 

**RESEARCH FUNDING AGREEMENT**

**PROJECT TITLE**

**PHA PROJECT NUMBER 20XX-XXX**

**BETWEEN**

**LEGAL NAME OF OTHER PARTY (ABN XX XXX XXX XXX)**

**("Researcher")**

# -AND-

## UNIVERSITY OF NEW ENGLAND (trading as POULTRY HUB AUSTRALIA) ABN 75 792 454 315 ("PHA")

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Special Conditions Schedule

Project Plan Execution Blocks

## The parties listed in the Schedule agree as follows:

## Introduction to PHA and PHA’s representative

* 1. Poultry Hub Australia (PHA) is located at the University of New England (UNE) in Armidale, NSW While PHA sits within the grounds of UNE, it is a semi-autonomous body with authority to manage its own branding, contracting, financial delegation, and personnel management.
  2. PHA’s representative for this Agreement is the Director.

## Project

* 1. PHA appoints the Researcher to perform the Project and the Researcher accepts the appointment.
  2. The Researcher must perform the Project according to the Project Plan to achieve the purposes of the Project.

## Project management

* 1. The Researcher must attend meetings for the Project as reasonably required by PHA.

## Term

* 1. This Agreement starts on the Start Date in the Project Plan and ends on the earlier of:

1. the End Date in the Project Plan; or
2. an earlier termination under this Agreement.

## Quality

* 1. The Researcher will perform the Project with the highest practicable:

1. effort;
2. diligence;
3. efficiency; and
4. applicable professional, scientific, and ethical principles or standards,

to be reasonably expected from an Equivalent Organisation undertaking a Similar Project.

## Payment of Funds

* 1. PHA will pay the Funds to the Researcher.
  2. Sub-clause 6.1 is subject to:

1. clause *29Project halt*;
2. sub-clause 49.1; and
3. completion of Milestones set out in the Project Plan to the reasonable satisfaction of PHA.

## Use of Funds

* 1. The Researcher must apply the Funds only for the objectives of the Project.
  2. If any Funds paid to the Researcher remain uncommitted by it, the Researcher must repay those Funds to PHA by the earlier of 30 days from the End Date, or 30 days after PHA directs the Researcher to repay the Funds.

## Researcher contributions

* 1. The Researcher must, according to the Project Plan, provide the:

1. time of the Principal Investigator;
2. support of relevant administrative and finance staff;
3. Researcher Funds;
4. Researcher Assets; and
5. Researcher Materials, detailed in the Project Plan.
   1. The Researcher must:
6. purchase those Project Assets detailed in the Budget to be purchased by it;
7. protect and maintain Project Assets for a period sufficient to complete its obligations under this Agreement; and
8. not encumber or dispose of any Researcher Assets or Project Assets until the completion of its obligations under this Agreement.
   1. The Researcher must cause the Principal Investigator to manage, supervise and, if necessary, do the day-to-day work on the Project to ensure its completion by the End Date.
   2. If the Researcher engages contractors or students for the Project, the Researcher:
9. is liable for all acts and omissions of its contractors or students; and
10. remains liable for the Researcher’s obligations under this Agreement.

## Directions

* 1. The Researcher must comply with all of PHA’s reasonable and lawful directions about the Project.

## Demands for information

* 1. If directed to do so, the Researcher must provide PHA with written evidence of compliance with clauses:

1. *7 Use of Funds*;
2. *8 Researcher contributions*;
3. *12 Compliance*;
4. *13 Reporting*;
5. *17 Discoveries*;
6. *24 Insurance*;
7. *26 Failure to perform*;
8. *36 Moral Rights*;
9. *38 Student publications*; and
10. *56 PPSA*.

## Conflict of Interest

* 1. During the Term, the Researcher must not become a Conflicted Party without the prior written consent of PHA, which may be withheld in PHA’s absolute discretion.

## Compliance

* 1. In performing the Project, the Researcher must comply with all laws, codes (such as codes of conduct or practice), national statements, accounting standards, industry standards, and guidelines applying to an Equivalent Organisation.
  2. The Researcher must obtain all necessary approvals, consents, and authorisations required for performing the Project, including, if necessary, prior ethical clearances for the Project from the relevant ethics committee, and comply with those clearances during the Term.
  3. The Researcher must ensure that all its officers, employees, agents, representatives, contractors, and students work on the Project according to the clauses of this Agreement, and to the standard detailed in clause *5 Quality*.
  4. The Researcher must not vary, or attempt to vary, any aspect of the Project detailed in the Project Plan without the prior written approval of PHA.

## Reporting

* 1. By the due dates, the Researcher must provide PHA with:

1. special reports;
2. progress reports;
3. annual reports
4. final report;
5. financial report; and
6. Utilisation Report; or
7. Commercialisation Report,

detailed in the Project Plan, or reasonably requested of the Researcher by PHA.

* 1. Reports are parts of the Project and must:

1. be in the form;
2. contain the information; and
3. meet the standard, reasonably required by PHA.
   1. In addition to the requirements of sub-clause 13.1, the Researcher must keep PHA updated about:
4. any changes to BIP made available for the Project;
5. the progress of the Project, including any issues with meeting Milestones, and the provision of Reports by the due dates;
6. the production of Project CI and Project IP;
7. any relevant information regarding the Project, including any opinions the Researcher may have about its course and the likelihood of industry relevant Transfer; and
8. any information about, or incidental to, this Agreement.

## Use of Reports

* 1. The Researcher must not copy, reproduce, provide, publish, exploit, use or disclose any Report, or other document containing information from a Report, without PHA’s prior written consent, which may be granted or withheld in PHA’s absolute discretion.
  2. The Researcher acknowledges and agrees that PHA may, in its absolute discretion, and subject to the author’s Moral Rights:

1. amend or change any Report;
2. decide to, or not to, copy, reproduce, provide, publish, exploit, use or disclose any Report.
   1. Nothing in this clause limits clause *13 Reporting*.

## Audit

* 1. Records created by the Researcher or its subcontractors in connection with the Project may be State records under the *State Records Act 1998* (NSW).
  2. PHA may on 7 days’ notice to the Researcher audit or examine the Researcher’s records:

1. to determine the accuracy of any Report;
2. to assess compliance with the clauses of this Agreement; or
3. if the Researcher has not provided information to the satisfaction of PHA under clauses *10 Demands for information* and *13 Reporting*, to obtain that information.
   1. The Researcher must keep its financial and other records required for the purposes of this clause for 7 years after the Agreement ends under clause *4 Term*.

## Confidential information

* 1. Unless stated otherwise in this clause, a Party must not use or disclose CI of another Party.
  2. A Party may use or disclose CI of another Party only for the objectives of the Project.
  3. A Party may disclose CI of another Party to its;

1. employees;
2. officers;
3. directors;
4. students who have signed an agreement with the Party to respect the confidentiality of CI disclosed to them;
5. legal, financial, taxation, or other professional advisors owing a duty of confidentiality to the Party; and
6. related bodies corporate,

who need to know, and only to the extent they need to know.

* 1. A Party may disclose CI of another Party if:

1. required by law; or
2. the other Party gives prior written permission to the disclosing Party.
   1. Subject to applicable law, a Party must return another Party’s CI to that Party if it requests and the returning Party must, to the extent reasonably practicable, delete all electronic copies of the CI under its control.
   2. For the avoidance of doubt, the Parties acknowledge and agree that PHA alone is responsible for the management of Project CI.

## Discoveries

* 1. The Researcher must record discoveries made during the Project in notebooks, and keep physical or electronic copies of the notebooks in a secure location.
  2. The Researcher must notify PHA within 3 days of developing, or becoming aware of the development of, any Project CI or Project IP.

## Background IP warranties

* 1. The Researcher warrants that:

1. it owns, or is entitled to control and does control, BIP it makes available for the Project;
2. performing the Project will not infringe any other person’s intellectual property rights (excepting patent rights);
3. to the best of its knowledge and belief after making appropriate inquiries, the use of BIP under this Agreement will not infringe any other person’s patent rights;
4. except as disclosed at the Start Date, BIP made available for the Project is unencumbered; and
5. it will not deal with BIP made available for the Project in any way that would impair or frustrate the objectives of this Agreement, for example, by disposing of, disclosing, encumbering, or commercialising the BIP.

## Background IP

* 1. Subject to this clause, the Researcher retains ownership of BIP it makes available for the Project.
  2. For all Projects, the Researcher making BIP available for use in a Project grants to PHA, and PHA accepts, a non-exclusive, royalty free licence to use the Researcher’s BIP only for the objectives of the Project.
  3. Subject to clause *33 Effect of Termination*, for Utilisation Projects, the Researcher making BIP available grants to PHA, and PHA accepts, an irrevocable, perpetual, non- exclusive, royalty free licence permitting PHA to make the Researcher’s BIP available to industry for use along with the Project IP.
  4. Subject to clause *33 Effect of Termination*, for Commercialisation Projects, the Researcher making BIP available grants to PHA, and PHA accepts, an irrevocable, perpetual, non-exclusive, royalty-bearing licence permitting PHA to make the Researcher’s BIP available to industry for use either alone, or with the Project IP.
  5. For Declared BIP, the BIP Royalty payable to the Researcher by PHA under sub-clause

19.4 will be 5% of Commercialisation Return.

* 1. For Undeclared BIP, the BIP Royalty payable to the Researcher by PHA under sub-clause

19.4 will be 0.5% of Commercialisation Return.

* 1. If the Researcher refuses to make BIP available under this clause, it must repay the Funds for the Project to PHA within 30 days of PHA directing it to make the BIP available.
  2. The Parties acknowledge and agree that sub-clause 19.7 does not give rise to a Dispute under this Agreement, and the Funds are deemed to be a liquidated debt.
  3. While the Parties acknowledge and agree that all BIP made available for the Project is subject to this clause from the Start Date, nothing in this Agreement prevents the Parties agreeing to different terms for BIP, including any Royalty payable, before the Start Date.

## Ownership of Project IP

* 1. Subject to this clause, PHA will own Project IP upon its creation.
  2. If necessary to give effect to clause 20.1, the Researcher will assign all its present and future rights, upon such rights coming into existence, in Project IP to PHA.
  3. PHA grants to the Researcher a revocable, non-exclusive, royalty free licence to use the Project IP for the objectives of the Project.
  4. PHA grants to the Researcher an irrevocable, non-exclusive, royalty free licence to use the Project IP for the Researcher’s own internal research purposes and teaching purposes.
  5. The Researcher may not use Project IP for any other purpose or disclose information about the Project IP to any person, without the prior written approval of PHA, which may be refused in the absolute discretion of PHA.

## Equity in Project IP

* 1. Equity in Project IP arising from Commercialisation Projects will be divided proportionately between the Parties.
  2. Equity in Project IP arising from Utilisation Projects will be held by PHA.

## Transfer to industry

* 1. PHA will undertake Transfer of Project IP.
  2. PHA will use reasonable endeavours to achieve Transfer of Project IP according to the Project’s Transfer Strategy, if any.
  3. Unless otherwise agreed in the Special Conditions, PHA will pay to itself and to the Researcher their share of the Commercialisation Return.

## Knowledge Asset infringement

* 1. The Researcher must notify PHA (and any other affected Party) within 3 days of becoming aware of an infringement, or potential infringement, of any Knowledge Asset.

## Insurance

* 1. The Researcher must self-insure or take out and maintain the level of:

1. product liability;
2. statutory workers compensation insurance (or otherwise comply with all statutory workers compensation requirements);
3. public liability;
4. professional indemnity; and
5. other insurance,

to be reasonably expected from an Equivalent Organisation undertaking a Similar Project.

* 1. A Researcher, who is an individual, must take out and maintain at the Researcher’s own cost the insurances listed in sub-clauses 24.1(b), 24.1(c), and 24.1(d) with the amounts required for sub-clauses 24.1(b), 24.1(c), and 24.1(d) as set out in the Project Plan.
  2. Professional indemnity insurance obtained for the purposes of sub-clauses 24.1 and 24.2, must continue to provide cover (by way of renewal, or run-off cover, or otherwise) for a period of 5 years from the end of the Term.
  3. A Researcher must:

1. provide certificates of currency to PHA for any insurance claimed to be held by the Party if PHA requests it to do so;
2. notify PHA immediately if an insurance policy required under sub-clause 24.1 is cancelled or not renewed; and
3. ensure the insurance policies referred to in clause 24.1 cover all contractors, who are not otherwise insured, and students engaged by the Researcher for the purposes of the Project.
   1. For the avoidance of doubt, the Parties acknowledge and agree that they will carefully consider risks with a likelihood of arising from the performance of the Project, or under this Agreement, and obtain appropriate levels of insurance cover against the potential impact of those risks.

## Privacy

* 1. The Researcher, when it collects, uses, discloses or holds personal information in connection with this Agreement must:
     1. collect, use, disclose or hold such personal information only for the purpose of performing its obligations under this Agreement;
     2. comply with the Privacy Laws as if it were subject to the Privacy Laws in relation to the collection, use, disclosure and storage of personal information, including by obtaining all necessary consents;
     3. not do any act or engage in any practice that would breach the Privacy Laws, or which if done or engaged in by PHA, would be a breach of any Privacy Laws;
     4. not allow any personal information that has been collected or used in connection with this Agreement to be transferred, stored, hosted, backed-up or otherwise removed outside of New South Wales unless it has obtained PHA’s prior written approval in writing;
     5. notify UNE immediately upon becoming aware of a complaint, breach or possible breach of any of the obligations in this clause by the Researcher or its Personnel and comply with all reasonable directions from PHA in connection with remedying that complaint or breach;
     6. comply with all reasonable directions of PHA in relation to the security of personal information and take all such steps as reasonably necessary to protect the personal information from misuse or loss and from unauthorized access, use, modification or disclosure; and
     7. ensure that the Researcher’s Personnel are made aware of the above obligations and any agreement with a subcontractor contains equivalent provisions to this clause.

## Data Loss or Data Breach

* 1. In the event of any incident or act that compromises the security, confidentiality, or integrity of any Personal Information or the physical, technical, administrative, or organizational safeguards put in place by a party that relate to the protection of Personal Information, the party must:
     1. notify the other party as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence;
     2. take any actions required as soon as practicable to restore the protections for the Personal Information and to reinstate the Personal Information;
     3. provide the other party with a written report within forty eight (48) hours of the occurrence providing any available details of the cause of the data breach or loss; the extent of any data lost, compromised or accessed by a third party; and steps taken to contain the breach or loss;
     4. cooperate with the other party in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the party;
     5. provide the other party with a detailed written report within ten (10) calendar days of the occurrence providing full details of the cause of the data breach or loss; the extent of any data lost, compromised or accessed by a third party; if the data has

been restored; any permanent loss of data; how long the breach lasted; and describing the steps the party has taken and measures it will undertake in the future to prevent a future data breach or loss.

## Failure to perform

* 1. Subject to clause *19 Background IP*, the Researcher’s liability for failure to perform the Project is limited to performing the Project again, or that part of the Project, that PHA considers, in PHA’s absolute discretion, has not been performed satisfactorily. If reasonably required having regard to clause 27.1, to meet the objectives of the Project, PHA may direct the Researcher to redo any part of the Project.
  2. If the Researcher refuses to redo the unsatisfactory Project, or part of the Project, it must repay the Funds for the Project, or that part of the Project, within 30 days of PHA directing it to repay the Funds.
  3. The Parties acknowledge and agree that sub-clause 27.2 does not give rise to a Dispute under this Agreement, and the Funds are deemed to be a liquidated debt.
  4. For the avoidance of doubt, a Party’s failure to meet a deadline imposed under this Agreement does not relieve the Party from satisfying, as soon as is practicable, the obligation underlying that deadline.

## Intervening Event

* 1. If an Affected Party is unable to perform an obligation under this Agreement, the Affected Party must give the other Party prompt written notice of:
     1. the particulars of the Intervening Event; and
     2. the likely duration of and extent to which the Affected Party will be unable to perform the obligation.
  2. If sub-clause 28.1 applies:
     1. the obligation will be suspended for the duration of the Intervening Event;
     2. the Affected Party must use its best reasonable efforts to overcome or remove the Intervening Event as quickly as possible; and
     3. a Party may, by notice to the other Party, terminate this Agreement if the Intervening Event is expected to, or does continue, for 3 continuous months.
  3. Nothing in this clause requires an Affected Party to settle any labour or industrial disputes to relieve the Intervening Event.

## Project halt

* 1. PHA may suspend payments of any of Funds if the Researcher:
     1. fails to complete a Milestone by the due date to a standard reasonably acceptable to PHA;
     2. does not provide Reports of a standard reasonably acceptable to PHA;
     3. fails to ensure that the Principal Investigator and other persons specified in the Project Plan perform the day-to-day work on the Project;
     4. in the reasonable opinion of PHA, breaches clause *8 Researcher contributions*; or
     5. breaches any material clause of this Agreement.
  2. PHA’s exercise of its rights under this clause do not limit its rights under clause *32 Termination* or clause *34 Early Termination* or both.

## Dispute resolution

* 1. The Parties acknowledge and agree that they must, without delay and in good faith, try to resolve any issues between them under this Agreement or arising from the performance of the Project before using this clause.
  2. An Aggrieved Party must comply with this clause before starting court proceedings or an alternative dispute resolution process other than mediation under this clause, but may seek an injunction.
  3. The Aggrieved Party must give the other Party to the Dispute and to PHA (whether or not PHA is the other Party to the Dispute) a Dispute Notice.
  4. Within 21 days after the issue of a Dispute Notice under sub-clause 30.3 (or such longer period agreed between them) representatives of the Parties involved in the Dispute must meet and make a reasonable attempt to resolve the Dispute.
  5. If the Parties representatives fail to resolve the Dispute under sub-clause 30.4, the Parties must refer it to mediation by the Australian Commercial Disputes Centre.
  6. The decision of the mediator will be final and binding on the Parties.
  7. A Party to mediation must:
     1. keep any information disclosed to it confidential and only use it for attempting to resolve the Dispute; and
     2. pay its own costs of complying with sub-clause 30.5 and an equal share of the cost of the mediation.
  8. For Utilisation Projects, if the Dispute is not resolved within 30 days (or such longer period agreed between them) after the mediation is concluded, any Party may terminate this Agreement under clause *32 Termination*.
  9. For Commercialisation Projects, if the Dispute is not resolved within 30 days (or such longer period agreed between them) after the mediation is concluded, any Party may start court proceedings or the Parties may terminate this Agreement subject to terms to be agreed between them.

## Disputes within UNE

* 1. If a dispute affecting the Project arises between the Director and a UNE Researcher, a meeting must be held within 21 days between the Director, the UNE Researcher’s Head of School (or equivalent) and the Pro-Vice Chancellor (Research) (or equivalent, or more senior UNE Officer), at which meeting the Pro-Vice Chancellor will make a binding decision resolving the dispute.

## Termination

* 1. The Parties may agree to terminate this Agreement in writing at any time.
  2. A Party may terminate this Agreement with immediate effect by written notice to a Defaulting Party if the Defaulting Party:
     1. breaches a material clause of this Agreement that cannot be remedied;
     2. breaches a material clause of this Agreement capable of remedy, but fails to remedy the breach within 30 days (or such other reasonable period specified in the notice) after receiving written notice requiring it to do so;
     3. Restructures without providing prior written notice of its intention to Restructure to the other Party; or
     4. agrees to enter into or has an Insolvency Event forced upon it.
  3. PHA may terminate this Agreement immediately on notice if it considers (in its absolute discretion) that the Agreement may be inconsistent with the Guidelines to Counter Foreign Interference in the Australian University Sector https://[www.education.gov.au/ufit](http://www.education.gov.au/ufit) including if it impinges on academic freedom, research ethics or is found to be subject to export controls.

## Effect of Termination

* 1. If this Agreement terminates:
     1. the Parties remain subject to the clauses detailed in clause *35 Surviving obligations* and any other clauses or sub-clauses that are, by their nature, intended to survive termination;
     2. the termination does not affect any accrued rights or remedies of a Party under this Agreement, whether or not against a Defaulting Party, which survive termination;
     3. unless PHA is the Defaulting Party, licences granted to PHA under this Agreement for a Defaulting Party’s BIP remain in force;
     4. licences granted to a Defaulting Party under this Agreement for BIP and Project IP immediately cease;
     5. a Defaulting Party must cease to use any other Party’s CI or any Project CI and comply with sub-clause 16.5;
     6. a Party must comply with clause *39 Further actions*, if reasonably required for Transfer;
     7. the Researcher must repay to PHA any Funds uncommitted by the Researcher at close of business on the date of termination; and
     8. after the Researcher has complied with sub-clause 33.1(g), PHA must pay to the Researcher any Funds due at close of business on the date of termination.
  2. For the avoidance of doubt, the Parties acknowledge and agree that, if this Agreement is terminated, PHA is not liable for ongoing support of officers, employees, agents, representatives, contactors, and students appointed on Funds from close of business on the date of termination.

## Early Termination by PHA

* 1. PHA may, on 3 months’ notice to the Researcher, terminate this Agreement if it considers, on reasonable grounds that the Project is:
     1. no longer of benefit to the Australian poultry industry; or
     2. unlikely to achieve the Transfer detailed in the Project Plan.
  2. If this Agreement is terminated under sub-clause 34.1, then on the date of the written notice of termination to the Researcher:
     1. sub-clauses 33.1(a), 33.1(b), 33.1(f), 33.1(g), 33.1(h), and 33.2 apply;
     2. the Researcher must not commit to expend any further PHA Funds;
     3. the Researcher must take all reasonable action to minimise payments for Funds already committed by the Researcher;
     4. any licences of a Party’s BIP immediately cease; and
     5. PHA retains any existing Project IP or Project CI.

## Surviving obligations

* 1. The clauses and sub-clauses of this Agreement that survive termination include:
     1. 7.2, *Use of funds*;
     2. 15.3, *Audit*;
     3. *16 Confidential Information*;
     4. *19 Background IP*;
     5. *20 Ownership of Project IP*;
     6. *21 Equity in Project IP*;
     7. *21.2 Transfer to industry*;
     8. *24 Insurance*;
     9. ***Error! Reference source not found.*** *Privacy*;
     10. 30.7 *Dispute resolution*;
     11. *33 Effect of Termination*;
     12. *39 Further actions*; and
     13. *56 PPSA*.

## Moral Rights

* 1. For Works arising from or incidental to the Project, the Researcher must take all reasonable action to obtain a Moral Rights consent for PHA to:
     1. amend the Works of the Principal Investigator or other author; and
     2. use the Works of the Principal Investigator or other author for Transfer.

The Moral Rights consent does not extend to a failure to attribute the Principal Investigator or other author in any Works.

## Publications

* 1. The Parties acknowledge and agree to use their best endeavours to prevent damage to or loss of Knowledge Assets through disclosure or publication.
  2. At least 30 days before submitting a proposed Publication, the Researcher must give PHA a Publication Notice.
  3. Within 21 days of receiving the Publication Notice, PHA must advise the Researcher of PHA’s decision as to whether or not it will permit the proposed Publication to be published.
  4. If PHA fails to advise the Researcher within 21 days under sub-clause 37.3, the Researcher may publish the proposed Publication.
  5. PHA may decide, in PHA’s absolute discretion, to permit or refuse permission for the Researcher to publish the proposed Publication.
  6. If PHA grants permission under sub-clause 37.5, PHA may make its permission conditional on the Researcher doing any or all of the following:
     1. amending the proposed Publication;
     2. publishing the proposed Publication only after a date set by PHA;
     3. publishing the proposed Publication in an open access journal.
  7. If PHA grants permission under sub-clause 37.5, the Researcher must:
     1. acknowledge in the Publication PHA’s role in and contribution to the creation of the information; and
     2. note, in wording to be approved by PHA, the Researcher’s affiliation with PHA.
  8. The Parties acknowledge and agree that PHA is not required to give reasons for decisions made under this clause.
  9. Nothing in this clause allows a Party to disclose CI of another Party without the prior written permission of that Party.

## Student publications

* 1. The Parties acknowledge and agree that a postgraduate Student owns the copyright in a thesis authored by the Student, but any Knowledge Asset incorporated in the thesis is not subject to the Student’s copyright.
  2. To give effect to sub-clause 38.1, a Participating University must allow a Student to work on a Project only after the Student has agreed with the Participating University to be bound by words to the effect of sub-clause 38.1 in writing signed by the Student.
  3. If a Student wishes to submit a thesis for examination that incorporates any Knowledge Asset, the Participating University must:
     1. notify PHA that the thesis is to be submitted for examination;
     2. provide PHA with a copy of the thesis; and
     3. have the examiners agree in writing to keep the Knowledge Asset confidential.
  4. While the Parties acknowledge and agree that the Participating University’s Examination Protocol takes precedence, the Participating University must comply with any reasonable request of PHA to protect Knowledge Assets, for the maximum time allowed under the Examination Protocol, by:
     1. restricting access to the thesis; or
     2. moving any Knowledge Assets out of the thesis into an appendix stored under restricted access.

## Modern Slavery

* 1. The Researcher acknowledges that PHA has obligations to comply with the Modern Slavery Laws, and represents and warrants to PHA that, at the date of entering into this Agreement, the Researcher:
     1. has no knowledge of any Modern Slavery Offence currently occurring within its organisation or supply chain; and
     2. takes and will continue to take reasonable steps to identify the risk of, and prevent the occurrence of, Modern Slavery Offences within its organisation or supply chains.
  2. Without limiting clause 39.1, the Researcher represents and warrants to PHA that, in relation to any services procured from, or subcontracted or outsourced to, third parties for the provision of the services under this Agreement, the Researcher has taken, or will, prior to procuring, sub-contracting or outsourcing any such services from or to a third party, take (and will continue through the Term to take) all reasonable steps to confirm that such third party is not engaging in Modern Slavery Offences.
  3. The Researcher will notify PHA in writing as soon as practicable and no later than 10 Business Days upon becoming aware of any Modern Slavery Offence (or of any charges laid or orders made in relation to a Modern Slavery Offence) within its organisation or supply chain.
  4. If requested by PHA, the Researcher will, subject to any existing confidentiality requirements and any relevant law, take all reasonable steps to provide UNE with any information, reports or documents in relation to any Modern Slavery Offence or any risk of a Modern Slavery Offence within the Researcher’s organisation or supply chain including, if required, the completion of a self-assessment questionnaire.

## Further actions

* 1. Each Party must, at its own cost, do all things reasonably necessary, including executing documents, to give effect to this Agreement and all transactions incidental to it.

## Relationship of Parties

* 1. The Parties acknowledge and agree that the relationship between them is a contractual one formed for the objectives of the Project under this Agreement.
  2. Nothing in this Agreement constitutes any Party as the agent, partner, joint venturer, or employee of any other Party or creates any agency, partnership, joint venture, or employment relationship.
  3. A Party, or any person or entity acting on its behalf, must not claim to be entitled to contract or accept payment in the name of, or on account of, any other Party, and must not make any inaccurate claims of association with another Party, or its related bodies corporate, officers, employees, agents, representatives, contactors, and students.

## Indicia

* 1. A Party must not use, apply for, or register Indicia of another Party without the prior written consent of the other Party.

## Entire agreement

* 1. This Agreement, including the Schedule and the Project Plan, constitutes the entire agreement between the Parties as to its subject matter and all previous statements, discussions, understandings, or agreements of the Parties on its subject matter are merged in and superseded by this Agreement.

## Variations of Agreement

* 1. The clauses of this Agreement and the Schedule may only be varied by written agreement, signed by the Parties.
  2. The Project Plan may be varied by the following process:
     1. the Principal Investigator may, after having consulted with PHA and investigators from the other Parties (if any), request a variation of the Project Plan by an email sent to PHA, with copies to all Parties; and
     2. if PHA, in its absolute discretion, approves of the proposed variation, PHA may confirm the variation of the Project Plan by a return email to the Principal Investigator, with copies to all Parties.
  3. Despite sub-clause 44.2, variations of the Project Plan requiring changes to:
     1. the Start Date or End Date;
     2. the purposes of the Project;
     3. the Budget of more than $50,000;
     4. more than 3 Milestone dates;
     5. a significant proportion of the Project methodology; or
     6. staff materially affecting the performance of the Project, for example, changing the Principal Investigator,

may only be done by written agreement, signed by the Parties.

## Waiver

* 1. A right of a Party under this Agreement:
     1. may only be waived if the waiver is in writing signed by the Party granting the waiver;
     2. is not waived if a Party fails to exercise or delays in exercising it; and
     3. may be exercised multiple times and is not stopped by a previous single or partial exercise of it.

## Assignment

* 1. A Party may only assign a right under this Agreement with the prior written consent of the other Party.

## Severability

* 1. If all or any part of any clause of this Agreement is illegal or unenforceable, it will be severed from this Agreement and does not affect the continued operation of the remaining clauses.

## No merger

* 1. Unless specifically agreed by the Parties, the rights and obligations of Parties to this Agreement do not merge on completion of any transaction incidental to it.

## Tax invoices and GST

* 1. Despite any other clause of this Agreement, PHA is under no obligation to pay any amount payable under this Agreement to a Party until it receives a valid tax invoice for the particular payment setting out the payment and the applicable GST as calculated under the GST Law.
  2. Unless otherwise stated, amounts mentioned in this Agreement do not include GST.
  3. Terms used in this clause which are defined in GST Law have the same meaning as in the GST Law.

## Counterparts

* 1. This Agreement may be executed in counterparts and, when taken together, all executed counterparts constitute one document.

## Electronic execution

* 1. A Sending Party may sign, or attach an electronic signature to, a counterpart of this Agreement and deliver a copy in PDF to a Receiving Party, which, subject to sub-clause 51.2, the Receiving Party must accept as a means of executing this Agreement.
  2. The Receiving Party may rely on sub-clause 51.1 if:
     1. the Receiving Party can reasonably identify the place of origin of the PDF copy as being the Sending Party; and
     2. the PDF copy is apparently signed by the duly authorised person at the Sending Party.
  3. When all Parties required to sign this Agreement have sent and received counterparts under sub-clause 51.1, this Agreement is validly Electronically Executed.
  4. Electronic Execution under this clause may be used for documents incidental to this Agreement that require writing signed by a Party, such as variations under clause *44 Variations of Agreement* or Notices under clause *55 Notices* and, if not dated, the date of execution will be taken as the date of receipt of the last counterpart by a Receiving Party.

## Legal costs

* 1. Each Party must pay its own legal and related expenses for negotiating, drafting and executing this Agreement and all documents incidental to it.

## Governing law

* 1. This Agreement is governed by the law of NSW and each Party submits to the non- exclusive jurisdiction of the courts of NSW.

## Inconsistency within Agreement

* 1. If there is any inconsistency between the Project Plan, the Schedule, the clauses of this Agreement, and the Special Conditions, the Special Conditions rank first, the clauses second, the Schedule third, and the Project Plan fourth to the extent of the inconsistency.

## Notices

* 1. The addresses for the service of Notices to Parties are those detailed in the Schedule.
  2. If a Party changes its physical, postal, or email addresses, it must provide notice of the changes to the other Party.
  3. A Notice is received and takes effect if:
     1. hand delivered, on delivery;
     2. sent by prepaid post, on the fourth Business Day after the date of posting in Australia;
     3. sent by prepaid post, on the tenth Business Day after the date of posting if posted from, or to, a place outside of Australia; or
     4. sent by email, at the time the Sending Party receives a delivery receipt or read receipt from the Receiving Party or, in the absence of such receipt, at the time delivery is deemed to have occurred under the *Electronic Transactions Act 1999* (Cth).

# PPSA

* 1. No Party may apply for any registration, or hold, any security interest under the PPSA Law arising from this Agreement or from the performance of the Project without requesting the prior written approval of PHA, which PHA may grant or refuse to grant in its absolute discretion.

## Special Conditions

* 1. Before the execution of this Agreement, the Parties may agree to Special Conditions that delete or modify any clause of this Agreement, or add new clauses to it as contained in Schedule A.

## Interpretation

In this Agreement, unless a contrary intention appears:

1. Words defined in clause *59 Definitions* have the meaning given in that clause.
2. “Immediately” means as soon as possible regardless of cost or effort, for example, if a notice under clause 24.4(b) could be sent by email to PHA by an employee of a Researcher responsible for insurance, it should be sent when the employee learns of the cancellation of the particular policy.
3. “Include”, includes”, and “including” are not words of limitation.
4. “Person” includes a natural person or individual, a corporation sole, a body corporate, a partnership, an association, a joint venture, a government, a governmental body (such as an authority or agency), and any form of legal entity.
5. “Right” includes a benefit, remedy, authority, discretion and power.
6. “Writing” includes handwriting, printing, lithography, photography and any other method of representing or reproducing words, letters, numbers, symbols or figures in a permanent and visibly interpretable form.
7. Words having other grammatical forms to words defined in clause *59 Definitions* have meanings corresponding to the defined word.
8. The singular includes the plural and the plural includes the singular.
9. A word importing a gender includes every other gender.
10. Words describing the whole of a matter or thing include a part of the matter or thing.
11. A clause stating that a Party “must” do or “must” not do something should be understood as an agreement by that Party to do or not to do that thing or matter.
12. A clause is not, unless it is specifically stated otherwise, limited in its meaning or effect by any other clause.
13. Clause headings are merely for ease of reference and do not affect the meaning of this Agreement, as they do not form part of the clause.
14. A reference to a document or agreement, including this Agreement, includes that document or agreement as novated, altered, or replaced from time to time.
15. A reference to “$”, “$A”, “AUD”, “dollar”, or “A$” is to Australian currency.
16. A reference to a specific time for performance of an obligation means that time in the State or Territory of Australia, or other country, where the obligation is to be performed.
17. Any law or legislation or legislative provision referred to in this Agreement is construed pursuant to the *Acts Interpretation Act 1901* (Cth) or equivalent State legislation, if applicable.
18. 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 law or legislation or legislative provision.
19. A reference to a “Researcher” or a “Party” includes, if the context requires it, other Parties who, within the meaning and intention of the clause, are in the same or a similar position to the first mentioned Researcher or Party, for example, in a particular Project, the Parties may include PHA, a research university, a government research organisation, and an individual, with the last three mentioned Parties all being considered as a “Researcher”.
20. If an act must be done on a specified day which is not a Business Day, the specified day is taken to be the next Business Day, and a Business Day is taken to start at 9.00am and end at 5.00pm in the place where the act must be done.

## Definitions

The words, acronyms, and abbreviations in bold below, when capitalised in this Agreement, have the following meanings:

**ABN** means Australian Business Number.

**Affected Party** means a Party affected by an Intervening Event.

**Aggrieved Party** means a Party which believes on reasonable grounds that a Dispute has arisen under this Agreement.

**Agreement** means this agreement and includes any schedules, annexures and, attachments to this Agreement.

**Background Intellectual Property** or **BIP** means intellectual property owned or controlled by a Party that the Party makes available for the Project under this Agreement, but does not include Project Intellectual Property or Project IP.

**BIP Royalty** means the royalty rate set for Declared BIP or Undeclared BIP in clause *19 Background IP*, or as agreed between the Parties and stated in the Project Plan.

**Budget** means the budget for the Project set out in the Project Plan.

**Business Day** means, for the doing of any act in a place, any day other than a Saturday, Sunday, public holiday or bank holiday in that place.

**Commercialisation** means using all or part of Intellectual Property to:

1. manufacture, sell, hire, or otherwise exploit a product or process;
2. supply a service;
3. licence another person to do any of (i) or (ii) or both; or
4. otherwise licence or assign the Intellectual Property for the purposes of (i) or (ii) or both, or (iii),

for commercial purposes whether or not any revenue is intended to be created or is created.

**Commercialisation Report** means the report required under sub-clause 13.1(g) laying out the Researcher’s opinion as to the expected pathway to Commercialisation and planning to achieve it.

**Commercialisation Return** means the amount to be paid to a Party from the proceeds (if any) of Commercialisation of Intellectual Property, in proportion to the Party’s share of equity, after PHA has first deducted Net Commercialisation Expenses and BIP Royalty (if any) in that order.

**Confidential Information** or **CI** means all information that:

1. is by its nature confidential;
2. has been designated by the disclosing Party as confidential; or
3. the receiving Party knows or ought to know is confidential,

and includes all extrinsic know-how, trade secrets, financial information, and other commercially or scientifically valuable information of whatever description or form.

**Conflicted Party** means a Party subject to a Conflict of Interest.

**Conflict Of Interest** or **COI** means an actual, apparent, or potential conflict of interest arising through a Party’s activities that may prevent or restrict the Party from meeting its obligations fairly and independently under this Agreement.

**Cth** means the Commonwealth of Australia.

**Declared BIP** means Background Intellectual Property or BIP that a Party is required to and has notified to PHA, and any other Parties, before the Start Date of the Project.

**Defaulting Party** means a Party to which any of the circumstances in sub-clause 32.2 apply.

**Detrimental Effects** means direct liability, loss, damage, costs or expense.

**Director** means the director of PHA or an acting director appointed by UNE.

**Dispute** means a dispute or disagreement that has arisen between the Parties or some of the Parties to this Agreement, and includes a Restructure of a Party.

**Dispute Notice** means a written notice setting out what constitutes the Dispute and why the Dispute must be resolved before the Parties may complete performance of the Project.

**Electronic Execution** means the exchange between Sending and Receiving Parties of counterparts of a document in PDF that originated as a paper copy of this Agreement which was manually signed and then scanned to create the PDF, or as an electronic copy of this Agreement to which an electronic signature was attached.

**End Date** means the completion date for the Project set out in the Project Plan or such other date as the Parties agree in writing signed by the Parties.

**Equivalent Organisation** means a research university or other government research organisation operating in the state or territory in which the Researcher is located.

**Examination Protocol** means the Participating University’s, policies, processes and procedures for postgraduate examination.

**Funds** means the funds detailed in the budget set out in the Project Plan as approved by PHA for the Project.

**GST Law** means *A New Tax System (Goods and Services) Act 1999* (Cth) and all related legislation effecting the Goods and Services Taxation regime.

**Indicia** means the name, business name, company name, domain name, email address, trade mark, logo, branding, or any other sign, marking, or indication signifying a Party.

**Insolvency Event** means the occurrence of:

1. a Party ceasing to carry on business;
2. the disposal of all or part of a Party’s assets, operations or business other than in the ordinary course of business;
3. a Party ceasing to be able to pay its debts as and when they become due;
4. a Party entering into a scheme of arrangement with any or all of its creditors;
5. a Party proposing a reorganisation, moratorium or other administration with all or any of its creditors;
6. a situation arising in which a court would presume a Party which is a body corporate to be insolvent under section 95A(2) of the *Corporations Act 2001* (Cth);
7. an application to a court for an order, or an order is made, that a Party which is a body corporate be wound up;
8. action is taken to appoint a receiver, receiver and manager, provisional liquidator, administrator, financial affairs investigator, or any like person for all or part of the Party’s assets, operations or business; or
9. a Party becomes “insolvent under administration” (including bankrupt) as defined under section 9 of the *Corporations Act 2001* (Cth).

**Intervening Event** means, for a Party, any reason or cause (other than an obligation to pay money owing to a shortage of funds), which an Equivalent Organisation would not reasonably be expected to be able to prevent or control, including acts by regulatory authorities or government, labour or industrial disputes, lockouts, strikes, civil commotion, riot, insurrection, war, natural events (such as earthquake, floods, storms, solar or magnetic disturbances), pandemic, epidemic or failures or inability to obtain sufficient labour, power, raw materials, fuel or utilities.

**Intellectual Property** or **IP** means and includes all copyright (including broadcast rights), all rights to inventions (including registered and unregistered patents), rights to plant varieties (whether *sui generis* or patent rights), trade marks (including service marks), rights to circuit layouts, design rights, all other rights deriving from intellectual activity in the industrial, scientific, literary, musical, or artistic fields (including the right to apply for such rights), and any rights to have confidential information kept confidential, but excluding rights of performers or Moral Rights.

**Knowledge Assets** means CI, Project CI, Background IP, Project IP, other IP or CI of a Party, or any combination of all or some of them.

**Milestones** means the milestones set out in the Project Plan.

**Modern Slavery Laws** means the *Modern Slavery Act 2018* (Cth), the *Modern Slavery Act 2018* (NSW) and any relevant regulations or ancillary legislation published in respect of the above or any similar modern slavery legislation in another jurisdiction.

**Modern Slavery Offence** means:

(b) any conduct which would constitute 'modern slavery' under the Modern Slavery Laws; and

1. any other conduct or practices which amount to an offence under any of the Modern Slavery Laws.

**Moral Rights** has the meaning given to it under the *Copyright Act 1968* (Cth), but in the context of this Agreement refers specifically to the:

* 1. right of attribution of authorship;
  2. right not to have authorship falsely attributed; and
  3. right of integrity of authorship.

**Net Commercialisation Expenses** means reasonable expenses incurred by PHA in commercialising Project IP (not including time spent by PHA) including:

1. government fees, taxes, duties, charges or imposts;
2. maintenance and prosecution costs of IP protection (including attorney fees);
3. legal expenses;
4. relevant travel, insurance, packaging, or transportation costs;
5. costs of seeking out-licences for Project IP, or in-licences for required third party IP; and
6. any other expenses directly required for commercialisation of Project IP.

**Notices** means a notice, consent, approval, or other communication under this Agreement, which must be:

1. in writing, in English, and signed by the duly authorised person at the Sending Party; and
2. hand delivered, posted by prepaid post, or emailed to the Receiving Party’s address for Notices detailed in the Schedule or as changed by a notice provided by the Receiving Party to the other Parties.

**NSW** means the State of New South Wales, Australia.

**Participating University** means a university participating as a Researcher under this Agreement.

**Party** means a party to this Agreement and includes that Party’s successors, permitted assigns, and related entities.

**PDF** means portable document format, with the file extension “.pdf”.

**Personal Information** has the meaning given by the Privacy Laws

**PHA** means University of New England ABN 75 792 454 315 trading as Poultry Hub Australia, which oversees and provides funding for the Project.

**PPSA Law** means the *Personal Property Securities Act 2009* (Cth).

**Principal Investigator** means the person identified in the Project Plan as having responsibility for ensuring performance of the Project.

**Privacy Laws** means the *Privacy Act 1988 (Cth), the Privacy and Personal Information Protection Act 1998 (NSW), the Health Records and Information Act 2002 (NSW),* and any privacy legislation (to the extent such legislation applies to PHA or the Researcher) in any Australian jurisdiction or any other jurisdiction.

**Project** means the project detailed in the Project Plan.

**Project Assets** means all assets specified in the Budget to be purchased by the Researcher with identified Funds.

**Project CI** means CI arising from the Project.

**Project IP** means Intellectual Property arising from the performance of the Project.

**Project Plan** means the Plan forming part of this Agreement as approved by PHA and any variation subsequently made to it.

**Public** excludes any person who owes a duty of confidentiality to a Party.

**Publication** means a disclosure or release to the Public of information, regardless of the form or media used and includes talks, presentations or posters at meetings, public announcements, press releases, social media or blog posts, web pages, news articles, and journal articles.

**Publication Notice** means a written notice requesting permission to publish, which must include details of any CI, BIP or Project IP in, or referred to in, the proposed publication and have the proposed publication attached to it.

**Receiving Party** means a Party receiving an electronic communication (email) from a Sending Party under this Agreement.

**Reports** means, as required by the context, special reports, progress reports, annual reports, final reports, financial reports, and Utilisation Reports or Commercialisation Reports, as listed in sub-clause 13.1.

**Researcher** means, a research university, government research organisation, person, or other entity participating in the Project.

**Researcher Assets** means all assets specified in the Budget to be provided to the Project by the Researcher.

**Researcher Funds** means funds specified in the Budget to be contributed to the Project by the Researcher.

**Researcher Materials** means all material and information to be provided by the Researcher for the Project as identified in the Project Plan.

**Restructure** means, for a Party that is a body corporate which is solvent, when the Party:

1. restructures or amalgamates; or
2. undergoes a change in its direct beneficial ownership or control.

**Schedule** means the schedule setting out the details of the Parties, which includes the:

1. name, ABN, and contact details for PHA;
2. name, ABN, and contact details for the lead Researcher;
3. name, ABN, and contact details for UNE (if it is also acting as a Researcher); and
4. name, ABN, and contact details of any other parties.

**Sending Party** means a Party sending an electronic communication (email) to another Party or Parties under this Agreement.

**Similar Project** means a research project conducted by an Equivalent Organisation that, taking into account differences in its aims or objectives, milestones and budget, is comparable with the Project, for example, if the Project has a budget of $50,000, a similar project might have a budget between $20,000 and $70,000.

**Special Conditions** means any special conditions agreed to by the Parties before execution of this Agreement deleting or modifying any clause of, or adding a clause to this Agreement, which appear under the heading “Special Conditions” above the heading “Schedule”.

**Start Date** means the commencement date for the Project set out in the Project Plan or such other date as the Parties agree in writing signed by the Parties.

**Student** means a student working on a Project while studying at a Participating University.

**Term** means the term of this Agreement determined by clause *4 Term*.

**Transfer** (knowledge transfer) means either Utilisation or Commercialisation to achieve the adoption of knowledge by industry.

**Transfer Strategy** means the strategic plan for Transfer.

**Undeclared BIP** means Background Intellectual Property or BIP that a Party has **NOT** notified to PHA, and any other Parties, before the Start Date of the Project.

**UNE** means the University of New England located at Armidale, NSW.

**UNE Researcher** means a researcher or researchers at UNE.

**Utilisation** means providing access to the outputs of the Project to industry to achieve practical and effective use of them by industry.

**Utilisation Report** means the report required under sub-clause 13.1(f) laying out the Researcher’s opinion as to the expected pathway to Utilisation and planning to achieve it.

**Work** has the meaning given to it under the *Copyright Act 1968* (Cth).

# SCHEDULE

|  |  |  |
| --- | --- | --- |
| University of New | Director: | Professor Tamsyn Crowley |
| England | Mobile: | 0409253943 |
| Trading as Poultry | Admin: | Mr Trent McIntyre |
| Hub Australia | Office Phone: | (02) 6773 1855 |
| ABN 75 792 454 315 | Mobile: | N/A |
|  | Email: | [poultryhub@une.edu.au](mailto:poultryhub@une.edu.au) |
|  | Postal address: | CJ Hawkins Homestead, UNE |
|  |  | Armidale NSW 2351 Australia |
| The University of X | Principal Investigator: | [#Insert#] |
| (Project Leader) | Mobile: | [#Insert#] |
| ABN | Admin: | [#Insert#] |
|  | Office Phone: | [#Insert#] |
|  | Mobile: | [#Insert#] |
|  | Email: | [#Insert#] |
|  | Postal address: | [#Insert#] |
| Government Research | Investigator: | [#Insert#] |
| Organisation | Mobile: | [#Insert#] |
| ABN | Admin: | [#Insert#] |
|  | Office Phone: | [#Insert#] |
|  | Mobile: | [#Insert#] |
|  | Email: | [#Insert#] |
|  | Postal address: | [#Insert#] |

## Project Plan

1. Project name
2. PHA Project number
3. Principal Investigator
4. Project’s overall objective(s)
5. Transfer strategy (Utilisation or Commercialisation)
6. Start Date
7. End Date
8. Proposed benefit to industry
9. Review of science
10. Review of IP, including description of Confidential Information, Background IP, relevant third party IP, Researcher Materials and opinion as to “freedom to operate” for industry with proposed outputs from Project
11. Agreed BIP royalty rate (if any)
12. Proposed methodology (including details of when Ethics Committee approval will be sought and a copy provided to PHA)
13. Milestones (including Reports)
14. List of research and professional staff required
15. Research capability of the Researcher(s)
16. List of Contractors
17. Quality assurance systems review
18. Risk analysis and management review
19. For an individual acting as a Researcher, verify that the Researcher has in place the following amounts of:
    1. public liability $[20,000,000]; and
    2. professional indemnity $[5,000,000],

insurance, in addition to statutory workers compensation insurance (if applicable).

1. Full details of proposed outputs
2. Budget covering:
3. Justification for Funds requested;
4. Project staff salaries and on-costs;
5. operating costs;
6. travel costs;
7. Project Assets;
8. any indirect support costs of the proposed research; and
9. Researcher Funds (if any)
10. Researcher Assets (if any).

# SCHEDULE A – SPECIAL CONDITIONS

## Execution Blocks

**EXECUTED as an agreement on the last date written below.**

Signed for and on behalf of

**University of New England** trading as Poultry Hub Australia

Name: Professor Tamsyn Crowley Title: Director

Date:

Witness

Name of Witness (BLOCK LETTERS)

Signed for and on behalf of

**XXX** Name:

Title: Date:

Witness

Name of Witness (BLOCK LETTERS)