Agreement to provide services

<table>
<thead>
<tr>
<th>Parties</th>
<th>Macquarie University ABN 90 952 801 237 of Macquarie University, NSW 2109 (University). [insert name] ABN / ACN [insert ABN or ACN] of [insert address] (Client)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agreement</td>
<td>The Client engages the University to provide the Services on the terms set out below and in the attached document headed ‘General Terms’. These General Terms form part of this agreement.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Details</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Defined Term</td>
<td>Meaning</td>
</tr>
<tr>
<td>Commencement Date</td>
<td>[insert date]</td>
</tr>
<tr>
<td>Contract End Date</td>
<td>[insert date]</td>
</tr>
<tr>
<td>Services</td>
<td>[insert a description of the Services to be provided. Attach a schedule if necessary.]</td>
</tr>
<tr>
<td>Deliverables</td>
<td>[Insert details of any deliverables to be provided by the University to the Client eg progress reports, final reports. A decision needs to be made as to whether Intellectual Property in Deliverables is assigned or retained. See Guidance Note at clause 5.1]</td>
</tr>
<tr>
<td>Key Personnel</td>
<td>[insert details of any Key Personnel to be provided by the University. If there are no Key Personnel insert ‘Not applicable’]</td>
</tr>
<tr>
<td>Client Responsibilities</td>
<td>[insert details of responsibilities of Client (if any) eg provide samples, arrange travel.]</td>
</tr>
<tr>
<td>Client Materials</td>
<td>[insert details of materials (if any) to be provided by the Client]</td>
</tr>
<tr>
<td>Service Fee</td>
<td>[insert details of Service Fee]</td>
</tr>
<tr>
<td>Expenses</td>
<td>[insert comprehensive description of types of expenses the Client will cover]</td>
</tr>
<tr>
<td><strong>University Approvals</strong></td>
<td>Are University Approvals required</td>
</tr>
<tr>
<td>-------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td></td>
<td>☐ Yes</td>
</tr>
</tbody>
</table>

| **Timetable (clause 2.4)** | [insert timetable details. If no timetable is to be met by the University insert 'Not applicable'] |  
| **Payment Schedule (clause 4.2)** | [insert payment schedule] |  

| **Address for Notices University (clause 11)** | Title : [name]  
| Address : Macquarie University, North Ryde  
| Telephone : [telephone]  
| Email : [email] |  

| **Address for Notices Client (clause 11)** | Title : [name]  
| Address : [address]  
| Telephone : [telephone]  
| Email : [email] |  

| **Special Terms** | This agreement is subject to the following special terms.  
| [insert special terms. If no special terms insert 'Not applicable'] |
Signed on behalf of MACQUARIE UNIVERSITY by its authorised officer:

________________________________________  __________________________________________
Signature of authorised officer

________________________________________  __________________________________________
Name of authorised officer

Date  Position of authorised officer

[Option 1 Company under s127 Corporation Act]
Signed by [insert name of Client]

________________________________________  __________________________________________
Signature of director  Signature of director/secretary

________________________________________  __________________________________________
Name of director  Name of director/secretary

Date

[Option 2 Company by single director/secretary]
Signed by [insert name of Client]
by its sole director and sole company secretary

________________________________________
Signature of sole director/secretary

Date  Name
[Option 3 Company by authorised officer]

Signed on behalf of [insert name of Client] by its authorised officer:

________________________________________
Signature of authorised officer

________________________________________
Name of authorised officer

________________________________________
Position of authorised officer

Date
1. DEFINITIONS

1.1 Definitions

The following definitions apply in this agreement.

**Australian Sanctions Law** means any law prohibiting or restricting dealings with prescribed states, persons, or entities or seeking to prevent the proliferation of weapons including laws implementing the sanctions imposed by the United Nations Security Council.

**Background IP** means Intellectual Property owned, licenced or controlled by a party prior to the Commencement Date or subsequent to that date but unrelated to this agreement.

**Business Day** means any day other than:

(a) a Saturday, Sunday or public holiday in Sydney; or
(b) 27, 28, 29, 30 or 31 December.

**Commencement Date** means the date specified in the Details or if no date is specified in the Details, the date on which this agreement became executed by all parties.

**Confidential Information** means information disclosed to a party (Receiving Party) by the other party (Disclosing Party) in any form or medium that is not Excluded Information and that relates to the past, present or future operations or affairs of the Disclosing Party or its controlled entities and:

(a) the Disclosing Party makes the Receiving Party aware is considered by the Disclosing Party to be confidential; or
(b) is by its nature confidential or the Receiving Party knows or ought to know is confidential.

Confidential Information may be acquired before, on or after the Commencement Date. Confidential Information includes the existence of this agreement and information about the employees or students of the Disclosing Party.

**Details** means the details set out on the cover pages of this agreement.

**Excluded Information** means information that the Receiving Party can establish is in the public domain other than through a breach of this agreement.

**Intellectual Property** means all present and future rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not capable of protection by statute, common law or in equity and including copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names and inventions.

**Personal Information** means:

(a) information or an opinion (including information or an opinion forming part of a database) whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion; and
(b) health information for the purposes of the Health Records and Information Privacy Act 2002 (NSW).

**Representative** means an employee, officer, contractor or agent of the University and includes any Key Personnel.

**Services** means the Services specified in the Details and providing any Deliverables specified in the Details.

**Term** means the period from and including the Commencement Date to and including the Contract End Date.

**University Approval** means an internal approval required before the University is authorised to provide the Services such as approval from an ethics / biosafety committee.

1.2 Rules for interpreting this agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this agreement.

(a) A reference to:

(i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
(ii) a document or agreement (including this agreement), or a provision of a document or agreement (including this agreement), is to that document, agreement or provision as amended, supplemented or replaced;
(iii) a party to this agreement or to any other agreement or document includes a successor in title, permitted substitute or a permitted assign of that party;
(iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
(v) anything (including a right, obligation or concept) includes each part of it.

(b) A singular word includes the plural, and vice versa.

(c) A word which suggests one gender includes the other genders.

(d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

(e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

(f) A reference to dollars or $ is to an amount in Australian currency.

2. SERVICES AND RELATIONSHIP

2.1 University to provide Services

The Client engages the University to provide the Services for the Term.

2.2 Relationship

The relationship of the University and the Client under this agreement is that of principal and independent contractor. This agreement does not make either party a joint venturer, partner, employee or agent of the other.

2.3 University Approvals

(a) If University Approval is required in relation to the Services, the University must use reasonable endeavours to obtain such University Approval. The University is not required to commence the Services until such University Approval is obtained.
(b) If University Approval cannot be obtained or cannot be obtained in a timely manner, the University may terminate this agreement.

(c) If the University terminates this agreement under this clause 2.3, the University is entitled to be paid for work done and for any Expenses incurred up to the date of termination.

2.4 Performance by University

(a) The University must do the work needed to provide the Services through its Representatives who have appropriate qualifications and skills. If Key Personnel are specified in the Details the University must do the work needed to provide the Services through its Key Personnel.

(b) If Key Personnel are unavailable or leave the employ of the University, the University will endeavour to provide a replacement subject to the Client’s approval which must not be unreasonably withheld. If a suitable replacement cannot be found the parties may agree to terminate this agreement. If the parties agree to terminate this agreement under this clause 2.4, the University is entitled to payment for work done and for any Expenses incurred up to the date of termination.

(c) University will use reasonable endeavours to complete the Services in accordance with the Timetable.

(d) The Client acknowledges that where Services involve research, development, expert opinion or testing the University may produce no results or conclusions or opinions or results that are unpredictable or which do not favour the Client.

3. CLIENT OBLIGATIONS

3.1 Client Responsibilities

The Client must comply with or perform the Client Responsibilities at the Client’s sole expense and must promptly provide the Client Materials required to perform the Services, and all information and assistance reasonably required to enable the University to provide the Services.

3.2 Use of Client Materials

The Client must:

(a) ensure that the Client Materials are accurate, complete and current;

(b) ensure that it is entitled to supply the Client Materials to the University for the purpose of the Services;

(c) ensure that the use of the Client Materials in connection with the Services is lawful and all required consents, permissions or authorisations relating to such use have been obtained;

(d) be responsible for arranging for the packaging and delivery of all Client Materials to the University and for all associated costs. The University is not responsible for any damage to the Client Materials prior to delivery to it;

(e) unless specified by written notice to the University ensure that the Client Materials, when used by the University for the Services, are not reasonably capable of constituting a threat to safety, health, life, property or the environment;

(f) ensure that it provides the University with all relevant information regarding the Client Materials, including, information relating to the safe, secure and appropriate transportation, use, storage and disposal of the Client Materials; and

(g) not engage in any act that may result in the University contravening an Australian Sanctions Law.

3.3 Modern Slavery

(a) The Client must (and must ensure that its Representatives) in connection with its production, procurement and supply of the Services and Deliverables pursuant to the agreement:

(i) comply with the Modern Slavery laws as if it were bound by them; and

(ii) provide such assistance as may be reasonably requested by the University to enable the University to comply with its obligations under the Modern Slavery Laws.

(b) For the purposes of this clause, Modern Slavery Laws means the Modern Slavery Act 2018 (NSW) and the Modern Slavery Act 2018 (Cth) and Modern Slavery means as defined in the Modern Slavery Laws.

4. PAYMENT AND GST

4.1 Service Fee and Expenses

The Client must pay to the University the Service Fee. The Client must also pay for Expenses incurred by the University.

4.2 Invoices

The University will issue the Client with an itemised tax invoice in accordance with the Payment Schedule for any Services for which it requires payment of the Service Fee and for any Expenses it requires to be reimbursed.

4.3 Payment

The Client must pay the University’s tax invoice within 14 days of the University submitting the invoice.

4.4 GST wording

Words defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause 4.

4.5 GST inclusive pricing

Any amount payable for anything supplied under this agreement is expressed exclusive of GST. If GST is payable on any supply made by the University under this agreement, the Client must pay to the University an additional amount equal to the GST at the time payment of the Service Fee is due.

4.6 Overdue payments

The University may suspend performance of the Services or other obligations under this agreement until all overdue amounts are paid.

4.7 Set Off

The University is entitled to set off any amount owed to the Client against any amount payable by the Client (including amounts payable for breach of this agreement) at any time in connection with this agreement.
5. INTELLECTUAL PROPERTY

5.1 Rights in Deliverables

(a) Ownership of rights in any Background IP remains with the contributing party. Where the Background IP is contributed by the Client, the University is licensed to use, modify or adapt that Background IP for the provision of the Services.

[Alternative 1 – use these paragraphs if Intellectual Property in Deliverables is assigned to Client.]

(b) On payment of the Service Fee and all Expenses, all interest and Intellectual Property in the Deliverables are assigned to the Client.

(c) The Client grants to the University a non-exclusive, royalty free, perpetual licence (with a right to sublicense), to use the Deliverables and the Intellectual Property in the Deliverables for research, teaching, academic and publication purposes (subject to clause 7).

[Alternative 2 – use this paragraph if Intellectual Property in Deliverables is retained.]

(d) Intellectual Property in the Deliverables remains with the University. On payment of the Service Fee and all Expenses the University grants to the Client a royalty-free non-transferable licence to use the Deliverables for its internal business purposes. The Client must not grant a sub-licence of the Deliverables.

5.2 Client has no right to Intellectual Property of University

Nothing in this agreement gives the Client any interest in any Intellectual Property or goodwill of the University.

5.3 No Intellectual Property infringement

The Client warrants that the use of any Background IP supplied by the Client will not infringe any Intellectual Property rights of any person or give rise to any liability to make royalty or other payments to any person.

5.4 Survival of clause

The operation of this clause 5 survives the termination of this agreement.

6. CONFIDENTIAL INFORMATION

6.1 Obligations of confidentiality

The Receiving Party agrees to keep Confidential Information secure and under the effective control of the Receiving Party. Except as permitted by clause 6.2, the Receiving Party must not disclose Confidential Information directly or indirectly in any form to anyone else or make a copy of any Confidential Information except to perform any of its obligations under this agreement.

6.2 Exceptions to obligations of confidentiality

The obligations in clause 6.1 do not apply to the Receiving Party if:

(a) the Disclosing Party has first agreed in writing to the particular disclosure, use, or copying;

(b) the information is disclosed to an officer or employee of the Receiving Party who needs to know the information concerned to perform its duties and is under the same obligations of confidence as set out in this agreement; or

(c) disclosure of any Confidential Information is required to comply with any applicable law or requirement of any government agency or regulatory body, and the Receiving Party first informs the Disclosing Party of the intended disclosure and cooperates with the Disclosing Party to limit the disclosure as reasonably requested.

6.3 Return of Confidential Information

Subject to clause 6.4 at the completion of the Services or at the written request of the Disclosing Party, the Receiving Party must (at its expense) immediately:

(a) deliver to the Disclosing Party (or if in electronic form, erase or destroy and deliver evidence of erasure or destruction) all documents and other materials containing, recording or referring to Confidential Information which are in its possession, power or control; and

(b) ensure that any person who receives the Confidential Information by the Receiving Party’s authority returns the Confidential Information to the Disclosing Party in any form in which it is held (or if it is in electronic form, erases or destroys it and gives evidence of its erasure or destruction to the Disclosing Party).

6.4 Retaining Confidential Information

(a) The Receiving Party is not required to delete or destroy any electronic back-up media that have been created solely by their automatic or routine archiving or back-up procedures to the extent that the media are not easily segregated, are maintained in confidence and are not accessible to users of the electronic system.

(b) The Receiving Party may retain a copy of a document or material containing Confidential Information if the Receiving Party is required to retain the document or material by law or for the internal auditing or reporting obligations of the Receiving Party.

6.5 Survival of clause

The operation of this clause 6 survives the termination of this agreement.

7. PUBLICATIONS

7.1 Publishing

(a) The University may publish information created in the provision of the Services, including the Deliverables, in academic, scientific and technical publications provided no Confidential Information of the Client is disclosed.

(b) Thirty days prior to publication, the University will provide the Client with a copy of all proposed publication material together with details of how, when and to whom it is proposed to be published for comments by the Client. The Client may request changes and if it does so the Client must provide reasons. The University will accommodate the Client’s requests where possible.

7.2 Consent required

(a) Neither party will use the other party’s name or the name of any employee or contractor of the other party in any publication or promotional material without the other party’s written consent.

Guidance Note – Authors must decide if Intellectual Property in the Deliverables is to be assigned, or only licensed, to the Client. Depending on what is happening with the Intellectual Property, choose the appropriate alternative.
8. PRIVACY

8.1 Obligations
Each party must ensure that where it has access to Personal Information to perform its obligations under this agreement, that party complies with all applicable state and federal privacy legislation and does not do, or permit, anything which would cause the other party or its controlled entities to be in breach of their obligations under state or federal privacy legislation.

8.2 Survival of clause
The operation of this clause 8 survives termination of this agreement.

9. LIABILITIES AND WARRANTIES

9.1 Warranty
(a) The University warrants that it will carry out the Services in a professional manner consistent with generally accepted academic and research practice.
(b) Except for the warranty in paragraph (a) the University does not make any warranties regarding the Services or the Deliverables.

9.2 Limit to liability
(a) To the extent permitted by law, the University excludes all terms, representations and warranties implied by law. Where liability cannot be excluded it is limited, at the University’s option, to re-performing the Services or, subject to paragraph 9.2(b), paying the Client the cost of having the Services re-performed.
(b) The total liability of the University to the Client for loss or damage must not exceed the payment received by the University under this agreement.

9.3 Consequential Loss
The University is not liable to the Client for consequential or indirect loss or damages including loss of profits, revenue, data, goodwill or opportunities.

9.4 Contributory negligence
Each party’s liability under this agreement is reduced to the extent the other party caused or contributed to the loss or damage.

10. TERMINATION

10.1 Immediate termination by either party
Either party (Party One) may terminate this agreement immediately by notice to the other party (Party Two) if Party Two:
(a) breaches this agreement and the breach is not remedied within 14 days of service on Party Two of a notice specifying the breach and requiring it to be remedied;
(b) becomes insolvent or goes into liquidation or provisional liquidation or enters into any arrangement or composition with its creditors;
(c) is subject to any action to have a controller, administrator, receiver, receiver and manager, liquidator or provisional liquidator appointed over its assets; or
(d) dies, ceases to be of full legal capacity or becomes incapable of managing its own affairs for any reason.

A termination under this clause 10.1 is without prejudice to any other right or action Party One may have against Party Two.

10.2 Termination by the University
(a) The University may terminate this agreement on fourteen days’ notice for convenience.
(b) A termination under this clause 10.2 is without prejudice to any other right of the University.

10.3 Consequences of termination
If this agreement is terminated for any reason, then:
(a) both parties must return all property in their possession belonging to the other party, including Confidential Information;
(b) the Client must pay the University all Service Fees owing to the University at termination within 14 days of termination; and
(c) the Client must pay the University for any reasonable costs directly attributable to providing the Services and incurred by the University prior to the date of termination where proof of the costs is supplied to the Client.

11. NOTICES

11.1 How to give an effective notice
A notice, consent or other communication under this agreement must be in writing and signed by an authorised person and must be either left at the addressee’s address or sent to the addressee by pre-paid mail or email and is deemed to be delivered to the addressee:
(a) If it is left at the addressee’s address before 5.00pm on a Business Day, on that day. If it is left at the addressee’s address on a day that is not a Business Day or after 5.00pm on a Business Day, at 9.00am on the next Business Day;
(b) If it is sent by pre-paid mail within Australia, five Business Days after it is posted;
(c) If it is sent by international post, ten Business Days after it is posted; and.
(d) if it is sent by email, when an email receipt is acknowledged by the recipient personally (not by any automatically generated system email).

11.2 Addresses for notices
A party’s address is the Address for Notices as set out in the Details. A party may change its address by notice to the other party.

12. AMENDMENT AND ASSIGNMENT

12.1 Amendment
This agreement can only be amended or replaced by another agreement signed by the parties.

12.2 Assignment
(a) The Client may only deal with its rights under this agreement with the consent of the University.
(b) The University may deal with its rights under this agreement without the consent of the Client, and may disclose to any potential holder of a right or interest any information relating to this agreement or any party to it.
13. GENERAL

13.1 Governing law
This agreement is governed by the laws of New South Wales and any dispute relating to it must only be referred to the courts of New South Wales and the federal courts of Australia.

13.2 Exercise of rights
The exercise of a right does not prevent any further exercise of that right or the exercise of any other right. Neither the exercise of a right nor a delay in the exercise of a right operates as an election or a variation of the terms of this agreement.

13.3 Operation of this agreement
(a) This agreement contains the entire agreement between the parties about its subject matter. This agreement prevails over any terms attached to a purchase order, scope of work or other similar document provided by the Client.

(b) Any provision of this agreement which is unenforceable is, where possible, to be severed unless this would materially change the effect of this agreement.

13.4 Events beyond reasonable control
The University is not liable for any delay or failure to perform the Services or its obligations under this agreement where such delay or failure is due to an event beyond the University’s reasonable control.

13.5 No exclusivity
The Client is not acquiring the Services on an exclusive basis and this agreement does not preclude each party engaging in activities similar to or in competition with the Services or their subject matter.