This **Memorandum of Understanding** is dated the last date on which it is executed.

**BETWEEN:**

**WESTERN HEALTH (ABN 61 166 735 672)** of 176 Furlong Road, St Albans VIC 3021 **(Western Health)**

**AND**

**[PARTY 2] (ABN [INSERT])** of [insert address] (***[insert short form Party name]***)

AND

**[PARTY 3] (ABN [INSERT])** of [insert address] (***[insert short form Party name]***)

[INSERT ANY OTHER **PARTIES**]

Collectively [Party 2, 3 etc]are referred to asCollaborator or Collaboratorsand arenamed in Item 2 of Schedule 1.

**RECITALS**

The parties wish to conduct research and development with a view to achieving agreed research objectives through a research or quality improvement project, the “Research Project,” as specified in Item 1 of Schedule 1, on the terms and conditions set out in this Memorandum of Understanding.

**IT IS AGREED AS FOLLOWS:**

1. RESEARCH PROJECT

Each party agrees to carry out its obligations in accordance with the *National Statement on Ethical Conduct in Human Research 2007 and The Australian Code for the Responsible Conduct of Research 2007 (*as varied or replaced by the National Health & Medical Research Council, the Australian Research Council and Universities Australia).

* 1. Each party must:
     1. bear its own costs under this Memorandum of Understanding; and
     2. obtain and comply with all required authorisations from government agencies and ethics committees which are required for the Research Project unless one party is nominated at Item 4 of Schedule 1; and
     3. not knowingly infringe, and use its best endeavours not to infringe, the Intellectual Property rights of any person in carrying out the Research Project; and
     4. carry out the Research Project in accordance with all applicable laws.

1. PROJECT INTELLECTUAL PROPERTY (IP)
   1. Except for copyright in a student thesis (see clause 2.2) the ownership of Project IP will be determined in accordance with the details set out in Item 5 of Schedule 1 and no party may:
      1. grant a licence of its share of any Project IP; or
      2. assign its share of the Project IP,

without the written consent of all parties, which shall not be unreasonably withheld.

* 1. The parties agree that copyright in a student thesis will be owned by the student but the party responsible for the student will ensure that the student enters into a written agreement, which is consistent with this Memorandum of Understanding, before the student commences any Research Project activities.
  2. The parties will notify each other of any Project IP that might have commercial potential and the parties will negotiate in good faith the terms of any Commercialisation of the Project IP so as to share fairly any associated commercial return.
  3. The parties are committed to appropriate recognition of contributions to invention and exploitation of Intellectual property for the benefit of the Australian community.

1. BACKGROUND IP
   1. Each party warrants that it either owns, or is properly licensed to use, its Background IP and that it has the right to grant the licence in clause 3.2.
   2. Each party grants to the other party for the Term a royalty free, non-exclusive licence to use that party’s Background IP for the purposes of this Memorandum of Understanding only.
   3. Subject to clause 3.2, no provision of this Memorandum of Understanding affects the rights inherent in the Background IP.
2. CONFIDENTIALITY
   1. Subject to the remaining provisions of this clause 4, each party will treat all Confidential Information of any other party as confidential and will not, without the consent of the other relevant party, disclose or permit the same either to be disclosed to third parties or to be used, except solely as contemplated by this Agreement.
   2. Each party must use all reasonable endeavours to ensure that its representatives comply with the obligations of confidentiality imposed upon it under this clause 4 as if those representatives were bound in the same way.
   3. Each party must advise each other party as soon as practicably possible of any breach of any confidentiality obligations under this Agreement of which it becomes aware.
   4. A party may disclose Confidential Information if required to do so by law or to its professional advisers, subject to the relevant adviser being bound by similar obligations of confidentiality, or if necessary, entering into an appropriate confidentiality undertaking.
   5. Where the parties jointly own the Research Results of the Research Project a party may publish the Research Results, subject to it complying with the requirements set out at clause 5 below.
3. PUBLICATION
   1. At least 28 days prior to any publication, the publishing party will provide a copy of the proposed publication to each other party.
   2. The other parties may provide comments and/or reasonable amendments to the publication to protect their Confidential Information and/or Intellectual Property provided they are given to the publishing party in writing no later than 14 days before the publication is proposed. If no such comments or amendments are provided within those 14 days the publishing party can publish.
   3. All publications will recognise the contribution by the parties to the Research Project.
   4. The parties are committed to appropriate recognition of contributions to invention and exploitation of Intellectual property for the benefit of the Australian community.
   5. A party may only refuse a request to publish by another party if, in that party’s reasonable opinion, the publication is likely to jeopardise:
      * 1. the protection of Research Results under any statute of monopoly; or
        2. the successful commercialisation of the Research Results by the party with such rights, or
        3. the other party’s Confidential Information.
   6. Each party’s obligations under this clause 5 shall survive termination or expiration of this Agreement.
4. INSURANCE
   1. Each party must provide to the other documentary evidence that they maintain public and products liability and professional indemnity insurance with insurer(s) having a minimum long term credit rating of at least A- (Standard & Poor’s Australia) and A- (Moody’s Investors Service) at the commencement of the Agreement and has paid the full premiums required by such insurer(s). Such insurances must:
      1. have initial currency of at least 12 months and be maintained continuously throughout the term of this Agreement;
      2. contain a minimum limit of indemnity in respect of any one occurrence or series of occurrences arising out of any one event of $20 million and a minimum aggregate limit of indemnity in respect of any one year of $20 million; and
      3. ensure that the other party is noted as a named insured.
   2. If a party cannot or does not comply with all of the provisions of this clause then another party may (but is not obliged to) affect insurance which so complies at the expense of the other which expense, plus an administration fee of 10% of the premiums paid, must be promptly paid upon request.
   3. Each party must upon request produce to the other satisfactory documentary evidence that the insurances required by this clause are current and effective.
   4. If an insurance policy effected and maintained under this clause 6 is a claims made policy, the party must maintain a current policy (or run off cover) for at least 10 years after the expiry or termination of this Agreement.
   5. The provisions of this clause 6 survive the expiration or earlier termination of this Agreement and do not modify or limit any indemnity provided under clause 7.
5. INDEMNITY
   1. Each party agrees to indemnify (and keep indemnified) the other parties to this Agreement against all losses or liabilities incurred by the other parties and all costs actually payable by that other parties in relation to claims against those other parties, including legal costs, arising directly from any negligent or unlawful act, error or omission by that party in connection with this Agreement, which may arise in relation to:
      1. a consequence of, disclosure or use of any Confidential Information in breach of this Agreement including but not limited to its use or commercialisation of the Research Project (if permitted);
      2. any unlawful or negligent act or omission of the party or its representatives under this Agreement;
      3. a breach of the terms and conditions of this Agreement by the party; and
      4. the use of any product or process incorporating or produced using the Research Project.
   2. A party’s liability to indemnify the other parties under clause 7.1 will be reduced proportionately to the extent that any negligent or unlawful act or omission or wilful misconduct on the part of another party contributed to the relevant loss, damage, expense or liability. No party will be liable under this Agreement, in any event, for any liability, cost, expense, claim, proceeding, action, demand or damage for consequential or indirect damages, punitive or exemplary damages and/or loss of profits.
   3. To the extent that any implied terms, conditions or warranties cannot be excluded at law but liability for their breach can be limited, liability for their breach shall be limited, at the option of the party in breach to:
      1. re-performing its contribution to the Research Project; or
      2. at its election, payment of the cost of having its contribution to the Research Project re-performed.
   4. The Party with the right to use and commercialise the Research Project does so at its own risk.
   5. The provisions of this clause 7 shall survive expiration or termination of this Agreement.
6. DISPUTE RESOLUTION
   1. All disputes or differences in relation to this Agreement or its subject matter (Dispute) shall be resolved in accordance with this clause 8.
   2. Upon one Party giving notice of a Dispute arising between the Parties, the Parties agree to negotiate in good faith to resolve the Dispute and will refer resolution of the Dispute to their Authorised Representatives, or their nominees. If the Dispute has not been resolved by negotiation within 10 Business Days or any other period of time agreed by the Parties, either Party may refer the Dispute to mediation and will do so before initiating proceedings in a court to resolve the Dispute.
   3. A Dispute which is referred to mediation will be referred to the Australian Dispute Centre (ADC) and be conducted in accordance with the ADC Guidelines for Commercial Mediation 2015 under the relevant rules in Victoria with the proceedings being in English, and
      1. if the Dispute has not been resolved within sixty (60) days of referral pursuant to this clause 8.3 any Party to the Dispute may initiate proceedings in a court;
      2. any documents produced for the mediation are to be kept confidential and cannot be used except for the purpose of settling the Dispute;
      3. each Party must bear its own costs of resolving a Dispute under this clause 8.3; and
      4. unless the Parties otherwise agree, the Parties must bear equally the costs of the mediator.
   4. Nothing in this clause 8 will prevent a Party from seeking interlocutory relief through courts of appropriate jurisdiction. But a Party shall not otherwise commence legal action in the event of a Dispute unless it has first complied with clauses [8.2](#_bookmark18) to [8.3](#_bookmark19) inclusive.
7. GENERAL
   1. This Agreement constitutes the entire agreement and understanding between the parties with respectto the subject matter of this Agreement.
   2. This Agreement is governed by the laws of the State of Victoria and each Party submits to the exclusive jurisdiction of the courts of that State.
   3. This Agreement is intended to be legally binding on the parties.
8. DEFINITIONS

*Background Intellectual Property* in relation to the Research Project means inventions, technology, know-how and Confidential Information and Materials and all Intellectual Property Rights belonging to or under the control of a party as at the Commencement Date of the Project or developed or created by a party after that Commencement Date but independently to and separately from that Research Project, which are made available for the conduct of that Research Project including all improvements to Background Intellectual Property;

***Confidential information*** in relation to a party, means all knowledge, information (including scientific, business, patient, staff and financial information), inventions, improvements, documents, drawings, samples, devices, demonstrations, trade secrets, know-how and other information of whatever description and all other commercially valuable information of that party and which that party regards as confidential to it (or which it designates as confidential) and all copies, notes and records as well as all related information generated by, or that comes into the possession (howsoever occurring) of, the other party based on or arising out of any such disclosure, but does not include information which:

* + 1. is in the public domain at the time of disclosure to the other party;
    2. is published or otherwise becomes part of the public domain but not in breach of any other obligations of confidence;
    3. at the date of disclosure to the other party was already properly in the possession of the other party without an obligation of non-disclosure to that party;
    4. is independently created by or on behalf of the other party by persons who had no knowledge of the disclosed information; or
    5. is required to be disclosed by law;

*Intellectual Property Rights* means statutory and other proprietary rights in respect of trademarks, patents, circuit layouts, copyright, confidential information and all other rights with respect to intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967;

*Project IP* means the intellectual property in the Research Project

*Research Results* means all results of the Research Project including, without limitation, outcomes, deductions, conclusions, assumptions, inferences, or suppositions drawn, processes, formulae, reports, software, designs, and research data produced by Parties in the conduct of the Project and all Intellectual Property Rights therein.

**EXECUTED as an Agreement** by the parties on the last date hereinafter appearing:

|  |  |  |
| --- | --- | --- |
| Signed for and on behalf of **Western Health** (ABN 61 166 735 672) by its duly authorised representative, in the presence of | )))))) |  |
| Witness (Signature) |  | Representative (Signature) |
| Name of Witness (Print) |  | Name of representative (Print) |
| Date |  | Position |

|  |  |  |
| --- | --- | --- |
| Signed for and on behalf of by [**insert party name** (ABN insert ABN)] by its duly authorised representative, in the presence of: | )))))) |  |
| Witness (Signature) |  | Representative (Signature) |
| Name of Witness (Print) |  | Name of representative (Print) |
| Date |  | Position |

**SCHEDULE 1 – PROJECT DETAILS**

|  |  |  |
| --- | --- | --- |
| **Item 1** | **Research Project** | * HREC Reference Number: [Insert Reference here] * Project Title: [Insert Project Title] * *Protocol: [Insert Protocol version number and date]* |
| **Item 2** | **Collaborator(s)** (Institution names, ABN) | * [*Collaborator – institution name, ABN*] |
| **Item 3** | **Term**  **Commencement Date**  **End Date** | * [Insert anticipated start date or “date of last signature”] * [*Insert anticipated completion date or (eg) “XX months/years from start date”]* |
| **Item 4** | **Party responsible for obtaining all necessary ethical, administrative and governmental approvals** | [insert details about which party(ies) will be responsible for obtaining ethical and other approvals, eg specify if WH or Collaborator or both will obtain approvals as applicable, necessary for undertaking this research project] |
| **Item 5** | **Ownership of Project IP** | * equal shares * in the proportion to the inventive contribution of each contributing party   *(strike which is inapplicable)* |

**SCHEDULE 2 – PARTY DETAILS**

|  |  |
| --- | --- |
|  | **Western Health** |
| **Principal Investigator:**  **Name**  **Position**  **Address**  **Telephone**  **Facsimile**  **E-mail** |  |
| **Other Western Health investigators:** |  |
| **Research Project obligations:** | |
| **Role** | Eg; Prepare protocol  Supply questionnaires  Manage research staff  Identify participants  Provide access to medical records  Consent participants  Data collection  Data analysis  Report and manuscript preparation  etc |
| **Materials and other in-kind contributions** | List if any – eg provision of tissue samples or data  Note: if “materials” provided include tissue samples, provide full details of what will happen to tissue samples at end of the project. Tissue samples provided by Western Health remain the property of Western Health. |
| **Reports** | List who will prepare the annual progress report to the Western Health LREP/Melbourne Health HREC (if applicable). |
| **Other obligations** | List if any |

|  |  |
| --- | --- |
| **Collaborator** [copy to add tables for additional collaborators] | **[Name of Collaborating Institution]** |
| **Principal Investigator:**  **Name**  **Position**  **Address**  **Telephone**  **Facsimile**  **E-mail** |  |
| **Other investigators:** |  |
| **Research Project obligations:** | |
| **Role** | Prepare protocol  Supply questionnaires  Manage research staff  Identify participants  Provide access to medical records  Consent participants  Data collection  Data analysis  Report and manuscript preparation  etc |
| **Materials and other in-kind contributions** | List if any eg provision of any tissue samples or data |
| **Reports** | List who will prepare the annual progress report to the Western Health LREP/Melbourne Health HREC (if applicable). |
| **Other obligations** | List if any |