RESEARCH AGREEMENT

THIS AGREEMENT is executed on the day of 201

BETWEEN

THE UNIVERSITY OF MELBOURNE [ABN 84 002 705 224] a body politic and corporate established in 1853 and constituted under the University of Melbourne Act 2009 (Vic) of Melbourne, Vic, 3010

("the University")

AND

THE RESEARCH SPONSOR SPECIFIED IN ITEM 1 OF SCHEDULE 1

("the Sponsor")

RECITALS

A. The University has a research interest and expertise in an area which is of interest to the Sponsor.
B. The Sponsor has asked the University to participate in the Research Project with the Sponsor.
C. The Parties agree to work together on the Research Project in accordance with this Agreement.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

‘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 a day that is not a Saturday, Sunday or a University holiday as indicated on the University calendar (as amended from time to time).

‘Commercialise’, in relation to the Research Project Intellectual Property, means to:

(a) market, manufacture, sell, hire, distribute or otherwise exploit a Product;
(b) provide services incorporating the Research Project Intellectual Property; or
(c) licence any third party the right to do any of (a) or (b) above.

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 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 or the manner of its disclosure 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. Confidential Information excludes, or as the case requires, ceases to include information which is, or becomes:
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(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;

(b) at the date of its disclosure to the Receiving Party, already properly in the possession of the Receiving Party in written form otherwise than by prior confidential disclosure from the Disclosing Party;

(c) after the date of its disclosure to the Receiving Party, available to the public from sources other than the Receiving Party;

(d) after the date of its disclosure to the Receiving Party, properly available to the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party;

(e) demonstrated by the Receiving Party to be independently developed by an employee or agent of the Receiving Party having no knowledge of such information the subject of the disclosure; or

(f) required to be disclosed by law.

‘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 3 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.

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

‘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 and appointed pursuant to clause 5.4.

‘Research Project’ means the research and research related activities to be conducted by the Parties in accordance with this Agreement as detailed in Schedule 2.


‘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.

‘Start Date’ means the date of this Agreement.

‘Term’ means the term specified in Item 2 of Schedule 1, subject to clause 16.
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‘Territory’ means the territory detailed in Item 4 of Schedule 1.

1.2 The following rules apply unless the context otherwise requires:

(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;
(d) 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 A$, $A, dollar, or $ is to Australian currency;
(g) a reference to time is to Melbourne, Australia time;
(h) 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;
(i) 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;
(j) a reference to “writing” includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form; and
(k) 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.

1.3 Headings are for convenience only and do not affect interpretation.

2. TERM

This Agreement shall commence on the Start 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 according to the Research Project Specification.

3.2 The University shall have the primary responsibility for conducting the Research Project in accordance with clause 5, but the 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 3.1 and 4 of this Agreement.

4. PAYMENT SCHEDULE

The 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 the Sponsor as required by the Research Project Specification set out in Schedule 2.

5.3 The Parties may determine that the Research Project requires a Research Management Committee to oversee the conduct of the Research Project and related matters. If the Parties so agree, a Research Management Committee will be established and its composition, powers and role will be set out in Schedule 3.
5.4 The University, in consultation with the Sponsor, will appoint a Project Manager to oversee the conduct of the Research Project and the Project Manager will chair the meetings of the Research Management Committee.

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; and

(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, the Parties will negotiate in good faith to reach agreement to allow the Background Intellectual Property to be made available on commercial terms. If the Parties cannot reach agreement on commercial terms, the matter must be dealt with in accordance with clause 17 [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 to the rights granted to the Sponsor under this Agreement, the University may deal with Research Project Intellectual Property as it determines to be appropriate in the circumstances; and

(b) shall grant a royalty-free, non-transferable, non-exclusive licence to the Sponsor to use the Research Project Intellectual Property for its non-commercial internal operations only. The 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 under this clause.

7. OPTION TO EXCLUSIVE LICENCE

7.1 The University hereby grants to the 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 this clause 7 ('Option').

7.2 The Option may be exercised by the 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 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 clauses 7.4 and 7.5, the University must grant the Sponsor the exclusive right to Commercialise and 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 Sponsor that it intends to exercise its Option the Parties must negotiate in good faith the commercial terms of a licence agreement and execute such agreement within ninety (90) days or some other period of time as agreed in writing. If the Parties fail to agree on the commercial terms in such period of time, the matter must be dealt with in accordance with clause 17.2 for the purposes of settling and executing a licence agreement on reasonable commercial terms.

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 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 Sponsor under clause 7.6.

7.8 If notification under clause 7.3 is not received during the Option Period, or if the 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 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 Sponsor. The Sponsor has the right to recoup as a first charge all costs, 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 obtaining 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 Sponsor does not bear any costs relating to the protection of any Research Project Intellectual Property, the Sponsor shall forego its Commercialisation rights under clauses 7.3 and 7.4 and any Option granted to the Sponsor shall be of no effect in relation to the relevant Research Project Intellectual Property. The University shall have full rights to the relevant Research Project Intellectual Property as the absolute owner thereof.

9. 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.

10. FURTHER RESEARCH REQUIRED

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 the Sponsor for further research is outside the scope of this Agreement and must be the subject of a separate agreement.

11. WARRANTIES

11.1 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.

11.2 The 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 or logo 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 where due to a breach of 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.

12. LIMITATION OF LIABILITY

12.1 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 clause 12.2, 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.

12.2 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 the Sponsor the reasonable cost of having the Research Project or part thereof re-performed by another research provider.

13. INSURANCE

13.1 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.

13.2 Each Party must provide the other, if requested, with details of the name of the applicable insurers and satisfactory evidence that the insurance policies required under this clause are current.

13.3 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 required under clause 13.1 shall be in force for the Term of this Agreement.

14. CONFIDENTIALITY

14.1 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.
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.

15. PUBLICATION

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

15.2 The Sponsor must reply in writing within one (1) month stating whether it approves or does not approve the publication of the paper or papers, and must not withhold such approval unless it reasonably believes that such publication would harm, prejudice or in any other way injure the interest which it has in the Project Intellectual Property rights under this Agreement.

15.3 If the Sponsor does not give the University a reply within 1 month of receiving the request to publish, then the consent to publish shall be deemed to have been given.

15.4 The 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.

15.5 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.

16. TERMINATION

16.1 The University may terminate this Agreement immediately upon the giving of Notice to the Sponsor if:

(a) the Sponsor is insolvent within the meaning of the Corporations Act 2001 (Cth);

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

(c) an administrator is appointed over all or any of the 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 the Sponsor’s assets or undertakings.

16.2 Either the Sponsor or the University may terminate this Agreement:

(a) 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

(b) on giving ninety (90) days notice without cause.

16.3 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.

16.4 Clauses 6, 11, 12 and 14 survive the expiration or termination of this Agreement along with any other provision which by its nature survives termination or expiration of this Agreement.

17. DISPUTE RESOLUTION

17.1 A Party claiming that a dispute has arisen under this Agreement (Dispute) must notify the other Party giving written details of the Dispute. The Parties agree to negotiate in good faith on a commercially realistic basis to resolve the Dispute and will refer resolution of the Dispute to officers within each Party who are authorised to hear the dispute before commencing any legal proceedings in relation to the Dispute.

17.2 Any Dispute which cannot be settled under clause 17.1 within a reasonable time must be referred for determination by a person appointed for that purpose by the Parties, and failing agreement, appointed by the President of the institute of Arbitrators and Mediators Australia (Victorian Division).
Any determination made under clause 17.2 is binding on the Parties and the Commercial Arbitration Act 1984 (Vic) applies to the determination except to the extent otherwise agreed by the Parties.

Nothing in this clause 17 will prevent a Party from seeking urgent interlocutory relief.

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.

For the purposes of this clause 19, 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.

This Agreement is governed by the laws of the State of Victoria, Australia. The Parties submit to the jurisdiction of the courts of the State of Victoria and any courts which may hear appeals from those courts.

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.

This Agreement may only be amended in writing signed by the Parties.

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

A Party’s failure to exercise or delay in exercising a right, power or remedy does not operate as a waiver of that right, power or remedy and does not preclude the future exercise of that right, power or remedy. To be effective, a waiver of a right, power or remedy must be in writing and signed by the Party granting the waiver.

If any provision or part 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.

Notices. Notices must be in writing and signed by a duly authorised person. Notices to or by a Party delivered in person are deemed to be given by the sender and received by the addressee when delivered to the addressee: if by post, 3 Business Days from and including the date of postage, or if by facsimile, when transmitted to the addressee provided that if transmission is on a day which is not a Business Day or is after 5.00pm (addressee’s time) on the next Business Day.

The University will not be liable for the consequences of any delays or failure to perform its obligations according to the Research Project where such delay or failure is due to any event beyond the University’s reasonable control, including without limitation, acts of God, fire, flood, accident, terrorism, strike and riot.

This Agreement may be executed in counterparts.
EXECUTED AS AN AGREEMENT

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 THE 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)

[The last party to sign must complete the date field on the first page]
SCHEDULE 1

Item 1: THE PARTIES

The University
Legal Name: The University of Melbourne

Address: Attention: Deputy Vice-Chancellor (Research)
The University of Melbourne
VIC 3010

Fax No: + 61 3 9347 9326
ABN: 84 002 705 224

The Sponsor
Legal Name:
Address:
Fax No:
ABN:

Item 2: TERM
[Note: Delete whichever option is not applicable]

Option 1:
This Agreement will remain in effect until the Research Project has been completed.

OR

Option 2:
This Agreement will remain in effect for a period of _______ calendar months commencing on and from the Start Date.

Item 3: FIELD
Research Sponsor’s Field is as follows:

[Note: this is the defined product area or service delivery market over which the sponsor has rights pursuant to clause 7.1. It should be defined as narrowly as possible]

Item 4: TERRITORY
The Territory shall be the Commonwealth of Australia unless the parties specify otherwise below:
SCHEDULE 2

RESEARCH PROJECT DETAILS

A detailed description of the Research Project 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 applicable);
- Any relevant milestones, including reporting requirements must be listed;
- Payment schedule for payments.
SCHEDULE 3

RESEARCH MANAGEMENT COMMITTEE

(If applicable)