**Draft Template for**

**Intellectual Property (IP) Governing Framework**

**for**

**Collaborative Research under INDO-AUS**

**Parties:**

**Party-1 Name & Affiliation of the partnering Australian University**

**Party-2 Name & Affiliation of the partnering Australian University**

**Party-3 Name & Affiliation of partnering Indian University/Institutes**

**Party-4 Name & Affiliation of partnering Indian University/Institutes**

Collectively, known as “Parties”

**Recitals**

Whereas **Indian University/Institute** and **Partnering University at Australia** are jointly submitting below mentioned research project proposal in response to the call for proposals by the Department of Biotechnology’s Indo-Australian Biotechnology Fund (IABF) and Australia India Strategic Research Fund (AISRF) Australia.

**Definitions**

* **Background Intellectual Property (IP):**  means pre-existing or independently developed Intellectual property, owned or controlled by a Party which it determines, in its discretion, to make available for the carrying out of the project
* **Foreground or Project Intellectual Property:** means any Intellectual property created or arising as a direct result of the conduct of the Project excluding copyright in a Student’s thesis or work submitted for a higher degree
* **Intellectual Property** means all copyrights, neighboring rights, all rights in relation to inventions (including patent rights), Patents, Plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know-how, circuit layouts) and all other rights resulting from intellectual activities (other than moral rights under the Copyright Act 1968).
* **Projects** means **“title of the proposal/project submitted”**
* **Students** means a student of any of the parties to participate in the project

The Parties hereby agree on the following terms of the IP Governing Framework for the project:

1. **Collaborative Research Agreement:** The Parties hereby agree that if the funding applications are successful, they will enter into a Collaborative Research Agreement to set out the details of the Project, the role and responsibilities to be undertaken by each Party and the contributions expected from each Party. The collaboration agreement will include Intellectual Property clause consistent with those set out in this IP Governance Framework
2. **Background Intellectual Property:**
	1. To ensure adequate and effective protection of background Intellectual Property, the Parties agree that the ownership of Background Intellectual Property will not be affected by the proposed research collaboration and that all Background intellectual Property remains the property of or controlled by the Party that makes it available for the purpose of carrying out the project
	2. Each party grants to the other parties a non-exclusive, revocable, non-transferable, royalty-free license for the duration of the project to use their background Intellectual Property solely for the purpose of conducting the project.
	3. Except as otherwise specified in this agreement, each party acknowledges that nothing in this agreement assigns or grants any other rights to another party in any Background Intellectual Property
	4. No representations or warranties shall be made or given in relation to Background Intellectual Property, however, each Party making available background Intellectual Property acknowledges that to the best of its knowledge, without the need to make additional enquiries, conduct searches or seek a legal opinion, such Background Intellectual Property when used in the project will not infringe any third party Intellectual Property rights.
3. **Project/Foreground Intellectual Property:**
	1. The Parties must use reasonable endeavors to ensure that their specified Personnel promptly notify each other upon creation of Foreground/Project Intellectual Property.
	2. Except for any Copyright in a Student thesis (which will remain owned by a Student), the Parties agree that Foreground/Project Intellectual Property
4. Created or developed solely by a Party will be owned by that Party; and
5. Created or developed jointly by the parties will be owned by the parties (Joint IP ownership) as tenants in common in shares proportionate to their respective Intellectual contributions to the development or creation of that Foreground/Project Intellectual Property
	1. The Parties shall agree that Copyright in a Student’s thesis will be owned by the student; however, the Party where the Student is enrolled will ensure that the Student enters into written arrangements which are consistent with the terms of this agreement before the Student commences any research activities on the Project.
	2. Each Party that solely owns Foreground/Project Intellectual Property in accordance with clause 1.6 (a) grants the other Party a non-exclusive, perpetual, irrevocable, non-transferable, non-sub-licensable (except to the party’s students and honorary academics) royalty-free and license fee-free license to use the Foreground/Project Intellectual Property for the purpose of the project
6. for the purpose of conducting the Project (subject to a party’s obligation to keep in confidence the confidential information of the other parties); and
7. for the other Party’s own non-commercial purposes including research, training and education
	1. In the case of the Jointly owned Foreground/Project Intellectual Property, each joint IP owner:
8. may use and sub-license the Foreground/Project Intellectual Property jointly owned by it for its non-commercial purpose including research, education, training without obtaining the consent of the other joint IP Owner; and
9. may only commercialize jointly owned Foreground/Project Intellectual Property with the consent of the other joint IP Owner (not to be unreasonably withheld)
10. **Commercialization of Project/Foreground IP:** The Parties agree that any commercial exploitation or commercialization of jointly – owned Project/Foreground IP must be agreed and formalized under a subsequent written commercialization agreement. In no event will a collaborating party commercialize or attempt to commercialize jointly-owned Project/Foreground IP without such agreement in place. If the commercialization of the Project/Foreground IP requires access to Background IP, the relevant collaborating Party will license its Background IP to the commercialization party on reasonable commercial terms to be agreed, or in default of agreement, on terms to be finally determined by an independent expert.
11. **Vesting of Project/Foreground IP:** Each party warrants it has (or will obtain prior to commencing work on the project)the necessary rights and documentation (including assignments, consents and approvals) from all persons working on the project necessary for the Project IP to vest as required by this agreement, or will do all such acts as are necessary to ensure that the Project IP vests in accordance with this agreement.
12. **Termination by Mutual Consent:** This agreement may be terminated at any time by mutual, written consent of the Parties.
13. **Dispute resolution:** Any dispute between the parties under this agreement will, in the first instance, be referred to appropriately qualified representatives with authority to settle, appointed by each party to resolve the dispute. If those representatives are unable to resolve the dispute in a reasonable time period, the dispute will be referred to mediation (using a mediator agreed by the parties, who must facilitate mediation via teleconferencing and/or other electronic means).
14. **Counterparts:** This agreement may be signed in any number of counterparts (whether in original, scanned, electronic or facsimile form) and all those counterparts together make one instrument.

Executed for and on behalf of the

University by its duly authorized

delegate in the presence of:

Signature

Name & Position

Signature of Witness

Name of Witness

Date

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