

Confidentiality Agreement – One Way (UNSW Recipient)

AGREEMENT DETAILS

Agreement Date	The date that this Agreement is executed by the last party to it.	
UNSW or the Recipient	Name	The University of New South Wales, a body corporate established pursuant to the University of New South Wales Act 1989 (NSW) (UNSW)
	Address	UNSW Sydney NSW 2052, Australia
	ABN	57 195 873 179
	Notices	Attention - RGC Director, Research Grants and Contracts Research Grants and Contracts Address Level 3, Rupert Myers Building South Wing UNSW NSW 2052, Australia Email MyResearch.rgc@unsw.edu.au Phone +61 2 9065 8491
Technical/Agreement Contact	Attention	[insert]
	Address	[insert]
	Email	[insert]
	Phone	[insert]
[Insert short form name] or Discloser	Name	[LEGAL NAME] <i>[You need to complete the details for the other party in this section, being the legal name, ABN (or other registration detail) and an address below. You should make sure that the correct legal name is used (and it is not a trading name or an unincorporated affiliation).]</i>
	Address	[REGISTERED ADDRESS OR STREET ADDRESS AND COUNTRY IF A FOREIGN PARTY]
	ABN or ACN or other registration number:	[INSERT NUMBER] <i>[You can do a basic ABN search for Australian entities at ABN lookup to make sure the details are correct]</i>
	Notices	Attention [INSERT NAME OF LEGAL CONTACT]

		[This person should be the organisation contact not the researcher, project manager or agreement contact]
	Address	[insert]
	Email	[insert]
	Phone	[insert]
Agreement Contact	Attention	[insert]
	Address	[insert]
	Email	[insert]
	Phone	[insert]
Disclosed Information	[Drafting Note: Describe the information that will be disclosed such as: specific documents, business plans, technical documents, research reports, results, specifications, etc.]	
Purpose	[Drafting Note: Describe the purpose of disclosing the confidential information. Some examples of types of purposes are: • For the purpose of enabling UNSW to evaluate the ABC Technology with a view to developing a prototype. • For the purpose of negotiations and discussions between the parties in relation to a possible collaboration. • To conduct business and technical discussions in relation to project B. • To negotiate a contract between the parties related to research project C]	
Effective Date	The [Agreement Date OR OTHER SPECIFIED DATE]	
Term	[insert number of years] years from the Effective Date [Duration of this Agreement, can be a date range. Select 5 years for research and knowledge exchange projects.]	

EXECUTION

Executed as an agreement

Signed for and on behalf of UNSW by its authorised representative:

_____ Signature	_____ Date
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_____ Name of authorised representative	_____ Position
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Signed for and on behalf of [Insert Discloser legal name] by its authorised representative:

_____ Signature	_____ Date
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_____ Name of authorised representative	_____ Position
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GENERAL TERMS

1 Definitions and interpretation

1.1 Definitions

In this Agreement, the capitalised words below have the following meaning.

Affiliate of a party means an entity who, directly or indirectly, Controls or is Controlled by or is under common Control with a party.

Agreement means this agreement between UNSW and the Discloser once executed.

Business Day means any day that is not a Saturday, Sunday or public holiday New South Wales, Australia.

Confidential Information means:

- (a) the Disclosed Information;
- (b) all information that relates to the Purpose, including:
 - (i) the existence, progress and status of discussions, negotiations or agreements relating to the Purpose; and
 - (ii) information created, ascertained, discovered or derived directly or indirectly from the Purpose; and
- (c) all other information disclosed by the Discloser to the Recipient or which the Recipient otherwise becomes aware of during the Term or before the Effective Date, that is:
 - (i) imparted in circumstances of confidence; or
 - (ii) by its nature reasonably to be considered the confidential information of the discloser or of a person to whom the Discloser owes a duty of confidence,

in each case, irrespective of the medium or means of disclosure or whether the disclosure is made directly or indirectly either by or to a party or by either party's Personnel, Affiliates or Related Bodies Corporate but does not include any Excluded Information.

Control has the meaning given to that term in section 50AA of the *Corporations Act 2001* (Cth).

Dispute means a dispute arising out of or relating to this Agreement including a dispute about the breach, termination, validity, or subject matter of this Agreement, or a claim in equity or in tort relating to the performance or non-performance of this Agreement.

Excluded Information means information that:

- (a) is in the public domain other than due to a breach of this Agreement;
- (b) was known by UNSW at the time of disclosure or is subsequently disclosed to UNSW by someone other than the Discloser and the information was not acquired directly or

indirectly through a breach of this Agreement or any other obligation of confidentiality; or

- (c) is independently developed by the Recipient without any reference to or reliance on, or because of the disclosure of the Confidential Information by the Discloser.

Government Agency means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

Law means any applicable statute, regulation, by-law, ordinance, rule, proclamation, subordinate legislation, order in council, any other instrument of a legislative character, and court rules, that are in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government) or elsewhere, and includes the common law and rules of equity as applicable from time to time.

Personnel means any employee, officer, principal, agent, contractor, student or volunteer of a party.

Related Body Corporate has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth).

1.2 Interpretation

Unless the context requires otherwise:

- (a) words in the singular include the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) if a word or phrase is given a particular meaning, its other grammatical forms have corresponding meanings;
- (d) a reference to:
 - (i) a person includes a partnership, a joint venture, an unincorporated association, a corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation; and
 - (iii) this or any other document includes the document as novated, varied or replaced and despite any change in a party's identity;
- (e) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day;
- (f) headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation;

- (g) a reference to a term in the Agreement Details which is not separately defined has the meaning specified in the Agreement Details; and
- (h) no provision in this Agreement may be construed adversely to a party just because that party prepared it.

2 Term

This Agreement commences on the Effective Date and continues until the Term expires, unless otherwise terminated or extended by the parties in accordance with the provisions of this Agreement.

3 Confidentiality obligations

UNSW must during the Term:

- (a) maintain the confidentiality of all Confidential Information;
- (b) use the Confidential Information solely for the Purpose;
- (c) not disclose directly or indirectly or permit the disclosure or use of the Confidential Information, except as provided in this Agreement;
- (d) take reasonable steps to keep the Confidential Information:
 - (i) within its possession, power, custody and control; and
 - (ii) secure and properly stored to protect it from unauthorised access, use, disclosure, loss, damage or destruction;
- (e) use best endeavours to ensure that all persons to whom any Confidential Information is disclosed as permitted under this Agreement comply with this Agreement; and
- (f) immediately notify the Discloser if it becomes aware of any actual or suspected breach of this Agreement, and use reasonable endeavours to prevent or remedy any breach of this Agreement.

4 Permitted disclosures

4.1 During the Term, UNSW may disclose the Confidential Information to its:

- (a) Personnel;
- (b) Affiliates and Related Bodies Corporate; and
- (c) professional advisers,

who have a specific need to access the Confidential Information for the Purpose and provided they are made aware of the confidential nature of the Confidential Information and the terms of this Agreement before they are provided with or given access to Confidential Information.

4.2 UNSW may disclose Confidential Information if required by any Law or order of any Government Agency provided, that it:

- (a) only discloses the minimum amount of information necessary to comply with the requirement;
- (b) takes all reasonable steps to avoid such disclosure;
- (c) where permitted by Law, notifies the Discloser as soon as practicable after such disclosure is ordered; and
- (d) consults with the Discloser as to the form of disclosure to be made and takes account of any reasonable comments of the Discloser.

5 Return of Confidential Information

5.1 UNSW must within ten (10) Business Days of the end of the Term (or earlier if requested in writing by the Discloser):

- (a) cease all use of the Confidential Information;
- (b) return, destroy or permanently delete all records and copies of the Confidential Information in its possession, custody or control, and
- (c) if requested by the Discloser, certify in writing compliance with the requirements of this clause 5.

5.2 Despite clause 5.1, UNSW may retain a copy of the Confidential Information (acting reasonably and only for as long as it is reasonably required):

- (a) to the extent required by UNSW's document retention policy;
- (b) to fulfil legal, regulatory or reporting obligations;
- (c) that is stored electronically due to an existing routine data backup, provided the Confidential Information is deleted from local hard drives and no attempt is made to recover it other than as required by Law; and
- (d) provided UNSW is subject to the same obligations of confidentiality that apply during the Term.

6 Privacy

Both parties agree to:

- (a) comply with the relevant laws, principles, codes and policies relating to the collection, use, disclosure, storage and access to personal information (**Privacy Laws**);
- (b) not do anything with any personal information it receives or holds that will cause the other party to be in breach of any Privacy Laws; and
- (c) assist and co-operate with the other party in resolving any complaints made under any Privacy Laws.

7 Warranties

- 7.1 Each party represents and warrants to the other party that to its actual knowledge at the Effective Date it has:
- (a) full power and authority to enter into and perform its obligations under this Agreement;
 - (b) taken all necessary actions and obtained all authorisations, licences, consents and approvals, to allow it to enter into this Agreement.
- 7.2 The Discloser does not provide any warranties (express or implied) regarding the accuracy or reliability of the Confidential Information and the Recipient acknowledges the Discloser excludes all liability for loss or damage that may be suffered or incurred by the Recipient because of using or relying on the Confidential Information.

8 Dispute resolution

- 8.1 This clause 8 applies to any Dispute which arises between the parties in connection with this Agreement. Each party must follow the dispute resolution process in this clause before it commences litigation or takes similar action, except to seek an urgent injunction or declaration.
- 8.2 If a party considers that a Dispute has arisen (**Initiating Party**), it must give notice in writing of the Dispute to the other party (**Receiving Party**), setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- 8.3 Within twenty (20) Business Days of the service of the Dispute Notice by the Initiating Party on the Receiving Party, in the case of UNSW, the relevant Deputy Vice-Chancellor (or equivalent) or their delegate and in the case of the Discloser, its Chief Executive Officer, or their delegates who have appropriate authority to resolve the Dispute will meet (in person or by telephone or video conference) and attempt to resolve the Dispute in good faith.
- 8.4 If the Dispute is not resolved within twenty (20) Business Days after the Dispute is referred to Senior Representatives, the parties will endeavour to settle the Dispute by mediation administered by the Australian Disputes Centre (**ADC**) before having recourse to litigation.
- 8.5 Where a Dispute is referred to mediation under clause 8.4 above:
- (a) the mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC (**Guidelines**).
 - (b) the terms of the Guidelines are hereby deemed incorporated into this Agreement.

- 8.6 this clause 8 shall survive termination of this Agreement.

9 Remedies

UNSW acknowledges that the Discloser may be irreparably harmed by an actual or threatened breach of this Agreement and that damages may not be an adequate remedy. Consequently, if there is an actual or threatened breach of this Agreement, and subject to clause 8, the Discloser will be entitled to enforce this Agreement by injunctive relief or compel specific performance as a remedy (in addition to other remedies it may be entitled to at Law) without proof of actual or special damage.

10 General

10.1 Assignment

A party must not assign, novate, or otherwise deal with this Agreement without the prior written consent of the other party.

10.2 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary to give full effect to this Agreement.

10.3 No relationship

Nothing in this Agreement may be construed as creating a relationship of partnership, joint venture employment, principal and agent or trustee and beneficiary between the parties.

10.4 Entire Agreement

This Agreement:

- (a) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

10.5 Waiver

The failure by a party to require performance of an obligation under this Agreement by the other party will not operate as a waiver of the obligation and the other party remains liable to perform all its obligations under this Agreement.

10.6 Variation

Any variation to this Agreement is not valid unless it is in writing and signed by each party.

10.7 Severability

If any provision in this Agreement is unenforceable, illegal or void or makes this Agreement or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Agreement remains in force.

10.8 Survival

Clauses 5, 6, 8, 9 and 10 survive termination or expiry of this Agreement together with any other term that by its nature is intended to do so.

10.9 Counterparts

This Agreement may be executed in any number of counterparts each of which may be executed electronically or in handwriting and will be deemed an original whether kept in electronic or paper form. All counterparts together constitute one agreement.

10.10 Governing law and jurisdiction

The Laws of New South Wales, Australia govern this Agreement and the parties submit to the exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

SAMPLE