do all things necessary (including, without limitation, registering with any required Government authority) to enable the party making a payment for a taxable supply to claim any credits or other benefits under the relevant law relating to GST.

27. AMENDMENT
Any modification, alteration, change or variation of any term or condition of this Agreement must be in writing and executed by both Parties.

28. FORCE MAJEURE
The University is not liable for any failure to perform, or delay in performing an obligation under this Agreement where such failure or delay is due to any Cause Beyond the Reasonable Control of the University.

29. COUNTERPARTS
This Agreement may be executed in counterparts.

30. GOVERNING LAW AND JURISDICTION
This Agreement is governed by the laws of the State of Victoria.

EXECUTED in Melbourne by the Parties on the day and year first above mentioned.

SIGNED for and on behalf of THE UNIVERSITY OF MELBOURNE )  ...................................................
in the presence of: )  Signature of authorised person

.....................................................  ...................................................
Signature of Witness Office held

.....................................................  ...................................................
Name of Witness Name of authorised person
(block letters) (block letters)

SIGNED for and on behalf of RESEARCH SPONSOR )  ...................................................
in the presence of: )  Signature of authorised person

.....................................................  ...................................................
Signature of Witness Office held

.....................................................  ...................................................
Name of Witness Name of authorised person
(block letters) (block letters)
<table>
<thead>
<tr>
<th>Item 1: Research Sponsor</th>
<th>Legal Name:</th>
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<td>Attention:</td>
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<td>Address:</td>
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<td>Phone:</td>
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<td>Fax No:</td>
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<td>ABN:</td>
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| Item 2: Commencement Date | This Agreement will take effect on and from the date on which the last party signs this Agreement or as otherwise agreed and noted below: |

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<tr>
<th>Item 3: Term</th>
<th>This Agreement will remain in effect for one of the two options below:</th>
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<tr>
<td>(i)</td>
<td>until the Research Project has been completed; or</td>
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<td>(ii)</td>
<td>for a period of INSERT THE NUMBER OF CALENDAR MONTHS calendar months commencing on and from the Commencement Date.</td>
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[Note: Delete whichever option is not applicable]

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<th>Item 4: Field</th>
<th>Research Sponsor’s Field is as follows:</th>
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<th>Item 5: Territory</th>
<th>The Territory shall be the Commonwealth of Australia unless the parties specify otherwise below:</th>
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SCHEDULE 2

RESEARCH PROJECT SPECIFICATION

A detailed Research Project Specification must be attached which must include the following headings:

- A Description of Research Project;
- The Names of All University Personnel who will be working on the Project and the % allocation of time each will spend on the Research Project;
- Details of Resources (i.e. cash and in-kind contributions) to be provided by the University;
- Details of Resources (i.e. cash and in-kind contributions to be provided by Research Sponsor);
- Name of the Project Manager (if required);
- Any relevant milestones, including reporting requirements must be listed;
- Payment schedule for payments.