CONSULTANCY 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

Client

RECITALS

A. The Client wishes to engage the University to provide the services and the University has agreed to perform the services.

B. The objective of this agreement (“the Agreement”) is 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 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 Services.

‘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, lightning, 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.

‘Client’ means the client described in Item 2 of Schedule 1.

‘Commencement Date’ means the date on which the last party signs this Agreement.

‘Confidential Information’ 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.

‘Deliverables’ means the reports and other materials embodying data, results and other information produced in and for the Services as described in Schedule 2.

‘Disclosing Party’ means the Party that is disclosing Confidential Information.

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

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

‘Services’ means the services specified in Schedule 2.

‘Specified Personnel’ means the people listed in Item 4 of Schedule 1.

‘Term’ means the term specified in Item 3 of Schedule 1, subject to clause 11 of this Agreement.

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.

(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 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. SERVICES

3.1 The University will perform the Services and provide the Deliverables by the date specified in Item 5 of Schedule 1.

3.2 The Services must be performed in accordance with the terms of this Agreement, including by the Specified Personnel, if any are specified.

3.3 Subject to clause 3.2, the University may sub-contract the performance of any part of the Services with the prior written consent of the Client, not to be unreasonably withheld.
4. **PAYMENT SCHEDULE**
4.1 The Client shall make payments to the University for the Services as set out in Item 6 and Item 7 of Schedule 1.
4.2 Payments must be made within thirty (30) days of receipt by the Client of a valid invoice from the University for the amount owing, as specified in Item 6 and Item 7 of Schedule 1.

5. **EXPENSES**
5.1 The Client must reimburse the University for all reasonable expenses incurred by the University in providing the Services, provided that the University:

(a) obtains the Client’s prior consent before incurring any additional expenses not specified in Item 7 of Schedule 1; and

(b) provides the Client with details of the expenses incurred and all assistance reasonably required by the Client to verify the expenses incurred, including the provision of receipts or other documentation acceptable to the Client.

6. **CONFIDENTIALITY**
6.1 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 Services 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 in relation to the subject matter of this Agreement.

6.2 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;

(b) properly in the possession of the Receiving Party otherwise than by prior confidential disclosure from the Disclosing Party;

(c) 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.

6.3 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.

7. **INTELLECTUAL PROPERTY**
7.1 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 Services.

(c) agrees that if Background Intellectual Property which has been made available pursuant to sub-clause (b) is required for the Commercialisation of the Services it
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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 13 [Dispute Resolution].

7.2 Subject to clause 7.3, the rights to all Deliverables, including the Intellectual Property created, discovered or coming into existence as a result of or arising out of the Deliverables shall be the property of and vested in the Client.

7.3 Ownership or other rights in the Deliverables will not pass to the Client if payment is not made in accordance with clause 4 and clause 5 of this Agreement.

7.4 The Client agrees that, subject to clause 6 of this Agreement, the University may use the Deliverables and all Intellectual Property created pursuant to this Agreement for its internal research and scholastic endeavours, but not for commercialisation.

8. PUBLICATION
The University agrees that it will obtain the Client’s prior approval before submitting any manuscript or article relating to this Agreement for publication.

9. RISK AND LIABILITY
9.1 The University warrants that it will carry out the Services according to proper professional standards.

9.2 Except for the warranty in clause 9.1, the University does not make any warranties regarding the Services or the Deliverables. All other warranties, including without limitation those of merchantability, fitness for a particular purpose, or that the use of the Deliverables or any other materials created pursuant to this Agreement will not infringe any intellectual property rights of a third party, are excluded. The Client uses the Deliverables at its own risk.

9.3 To the extent permitted by law, the University has no liability under this Agreement other than as set out in this clause 9. Where liability cannot be excluded it is limited, at the University’s option, to re-performing the Services or paying the Client the cost of having the services re-performed. The cost to the University under this clause 9 shall not exceed the payment received by the University under this Agreement.

10. INSURANCE
10.1 The Client will obtain and maintain adequate insurance in respect of its use of the Deliverables and, if requested by the University, provide the University with a certificate of currency in relation to the policy.

11. TERMINATION
11.1 This Agreement may be terminated at any time with the consent of both Parties.

11.2 Either the Client 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 receiving Notice requiring the remedy of the default; or
(b) on giving ninety (90) days notice without cause.

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

12. GST
For the purposes of this clause 12, the value of taxable supply 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;
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(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.

13. DISPUTE RESOLUTION

13.1 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, in the case of the University, to the Deputy Vice-Chancellor (Research) and, in the case of the Client, to its Chief Executive Officer, or their nominees.

13.2 If the Parties are unable to resolve any dispute or difference in accordance with clause 13.1 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 mediation and if possible, determination of the dispute. The costs of submission to the person appointed pursuant to this clause 13.2 will be met equally by the Parties.

13.3 Nothing in this clause 13 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 13.1 and 13.2.

14. GOVERNING LAW

This Agreement is governed by the laws of the State of Victoria.

15. 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.

16. 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.

17. AMENDMENT

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

18. CAUSE BEYOND REASONABLE CONTROL

The University will not be liable for any failure to carry out the Services or provide the Deliverables where such failure is due to any Cause Beyond the Reasonable Control of the University.

19. SEVERANCE

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.

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

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. COUNTERPARTS
This Agreement may be executed in counterparts.

EXECUTED as an Agreement this ……………………. day of ………………….……………….200

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

Signature of Witness Office held

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

SIGNED for and on behalf of CLIENT )
in the presence of: ) ) Signature of authorised person

Signature of Witness Office held

Name of Witness Name of authorised person
(block letters) (block letters)
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SCHEDULE 1

Item 1: 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 6883
ABN: 84 002 705 224

Item 2: Client
Legal Name:
Address:
Phone:
Fax No:
ABN:

Item 3: Term
This Agreement will remain in effect for one of the two options below:

(i) until the Services have been performed and the Deliverables have been provided to the Client by the date specified in Item 6 below; or

(ii) for a period of INSERT THE NUMBER OF CALENDAR MONTHS calendar months commencing on and from the Commencement Date.

[Note: Delete whichever option is not applicable]

Item 4: Specified Personnel
(List if any)

Item 5: Date of delivery of Deliverables
The Deliverables will be provided by the University to the Client by the date specified below:

Item 6: Payment Schedule

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<tr>
<th>Instalment No.</th>
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<th>Total ($ AUD)</th>
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Item 7: Specified expenses for which University must be reimbursed
SCHEDULE 2

SERVICES

A DETAILED DESCRIPTION OF THE SERVICES TO BE PROVIDED BY THE UNIVERSITY TO BE ATTACHED HERE:
SCHEDULE 2

SERVICES

A detailed description of the Services to be provided by the University to be attached here: