IP and confidentiality deed for visiting researchers
Schedule

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|  |  |
| --- | --- |
| **Visiting Researcher** | [Insert full legal name of entity] of [Insert address of entity] |
| **Project** | [Insert description of project, including relevant school or faculty] |

Execution

Executed as a deed.

|  |  |  |
| --- | --- | --- |
| **SIGNED, SEALED AND DELIVERED** by **THE UNIVERSITY OF QUEENSLAND** through its authorised officer whose name and signature appears opposite in the presence of: |  |  |
|  |  |  |
| **Signature of Witness** |  | **Signature of authorised officer** |
|  | Name of authorised officer |
| Name of Witness |  | Title of authorised officer |
|  | Date |

|  |  |
| --- | --- |
| SIGNED, SEALED AND DELIVEREDby |  |
| **[Insert entity name and ABN]** |  |
| by its duly authorised officer: | in the presence of: |
| .................................................Signature.................................................(Print Name).................................................(Print Title).................................................Date | .................................................Witness signature................................................(Print Name) |

IP and confidentiality deed for visiting researchers – terms and conditions

**Parties**

|  |  |
| --- | --- |
| **UQ** | **The University of Queensland ABN 63 942 912 684** a body corporate constituted under the *University of Queensland Act 1998* (Qld) of Brisbane in the State of Queensland 4072 |
| **Visiting Researcher** | the individual specified in the Schedule.  |

Background

1. The Visiting Researcher may undertake research and other activities with UQ, including work in relation to the Project.
2. During the course of the Project, the Visiting Researcher may be permitted to use UQ IP or receive Confidential Information from time to time.
3. The Visiting Researcher has agreed to assign the Project IP to UQ and keep the Confidential Information confidential on the terms of this deed.

Operative terms

# Definitions and interpretation

## Definitions

In this deed:

|  |  |
| --- | --- |
| **Australian Consumer Law** | means Schedule 2 as applied under Subdivision A of Division 2 of Part XI of the *Competition and Consumer Act 2010* (Cth). |
| **Background IP** | means any Intellectual Property of UQ that is:in existence at the Commencement Date; orcreated or developed by UQ during the Term independently of the Project; orassigned or licensed to UQ by a third party during the Term independently of the Project. |
| **Commencement Date** | means the date specified in the Schedule.  |
| **Confidential Information** | means the terms of this deed and any information relating to the the dealings of UQ or the Project:which is by its nature confidential;which is designated as confidential by UQ; orwhich the Visiting Researcher knows or ought to know is confidential,irrespective of whether that information was disclosed before, on or after the date of this deed, and includes all information relating to the subject matter of the UQ IP. |
| **Control** | has the meaning provided under section 50AA of the *Corporations Act 2001* (Cth).  |
| **Foreign Principal** | has the meaning provided under section 11 of the *Foreign Influence Transparency Scheme Act 2018* (Cth). |
| **Intellectual Property** | means all industrial and intellectual property rights anywhere in the world, whether registered or unregistered, including:patent rights, trade mark rights, copyright, plant breeders’ rights, rights in relation to inventions, trade names, business names, company names, indications of origin, designs, plant varieties, semiconductors, circuit layouts, and related confidential information and knowhow;any right of registration of, provisional applications for, claim of priority from, continuation of or division of such rights; andall other intellectual property as defined in article 2 of the *Convention Establishing the World Intellectual Property Organisation 1967*. |
| **IP Policy** | means the UQ intellectual property policy approved by UQ’s governing body, as amended or replaced from time to time. |
| **Moral Rights** | means moral rights as described in Part IX of the *Copyright Act 1968* (Cth) and any analogous rights arising under statute that exist, or may come to exist, anywhere in the world. |
| **Personal Information** | means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. |
| **Privacy Laws** | means the *Information Privacy Act 2009* (Qld) and any other relevant laws or regulations relating to the handling of Personal Information. |
| **Project** | means: the project specified in the Schedule; and all research and technical activities undertaken by the Visiting Researcher while at UQ. |
| **Project IP** | means any Intellectual Property that comes into existence in connection with the Visiting Researcher’s involvement in the Project. |
| **Project Material** | means any documents, electronic files and other materials that come into existence in connection with the Visiting Researcher’s involvement in the Project. |
| **UQ IP** | means the Background IP and Project IP. |

## Interpretation

In this deed:

* + 1. no rule of construction applies to the disadvantage of the party that drafts this deed on the basis that the party suggested the relevant drafting;
		2. references to a party mean UQ or the Visiting Researcher and references to the parties mean both UQ and the Visiting Researcher; and
		3. words such as “includes” and “including” do not impose any limitation on the construction of general language that is followed by specific examples.

# Use of UQ IP

The Visiting Researcher must only use the UQ IP for the purpose of performing the Project for the benefit of UQ.

# Ownership of Project IP

## Ownership

### The parties agree that the Project IP will be owned by UQ.

### To the extent necessary to give effect to clause 3.1(a), the Visiting Researcher assigns all right, title and interest in the Project IP to UQ effective immediately on the date such Project IP is created or developed.

### Without limiting clause 11(a), the Visiting Researcher must sign all documents and perform all acts as required by UQ to give effect to the assignment contemplated by clause 3.1(b)

## Related rights

The Visiting Researcher assigns all causes of action (whether known or unknown) and any other enforcement rights in connection with the Project IP for past, current and future infringement including for damages, injunctive relief and any other remedies, effective immediately on the date such Project IP is created or developed.

## Patents

The Visiting Researcher must:

* + 1. not file any patent applications over any part of the UQ IP without UQ’s consent;
		2. notify UQ of each person who is an inventor of, or made an inventive contribution to, any invention contemplated by any patent that forms part of the Project IP, other than those individuals named as inventors on the application for that patent; and
		3. comply with the UQ IP Policy.

## Knowhow

The Visiting Researcher must disclose the Project IP to UQ upon its creation and all knowhow necessary or desirable to enable UQ to exercise the Project IP.

## Project Material

The Visiting Researcher must provide the Project Material to UQ from time to time upon any request by UQ and upon completion or termination of the Project.

# Moral Rights

### The Visiting Researcher irrevocably and unconditionally consents to and authorises each of UQ, UQ’s licensees and successors in title, and any other person authorised by UQ or by such a licensee or successor in title to:

#### any act or omission that would otherwise infringe the Visiting Researcher’s Moral Rights in relation to any copyright works forming part of the Project IP;

#### specifically, make alterations to or deletions from any copyright work forming part of the Project IP; and

#### fail to attribute authorship of the relevant copyright work forming part of the Project IP to the Visiting Researcher.

### The Visiting Researcher warrants and represents that the consent given in this deed is genuinely given, and has not been provided under duress or as a result of any false or misleading statements.

# Confidentiality

## Obligations of confidence

### The Visiting Researcher must:

#### keep the Confidential Information confidential, and not disclose the Confidential Information to any third party without UQ’s prior written consent;

#### not use or copy the Confidential Information for any purpose other than to perform the Project;

#### without limiting the foregoing, not apply for registration of any patent application (or any other form of statutory protection that includes the Confidential Information;

####  without limiting the foregoing, not use the Confidential Information in, as part of, or to develop any product or service; and

#### not use the Confidential Information to the disadvantage of UQ.

### If the Visiting Researcher discloses Confidential Information in accordance with clause 5.1(a) then the Visiting Researcher must ensure that the relevant third party complies with the requirements of clause 5.1(a).

## Exceptions

### The obligations of confidence contemplated by clause 5.1do not apply to Confidential Information that:

#### the Visiting Researcher can demonstrate was in the possession of the Visiting Researcher prior to the provision of the Confidential Information to the Visiting Researcher by or on behalf of UQ; or

#### the Visiting Researcher can demonstrate was independently developed by the Visiting Researcher in good faith and free of any obligation of confidence; or

#### the Visiting Researcher can show is in the public domain otherwise than by a breach of this deed or other obligation of confidence.

### Confidential Information will not be regarded as being publicly known by reason only of the fact that some portion of it is public or that information is publicly available which, together with other information, could be used to produce any Confidential Information.

### If Visiting Researcher believes that any Confidential Information is within any one of the foregoing exceptions, then the Visiting Researcher will give the other party at least 10 days written notice if the Visiting Researcher intends to use or disclose such information.

## Disclosure required by law

### Notwithstanding the foregoing, the Visiting Researcher may disclose the Confidential Information if required to do so by law or pursuant to a valid order of a court or other governmental entity provided:

### to the extent practical under the circumstances, the Visiting Researcher promptly gives UQ prior notice of the requirement to disclose the Confidential Information with full particulars of the requirement;

### disclosure is limited to that necessary to comply with the applicable law or order;

### the Visiting Researcher postpones any required disclosure for as long as the Visiting Researcher is able, without prejudicing the Visiting Researcher’s own position;

### reasonable attempts are made to obtain a protective order or similar relief; and

### if the law is reasonably believed to be nonapplicable or the order is reasonably believed to be invalid, reasonable attempts are made to overturn the requirement of disclosure.

## Acknowledgment

### The Visiting Researcher acknowledges that the Confidential Information is valuable and proprietary to UQ.

### UQ has no obligation under this agreement to disclose any Confidential Information to the Visiting Researcher.

### The Confidential Information may be disclosed to the Visiting Researcher in writing or orally or both.

### UQ does not warrant the accuracy or completeness of the Confidential Information.

### UQ has no obligation to update the Confidential Information.

### UQ has no obligation to notify the Visiting Researcher if UQ believes or becomes aware that the Confidential Information is inaccurate, incomplete or out-of-date.

### The Visiting Researcher relies on the Confidential Information at its own risk.

### The Visiting Researcher acknowledges that the Confidential Information remains the property of UQ.

## Obligation to disclose breaches of confidence

If the Visiting Researcher becomes aware that the Visiting Researcher has breached this deed or any other obligation of confidence owed by the Visiting Researcher to UQ with respect to the Confidential Information, then the Visiting Researcher must immediately notify UQ, provide full particulars and provide all reasonable assistance to UQ in connection with that breach of confidence.

# Warranties

## Capacity warranties

The Visiting Researcher warrants and represents, and it is a condition of this deed, that:

* + 1. the Visiting Researcher has the power and capacity to enter into this deed; and
		2. entry into this deed is not inconsistent with any other legally binding agreement to which the Visiting Researcher is a party.

## IP warranties

The Visiting Researcher warrants and represents, and it is a condition of this deed, that:

* + 1. the Visiting Researcher has the right to grant the assignment contemplated by clause 3.1(b); and
		2. exercise of the Project IP by UQ or any licensee or assignee of UQ will not infringe the Intellectual Property of any third party.

# Term

### This deed commences when both parties have executed this deed and continues until terminated in accordance with this clause 7.

### If UQ provided the Visiting Researcher with access to Confidential Information prior to the date of this deed, then the obligations in this deed take effect from the date of first access and not from the date of this deed.

### If either party commits a material breach of this deed, the other party may immediately terminate this deed by notice in writing to the other party.

### Each party expressly waives any rights it may have to terminate this deed other than as contemplated by this clause 7.

### On termination of this deed:

#### accrued rights or remedies of a party are not affected; and

#### the Visiting Researcher must destroy or deliver to UQ any Confidential Information of UQ in the Visiting Researcher’s control or possession at UQ’s discretion.

### The Visiting Researcher’s obligations under this deed in respect of previously received Confidential Information survive termination of this agreement.

# Injunctive relief

The Visiting Researcher acknowledges and agrees that:

### if the Visiting Researcher breaches this deed then UQ may suffer loss or damage as a result of that breach for which monetary remedies would not be adequate; and

### if the Visiting Researcher attempts to breach or threatens to breach this deed, UQ may seek injunctive relief including an injunction restraining the Visiting Researcher from committing any breach of this deed, without the necessity of proving that any actual loss or damage has been sustained or is likely to be sustained by UQ.

# Privacy

### To the extent that either party receives, collects, creates or holds any Confidential Information, data or Intellectual Property for the purposes of this deed that includes Personal Information (**Project Personal Information**), that party must:

#### comply with the Privacy Laws; and

#### use the Personal Information only for the purpose of conducting the Project in accordance with this deed.

### To the extent that the Visiting Researcher receives, collects, creates or holds any Project Personal Information as part of the Project, the Visiting Researcher must:

####  not disclose that Project Personal Information outside of Australia without UQ’s written consent;

####  promptly notify UQ of any request, complaint or investigation under any of the Privacy Laws in relation to that Project Personal Information and co-operate with UQ in the resolution of the request, complaint or investigation; and

#### immediately notify UQ in writing and give full details if the Visiting Researcher becomes aware or has reason to suspect that an unauthorised disclosure, use, modification or loss of, interference with, or other unauthorised access to, the Project Personal Information has occurred or is likely to occur.

# Record keeping and notebooks

The Visiting Researcher is required to keep appropriate research records including laboratory notebooks consistent with any policy or guidelines of UQ.

# General

### Each party must do all things necessary or desirable to give effect to the provisions of this deed including by signing all documents and performing all acts.

### A right under this agreement may only be waived by a party in writing signed by the party granting the waiver, and is effective only to the extent expressly set out in that waiver.

### This agreement does not create a relationship between the parties of employment, trust, agency or partnership between the parties.

### Unless otherwise expressly contemplated, where a provision of this agreement contemplates that a party may exercise its discretion then that party is entitled to exercise that discretion absolutely, with or without conditions and without being required to act reasonably or give reasons.

### This deed contains the entire agreement of the parties and supersedes all prior representations, conduct and agreements, with respect to its subject matter, except to the extent that any express guarantees have been given by a party as contemplated by section 59 of the Australian Consumer Law.

### Each party is responsible for its own costs of entering into and performing this deed.

### This deed is governed by and is to be construed in accordance with the laws applicable in Queensland, Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.

### To the extent that any portion of this deed is void or otherwise unenforceable then that portion will be severed and this deed will be construed as if the severable portion had never existed.

### This deed will be validly executed if signed in any number of counterparts and the counterparts taken together will constitute one agreement.

### Each party may communicate its execution of this agreement by successfully transmitting an executed copy of this agreement by email to the other party.