

# IP TOOLKIT – MODEL CONFIDENTIALITY AGREEMENT

## Notes:

### Purpose

This Confidentiality Agreement is intended to be used when a Sponsor (i.e. a sponsoring organisation such as a company) and a Research Organisation (such as a university or other research institution) intend to enter into discussions regarding a research project. This Confidentiality Agreement should be signed before discussions involving confidential material commence.

Please complete all highlighted sections in this Confidentiality Agreement, ensuring that only one option is selected in each clause and that the other option(s) are deleted.

Please delete all highlighted notes, such as this note, prior to signing the completed Confidentiality Agreement.

### Disclaimers and conditions of use

The law referred to in this model Confidentiality Agreement is current as at May 2015. Please exercise caution in using this model Confidentiality Agreement beyond that date as the law may have changed.

This model Confidentiality Agreement refers to Australian law and has not been designed for use outside Australia, including that it has not been designed for use by Parties located outside Australia.

This model Confidentiality Agreement does not constitute legal or financial advice. Please consider whether you require legal or financial advice to complete this Confidentiality Agreement.

This model Confidentiality Agreement is made available for use on the condition that the Commonwealth of Australia and its officers, employees, contractors, advisers and agents expressly disclaim all responsibility (including responsibility for negligence) for the content of this model Confidentiality Agreement to the extent permitted by law. By using this model Confidentiality Agreement, users are deemed to have consented to this condition and agree that this model Confidentiality Agreement is used entirely at their own risk.

### Licence



This model Confidentiality Agreement created by the Commonwealth of Australia is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).

A complete and current version of the Model Confidentiality Agreement is available at <https://www.ipaustralia.gov.au/tools-resources/ip-toolkit>

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**This Confidentiality Agreement** is made on [insert date]

**Between:**

[INSERT SPONSOR NAME] [ACN/ABN] [address]; and

[INSERT RESEARCH ORGANISATION NAME] [ACN/ABN] [address],

each a **Party** and collectively the **Parties**.

## **Background**

- A The Sponsor and the Research Organisation wish to discuss a possible research collaboration relating to [insert a brief description of the collaboration] (the **Purpose**).
- B The Parties may wish to disclose certain confidential information to each other relating to the Purpose, and therefore enter this Agreement to protect the confidentiality of that information, on the terms set out below.

## **It is agreed:**

### **1. Definitions**

- 1.1 **Agreement** means this Confidentiality Agreement, including any attachments and any other documents incorporated by express reference.
- 1.2 **Confidential Information** means the following information provided by the Disclosing Party or any of its Personnel to the Obtaining Party or any of its Personnel for or in connection with the Purpose:
- (a) information designated as confidential by Disclosing Party;
  - (b) information imparted in circumstances of confidence; or
  - (c) information that the Obtaining Party knows, or ought to know, is confidential,
- but does not include information which is already known by the Obtaining Party at the time it is disclosed, or which is or becomes public knowledge other than by a breach of this Agreement.
- 1.3 **Commencement Date** means [Option A: If the Parties have agreed that this Agreement will commence on a particular date, insert that date OR Option B: insert 'the date on which the last Party to execute this Agreement executes this Agreement.']
- 1.4 **Disclosing Party** means the Party which discloses Confidential Information to the Obtaining Party.
- 1.5 **Obtaining Party** means the Party which receives Confidential Information from the Disclosing Party.
- 1.6 **Personnel** means any employee, officer, agent, contractor, subcontractor, student or volunteer of a Party, and any employee, officer, agent, contractor, subcontractor, student or volunteer of a contractor or subcontractor, but excludes the other Party and its Personnel.

### **2. Roles of the Parties**

- 2.1 Each Party acknowledges and agrees that it may be both an Obtaining Party and Disclosing Party, and that the terms of this Deed are binding upon it as a Obtaining Party and enforceable by it as a Disclosing Party.

### **3. Confidentiality**

- 3.1 Each Party acknowledges and agrees that the Confidential Information is valuable.

- 3.2 In consideration for the Disclosing Party providing the Confidential Information to the Obtaining Party, the Obtaining Party accepts and agrees to keep the Confidential Information confidential in accordance terms of this Agreement.
- 3.3 Subject to clause 3.4, the Obtaining Party must:
- (a) keep the Confidential Information confidential and preserve its confidential nature; and
  - (b) not use or disclose or permit the use or disclosure of Confidential Information for any purpose other than the Purpose.
- 3.4 This Agreement does not prohibit the use or disclosure of Confidential Information:
- (a) required to be disclosed by the Obtaining Party by law or pursuant to the rules of any securities exchange;
  - (b) by the Obtaining Party to its legal or other advisers, subject to the relevant adviser being subject to confidentiality obligations or a confidentiality undertaking in a form reasonably satisfactory to the Disclosing Party;
  - (c) which is necessary for the Purpose, but only to the extent necessary for the Purpose;
  - (d) to an auditor solely for the purposes of an audit; or
  - (e) which the Disclosing Party has agreed in writing may be used or disclosed by the Obtaining Party, provided such use or disclosure is in accordance with the terms of that agreement.
- 3.5 The Obtaining Party must ensure:
- (a) its Personnel are made aware of the confidential nature of the Confidential Information and the terms of this Agreement before being provided with or having access to Confidential Information; and
  - (b) its Personnel do not do or fail to do anything that, if done or not done, would amount to a breach of the Obtaining Party's obligations under this Agreement.
- 3.6 If the Obtaining Party becomes aware that it has or may have breached this Agreement, it must immediately notify the Disclosing Party and take all reasonable steps required to stop the breach.

#### **4. Duration of obligations of confidentiality**

- 4.1 Unless the Parties agree otherwise in writing, this Agreement and the obligations under this Agreement continue in full force and effect for [insert number] years from the Commencement Date.

#### **5. Ownership of Confidential Information**

- 5.1 The Obtaining Party acknowledges that the Confidential Information remains the property of the Disclosing Party at all times and that this Agreement does not convey to the Obtaining Party or any of its Personnel any proprietary or other interest in the Confidential Information.

#### **6. Return of Confidential Information**

- 6.1 The Obtaining Party must, promptly upon request by the Disclosing Party, return or destroy all material containing Confidential Information in its possession, power or control, which was either received from the Disclosing Party or which the Obtaining Party has generated.

#### **7. Remedies**

- 7.1 The Obtaining Party acknowledges that disclosure of any Confidential Information in breach of this Agreement would cause irreparable harm to the Disclosing Party for which damages may not be an adequate remedy.

- 7.2 The Obtaining Party consents to the grant of injunctive relief to restrain any breach of this Agreement, or specific performance to compel the Obtaining Party to perform its obligations under this Agreement, as a remedy for any breach or threatened breach of this Agreement and in addition to any other remedies available to the Disclosing Party.

## **8. [Optional and may be deleted] Indemnity**

- 8.1 The Obtaining Party indemnifies the Disclosing Party against any claims, loss, damages, costs and expenses (including legal costs on a solicitor and own client basis) that the Disclosing Party incurs or suffers directly or indirectly as a result of a breach of this Agreement by the Obtaining Party, or any unauthorised use or disclosure of the Confidential Information by the Obtaining Party or its Personnel or a person who received Confidential Information from any of them.

## **9. Governing law**

- 9.1 This Agreement is governed by the laws of [insert applicable Australian State or Territory]. The Parties agree to submit to the non-exclusive jurisdiction of its courts.

## **10. Miscellaneous**

- 10.1 This Agreement shall be binding upon and for the benefit of the Parties, their successors and assigns.
- 10.2 This Agreement constitutes the entire understanding of the Parties in relation to its subject matter and supersedes all prior written or oral agreements or undertakings regarding that subject matter.
- 10.3 Neither Party may assign this Agreement (or any right under it) to another person without the prior, written consent of the other Party.
- 10.4 This Agreement may be executed in any number of counterparts. All counterparts when exchanged will be taken to constitute one document.
- 10.5 The termination or expiry of this Agreement for any reason will not extinguish the obligations of the Parties which, either expressly or by their nature, are intended to survive termination or expiry, including clause 7.

**EXECUTED AS DEED:**

**[Option A: if a Party is a corporation]**

Signed, sealed and delivered by **[name of corporation]** ACN **[ACN]** in accordance with section 127 of the *Corporations Act 2001* (Cth) and in the presence of:

.....  
Signature of director

.....  
Signature of director/company secretary

.....  
Name of director (print)

.....  
Name of director/company secretary (print)

.....  
Signature of witness

.....  
Signature of witness

.....  
Name of witness (print)

.....  
Name of witness (print)

**[Option B: If a Party is an individual]**

Signed, sealed and delivered by **[name]** in the presence of:

.....  
Signature of witness

.....  
Signature of **[name]**

.....  
Name of witness (print)