

Research Collaboration Agreement

Name of University

Bendigo Health

Project Title:

Parties

Bendigo Health

(ABN 26 875 445 912) of 100 Barnard Street, Bendigo, Victoria 3550

(BH)

Name of University

(the Collaborator)

Background

- A. Bendigo Health and [university] have agreed to undertake the Research Project described in Schedule 1.
- B. The Parties wish to enter into this Agreement to define their respective rights and obligations in respect of the Research Project.

Agreement

1. Interpretation

1.1 In this Agreement unless the contrary intention appears:

Agreement means this agreement including any schedules and attachments

Authorisation means any legally required consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with any government or relevant authority

Background IP means IPR which existed prior to the Commencement Date or is created or acquired independently of this Agreement after the Commencement Date and is made available to the other Party for the purposes of this Agreement, and includes the Background IP set out in Schedule 1

Collaborator Representative means the person so specified in Schedule 1 or otherwise notified by the Client from time to time

Confidential Information means information that is designated by a Party as confidential, and which is by its nature confidential or that the Party knows or ought to know is confidential, including but not limited to BH's patient details, but does not include information which:

- (a) is or becomes public knowledge other than by breach of this Agreement or by any unlawful means
- (b) is in the possession of a Party without restriction in relation to disclosure before the date of receipt from the other Party
- (c) is required by law to be disclosed; or
- (d) has been independently developed or acquired by a Party without reference to the other Party's information and the first Party provides valid written evidence to that effect.

Commencement Date means the date so specified in Schedule 1

Contributions means the cash and/or in-kind contributions of a Party set out in Schedule 1 **Insolvency Event** means any of the following events:

(a) the Party ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention to do so

- (b) a receiver, receiver and manager, administrator, liquidator or similar officer is appointed to that Party or any of its assets
- (c) such Party enters into, or resolves to enter into, a scheme or arrangement, compromise or composition with any class of creditors; or
- (d) a resolution is passed or an application to a court is taken for the winding up, dissolution, official management or administration of that Party

Intellectual Property or **IPR** includes copyright, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Material includes all information, documents or data however held, stored or recorded including drawings, plans, specifications, calculations reports, models, concepts, source codes, software, equipment, goods, files, computerized data, photographic recordings, audio or audio visual recordings

Moral Rights means moral rights under and in accordance with the *Copyright Act 1968* (Cth), namely the rights of an author, being an individual:

- (a) to be attributed as author of his/her work;
- (b) not to have his/her work falsely attributed; and
- (c) not to have his/her work subjected to derogatory treatment

Party or Parties means a Party or Parties to this Agreement

Personal Information means any personal information or health information as defined in the Privacy Laws

Privacy Laws includes the *Privacy and Data Protection Act 2014* (Vic), the *Health Records Act 2001* (Vic), the *Privacy and Personal Information Protection Act 1998* (Cth) and all other applicable privacy and data protection laws, and the Information Privacy Principles, Health Privacy Principles and Australian Privacy Principles under those Acts

Project IP means any IPR created or arising as a direct result of the conduct of the Research Project, but excludes copyright in a Student's thesis

Publish and **publication** include, but are not limited to, written publications and verbal presentations in any form.

Research Project means the research project described in Schedule 1

Student means a student of [University] participating in the Research Project

Term means the term so specified in Schedule 1

University Representative means the person so specified in Schedule 1 or otherwise notified by [University] from time to time.

- 1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
 - (a) words denoting the singular include the plural and vice-versa and words denoting a gender include other genders
 - (b) a reference to dollars or \$ means Australian dollars and all amounts payable under this agreement are payable in Australian dollars
 - (c) if a word or phrase given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning
 - (d) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or public authority

- (e) references to the word 'include' or 'including' are to be construed without limitation
- (f) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement
- (g) headings are inserted for convenience only and do not affect the interpretation of this Agreement; and
- (h) a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

2. Research Project

- 2.1 The Parties agree to carry out the Research Project and provide their respective Contributions to the Research Project at the times and in the manner set out in Schedule 1.
- 2.2 Each Party will provide its personnel to perform the Research Project as specified in Schedule 1. Where any personnel appointed by a Party becomes unavailable or unwilling to perform the Research Project:
 - (a) that Party agrees to use reasonable endeavours to provide appropriate replacement personnel having an equivalent level of expertise; and
 - (b) if no replacement personnel under clause 2.2(a) can be agreed by the Parties, acting reasonably, either Party may terminate this Agreement by providing 30 days' written notice.
- 2.3 Except as set out in this Agreement, each Party will be responsible for its own costs and expenses incurred by it in carrying out the Research Project.
- 2.4 Each Party agrees to carry out the Research Project in accordance with all applicable laws.
- 2.5 Each Party warrants that in carrying out the Research Project its personnel and, in respect of [University], any Students:
 - (a) are appropriately qualified for any tasks they will perform;
 - (b) will wear appropriate identification and attire approved by BH, acting reasonably;
 - (c) will comply with all relevant guidelines, policies, manuals, rules, regulations, protocols, procedures and by laws governing the Research Project as notified to it by the other Party; and
 - (d) will hold a satisfactory Police and Working With Children Check prior to commencement of the Research Project at BH's premises.
- 2.6 Each Party agrees to carry out obligations in relation to the Research Project in accordance with the National Statement on Ethical Conduct in Human Research 2007 and The Australian Code for Responsible Conduct of Research 2007 (as varied or replaced by the National Health & Medical Research Council, the Australian Research Council and Universities Australia).
- 2.7 When using BH's premises, [University] personnel and Students shall be bound by the rules, regulations, protocols, procedures and by-laws of BH with respect to use of those premises as notified by BH to [University] from time to time.
- 2.8 [University] staff members or Students visiting any BH facility have been vaccinated against seasonal influenza before entering that facility. [University] must provide appropriate evidence of the current immunization status of [University] staff members or Students upon request by BH. This requirement will apply to any access for the period 1 June to 30 September each year.
- 2.9 It will comply with the Australian Government's requirements that [University] must provide appropriate evidence of the current seasonal influenza immunization status of [University] staff members or Students before they will be permitted to enter a BH Residential Aged Care facility.

- 2.10 Discipline and control of the behaviour of [University] personnel undertaking the Research Project shall be the responsibility of [University] provided always that BH's representative shall be entitled to issue instructions to [University] personnel and Students undertaking the Research Project on matters affecting BH clinical work requirements, including BH client care or treatment, and such instructions shall be complied with fully and promptly.
- 2.11 BH shall be entitled to expect and require that [University] personnel and Students undertaking the Research Project who have access to patients/clients are confident and competent to perform their allotted tasks and that they conduct themselves in a safe and professional manner.
- 2.12 Should any [University] personnel and Students undertaking the Research Project fail or omit to be bound by or conform to any rule, regulation, protocol, procedure or by-law of BH or not behave in a safe or professional manner or perform any allotted task incompetently, BH has the right to request the [University] personnel or Student to immediately leave the clinical setting or the location and to enforce that request permanently or for any other period of time which BH reasonably deems appropriate and which the law permits.
- 2.13 Where BH requests a [University] personnel or Student undertaking the Research Project immediately to leave the clinical setting or its location, or intends to make such request at a later date, BH shall immediately inform [University] verbally of its reasons for doing so, or intention to do so, and shall as soon as practicable thereafter confirm the same in writing to [University]. Where the [University] personnel or Student undertaking the Research Project disagrees with such a request, then provided that [University] personnel or Student undertaking the Research Project has complied with the request, the disagreement shall be dealt with according to the dispute resolution procedure set out in clause 14.

2.14 BH agrees:

- (a) to provide an induction to [University] personnel and Students including such information, instruction and training as necessary to enable [University] personnel and Students to perform the Research Project in a safe manner and comply with BH's security and workplace guidelines, policies, manuals, rules, regulations, protocols, procedures and by laws;
- (b) to provide guidance on infection control protocols and procedures, as well as appropriate protective clothing and devices if required;
- (c) to provide and maintain an environment for [University] personnel and Students that is, as far as reasonably practicable, safe and without risks to health;
- (d) during the undertaking of the Research Project at BH's premises, to be responsible for day-to-day supervision of [University] personnel and Students by a professional with the appropriate expertise in relation to the activities being undertaken and to provide mentoring and adequate facilities and equipment for the duration of the Research Project;
- (e) will remain liable for all acts of [University] personnel and Students which are undertaken during the conduct of the Research Project at BH's premises whilst under the care and supervision of BH;
- (f) immediately notify [University] of any safety-related incidents that may affect the its personnel or Students, or any actions of [University] personnel or Students that BH becomes aware of that may constitute a breach of [University] policy.
- 2.15 [University] agrees that access to BH's patients or clients by [University] personnel and Students is subject to patient and client informed consent, which BH will seek and advise to [University].
- 2.16 [University] shall inform its personnel and Students that smoking is not permitted at BH's premises.
- 2.17 [University] will provide its personnel and Students with peer and professional support, in accordance with [University] policies.
- 2.18 [University] agrees to be responsible for and pay all wages, salaries and on costs due and owing to [University] personnel and Students during the Research Project at BH.

2.19 Should BH provide facilities, equipment or supplies for the [University] personnel and Students undertaking the Research Project, a scale of charges (if any and if so, inclusive of GST) and method of payment shall be agreed between BH and [University].

3. Cash contributions

- 3.1 Where Schedule 1 provides for any cash Contributions to be transferred from one Party to another Party, those funds shall be payable at the times and in the amounts set out in Schedule 1, upon receipt of a valid invoice.
- 3.2 A Party in receipt of funds under clause 3.1:
 - (a) shall upon receipt immediately deposit the funds into a separate and identifiable project account together with its own Contributions
 - (b) may only use those funds for the purpose of expenses incurred and work undertaken for the Research Project, in accordance with any budget set out Schedule 1
 - (c) upon completion of the Research Project, shall give the other Party a statement accounting for all payments from the project account; and
 - (d) upon termination or expiry of this Agreement, agrees upon request to repay to the other Party any funds that have not been expended in accordance with this clause.

4. GST

- 4.1 In this clause the expressions "consideration", "GST", "input tax credit", "supply", "recipient", "tax invoice" and "taxable supply" have the meanings given those expressions in the A New Tax System (Goods and Services Tax) Act 1999.
- 4.2 Unless otherwise expressly stated, all prices and other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.
- 4.3 If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Agreement.
- 4.4 If this Agreement requires a Party to reimburse any other Party for any expense, loss or outgoing ("reimbursable expense") incurred by another Party, the amount required to be reimbursed by the first Party will be the amount of the reimbursable expense net of input tax credits (if any) to which the other Party is entitled in respect of the reimbursable expense.

5. Cooperation

- 5.1 The Parties agree to cooperate in good faith and carry out their obligations under this Agreement in the interests of the Research Project.
- The Parties may establish a project committee for the management of the Research Project and for making recommendations to the Parties concerning issues arising under this Agreement. The committee shall regulate its own procedures at its meetings as it thinks fit and will meet as and when required. The Parties agree that the committee shall comprise such members and meet at such times as set out in Schedule 1 (if any), or as otherwise agreed from time to time.
- Each Party agrees when using the other Party's premises, facilities or equipment to comply with all reasonable directions and procedures relating to occupational health, safety and security in effect at the premises or in regard to the facilities or equipment, as notified by that Party or as might reasonably be inferred from the use to which the premises, facilities or equipment are being put.

- 5.4 Each Party acknowledges with respect to the Research Project that, due to the inherent nature of scientific research:
 - (a) there will usually be differences between forecasts and actual results as events and circumstances may not occur as expected (and these differences may be material), and no particular research result is guaranteed; and
 - (b) the Project IP may not be of any commercial value.

6. Confidentiality

- 6.1 Each Party may use Confidential Information of the other Party only for the purposes of the Research Project and in accordance with this Agreement.
- 6.2 Each Party acknowledges that all Confidential Information disclosed by one Party to the other, whether existing prior to the commencement of the Research Project or created in the course of the Research Project, is confidential and shall be kept confidential and shall not be disclosed to any person without prior written consent of the disclosing Party.
- 6.3 Each Party shall assume responsibility for the actions of its employees, officers, agents and subcontractors who have access to the Confidential Information and shall ensure that its employees, officers, agents and subcontractors are aware of and strictly observe and comply with the confidentiality obligations created under this Agreement.
- 6.4 Upon termination of this Agreement, each Party shall return to the other Party all copies of any Confidential Information disclosed Party by the other Party provided that each Party is entitled to retain in confidence a copy of the Confidential Information for its record keeping purposes as required by law and for the purpose of determining the scope of its obligations under this Agreement.

7. Privacy

7.1 Each Party agrees that in carrying out this Agreement they will comply with the relevant Privacy Laws and will not breach the Information Privacy Principles (IPPs) contained in the *Privacy and Data Protection Act 2014, privacy considerations required by the Charter of Human Rights and Responsibilities Act 2006 and the Health Privacy Principles (HPPs) within the Health Records Act 2001.*

8. Intellectual Property

- 8.1 The ownership of Background IP will not be altered or transferred or assigned merely by virtue of its use for the purposes of this Agreement.
- 8.2 Each Party grants to the other Party a non-exclusive, non-transferable, royalty-free licence to use its Background IP to the extent necessary to carry out the Research Project in accordance with this Agreement but for no other purpose.
- 8.3 Each Party making Background IP available warrants to the best of its knowledge that such Background IP when used in accordance with this Agreement will not infringe any third Party IPR.
- 8.4 Subject to clause 8.1 and unless otherwise specified in Schedule 1, the Parties agree that all rights, title and interest in the Project IP will be owned solely by the Party, or jointly by the Parties, that contribute to its development or creation and, in the case of jointly owned Project IP, the relevant Parties will own the Project IP as tenants in common in shares proportionate to their respective intellectual contributions to the development or creation of that Intellectual Property.
- 8.5 Having regard to any requirements to protect potentially commercially valuable Project IP, each Party grants to each other Party a non-exclusive, non-transferable, permanent, irrevocable, royalty free, worldwide licence to use the Project IP they own for:
 - (a) non-commercial research, education and training purposes; and

- (b) publication purposes (subject to clause 9 of this Agreement).
- 8.6 The Parties each agree to provide to the other Party written notice (within a reasonable time) of any Project IP that may have potential commercial value if and when it becomes aware of such Project IP.
- 8.7 The parties who own Project IP (as determined in accordance with clause 8.4) will consult and decide what (if any) measures should be taken to protect the Project IP and negotiate in good faith and using all best endeavours to agree the terms of any program of commercialisation arising from the Project IP so as to fairly share in any commercial return associated with the Research Project and the Project IP.
- 8.8 The Parties acknowledge and agree that copyright in a Student's thesis shall remain vested in that Student.
- 8.9 Nothing in this Agreement shall prevent any Student or [University] from providing any thesis or paper to an examiner for assessment provided that a Party may require the thesis or paper to be submitted to examiners in confidence where Confidential Information is involved. Each party will endeavour to keep any period of restriction for publication of a thesis or paper to a minimum.

9. Publication

- 9.1 Either Party is entitled to Publish the results of the Research Project subject to following:
 - (a) the first Party will provide a copy of their proposed publication to the other at least thirty (30) days in advance of submitting for publication
 - (b) the other Party may provide comments and/or reasonable amendments to the publication to protect their Confidential Information and/or Intellectual Property Rights provided they are reasonable and given to the first Party in writing no later than 14 days before the publication is made; and
 - (c) if no such comments or amendments are provided within the 14 day period, the first Party may make the publication.
- 9.2 Subject to clause 10, each Party shall acknowledge the other's contributions in all publications prepared by that Party which concern the research conducted pursuant to this Agreement in accordance with accepted academic practice.
- 9.3 Each Party shall comply with the Moral Rights of any authors of any Material. This includes without limitation:
 - (a) naming all authors in the publication of any Material
 - (b) submitting a proposed publication of any Material which has been modified to and consult with the authors who shall respond within 14 days prior to the publication of the final report in any modified form; and
 - (c) any of the authors of any Material having the right not to be named as an author of the publication in the event that the Material has been modified or altered in any way.
- 9.4 Nothing in this Agreement shall prevent any Student involved in the performance of the Research Project or [University] from providing any thesis or paper to an examiner for assessment provided that the thesis or paper will be submitted to examiners in confidence where Confidential Information is involved.
- 9.5 BH acknowledges [University] may have obligations under its statutes and policies to deposit in the library a copy of a Student's completed thesis or work submitted for a higher degree. Nothing in this Agreement affects the operation of those statutes or policies or creates any obligations contrary to those statutes or policies.

10. Publicity

- 10.1 All press releases, advertisements or other announcements relating to this Agreement will be made jointly with the written approval of each Party.
- 10.2 Neither Party shall use the name or logo of the other Party in any press release, advertising or other promotional activity or refer to this Agreement in any such promotional activity without the express written consent of that Party.

11. Indemnity

- 11.1 Each Party shall indemnify and keep the other Party indemnified from and against all claims and actions arising from any negligent act or omission on the part of the first mentioned Party or its employees, agents, contractors or consultants in connection with the Research Project.
- 11.2 A Party's liability to indemnify another Party under this clause 11 will be reduced proportionately to the extent that a negligent act or omission of the indemnified Party, its employees, agents, contractors or consultants contributed to the relevant claim or action.

12. Insurance

- 12.1 Each Party shall effect and maintain adequate insurances to cover any liabilities of that Party arising under this Agreement.
- 12.2 Each Party must provide proof of its insurances within fourteen (14) days of receipt of a written request by the other Party.

13. Notices

- 13.1 All notices required to be given under this Agreement shall be in writing sent to the address of the Party as set out in Schedule 1 or such other address as a Party may designate by notice given in accordance with this clause.
- 13.2 Any notice may be delivered by post and shall be deemed to have been served by post three days after posting and by email or facsimile on the day of transmission provided that the sender receives an "OK" or similar code in respect of the facsimile or email transmission. If the delivery, receipt or transmission is on a business day that day will be the day of notice, or if not delivered on a business day (or is after 5.00pm on any day), the notice is taken to be received at 9.00am on the next business day.

14. Dispute Resolution

- 14.1 At all times during this Agreement the Parties shall co-operate with each other and act in good faith to resolve any dispute or disagreement touching on or concerning this Agreement or the Parties' respective obligations under this Agreement.
- 14.2 If a dispute occurs between the Parties in connection with this Agreement, the following dispute resolution procedure must be followed:
 - (a) the Party claiming that a dispute has arisen ("Complainant"), must give written notice ("Notice") to the other Party to the dispute ("Respondent") specifying:
 - (i) the nature of the dispute
 - (ii) what outcome the Complainant wants; and
 - (iii) what action the Complainant considers will settle the dispute; and
 - (b) upon the Respondent receiving the Notice, the Parties to the dispute must endeavour in good faith to resolve the dispute; and

- (c) if the dispute is not resolved within 30 days after the Respondent receives the Notice (or within such further period as the Parties may agree) then either Party may refer the dispute to a mediator agreed by the Parties; if the Parties cannot agree about who should be the mediator within a further 14 days after the Respondent received the Notice (or within such further period as the Parties agree), either Party may ask the President or Senior Office-bearer of the Law Institute of Victoria to appoint a mediator.
- 14.3 The Parties agree to attend any mediation arranged under clause 14.2 and to endeavour in good faith to settle the dispute by mediation before having recourse to arbitration or litigation.
- 14.4 Unless otherwise agreed between the Parties in writing, the Parties are equally liable for the costs of the mediation. However each Party must bear its own costs associated with attending the mediation.
- 14.5 Clause 14 does not affect the right of a Party to take legal proceedings to obtain urgent interlocutory relief.

15. Termination

- 15.1 A Party may by written notice immediately terminate this Agreement if the other Party:
 - (a) is in breach of any terms of this Agreement and the breach is not remedied within thirty (30) days of a notice from the complaining Party specifying the breach and requiring its remedy; or
 - (b) suffers an Insolvency event.
- 15.2 BH may terminate this Agreement immediately by notice in writing if:
 - (a) any approval or Authorisation, including but not limited to any Authorisation of any ethics committee or any government authority necessary for the conduct of the Research Project is rejected or withdrawn and, despite reasonable efforts, the Parties are unable to amend the Research Project to adequately take account of the change in circumstances; or
 - (b) an issue of health, safety or security arises with regard to the Research Project that cannot reasonably be resolved.
- 15.3 Where unforeseen circumstances or causes beyond the control of the parties causes or threatens major disruption to client services or provision of clinical education (e.g. industrial disputes or implementation of a disaster plan and a declaration of a state of emergency or disaster or a health direction), both parties acknowledge and agree that either party has a right to defer, suspend or amend the Research Project.
- 15.4 Termination by a Party in accordance with this Agreement shall be without prejudice to any right of action or remedy, which has accrued or may have accrued to either Party.
- 15.5 Clauses 6, 7, 8, 9, 10, 11, 16.8 and 16.9 survive the termination of this Agreement.

16. General

- 16.1 This Agreement, including any amendments incorporated in Schedule 3 by way of special conditions, constitutes the entire agreement between the Parties.
- 16.2 This Agreement may only be varied by the further written agreement signed by the Parties.
- 16.3 This Agreement does not create any agency, employer-employee relationship or a partnership of any kind. Each Party is an independent contractor without authority to bind the other. Neither Party nor its personnel are agents or employees of the other Party by virtue of this Agreement.
- 16.4 Neither Party shall assign or purport to assign any right under this Agreement without the prior written consent of the other Party.
- 16.5 Each Party will bear its own costs arising out of the negotiation, preparation and execution of this Agreement.

- 16.6 Each Party agrees to do all things and execute all deed, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement.
- 16.7 This Agreement may be executed in counterparts, which may be exchanged and relied on by the recipient in the form of a facsimile or digital scan. This Agreement may be executed electronically.
- 16.8 Any provisions of this Agreement which are held to be illegal or otherwise in conflict with any laws, statutes or regulations shall be deemed to be severed from the remainder of the Agreement and the validity of the remaining provisions shall not be affected.
- 16.9 This Agreement shall be construed and governed in accordance with the laws of Victoria and the Parties submit to the exclusive jurisdiction of the courts of Victoria.
- 16.10 Failure of either party to enforce any of the conditions of this Agreement shall not be considered as a waiver by such party of such condition, or in any other way affect the validity of this Agreement or any part thereof.

Execution

Executed as an agreement		
Signed for and on behalf of BENDIGO HEALTH in accordance with its constitution by an authorised signatory))	
		Date:
Signed for and on behalf of UNIVERSITY) by an authorised signatory)	
		Data

Schedule 1 – Details

Research Project	As described in Schedule 2		
Title			
Commencement Date	On signing of this Agreement		
Completion Date			
University's representative (investigator)	Name: Title: Phone: Email: School:		
Bendigo Health's representative (investigator)	Name: Title: Phone: Email:		
University's address for notices	Attention: Address: Email:		
Collaborator's address for notices	Attention: David Ray, Director – Procurement Address, Post: PO Box 126, Bendigo, Victoria 3552 Address, Street: 100 Barnard Street, Bendigo, Victoria 3550 Email: dray@bendigohealth.org.au		
Contributions:			
Cash			
Time(s) for payment			
In-kind			
Background IP			
Project IP			
Equipment and materials			
Project team			

Schedule 2 – Research Project

Attach Research Protocol

Schedule 3 – Special Conditions