



## FUNDING AGREEMENT

BETWEEN

THE COMMONWEALTH OF AUSTRALIA

as represented by the

NATIONAL HEALTH AND MEDICAL RESEARCH COUNCIL

and

**[INSERT NAME OF ADMINISTERING INSTITUTION]**

Regarding provision of NHMRC Funding for Research Activities

Effective **[insert date]**

### Index

1.	Definitions.....	4
2.	Interpretation .....	12
3.	Term .....	14
4.	Performance of the Agreement and Research Activities.....	14
5.	Formal Agreements with Participating Institutions and other third party agreements..	17
6.	Payment of Funds .....	20
7.	Use of and Accountability for Funds and Other Contributions .....	20

8.	<b>Record Keeping</b> .....	22
9.	<b>Reports</b> .....	22
10.	<b>Provision of information and evaluation</b> .....	25
11.	<b>Access to premises and documents</b> .....	25
12.	<b>Intellectual Property</b> .....	26
13.	<b>Assets</b> .....	28
14.	<b>Termination for Convenience/Reduction in scope</b> .....	29
15.	<b>Events of default and their consequences</b> .....	31
16.	<b>Misconduct related to NHMRC Funding</b> .....	34
17.	<b>Variations</b> .....	34
18.	<b>Indemnity</b> .....	35
19.	<b>Insurance</b> .....	36
20.	<b>Acknowledgements of NHMRC funding and use of NHMRC logo</b> .....	36
21.	<b>Use of Information</b> .....	37
22.	<b>Negation of Employment, Partnership and Agency</b> .....	38
23.	<b>Participation in peer review and assessment of funding applications</b> .....	38
24.	<b>Compliance with laws and NHMRC Approved Standards and Guidelines and other NHMRC policies</b> .....	38
25.	<b>Protection of Personal Information</b> .....	38
26.	<b>Confidential Information</b> .....	39
27.	<b>Taxes and Duties</b> .....	41
28.	<b>Recipient Created Tax Invoices (RCTIs)</b> .....	41
29.	<b>Conflict of Interest</b> .....	42
30.	<b>Dispute Resolution</b> .....	42
31.	<b>Notices and Research Administration Officer</b> .....	43
32.	<b>Responsible Officer(s)</b> .....	44

33. Assignment and Encumbrances ..... 44

34. CEO may act ..... 44

35. Counterparts ..... 44

36. Survival of Provisions ..... 44

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THIS AGREEMENT is made on the..... day of.....20....

BETWEEN THE

COMMONWEALTH OF AUSTRALIA (the Commonwealth) as represented by and acting through the National Health and Medical Research Council (NHMRC) (ABN 88 601 010 284) of 16 Marcus Clarke St, City West, Canberra, ACT 2601

AND

**[INSERT NAME OF THE ADMINISTERING INSTITUTION]** (the Administering Institution)

ACN or ABN: .....

of: **[insert address]**.....

WHEREAS:

- A. The *National Health and Medical Research Council Act 1992* (the Act) provides for the establishment of the Medical Research Endowment Account (the Account). The Act authorises NHMRC to provide assistance (Funding) from the Account to a person described in section 51 of the Act, subject to that recipient of Funding complying with any conditions that are determined by the Minister.
- B. NHMRC uses the Account to provide Funding for Research Activities which meet the purpose and objectives of a Scheme administered by NHMRC.
- C. The Administering Institution is an Eligible Institution for the purposes of each Scheme referred to in the Schedule(s) to this Agreement.
- D. NHMRC wishes to provide Funding to the Administering Institution for the Research Activities specified in the Schedule(s) subject to the terms and conditions set out in this Agreement.
- E. NHMRC is required by law to ensure the accountability of Funding and, accordingly, the Administering Institution is required to account for all NHMRC Funding it and its Participating Institutions receive under this Agreement.
- F. The Administering Institution must use the Funding in support of the purpose and objectives of each Scheme as specified in the Funding Policy for that Scheme. The Administering Institution acknowledges that it is required to comply with all of its obligations under this Agreement, including but not limited to:
  - a. managing and being accountable for the Funds;
  - b. conducting the Research Activities in an ethical manner in accordance with NHMRC Approved Standards and Guidelines and all applicable Commonwealth and State and Territory laws and regulations;

- c. maintaining a high standard of governance;
- d. ensuring its Participating Institutions perform the Research Activities and administer the Funds so as to give effect to this Agreement; and
- e. providing information, advice and Reports to NHMRC, and obtaining approvals from NHMRC as required under this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

## 1. Definitions

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1.1. In this Agreement, unless the contrary intention appears:

**"ABN"** has the meaning as given in section 41 of the *A New Tax System (Australian Business Number) Act 1999*;

**"Account"** means the Medical Research Endowment Account established under section 49 of the Act;

**"Acquittal Statement"** has the meaning given in clauses 9.11 to 9.14;

**"Act"** means the *National Health and Medical Research Council Act 1992*;

**"Additional Report"** has the meaning given in clause 9.24;

**"Administering Institution"** means those institutions that have the status of NHMRC Administering Institution ;

**"Agreement"** means this deed once it is executed by both Parties and includes the Schedules and any attachments or annexures as may be amended from time to time;

**"Annual Financial Statement"** has the meaning given in clauses 9.3 to 9.6;

**"Application"** means, in respect of a Research Activity, the application for Funding that was submitted by the Administering Institution, as required by the Scheme governing that Research Activity, to the extent that application has been approved by NHMRC;

**"Approved Auditor"** means a person who is:

- a. registered as a company auditor under the *Corporations Act 2001* (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia, the Institute of Public Accountants or CPA Australia; and
- b. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the Administering Institution or of a related body corporate (the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the *Corporations Act 2001* (Cth)); and
- c. not an accountant of the Administering Institution or a Participating Institution;

**"Approved Budget"** means, in relation to a Research Activity that is Funded under:

- a. People Support Scheme – the amount as specified in the Research Activity's Schedule; and

- b. Research Support Scheme – the budget as specified in the Research Activity's Schedule;

**"Asset"** means:

- a. any item of personal property (including Equipment and animals) or real property which has a GST-exclusive cost of more than \$10,000; and
- b. any group or class of items of personal property (including Equipment and animals) or real property that as a group or class of items has a total GST-exclusive cost of more than \$10,000,

(other than Intellectual Property rights) which is purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with use of the Funds. For the purpose of this definition, 'cost' includes any cost directly attributable to obtaining the Asset in the condition necessary for use in the relevant Research Activity;

**"Audited Financial Statement"** has the meaning given in clauses 9.15 to 9.17;

**"Australian Accounting Standards"** refers to the standards of that name, as amended from time to time, that are maintained by the Australian Accounting Standards Board referred to in section 227 of the *Australian Securities and Investments Commission Act 2001* (Cth);

**"Australian Auditing Standards"** refers to the standards of that name, as amended from time to time, that are made by the Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001* (Cth);

**"Bank"** means an authorised deposit-taking institution authorised to carry on banking business in Australia under the *Banking Act 1959* (Cth);

**"CEO"** means the position of Chief Executive Officer of NHMRC as established by section 6 of the Act or a person duly authorised or delegated to exercise the powers of the CEO, and includes a person for the time being occupying that position;

**"Change of Control"**, in relation to an Administering Institution or a Participating Institution, means:

- a. a change in its actual or beneficial ownership or control; and
- b. a change in the composition of its governing body that has the effect of reducing the Administering Institution's legal or financial independence;

**"Chief Financial Officer"** means the person with principal responsibility for accounting and financial management within the Administering Institution, or another person nominated by the Administering Institution, who is a qualified public accountant or a member of one of the following organisations, CPA Australia, the Institute of Chartered Accountants in Australia, or the Institute of Public Accountants;

**"Chief Investigator"** means, in respect of a Research Activity that is funded under a Research Support Scheme, each person specified in the Schedule for that Research Activity, or subsequently approved by NHMRC using the NHMRC's grant management system, as such and includes, without limitation, the Chief Investigator (A) for the Research Activity or the sole Investigator where appropriate;

**"Chief Investigator (A)"** means, in respect of a Research Activity that is funded under a Research Support Scheme, the person designated as such in the Schedule for that Research Activity, who is required to act, on behalf of all of the Chief Investigators for that Research Activity, as the person with primary responsibility for the scientific oversight and the management of that Research Activity;

**"Co-Funding"** means, in respect of a Research Activity, the part (if any) of the Funding that a third party pays into the Account as a contribution to that Research Activity for administration by NHMRC;

**"Commonwealth"** means the Commonwealth of Australia;

**"Commonwealth Material"** means any Material provided by NHMRC to the Administering Institution for the purposes of this Agreement or derived at any time from such Material other than as Research Material;

**"Commonwealth Purposes"** means the following:

- a. NHMRC verifying and assessing funding proposals, including an Application;
- b. NHMRC administering, Monitoring, reporting on, auditing, publicising and evaluating a funding program, including a Scheme;
- c. NHMRC preparing, managing, reporting on, auditing and evaluating agreements under a Scheme, including this Agreement;
- d. NHMRC monitoring, reporting on, auditing, publicising and evaluating projects funded under a Scheme, including a Research Activity;
- e. NHMRC developing and publishing policies, programs, guidelines and reports, including NHMRC annual reports;
- f. NHMRC providing information about a Scheme, an agreement under a Scheme or a project funded under a Scheme, including to:
  - i. a Minister of the Australian Government or the Commonwealth Parliament; or
  - ii. the public, including through the NHMRC website;
- g. NHMRC disclosing information that NHMRC is authorised or required by law to disclose;
- h. any other NHMRC activity that gives effect to a function of the Minister, the CEO or NHMRC under the Act, and
- i. NHMRC disclosing information to another Commonwealth agency for its internal purposes where this serves the Commonwealth's legitimate interests;

but, in all cases:

- j. excludes the commercialisation (being for-profit use) of the Research Material by the Commonwealth; and
- k. excludes NHMRC disclosing any Confidential Information contained in an Application or a Report except as permitted under clause 26.

**"Confidential Information"** means any information which the Parties agree in

writing or ought to know is confidential, or that is by its nature confidential;

**"Conflict of Interest"** means the Administering Institution, a Participating Institution or Personnel working on a Research Activity engaging in any activity or obtaining any interest that an independent observer might reasonably conclude would interfere with or restrict the Administering Institution, Participating Institution or Specified Personnel performing a Research Activity fairly and independently;

**"Direct Research Costs"** means direct research costs as described in the NHMRC Direct Research Costs Guidelines;

**"Eligible Institution"** means, in respect of a Scheme, an organisation that meets all of the requirements specified for being an Administering Institution ;

**"Equipment"** means the specific apparatus, instruments, machines, tools, implements, devices and, where relevant, specialised software, required for the conduct of a Research Activity and identified in the Approved Budget for that Research Activity;

**"Equipment Grant"** means a Grant provided for an Equipment Research Activity under the NHMRC Equipment Grants Guidelines to support an Administering Institution in receipt of NHMRC Funding;

**"Existing Material"** means, in respect of a Research Activity, all Material that is in existence prior to the commencement date specified in the Schedule for that Research Activity or otherwise created independently of a Research Activity;

**"Fellow"** means a person who is specified in the Schedule for a Research Activity that is funded under a People Support Scheme that is an NHMRC Fellowship or that which is funded as such under Investigator Grants;

**"Final Report"** has the meaning given in clauses 9.20 and 9.21;

**"Formal Agreement"** means a legally enforceable written agreement that is properly executed between the Administering Institution and a Participating Institution in respect of the Participating Institution's conduct of its part of a Research Activity or Research Activities and the expenditure of some or all of the Funds (if any) provided to the Participating Institution for that purpose.

**"Funds"** or **"Funding"** means the amount payable under this Agreement by NHMRC for the Research Activities specified in the Schedules, being the Grants and any Co-Funding administered through the Account for those Research Activities;

**"Funding Condition"** means a condition, standard or guideline specified in a Schedule, or imposed by NHMRC, in respect of a Research Activity and with which the Administering Institution is required to comply in respect of that Research Activity;

**"Funding Period"** means, the time period set out in the relevant Schedule for the payment of the Funds in relation to the performance of that Research Activity as may be amended or extended under clause 4 of this Agreement;

**"Funding Policy"** means, in respect of a Research Activity's Scheme, the guidelines (including grant opportunity guidelines), policies, rules, information booklets, and instructions to applicants for that Scheme that are issued by NHMRC including any requirements specified on the NHMRC website, as amended by NHMRC from time to time and to the extent that they are not inconsistent with the terms of this Agreement;



**"Government Related Entity"** has the meaning used in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as in force and amended from time to time;

**"Grant"** means, in respect of a Research Activity, the part (if any) of the Funding for that Research Activity that is:

- a. paid by the Commonwealth into the Account; and
- b. paid by NHMRC to the Administering Institution for that Research Activity.

**"Grant Identification Number"** means, in respect of a Research Activity, the identifying number specified in the Schedule for that Research Activity that was originally assigned to the Application for that Research Activity;

**"GST"** has the meaning given in the GST Act;

**"GST Act"** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**"Incorporated Material"** means, in respect of a Research Activity, Existing Material that is incorporated in, supplied with (or as part of), or required to be supplied with (or as part of), the Research Material for that Research Activity;

**"Information Commissioner"** means any of the information officers appointed under the *Australian Information Commissioner Act 2010* (Cth) when exercising the privacy functions set out in section 9 of that Act or, if that Act is repealed, the Commonwealth officer exercising similar functions;

**"Infrastructure Scheme"** means a Scheme under which funding is provided by NHMRC for research activities that involve the acquisition, management and/or use of infrastructure, including Equipment, and includes, without limitation, Equipment Grants and IRIISS Grants;

**"Institutional Annual Compliance Report"** means the report of that name described in clauses 9.22 and 9.23;

**"Institutional Approval"** means any statement of compliance or ethics clearance that the Administering Institution or a Participating Institution is required to obtain under the NHMRC Approved Standards and Guidelines or the relevant Funding Policy for the performance of a Research Activity;

**"Integrity Policy"** means the document entitled *NHMRC Research Integrity and Misconduct Policy* issued, and amended from time to time, by NHMRC

**"Intellectual Property"** includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs and circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields but excludes Moral Rights and rights in relation to Confidential Information;

**"Interest"** (in clauses 7.11, 14.2 and 15.6) means interest calculated at an interest rate equal to the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points, on a daily compounding basis;

**"IRIISS Grant"** means a Grant provided for an infrastructure Research Activity under the NHMRC Independent Research Institutes Infrastructure Support Scheme Grant Guidelines;

**"Material"** means anything in relation to which Intellectual Property rights arise;

**"Minister"** means the Commonwealth Minister from time to time responsible for the administration of the Act, and includes a delegate of the Minister;

**"Misconduct"** includes Research Misconduct, and fraudulent conduct.

**"Misleading Information"** includes, but is not limited to, information that:

- a. is false, including making a false claim in relation to a publication record (e.g. describing a paper as being 'in press' or 'accepted' if it has only been submitted);
- b. is based upon a fictitious track record, fabrication or falsification of data (even if published) or plagiarism;
- c. inflates funds obtained from other sources; and/or
- d. omits or fails to disclose relevant information;

**"Monitoring"** means activities conducted by or on behalf of NHMRC for the purpose of creating data over time about trends, compliance, effects and outcomes of the Schemes so that Funding from the Account is properly managed;

**"Moral Rights"** includes the following rights of an author of copyright Material:

- a. the right of attribution of authorship;
- b. the right of integrity of authorship; and
- c. the right not to have authorship falsely attributed;

**"New Institution"** means the Eligible Institution to which a Research Activity and its Funding are transferred as agreed by the Administering Institution, that Eligible Institution and NHMRC in accordance with clause 4.19;

**"NHMRC"** means the Commonwealth of Australia, as represented by and acting through the National Health and Medical Research Council established by section 5B of the Act;

**"NHMRC Approved Standards and Guidelines"** are those listed as such on the NHMRC website and include, but are not limited to, the:

- a. Australian Code for the Responsible Conduct of Research (2018);
- b. Australian code for the care and use of animals for scientific purposes 8<sup>th</sup> edition (2013);
- c. National Statement on Ethical Conduct in Human Research (2007 – updated May 2018);
- d. Guidelines approved under Section 95A of the *Privacy Act 1988* (2014);
- e. Guidelines under Section 95 of the *Privacy Act 1988* (2014);
- f. National Principles of Intellectual Property Management for Publicly Funded Research (2015);
- g. Principles and guidelines for the care and use of non-human primates for scientific purposes (2016);
- h. Ethical conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders (2018); and
- i. Ethical Guidelines on the Use of Assisted Reproductive Technology in

Clinical Practice and Research (2017);

as may be introduced, amended or replaced from time to time by NHMRC in accordance with clauses 17.3;

**"NHMRC Direct Research Costs Guidelines"** means the guidelines of that name, which are published on the NHMRC website and which describe direct research costs;

**"NHMRC's grant management system"** means the electronic, secure system that allows research administrators, applicants, assessors, grant holders and NHMRC staff to manage all aspects of the granting lifecycle.

**"NHMRC Equipment Grants Guidelines"** means the funding guidelines governing the administration of Equipment Grants;

**"Other Contributions"** means, in respect of a Research Activity, any financial or in-kind resources (with in-kind resources valued at cost) that are provided by or to the Administering Institution or a Participating Institution for that Research Activity and excludes Funding that is provided from the Account for that Research Activity;

**"Participating Institution"** means, in respect of a Research Activity, an organisation that contributes to the Research Activity in accordance with its Formal Agreement with, and under the leadership of, the Administering Institution and; where the context permits, includes its employees, advisers, officers, agents and contractor staff;

**"Party"** means either the NHMRC or an Administering Institution that is a party to this Agreement;

**"People Support Scheme"** means an NHMRC Scheme under which funding is provided by NHMRC for research activities that provide post-graduate training, post-doctoral training, career development or other opportunities to individual researchers. (NHMRC Fellowships and Scholarships are examples of People Support Schemes);

**"Personal Information"** has the same meaning as it has in section 6 of the *Privacy Act 1988* (Cth);

**"Personnel"** means a Party's officers, employees, advisers, contractor staff and agents and, in relation to the Administering Institution, includes any individuals involved in the management or performance of a Research Activity including the Specified Personnel;

**"Personnel Support Package"** has the same meaning as it has in the NHMRC Direct Research Cost Guidelines;

**"Probity Event"** means any event or occurrence which:

- a. has a material adverse effect on the integrity, character or honesty of the Administering Institution, a Participating Institution or Personnel involved in a Research Activity; or
- b. relates to the Administering Institution, a Participating Institution or Personnel involved in a Research Activity and has a material adverse effect on the public interest or public confidence in the Administering Institution, Participating Institution or Research Activity;

**"Progress Report"** has the meaning given in clauses 9.18 and 9.19;

**"Reports"** means all of the reports, statements and acquittals described in clause 9;

**"Research Activity"** means an activity that is Funded under a Scheme and which is specified in a Schedule to this Agreement and **"Research Activities"** means all of those activities;

**"Research Administration Officer"** means the officer nominated by the Administering Institution as its contact person for the purpose of this Agreement;

**"Research Material"** means, in relation to a Research Activity, the Application, Summary and all of the Reports regarding that Research Activity;

**"Research Misconduct"** has the same meaning as in the *Australian Code for the Responsible Conduct of Research (2018)*;

**"Research Support Scheme"** means an NHMRC Scheme that supports health and medical research and under which funding is provided by NHMRC for research activities that are carried out by individuals or teams of researchers (including Chief Investigators and, where a Scheme's Funding Policy allows, Fellows, Scholars and other researchers). NHMRC's Ideas Grants, Clinical Trial and Cohort Studies, Synergy Grants, Development Grants, Investigator Grants, Centres of Research Excellence and Partnership Projects are all examples of Research Support Schemes;

**"Responsible Officer"** means a senior manager (e.g. Chief Financial Officer, Pro-Vice-chancellor, Deputy Vice Chancellor (Research), Executive Director) appointed by the Administering Institution to be accountable for the administration of the Funds, the conduct of a Research Activity or other matter;

**"Salary Support Package"** has the same meaning as it has in the NHMRC Direct Research Cost Guidelines;

**"Schedule"** means a document signed by the Parties, which is substantially in the form of, and contains the information required by, the template provided by NHMRC;

**"Scheme"** means a funding scheme or grant opportunity administered by NHMRC, including:

- a. a Research Support Scheme;
- b. a People Support Scheme;
- c. an Infrastructure Scheme; and
- d. any other funding scheme established by NHMRC;

**"Scholar"** means a person who is specified as such in the Schedule for a Research Activity that is funded under a People Support Scheme that is an NHMRC Scholarship or funded under a Postgraduate scholarship.

**"Specified Person"** or **"Specified Personnel"** means, in respect of a Research Activity, the Chief Investigator(s), Fellow(s), Scholar(s), and any other individual specified in a Schedule, as a person who is required to perform all or part of that Research Activity;

**"Stipend"** is a tax-free living allowance paid to a full-time Scholar under certain People Support Schemes;

**"Summary"** means, in respect of a Research Activity, a summary of the Research

Activity that the Administering Institution is required to provide to NHMRC, prior to the commencement of the Research Activity, which NHMRC may use to provide information to the general public and others about the Research Activity.

**"Transfer Acquittal Statement"** has the meaning in clauses 9.8 to 9.10;

**"Transfer Application"** means an application, provided by the Administering Institution to NHMRC which seeks NHMRC's approval to transfer the remainder of a Research Activity, and all remaining Funds allocated to that Research Activity, to another Eligible Institution; and

**"Working Day"** means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday, public holiday in that place or any other day on which NHMRC is closed for business to the public.

## **2. Interpretation**

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- 2.1. In this Agreement, unless the contrary intention appears:
- a. words in the singular number include the plural and words in the plural number include the singular;
  - b. words importing a gender include any other gender;
  - c. words importing persons include a partnership and a body whether corporate or otherwise;
  - d. clause headings and words capitalised or in bold or italic format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;
  - e. all references to clauses are to clauses in this Agreement, and all references to items are references to items in a Schedule to this Agreement;
  - f. all references to dollars are to Australian dollars and this Agreement uses Australian currency;
  - g. reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, replaced or supplemented, is a reference to that statute or other legislation as amended, replaced or supplemented;
  - h. where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and
  - i. to the extent that a clause in this Agreement requires a Research Activity Funded under a Research Support Scheme to be conducted in accordance with the Application for that Research Activity, that clause does not require the Administering Institution to comply with the Approved Budget for that Research Activity.
- 2.2. The Parties intend and agree that each Schedule that they sign after the date they execute this Agreement is to be incorporated into, and form part of, this Agreement on and from the date that NHMRC signs that Schedule. The Parties may sign a separate Schedule for each Research Activity or Scheme under which NHMRC provides Funding to the Administering Institution. If NHMRC agrees to provide funds for a new research project under a Scheme:

- a. the Parties may sign a new Schedule that sets out, or refers to another Schedule that set outs, that project; or
  - b. the Parties may sign a new Schedule for that Scheme, in which case that new Schedule will replace any earlier Schedule that was signed in respect of that Scheme.
- 2.3. The Parties intend and agree that new Schedules and variations (including replacement) of existing Schedules can be agreed and signed electronically by the Parties using NHMRC's grant management system, and that Schedules and variations (including replacement) of Schedules signed electronically by the Parties using NHMRC's grant management system are legally binding.
- 2.4. Where this Agreement provides that something can be done using NHMRC's grant management system, it must be done in accordance with any requirements of NHMRC's grant management system and any instructions provided by NHMRC.
- 2.5. If a Party does not exercise (or delays in exercising) any of its rights under this Agreement or at law, that failure or delay does not operate as a waiver of those rights.
- 2.6. A single or partial exercise by a Party of any of its rights under this Agreement or at law does not prevent the further exercise of any right.
- 2.7. If a court or tribunal says any provision of this Agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate any other provision within the Agreement.
- 2.8. Any uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision.
- 2.9. This Agreement is subject to the Act. To the extent of any inconsistency between this Agreement and the Act, the Act prevails.
- 2.10. The laws of the Australian Capital Territory apply to this Agreement.
- 2.11. This Agreement constitutes the entire agreement between the Parties in relation to its subject matter and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement.
- 2.12. The Parties agree that all NHMRC funding provided under a Schedule under the NHMRC Funding Agreement of 31 March 2020 will be taken to be a Schedule under the NHMRC Funding Agreement of XX XXXX 2019 upon notification under clause 17.2.
- 2.13. If a requirement specified in the following list conflicts with any other requirement specified in the list, then the requirement that is specified earlier in the list shall take precedence in the event of any inconsistency between the two:
- a. a Ministerial condition regarding the provision of Funding;
  - b. a clause of this Agreement;
  - c. an item in a Schedule;
  - d. a requirement in the Funding Policy for the relevant Scheme;
  - e. a requirement relating to the approval of Administering Institutions;

- f. a requirement in the NHMRC Approved Standards and Guidelines;

### **3. Term**

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- 3.1. This Agreement commences on the date it is executed by the Parties and continues until it is terminated.

### **4. Performance of the Agreement and Research Activities**

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- 4.1. The Administering Institution must continue to meet, at all times during the term of this Agreement, the requirements for being an Administering Institution, and the conditions of any Schedule that applies from time to time.
- 4.2. The Administering Institution must ensure that each Research Activity is carried out in an ethical, responsible, diligent and competent manner, and in accordance with this Agreement, the requirements for being an Administering Institutions, the Funding Policy that applies to the Scheme under which the Research Activity is Funded, any Funding Conditions that apply to the Research Activity and all applicable NHMRC Approved Standards and Guidelines (including obtaining, maintaining and complying with any Institutional Approvals).
- 4.3. The Administering Institution must also ensure that each Research Activity is conducted in accordance with the Application for that Research Activity, subject to any revisions to the Application approved or required by NHMRC.
- 4.4. Where the Administering Institution consists of more than one person, those persons agree to be jointly and severally bound by the terms of this Agreement.
- 4.5. The Administering Institution shall ensure that each Research Activity is performed within the Funding Period for that Research Activity, unless the Research Activity is varied in accordance with clauses 4.9 – 4.11 and with the Grantee Variations Policy.
- 4.6. For each Research Activity, the Administering Institution must ensure:
- a. the provision of the assistance, resources, facilities and services specified in the Application or necessary for the efficient conduct of the Research Activity including:
    - i. accommodation (e.g. a laboratory and office that is suitably equipped and furnished for the Research Activity);
    - ii. access to a basic library collection, standard reference materials and funding for abstracting services, including online journal services;
    - iii. provision of computers, including laptops, and basic computing facilities such as printers, word processing and other standard software; and
    - iv. use of photocopiers, telephones, mail, fax, email and internet services; and
  - b. that all other expenses are met as required to support the Research Activity (including, but not limited to, administration, insurance, rent, taxes, repairs, salaries, communications and utility charges that relate to the Administering Institution's or a Participating Institution's business as a whole but where such expenses are not Direct Research Costs).
- 4.7. The Administering Institution represents and warrants that it will ensure that there are
-

security policy and procedures in place to:

- a. prevent unauthorised access to all locations at which any part of a Research Activity is conducted;
- b. protect all information technology hardware and software associated with a Research Activity; and
- c. prevent unauthorised access to documents and data (including research information and experiment details) pertaining to a Research Activity.

### **Commencement**

- 4.8. The Administering Institution must ensure that a Research Activity commences no later than the commencement date specified in the Schedule for that Research Activity (or as otherwise approved by NHMRC under clause 4.9).

### **Deferment**

- 4.9. If the Administering Institution wishes to defer commencement of a Research Activity beyond the commencement date specified in the Schedule for the Research Activity, or the commencement date previously approved by NHMRC under this clause 4.9, the Administering Institution must submit a request to NHMRC using NHMRC's grant management system, and where possible, prior to the existing commencement date. NHMRC may at its sole discretion approve or reject a deferral request in accordance with its Grantee Variations Policy.

### **Suspension**

- 4.10. If the Administering Institution wishes to suspend performance of a Research Activity during the Research Activity's Funding Period, the Administering Institution must submit a request to NHMRC using NHMRC's grant management system, and where possible, prior to the proposed start of the suspension. NHMRC may at its sole discretion approve or reject a suspension request using NHMRC's grant management system, and may suspend the payment of Funding for the Research Activity for the period of suspension in accordance with its Grantee Variations Policy.

### **Extensions**

- 4.11. If an Administering Institution wishes to extend a Research Activity, the Administering Institution must submit a request to NHMRC using NHMRC's grant management system, and where possible, prior to the existing completion date for that Research Activity. NHMRC may at its sole discretion approve or reject an extension request in accordance with its Grantee Variations Policy using NHMRC's grant management system.

### **Personnel**

- 4.12. Unless the Chief Investigator (A) or Fellow for a Research Activity is an employee of the Administering Institution or a Participating Institution, the Administering Institution must enter into a legally enforceable written agreement with the Chief Investigator (A) or Fellow in respect of the conduct of the Research Activity and the expenditure of the Funds for the Research Activity which requires the Chief Investigator (A) or Fellow to act in a manner that is consistent with, and enables the Administering Institution to give effect to, all of the Administering Institution's obligations under this Agreement.
- 4.13. The Administering Institution must ensure that the Specified Personnel and any of its



personnel involved in a Research Activity perform the Research Activity in accordance with the Application and this Agreement.

- 4.14. Where a Specified Person is unable to perform, or to continue to perform, all or part of a Research Activity:
- a. NHMRC may request the Administering Institution arrange for a replacement Specified Person who is acceptable to NHMRC, to perform all or part of the Research Activity at no additional cost to NHMRC and the Administering Institution must promptly comply with any such request. If NHMRC does not consider a Research Activity viable without the contribution of a particular Specified Personnel who ceases to perform all or part of a Research Activity, NHMRC may take action under clause 15; or
  - b. the Administering Institution may request to change a Specified Person in accordance with the circumstances set out in the Grantee Variations Policy .
- 4.15. The Administering Institution must ensure that Personnel who are employed full-time on a Research Activity, and in respect of whom a Salary Support Package is provided for that Research Activity, do not accept any remuneration from any source other than the Administering Institution or a Participating Institution in respect of the Personnel's work on the Research Activity without the prior agreement of NHMRC or unless otherwise permitted under the relevant Scheme's Funding Policy. In this clause 4.15 'remuneration' excludes income generated from the exploitation of Intellectual Property rights in the Research Activity's Existing Material.
- 4.16. In respect of Personnel:
- a. the provision of salaries, recreation leave, sick leave and other conditions of employment for those Personnel shall be determined by the Administering Institution or a Participating Institution; and
  - b. the administration of all salaries and related costs and expenses remains the responsibility of the Administering Institution or a Participating Institution.

### **Transfers**

- 4.17. The Parties acknowledge that:
- a. a Specified Person for a Research Activity that is Funded under a People Support Scheme; and
  - b. a Chief Investigator (A) for a Research Activity that is Funded under a Research Support Scheme,
- may, at any time, make a Transfer Application to his or her Administering Institution for the transfer of the conduct of that Research Activity, and the Funding for that Research Activity, to another Eligible Institution.
- 4.18. The Administering Institution must do all things necessary and complete and sign all necessary documents to facilitate the making of a Transfer Application by a Specified Person referred to in clause 4.17. The Administering Institution will notify NHMRC of its receipt of a Transfer Application from a Specified Person. The Administering Institution may make its own submissions to NHMRC in relation to a Transfer Application.

- 4.19. Funding for a Research Activity that is the subject of a Transfer Application will only be transferred from the Administering Institution to another Eligible Institution if NHMRC, the Administering Institution and the Eligible Institution each agree in writing to the Transfer Application, in which case:
- a. the Eligible Institution will become the New Institution;
  - b. NHMRC will cease or reduce the Funding for that Research Activity to the Administering Institution by such an amount as NHMRC, in its absolute discretion, thinks appropriate as a result of the Transfer Application;
  - c. the Schedule for the Research Activity will be amended by NHMRC to reflect the transfer of the Research Activity, and its remaining Funding, from the Administering Institution to the New Institution in accordance with clause 17.2; and
  - d. the Administering Institution:
    - i. must do all things necessary and complete and sign all necessary documents, including the Transfer Acquittal Statement to give effect to the Transfer Application (including providing the New Institution with access to the Assets, records, Material and Intellectual Property rights necessary to enable the Research Activity to be undertaken at the New Institution and assisting the New Institution enter into agreements with the Participating Institutions that are working on that Research Activity that meet the requirements specified in the New Institution's funding agreement with the NHMRC);
    - ii. must transfer to the New Institution any Funds the Administering Institution has received in respect of the Research Activity and has not spent or committed for the Research Activity in accordance with this Agreement up to the date of the transfer; and
    - iii. remains responsible for the Funds it spent and committed for the Research Activity prior to the date of the transfer.
- 4.20. NHMRC shall not be liable to pay any costs or compensation to the Administering Institution resulting from any action it takes in relation to a Transfer Application.
- 4.21. Funding received under an Infrastructure Scheme must not be transferred from the Administering Institution to any Participating Institution or any other institution, except with the prior written permission of NHMRC and subject to any conditions that NHMRC imposes on such a transfer.

## **5. Formal Agreements with Participating Institutions and other third party agreements**

- 5.1. Notwithstanding that the Administering Institution may have subcontracted some or all of its obligations under this Agreement (including to its Participating Institutions), the Administering Institution remains responsible to NHMRC for the performance of this Agreement (including the performance of the Research Activities and the administration of the Funds) and is required to do all things incidental or reasonably necessary to give effect to this Agreement.
- 5.2. The Administering Institution must enter into a Formal Agreement with each Participating Institution that is performing any part of the Administering Institution's Research Activities.

- 5.3. The Administering Institution acknowledges that it has an on-going obligation to monitor and report on each Participating Institution's adherence to the terms of its Formal Agreement with the Administering Institution.
- 5.4. NHMRC is under no obligation to assist with, participate in or facilitate any arrangements that the Administering Institution makes with a Participating Institution or any other third party in relation to a Research Activity. The Administering Institution must not:
- a. allow a Participating Institution to commence performing any part of a Research Activity; nor
  - b. provide Funding to that Participating Institution for that Research Activity,
- until the Administering Institution has entered into a Formal Agreement with that Participating Institution for that Research Activity. The Administering Institution must retain a copy of each Formal Agreement it makes with a Participating Institution (and any other agreement it makes with a third party) in relation to its Research Activities and make them available to NHMRC as and when required.
- 5.5. Subject to clause 5.7, each Formal Agreement that the Administering Institution has with a Participating Institution must require the Participating Institution to act in a manner that is consistent with, and enables the Administering Institution to give effect to, all of the Administering Institution's obligations under this Agreement. Without limiting the breadth of this clause 5.5, each Formal Agreement must:
- a. specify the Funding to be provided by the Administering Institution to the Participating Institution for the Research Activity as well as the role of, and any financial or in-kind contribution to be provided by, the Participating Institution for the Research Activity;
  - b. outline the part of the Research Activity to be undertaken by the Participating Institution;
  - c. outline each of the Administering Institution's and Participating Institution's responsibilities for the payment of salaries and any Stipends for the Specified Personnel for that Research Activity;
  - d. outline the respective roles and responsibilities of Personnel from the Administering Institution and the Participating Institution to ensure sound research governance, including notification of Misconduct and notification and management of breaches or potential breaches of the *Australian Code for the Responsible Conduct of Research* in accordance with the NHMRC's Integrity Policy;
  - e. require the Participating Institution to deal with the Funds it receives from the Administering Institution in the same way as the Administering Institution is required to deal with the Funding under clause 7 of this Agreement (except that the Participating Institution is required to provide information to, and seek approval from, the Administering Institution rather than NHMRC);
  - f. require the Participating Institution to repay to the Administering Institution any Funds provided by the Administering Institution to the Participating Institution for a Research Activity that the Participating Institution has not spent on the Research Activity in accordance with its Formal Agreement;
  - g. require the Participating Institution to provide the Administering Institution with the information that the Administering Institution requires to provide the Reports

- required under clause 9 of this Agreement in relation to the Research Activities;
- h. require the Participating Institution to provide the Commonwealth with the access specified in clause 11 of this Agreement;
  - i. describe the Intellectual Property arrangements between the Administering Institution and the Participating Institution that will apply to the outcome or results generated by the Research Activity. Such arrangements must comply with the *National Principles of Intellectual Property Management for Publicly Funded Research* and in a manner that is consistent with, and gives effect to, clause 12 of this Agreement;
  - j. require the Participating Institution to cooperate with the Administering Institution in relation to any complaints or allegations about potential breaches of the *Australian Code for the Responsible Conduct of Research*, including Research Misconduct;
  - k. require the Participating Institution to use the NHMRC logo and acknowledge the Funding consistently with the requirements in clause 20;
  - l. if clauses 36 and 37 apply to Research Activities involving the Participating Institution, contain clauses to give effect to clauses 36 and 37 of this Agreement; and
  - m. provide that if this Agreement is terminated or reduced in scope, the Formal Agreement will be similarly terminated or reduced in scope.
- 5.6. The Administering Institution must advise NHMRC if a Formal Agreement between the Administering Institution and a Participating Institution is terminated, suspended or expires.
- 5.7. Where a Participating Institution:
- a. is not incorporated or established in Australia;
  - b. will perform its part of a Research Activity solely in a country other than Australia; and
  - c. will not receive any Funds for its performance of part of the Research Activity, the Administering Institution need not comply with clause 5.5 in respect of the Participating Institution's involvement in that Research Activity provided that the Formal Agreement between the Administering Institution and the Participating Institution:
  - d. outlines the part of the Research Activity that is to be undertaken by the Participating Institution;
  - e. states that no Funding will be paid to the Participating Institution for its performance of that Research Activity; and
  - f. requires the Participating Institution to comply with either:
    - i. the NHMRC Approved Standards and Guidelines; or
    - ii. other research policies, standards and guidelines that apply in the country in which the Participating Institution is performing its part of the Research Activity and which the Administering Institution reasonably considers at least meet the requirements of the NHMRC Approved Standards and Guidelines

## **6. Payment of Funds**

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- 6.1. Subject to sufficient appropriation for each Grant, provision of the Co-Funding and the terms of this Agreement, NHMRC agrees to pay the Funds for a Research Activity to the Administering Institution during the Funding Period unless otherwise stated in the Schedule.
- 6.2. Payment of Funds for a Research Activity (other than an Infrastructure Scheme's Research Activity) will be made monthly within the month to which the payment relates, except for any Funding payable in respect of any Equipment Funding Element for that Research Activity.
- 6.3. NHMRC will pay the Funding for a Research Activity's Equipment Funding Element at the same time as it makes the initial payment for that Research Activity under clause 6.2.
- 6.4. NHMRC will pay the Funding for an Infrastructure Scheme's Research Activity at the time specified in the Funding Policy for that Scheme unless the relevant Schedule specifies an alternative payment arrangement for that Research Activity, in which case that alternative payment arrangement will apply.
- 6.5. NHMRC may, at its sole and absolute discretion, make a payment of Funds for a Research Activity before it would otherwise be due under this clause 6.

## **7. Use of and Accountability for Funds and Other Contributions**

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- 7.1. Funds may only be used for the Research Activity for which they are provided and then only in accordance with:
  - a. this Agreement;
  - b. the Funding Policy for the Research Activity's Scheme; and
  - c. any Funding Conditions that apply to the Research Activity.

The Funds must not be used for any other purpose without the prior written approval of NHMRC.
- 7.2. The Administering Institution must deposit Funding in a Bank account and maintain a separate accounting ledger for each Research Activity.
- 7.3. The Administering Institution must hold the Funds in a Bank account which it solely controls, unless it is prohibited from doing so by legislation or government regulation.
- 7.4. The Administering Institution must account for the Funds provided for each Research Activity and maintain up-to-date and accurate accounts and records for each Research Activity, in accordance with applicable Australian Accounting Standards.
- 7.5. As and when requested by:
  - a. NHMRC;
  - b. a Specified Person for a Research Activity Funded under a People Support Scheme; or
  - c. the Chief Investigator (A) for a Research Activity Funded under a Research Support Scheme,

the Administering Institution must arrange for its and its Participating Institution's

records for that Research Activity to be made available to the requesting person.

- 7.6. The Administering Institution must identify any overpayment of Funds that it receives under this Agreement and must notify NHMRC of that overpayment within 20 Working Days of identifying the overpayment. NHMRC may recover the amount of any overpayment from the Administering Institution in accordance with clause 15.
- 7.7. The Administering Institution must advise NHMRC in a timely manner of any Other Contributions (including any other Commonwealth financial or in-kind assistance) that will be provided for a Research Activity.
- 7.8. NHMRC may recover from the Administering Institution (under clause 15) any part of the Funding that has been provided for a particular purpose where NHMRC considers that the Administering Institution or Participating Institution is also receiving other Commonwealth assistance for that purpose.
- 7.9. The Administering Institution is responsible for monitoring the expenditure of Funds. If at any time, a Responsible Officer for the Administering Institution considers that Funds provided for a Research Activity are not being spent for the purpose of the Research Activity by the Administering Institution in accordance with this Agreement (or by a Participating Institution in accordance with its Formal Agreement), the Administering Institution must inform NHMRC immediately and, unless NHMRC directs otherwise, take all action necessary to cease or minimise further expenditure in relation to that Research Activity.
- 7.10. Any Funds that have not been spent or legally committed for the Research Activity by the Administering Institution in accordance with this Agreement (and, where the Funds for that Research Activity have been provided to a Participating Institution, that Participating Institution in accordance with its Formal Agreement) as at the completion of the Funding Period must, at NHMRC's discretion, either be:
  - a. repaid to NHMRC within 20 Working Days after the date of an NHMRC notice requiring the Administering Institution to repay those Funds; or
  - b. Off-set by NHMRC against one or more further payments of Funds under this Agreement.
- 7.11. If Funds that are required to be repaid under clause 7.10 are not repaid by the Administering Institution within the timeframe specified in that clause, Interest will accrue on the outstanding amount until it is repaid in full to NHMRC. The Administering Institution agrees that any such Interest represents a reasonable pre-estimate of loss incurred by NHMRC. Any amount that is not repaid in accordance with clause 7.10 may, at the absolute discretion of NHMRC, be recovered as a debt due to NHMRC without further proof of the debt being necessary.
- 7.12. Any expenditure incurred in respect of a Research Activity that exceeds the amount of Funding approved for that Research Activity is the responsibility of the Administering Institution. NHMRC will not pay or reimburse any such excess costs under any circumstances.
- 7.13. The Administering Institution must ensure that any Other Contributions that are referred to in the Schedule for a Research Activity are provided or received as specified in the Application for that Research Activity (and, if additional Other Contributions details are set out in the Schedule, the Schedule).

## **People Support Scheme**

- 7.14. Funds provided for a Research Activity under a People Support Scheme may only be spent in accordance with the NHMRC Direct Research Costs Guidelines.

## **Research Support Scheme**

- 7.15. Funds provided for a Research Activity under a Research Support Scheme may only be spent in accordance with the NHMRC Direct Research Costs Guidelines.

## **8. Record Keeping**

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- 8.1. The Administering Institution must ensure that the appropriate Specified Personnel establish and maintain detailed and accurate records (which if digital, can be easily reproduced in hardcopy), regarding the conduct of each Research Activity, including the creation and disposal of Intellectual Property rights and Assets and the use and management of the Funds provided for that Research Activity.
- 8.2. The records maintained in accordance with this clause 8 must include such information as is necessary to ensure the completion, and any future transfer of, the Research Activity.
- 8.3. The records for a Research Activity referred to in this clause 8 must be retained for a period of no less than five (5) years after the end of the Funding Period.

## **9. Reports**

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- 9.1. The Administering Institution must submit to NHMRC the Reports specified in this clause 9 in respect of each Research Activity and in the manner, within the timeframes, in the format, and containing the information, specified.
- 9.2. Each Report must be prepared by the Personnel specified in this Agreement or, if no such Personnel is so specified, the Personnel so specified by the Administering Institution.

### **Financial Reports**

#### ***Annual Financial Statements***

- 9.3. The Administering Institution must submit a separate financial statement (**Annual Financial Statement**) for each Research Activity for each calendar year of the Funding Period, other than the last calendar year for that Research Activity, within the timeframe specified.
- 9.4. The Annual Financial Statement for a Research Activity must show the Administering Institution's and its Participating Institution's receipt and expenditure of all of the Funding attributable to the relevant calendar year for the Research Activity.
- 9.5. The Administering Institution's Chief Financial Officer (or his or her authorised delegate) must certify in the Annual Financial Statement that it has been prepared using accounts and records that were properly maintained in accordance with applicable Australian Accounting Standards.
- 9.6. The Administering Institution's Responsible Officer (or his or her authorised delegate) must certify in the Annual Financial Statement for a Research Activity that all Funds provided for that Research Activity have been used for that Research Activity in accordance with the terms of this Agreement.

### ***Carry Over of Unspent Funds***

- 9.7. The amount of any unspent Funds that is being carried over from the preceding calendar year must be specified in any Annual Financial Statement.

### ***Transfer Acquittal Statements***

- 9.8. If NHMRC approves (and the Administering Institution and New Institution agree to) the transfer of a Research Activity to a New Institution, the Administering Institution must provide NHMRC with a transfer acquittal statement (**Transfer Acquittal Statement**) within the timeframe specified. The Transfer Acquittal Statement must state the amount of Funds received and spent or committed for that Research Activity by the Administering Institution in accordance with the Agreement attributable up to the effective date of the transfer.
- 9.9. The Administering Institution's Chief Financial Officer (or his or her authorised delegate) must certify in the Transfer Acquittal Statement that it has been prepared using accounts and records that were properly maintained in accordance with applicable Australian Accounting Standards.
- 9.10. The Administering Institution's Responsible Officer (or his or her authorised delegate) must certify in the Transfer Acquittal Statement that all Funds provided to the Administering Institution for that Research Activity have been used for the Research Activity, or transferred to the New Institution for that Research Activity, in accordance with the terms of this Agreement.

### ***Acquittal Statements***

- 9.11. The Administering Institution shall, within the timeframe specified, and at any other time reasonably requested by NHMRC, provide an acquittal statement (**Acquittal Statement**) in the form stipulated by NHMRC, for all of the Funding received by the Administering Institution for that Research Activity.
- 9.12. The Acquittal Statement must comply with applicable Australian Accounting Standards and include a statement of income and expenditure in respect of the Funds received in respect of the Research Activity attributable to its entire Funding Period (or other period specified by NHMRC) that is certified by the Chief Financial Officer (or his or her authorised delegate) and demonstrates:
- a. the Administering Institution's receipt and expenditure of the Funds for that Research Activity; and
  - b. each of its Participating Institutions' receipt and expenditure of the Funds for that Research Activity.
- 9.13. The Administering Institution's Chief Financial Officer (or his or her authorised delegate) must certify in the Acquittal Statement that it has been prepared using accounts and records that were properly maintained in accordance with applicable Australian Accounting Standards.
- 9.14. The Administering Institution's Responsible Officer (or his or her authorised delegate) must certify in the Acquittal Statement that all Funds provided for a Research Activity have been used for that Research Activity in accordance with the terms of this Agreement.

### ***Audited Financial Statements***



- 9.15. If requested by NHMRC, the Administering Institution must, within the timeframe specified, provide NHMRC with an audited financial statement (**Audited Financial Statement**) for all of the Funding received by the Administering Institution, and any Other Contributions provided, for a Research Activity. The Audited Financial Statement must show the income and expenditure in respect of the Funds and any Other Contributions received in respect of the Research Activity attributable to each calendar year of its Funding Period and include:
- a. the Administering Institution's receipt and expenditure of the Funds provided for that Research Activity; and
  - b. each of its Participating Institution's receipt and expenditure of the Funds provided for that Research Activity.
- 9.16. Subject to clause 9.17, an Audited Financial Statement must:
- a. use a financial statement that is prepared by the Administering Institution's Chief Financial Officer or other qualified accountant in accordance with applicable Australian Accounting Standards; and
  - b. be audited in accordance with Australian Auditing Standards by an Approved Auditor.
- 9.17. The Audited Financial Statement must be audited by an independent auditor unless the NHMRC consents, at its absolute discretion and prior to the due date for the Audited Financial Statement, to the Administering Institution's internal auditor, who must be registered as a company auditor under the *Corporations Act 2001* (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia, the Institute of Public Accountants or CPA Australia, preparing the Audited Financial Statement. If NHMRC so consents, the Administering Institution must ensure that:
- a. its internal auditor submits the Audited Financial Statement directly to NHMRC and certifies that this has occurred; and
  - b. its internal auditor receives instructions directly from NHMRC on the conduct and scope of the audit.

### **Non-Financial Reports**

#### ***Progress Reports***

- 9.18. If requested by NHMRC, the Administering Institution must ensure that progress reports (**Progress Reports**) are submitted in respect of the Research Activity within the timeframes specified.
- 9.19. If NHMRC is not satisfied with the completeness or accuracy of the information supplied in a Progress Report, or the Administering Institution fails to provide a Progress Report as and when required under this Agreement, NHMRC may require the Administering Institution to submit a more detailed, complete and accurate Progress Report within a timeframe specified by NHMRC and may withhold, in accordance with clause 15, any further payment of Funds until that report is provided and accepted by NHMRC. If the Administering Institution fails to provide the required complete and accurate Progress Report by the date specified by NHMRC, NHMRC may exercise any of its rights under clause 15.

#### ***Final Reports***

- 9.20. The Administering Institution shall, within the timeframe and in the format specified,

provide NHMRC with a final report (**Final Report**) in respect of the Research Activity.

- 9.21. If a Final Report for a Research Activity is considered by NHMRC to be inadequate, NHMRC may seek further information (including a more detailed, complete and accurate Final Report) about the Research Activity from the Specified Personnel who worked on that Research Activity. If NHMRC requires the Administering Institution to provide a more detailed, complete and accurate Final Report by the date specified by NHMRC and the Administering Institution fails to do so, NHMRC may exercise any of its rights under clause 15.

#### ***Institutional Annual Compliance Report***

- 9.22. The Administering Institution shall, within the timeframe and in the format specified, for each calendar year provide a Report (**Institutional Annual Compliance Report**) that details the Administering Institution's, the Participating Institution's and the Specified Personnel's compliance with NHMRC Approved Standards and Guidelines.
- 9.23. If NHMRC is not satisfied with the completeness or accuracy of the Institutional Annual Compliance Report NHMRC may exercise any of its rights under clause 15.

#### **Additional Reports**

- 9.24. The Administering Institution is to provide NHMRC with any other Report in respect of any Research Activity within the timeframe, in the format and containing the information requested by NHMRC.

### **10. Provision of information and evaluation**

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- 10.1. In addition to any other requirement in this Agreement, the Administering Institution must:
- a. provide information to NHMRC, as NHMRC reasonably requires, and agrees it may be used for Commonwealth Purposes;
  - b. comply with all reasonable requests, directions, or Monitoring requirements issued by NHMRC; and
  - c. co-operate with and assist NHMRC in any review or other evaluation that NHMRC undertakes of the Research Activities or the Funds.
- 10.2. The Administering Institution agrees that NHMRC may conduct an evaluation of the outcome of a Research Activity and shall provide NHMRC with any information relating to the Research Activity as NHMRC may reasonably require for the evaluation.

### **11. Access to premises and documents**

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- 11.1. The Administering Institution must, at all reasonable times, ensure that NHMRC or any person authorised in writing by NHMRC (including the Auditor-General and the Information Commissioner) has:
- a. access to:
    - i. the Administering Institution's and its Participating Institutions' employees, including but not limited to the Specified Personnel and any other Personnel working on a Research Activity;
    - ii. premises occupied by the Administering Institution, a Participating Institution

- and any other premises at which any part of a Research Activity is being conducted;
  - iii. information (including records and accounts) relevant to the Research Activities and the Funds; and
  - iv. Assets, Research Material and Incorporated Material; and
- b. reasonable assistance to:
- i. inspect the performance of any or all Research Activities;
  - ii. locate and inspect information (including records, accounts, Research Material and Incorporated Material) relating to any Research Activity or the Funds, the Administering Institution's compliance with this Agreement or a Participating Institution's compliance with its Formal Agreement; and
  - iii. make copies of any such information and remove those copies and use them for any purpose connected with this Agreement (including to confirm information contained in a Report, evaluate a Research Activity or audit expenditure of the Funds).

For clarity, this clause 11.1 does not require the Administering Institution to disclose, or require a Participating Institution to disclose, information of a third party (other than the Administering Institution or the Participating Institution) that is by its nature the Confidential Information of that third party.

- 11.2. The access rights in clause 11.1 are subject to:
- a. the provision of any reasonable prior notice required by the Administering Institution (which must not exceed 5 Working Days); and
  - b. the Administering Institution's and/or a Participating Institution's reasonable security procedures.
- 11.3. If a matter is being investigated where, in the opinion of the CEO of NHMRC, or any person authorised in writing by the CEO of NHMRC, the Administering Institution or Participating Institution may be involved in an actual or suspected breach of the law in performance of the Research Activity, clause 11.2 will not apply.
- 11.4. Nothing in clauses 11.1 to 11.3 inclusive affects the obligation of each Party to continue to perform its obligations under this Agreement unless otherwise agreed between them.

## **12. Intellectual Property**

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### **Intellectual Property policy**

- 12.1. The Administering Institution must adhere to an Intellectual Property policy, approved by the Administering Institution's governing body, which has as one of its aims the maximisation of benefits arising from research.
- 12.2. The Administering Institution's Intellectual Property policy referred to in clause 12.1 must comply with the '*National Principles of Intellectual Property Management for Publicly Funded Research*' (available on the NHMRC website) as amended from time to time.

### **Commonwealth Material**

- 12.3. Ownership of all Commonwealth Material, including Intellectual Property rights in that Material and the NHMRC logo referred to in clause 20, remains vested at all times in the Commonwealth. The Commonwealth's ownership of Commonwealth Material is not affected in any way by NHMRC consenting to the Administering Institution, Participating Institution or a Specified Personnel using Commonwealth Material under this clause 12.3 or clause 20. However, the Commonwealth grants the Administering Institution a licence to use, copy, reproduce, communicate and sub-licence that Material only for the purposes of this Agreement and in accordance with any conditions or restrictions the Commonwealth may notify to the Administering Institution including those specified in clause 20 in respect of the NHMRC logo.

#### **Ownership of Material**

- 12.4. NHMRC makes no claim on the ownership of:
- a. Intellectual Property brought into being as a result of the Research Activities (including the Research Material); or
  - b. Existing Material (including the Incorporated Material).

#### **NHMRC licence to use Research Material and Incorporated Material**

- 12.5. The Administering Institution grants to NHMRC, or must procure for NHMRC, a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, communicate, modify and adapt the Research Material and Incorporated Material (including any copyright in the Research Material and Incorporated Material) for the Commonwealth Purposes.

#### **Moral Rights**

- 12.6. In clause 12.7, '**Specified Acts**' means any of the following classes or types of acts or omissions by the Commonwealth or its licensees for the Commonwealth Purposes:
- a. using, reproducing, communicating, modifying or adapting all or any part of the Research Material or Incorporated Material, with or without attribution of authorship;
  - b. supplementing the Research Material or Incorporated Material with any other material;
  - c. using the Research Material or Incorporated Material in a different context to that originally envisaged;
- but does not include false attribution of authorship.
- 12.7. The Administering Institution agrees to:
- a. use its best endeavours to obtain from each author of any Research Material or Incorporated Material a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends to the performance of the Specified Acts by NHMRC or any person claiming under or through NHMRC; and
  - b. upon request, provide the executed original of each such consent to NHMRC.
- If, despite its best endeavours, the Administering Institution is unable to obtain a consent referred to in clause 12.7.a, it must notify the Commonwealth as soon as the Administering Institution becomes aware of that inability.
- 12.8. Clauses 12.4 to 12.7 do not apply to any Commonwealth Material incorporated into

the Research Material.

### **Provision of access to data and publications**

- 12.9. If required by a Funding Policy or another NHMRC policy about the dissemination of research findings, the Administering Institution must deposit any publication resulting from a Research Activity, and its related data, in an appropriate subject and/or open access repository (such as the Australian Consortium for Social and Political Research Inc. archive or databases listed under the National Centre for Biotechnology Information) in accordance with the timeframe and other requirements set out in that policy.
- 12.10. Any research outputs from a Research Activity that have been, or will be, deposited in such a repository by the due date for the Final Report for that Research Activity must be identified in that Final Report.

### **13. Assets**

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- 13.1. An Asset purchased, leased or created with Funds provided for a Research Activity must be used for that Research Activity. The Administering Institution must ensure such use is subject to the control and supervision of the Specified Personnel working on that Research Activity and that the first priority for that Asset's use is the Research Activity.
- 13.2. The ownership of any Asset purchased or created wholly or partly with the Funding shall be vested in the Administering Institution, located at its or a Participating Institution's premises and listed in the Administering Institution's assets register except to the extent:
- a. the Application specifies, or the relevant Schedule requires, otherwise or NHMRC otherwise agrees;
  - b. the Research Activity or this Agreement is terminated, in which case NHMRC may, by notice in writing and at its absolute discretion, require the Administering Institution to:
    - i. if the Asset is purchased or created solely with the Funds, transfer the Asset to the Commonwealth or other person specified in the notice; or
    - ii. sell the Asset for the best price reasonably available and pay to NHMRC the proportion of the sale proceeds (minus reasonable sale costs) that reflects the proportion of the Asset's cost that was met by the Funds; or
  - c. the Asset is required to be transferred to a New Institution in accordance with clause 4.19. If the New Institution does not require the Asset, NHMRC may require the Administering Institution to:
    - i. if the Asset is purchased or created solely with the Funds, transfer the Asset to the Commonwealth or other person specified in the notice; or
    - ii. sell the Asset for the best price reasonably available and pay to NHMRC the proportion of the sale proceeds (minus reasonable sale costs) that reflects the proportion of the Asset's cost that was met by the Funds.
- 13.3. The Administering Institution must ensure that a Participating Institution does not use the Funds to purchase land or purchase or create any buildings or fixtures.
- 13.4. The Administering Institution must, during the Funding Period, ensure that each Asset

is maintained in good condition.

- 13.5. Where ownership of an Asset vests in the Commonwealth, the Administering Institution must at the completion of the relevant Research Activity and at the discretion of NHMRC:
- a. sell the Asset and return the sale proceeds (minus reasonable sale costs) to NHMRC; or
  - b. return the Asset to NHMRC in the same condition in which it was received, fair wear and tear excepted.
- 13.6. At the end of a Research Activity's Funding Period, or where a Research Activity or this Agreement is terminated, NHMRC may give such directions as it, in its absolute discretion, thinks fit concerning the Assets created or purchased solely with the Funding provided for that Research Activity or this Agreement (as the case may be) and the Administering Institution must comply with any such directions, including bringing into existence, signing, executing or otherwise dealing with any document which may be necessary or desirable to transfer ownership of those Assets in accordance with those directions.
- 13.7. Any Asset purchased, leased or created by the Administering Institution in whole or part with the Funds must meet any applicable State and Territory legislative requirements, and any modification to an Asset must also meet those requirements.
- 13.8. The Administering Institution must keep a register of all Assets acquired in whole or part with the Funding that contains the information specified in clause 13.9. On receipt of a written request from NHMRC, and the provision of reasonable notice, the Administering Institution must make its Assets register available for inspection by NHMRC.
- 13.9. The Asset register referred to in clause 13.8 must record the Grant Identification Number, date of purchase, lease or creation, purchase, creation or lease price, description (including any identifying marks and numbers) and location of each Asset. The Asset register must also record the details of any Asset disposal, including the sale price and to whom it was disposed.

#### **14. Termination for Convenience/Reduction in scope**

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- 14.1. NHMRC may, at any time by written notice, immediately terminate or reduce the scope of this Agreement (including by terminating or reducing the scope of a Research Activity).
- 14.2. Upon receipt of a notice terminating or reducing the scope of this Agreement, the Administering Institution must:
- a. stop or reduce its performance of the Agreement as specified in the notice;
  - b. take all available steps to minimise loss resulting from that termination or reduction;
  - c. in the case of reduction in the scope of the Agreement, continue to perform any part of the Agreement not affected by the notice; and
  - d. immediately, and in any event within 10 Working Days of the date of NHMRC's notice to the Administering Institution, repay to NHMRC the Funding required under clause 14.3.e or 14.3.f (whichever applies) or deal with that Funding as

otherwise directed by NHMRC. If Funds that are required to be repaid under this clause 14.2.d are not repaid by the Administering Institution within this timeframe, Interest will accrue on the outstanding amount until it is repaid in full to NHMRC. The Administering Institution agrees that any such Interest represents a reasonable pre-estimate of loss incurred by NHMRC. Any amount that is not repaid in accordance with this clause 14.2.d may, at the absolute discretion of NHMRC, be recovered as a debt due to NHMRC without further proof of the debt being necessary.

- 14.3. If this Agreement is terminated or reduced in scope by NHMRC under this clause 14:
- a. where this Agreement is terminated, NHMRC will be liable only for payments of Funds due and owing to the Administering Institution under the payment provisions of this Agreement prior to the date of the notice;
  - b. where this Agreement is reduced in scope NHMRC will, in respect of the part of the Agreement that has been removed as a result of the reduction in scope (the **Removed Part**), be liable only for payments of Funds due and owing to the Administering Institution under the payment provisions of this Agreement in respect of the Removed Part prior to the date of the notice;
  - c. NHMRC will be liable to reimburse the Administering Institution for any reasonable costs it incurs that are directly attributable to the termination or reduction in scope of the Agreement (excluding costs arising pursuant to the termination of an employment contract which exceed the equivalent of four (4) weeks' salary);
  - d. NHMRC will not be liable to pay any amounts under this clause 14 that would, when added to any payments already paid to the Administering Institution under this Agreement, together exceed the total Funding specified in this Agreement; and
  - e. where the Agreement is terminated, NHMRC will be entitled to recover from the Administering Institution any part of the Funds that:
    - i. is not due and payable by the Administering Institution in accordance with this Agreement (and, where the Funds have been provided to a Participating Institution, by that Participating Institution in accordance with its Formal Agreement) by the earlier of the date that the notice is received or is deemed by clause 31.3 to be received by the Administering Institution; or
    - ii. has, in NHMRC's opinion, been spent by the Administering Institution other than in accordance with this Agreement (or, where the Funds have been provided to a Participating Institution, by that Participating Institution other than in accordance with its Formal Agreement); and
  - f. where part of the Agreement has been removed as a result of the reduction in the scope of the Agreement (the **Removed Part**), NHMRC will be entitled to recover from the Administering Institution any part of the Funds provided for the Removed Part that:
    - i. is not due and payable by the Administering Institution in accordance with this Agreement (and, where the Funds have been provided to a Participating Institution, by that Participating Institution in accordance with its Formal Agreement) for the Removed Part by the earlier of the date the notice is received or is deemed by clause 31.3 to be received by the Administering Institution; or

- ii. has, in NHMRC's opinion, been spent by the Administering Institution other than in accordance with this Agreement (or, where the Funds have been provided to a Participating Institution, by that Participating Institution other than in accordance with its Formal Agreement).
- 14.4. NHMRC's liability to pay any compensation under or in relation to this clause 14 is subject to:
- a. the Administering Institution's compliance with this clause 14; and
  - b. the Administering Institution's substantiation of any amount claimed under clause 14.3.c.
- 14.5. NHMRC is not liable to pay any other amount to the Administering Institution in respect of a termination or reduction under this clause 14.
- 14.6. Notwithstanding any other provision of this Agreement, the Administering Institution is not entitled to any compensation for loss of prospective profits or loss of any benefits that would have been conferred on the Administering Institution but for the termination or reduction in scope of the Agreement.

## **15. Events of default and their consequences**

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- 15.1. NHMRC may, upon written notice to the Administering Institution, immediately take any of the actions specified in clause 15.2 if:
- a. it reasonably considers that the Administering Institution or a Participating Institution has failed to comply with a term or condition of this Agreement, the requirements of being an Administering Institution, NHMRC Approved Standards and Guidelines or a Funding Policy;
  - b. within the last 3 years a Specified Person or any other person working on a Research Activity has been found to have engaged in Misconduct related to NHMRC funding;
  - c. it reasonably considers that the Administering Institution or Specified Personnel or any other personnel working on a Research Activity have provided Misleading Information, including in an Application or a Report;
  - d. it reasonably considers that the purposes and activities of the Administering Institution no longer remain compatible with the objectives of a Research Activity;
  - e. it reasonably considers the progress of a Research Activity to be unsatisfactory;
  - f. it has given the Administering Institution written notice to deliver an expected or overdue Research Activity outcome specified in a Schedule and 20 Working Days after the Administering Institution receives that notice, that outcome has not been delivered;
  - g. any Institutional Approval necessary for the performance of a Research Activity has not been obtained by the time it is necessary for such performance, or is withdrawn or not renewed during the Funding Period for that Research Activity;
  - h. a Probity Event occurs;
  - i. the Administering Institution or a Participating Institution becomes unable to pay all its debts as and when they become due and payable;
  - j. the Administering Institution or a Participating Institution has applied to come under, received a notice requiring it to show cause why it should not come under,



or has otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in legislation of the States and Territories pertaining to incorporated associations or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or an order has been made for the purpose of placing the Administering Institution or Participating Institution under external administration;

- k. the Administering Institution or a Participating Institution undergoes a Change of Control;
  - l. Co-Funding is not provided for a Research Activity as required in the relevant Schedule;
  - m. another provision of this Agreement provides for the application of this clause 15; and/or
  - n. the Administering Institution notifies NHMRC that it is ceasing a Research Activity, withdrawing from this Agreement or wishes for its status as an Administering Institution to be withdrawn.
- 15.2. Where an event specified in clause 15.1 occurs, NHMRC may take any of the following actions:
- a. temporarily withhold some or all of the Funds for one or more Research Activities until that event is rectified to the satisfaction of NHMRC;
  - b. impose a new Funding Condition in respect of one or more Research Activities;
  - c. terminate one or more, but not all, of the Research Activities on and from the date specified in the notice given by NHMRC under clause 15.1;
  - d. terminate the Agreement (and thus all of the Research Activities) on and from the date specified in the notice given by NHMRC and withdraw the status of Administering Institution;
  - e. require the Administering Institution to repay by the date specified in NHMRC's notice referred to in clause 15.1 (or NHMRC may off-set against other Funds payable to the Administering Institution in the future):
    - i. some or all of the Funds that are not due and payable by the Administering Institution in accordance with the terms of this Agreement (and, where the Funds have been provided to a Participating Institution, by that Participating Institution in accordance with its Formal Agreement) by the date that the Administering Institution receives the notice referred to in clause 15.1; and/or
    - ii. any Funds that have, in NHMRC's opinion, been spent by the Administering Institution other than in accordance with this Agreement (or, where the Funds have been provided to a Participating Institution, by that Participating Institution other than in accordance with its Formal Agreement); and/or
    - iii. in circumstances where NHMRC reasonably considers that:
      - (1) Specified Personnel or any other personnel working on a Research Activity have engaged in Misconduct related to NHMRC funding or funding administered by NHMRC;
      - (2) the Administering Institution or Specified Personnel or any other personnel working on a Research Activity have provided

Misleading Information; or

- (3) the Administering Institution has failed to adequately comply with its Reporting obligations under clause 9,

any Funds provided to the Administering Institution including those that have been spent in accordance with this Agreement; and/or

- iv. any amount that has been overpaid to the Administering Institution by NHMRC; and/or
- v. any amount of the Funding that has been provided for a particular purpose where NHMRC considers that the Administering Institution or Participating Institution is also receiving other Commonwealth assistance for that particular purpose; and/or

- f. any other action that is specified in NHMRC's Integrity Policy.

15.3. In addition, if NHMRC amends this Agreement or an NHMRC policy under clause 17 and the Administering Institution, acting reasonably, considers that it cannot comply with the Agreement or the NHMRC policy as so amended by NHMRC, the Administering Institution may, by signed, written and dated notice to NHMRC, terminate this Agreement and, subject to any other rights NHMRC has under clause 15.1:

- a. NHMRC may withdraw Administering Institution status from the institution;
- b. NHMRC will not be obliged to make any further payment to the Administering Institution in relation to this Agreement; and
- c. the Administering Institution must repay to NHMRC:
  - i. any Funds that are not due and payable by the Administering Institution in accordance with the terms of this Agreement (and, where the Funds have been provided to a Participating Institution, by that Participating Institution in accordance with its Formal Agreement) by the date of the Administering Institution's notice of termination; and
  - ii. any Funds that have, in NHMRC's opinion, been spent by the Administering Institution other than in accordance with this Agreement (or, where the Funds have been provided to a Participating Institution, by that Participating Institution other than in accordance with its Formal Agreement).

15.4. Where a Research Activity or this Agreement is terminated under this clause 15, the Administering Institution must provide, unless NHMRC advises otherwise, a Final Report, an Acquittal Statement, and if NHMRC requests, an Audited Financial Statement for each Research Activity affected by the termination.

15.5. In determining what, if any, action to take under this clause 15, NHMRC will have regard to, and act in accordance with, its Integrity Policy.

15.6. If the Administering Institution is required to repay an amount of Funds to NHMRC under clause 15.2.e or 15.3.c and the Administering Institution does not do so within the time period specified in that notice:

- a. Interest will accrue on the outstanding amount until it is repaid in full to NHMRC and the Administering Institution agrees that any such Interest represents a

reasonable pre-estimate of loss incurred by NHMRC; and

- b. any amount remaining unpaid may, at the absolute discretion of NHMRC, be recovered as a debt due to NHMRC without further proof of the debt being necessary.
- 15.7. The giving of a notice of termination of a Research Activity, or this Agreement, under this clause 15 ceases any obligation that NHMRC would otherwise have to make a payment of Funds in respect of that Research Activity or this Agreement (as the case may be).

## **16. Misconduct related to NHMRC Funding**

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- 16.1. If a complaint or allegation of Misconduct or of a potential breach of the *Australian Code for the Responsible Conduct of Research* is made to the Administering Institution that relates to any Specified Personnel, other personnel working on Research Activities, or Research Activities, the Administering Institution must notify NHMRC in accordance with the Integrity Policy.
- 16.2. The Administering Institution must, in all cases, conduct any investigation or inquiry into any alleged breach of the *Australian Code for the Responsible Conduct of Research*, including alleged Research Misconduct, in a manner that is consistent with the *Australian Code for the Responsible Conduct of Research*.
- 16.3. NHMRC may, at its absolute discretion and after consulting with the Administering Institution in relation to the Misconduct or breach allegation, withhold Funds, or impose a new Funding Condition, in accordance with clauses 15.2.a and 15.2.b respectively, pending the outcome of an investigation or inquiry into the alleged Misconduct or breach.
- 16.4. The Administering Institution represents and warrants to NHMRC that it:
- a. has informed the Specified Personnel and any other personnel working on a Research Activity prior to their involvement in the Research Activity that their Personal Information may be disclosed to NHMRC under this Agreement including this clause 16 and clause 31;
  - b. will inform any other person who may become Specified Personnel pursuant to this Agreement prior to their involvement in the Research Activity that their Personal Information may be disclosed to NHMRC under this Agreement including this clause 16 and clause 31; and
  - c. will inform any affected Specified Personnel and any other affected personnel working on a Research Activity of any proposed action or action taken by NHMRC in accordance with the Integrity Policy.

## **17. Variations**

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### **Variation as a result of a Ministerial condition**

- 17.1. The Minister may at any time impose conditions on the provision of Funding under this Agreement in accordance with subsection 51(2) of the Act. The Administering Institution must as soon as possible, and within any timeframe specified or agreed by NHMRC, comply (or procure compliance) with any Ministerial conditions notified to it by NHMRC.

### **Variation of this Agreement by NHMRC**

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- 17.2. NHMRC may at any time vary any term or condition of this Agreement (or item of a Schedule) by giving the Administering Institution notice in writing of such variation and the Administering Institution agrees to be bound by such variation. Any variation made pursuant to this clause 17.2 shall take effect immediately upon receipt by the Administering Institution of the notice unless a different date is specified in the notice, in which case the date of effect shall be the date specified in the notice.

#### **Variation of NHMRC policies**

- 17.3. The Administering Institution acknowledges that NHMRC may, at any time during the term of this Agreement, vary any policies applicable to Administering Institutions under this Agreement.
- 17.4. The Administering Institution will not be required to comply with any variation specified in clause 17.3 notified to it by NHMRC until the date specified in that notice or any other date specified in writing by NHMRC. This date will be determined by NHMRC having regard to the nature of the variation and the Administering Institution and its role in administering Funding under this Agreement.

#### **Other variations**

- 17.5. Except as otherwise provided in this Agreement, all variations to this Agreement are to be agreed in writing and signed by the Parties.

### **18. Indemnity**

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- 18.1. The Administering Institution indemnifies (and agrees to keep indemnified) NHMRC and NHMRC's Personnel (in this clause 18 referred to as 'those indemnified') from and against any:
- a. cost or liability incurred by those indemnified;
  - b. loss of or damage to property of those indemnified; or
  - c. loss or expense incurred by those indemnified in dealing with any claim against them, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by those indemnified, arising from:
    - d. any act or omission by the Administering Institution, its Personnel or a subcontractor (including a Participating Institution) in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense;
    - e. any breach by the Administering Institution of the Agreement;
    - f. any breach of a Formal Agreement by a Participating Institution;
    - g. use or disposal of any Asset by the Administering Institution, its Personnel or a subcontractor (including a Participating Institution);
    - h. the infringement of a person's Intellectual Property rights or Moral Rights by the Administering Institution, its Personnel or a Participating Institution in the performance, or as a result, of a Research Activity; or
    - i. the use of the Research Material or Incorporated Material, and the doing of any of the Specified Acts in clause 12.6, for the Commonwealth Purposes, including a claim in respect of:

- i. Moral Rights relating to the use of the Research Material or Incorporated Material for the Commonwealth Purposes; or
  - ii. the ownership of Intellectual Property in the Research Material or Incorporated Material or any right or licence to use the Research Material or Incorporated Material for the Commonwealth Purposes.
- 18.2. The Administering Institution's liability to indemnify those indemnified under this clause 18 will reduce proportionately to the extent that any act or omission involving fault on the part of those indemnified contributed to the relevant liability, cost, damage, loss or expense.
- 18.3. The right of those indemnified to be indemnified under this clause 18 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but those indemnified are not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

## **19. Insurance**

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- 19.1. The Administering Institution must, for so long as any obligations remain in connection with this Agreement, effect and maintain the following insurances:
  - a. workers' compensation insurance as required by law;
  - b. a public liability insurance policy for an amount sufficient to cover all the obligations of the Administering Institution under this Agreement, including those which survive the expiration or termination of this Agreement; and
  - c. insurance to cover the replacement cost of all of the Assets acquired or created by the Administering Institution for the Research Activities in the event they are lost or damaged; and
  - d. professional indemnity insurance for not less than \$10 million in respect of the advice and opinions contained in the Reports provided under this Agreement; andupon request, provide proof of insurance acceptable to NHMRC.
- 19.2. All of the insurance required by clause 19.1 is to be taken out with an insurer recognised by the Australian Prudential Regulation Authority (APRA) or regulated by a State or Territory Auditor-General, except if the Administering Institution is a body that self-insures.

## **20. Acknowledgements of NHMRC funding and use of NHMRC logo**

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- 20.1. The Administering Institution must ensure that the Grant from NHMRC, and the provision of any Co-Funding, for a Research Activity are properly acknowledged in any correspondence, public announcement, advertising material, research report or other material produced by, on behalf of or through the Administering Institution or a Participating Institution that relates to that Research Activity.
- 20.2. Any material published in respect of a Research Activity must:
  - a. include the Grant Identification Number for the Research Activity; and
  - b. specify that the contents of the published material are solely the responsibility of the Administering Institution, a Participating Institution or individual authors and do not reflect the views of NHMRC.

- 20.3. The Administering Institution must ensure that the NHMRC logo is not used without NHMRC's prior written consent to that specific use of the logo, which NHMRC may give, refuse or revoke in its absolute discretion. NHMRC may give consent subject to any terms or conditions that it considers reasonable.
- 20.4. The Administering Institution must comply, and must ensure that each of its Participating Institutions complies, with NHMRC's rules regarding the use of the logo including its font, colour, size and placement.
- 20.5. NHMRC confirms that if the Administering Institution is a non-government organisation, subject to clause 20.6:
- a. no right or obligation arising under this Agreement should be interpreted as limiting the Administering Institution or its Personnel from commenting on, advocating support for or opposing change to any matter established by law, policy or practice of the Commonwealth; and
  - b. NHMRC does not require the Administering Institution to obtain advance approval of any involvement by it or its Personnel in any activity referred to in clause 20.5.a.
- 20.6. Nothing in clause 20.5 limits or derogates from the Administering Institution's obligations, arising under this Agreement or otherwise, to not disclose confidential information as defined in the *Not-for-profit Sector Freedom to Advocate Act 2013* (Cth) or Personal Information.

## **21. Use of Information**

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- 21.1. If any agency or body of the Commonwealth receives information from the Administering Institution in relation to the Research Activity, the Administering Institution consents to that agency or body providing that information to NHMRC.
- 21.2. The Administering Institution acknowledges that NHMRC may be required to provide information in relation to the Research Activities, the Funds or this Agreement, as required by the operation of any law, judicial or parliamentary body or government agency.
- NHMRC reserves the right to publicise and report on the awarding of Funding for a Research Activity to the Administering Institution and, where relevant, its Participating Institutions. Without limiting the preceding sentence, NHMRC may do this by including general information about the Administering Institution, its Participating Institutions, the Funds and their disbursement between the Administering Institutions and Participating Institutions, the title and a brief description of the Research Activity (including its duration and location) in media releases, general announcements, NHMRC's annual reports and on NHMRC's website.

### **Use of Information in the NHMRC Annual Report**

- 21.3. The Administering Institution agrees that the name, and any other details relevant to qualifications or expertise, of Specified Personnel may, at the absolute discretion of NHMRC and without notice to or consultation with the Administering Institution, be reported under clause 21.3 and included in an NHMRC's annual report that is required under section 83 of the Act.
- 21.4. The Administering Institution represents and warrants to NHMRC that:
- a. it has obtained the consent of the Specified Personnel to the inclusion in any NHMRC annual report of the Personal Information referred to at clause 21.4; or

- b. it:
  - i. has informed the Specified Personnel prior to their involvement in the Research Activity that their Personal Information referred to in clause 21.4 may be included in any NHMRC annual report; and
  - ii. will inform any other person who may become Specified Personnel pursuant to this Agreement prior to their involvement in the Research Activity that their Personal Information referred to in clause 21.4 may be included in any NHMRC annual report.

## **22. Negation of Employment, Partnership and Agency**

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- 22.1. The Administering Institution is not by virtue of this Agreement an officer, employee, partner or agent of the Commonwealth, nor does the Administering Institution have any power or authority to bind or represent the Commonwealth.
- 22.2. The Administering Institution agrees not to represent itself, and to ensure its Personnel, Participating Institutions and any other subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

## **23. Participation in peer review and assessment of funding applications**

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- 23.1. It is a condition of this Agreement that, notwithstanding the negation of employment under clause 22, during the term of this Agreement, the Administering Institution must make available to NHMRC, free of charge but subject to NHMRC providing reasonable notice to the Administering Institution, the services of Specified Personnel to provide professional input into reviewing or assessing applications made under a Scheme in the Personnel's area of expertise as required by NHMRC.

## **24. Compliance with laws and NHMRC Approved Standards and Guidelines and other NHMRC policies**

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- 24.1. In carrying out this Agreement, the Administering Institution must comply, and require its Participating Institutions to comply, with:
  - a. the provisions of any applicable statutes, regulations, by-laws, and requirements of the Commonwealth and any State, Territory or local authority; and
  - b. subject to clause 17.4, the NHMRC Approved Standards and Guidelines and any applicable NHMRC policies.

## **25. Protection of Personal Information**

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- 25.1. The Administering Institution agrees, in conducting the Research Activity:
  - a. not to do any act or engage in any practice which, if done or engaged in by NHMRC, would be a breach of the requirements of Division 2 of Part III of the *Privacy Act 1988* (Cth);
  - b. ensure that any person under the control of the Administering Institution who has access to any Personal Information is made aware of, and undertakes in writing, to observe the Administering Institution's obligations under this clause 25;
  - c. to comply with any directions, guidelines, determinations or recommendations of NHMRC, to the extent that they are consistent with the Administering Institution's obligations under clause 25.1.a;

- d. not to transfer Personal Information held in connection with this Agreement outside Australia, or to allow parties outside Australia to have access to it, without the prior approval of NHMRC; and
- e. to comply with any policy guidelines laid down by the Commonwealth or issued by the Information Commissioner from time to time relating to the handling of Personal Information.

## **26. Confidential Information**

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### **Confidential Information not to be Disclosed**

- 26.1. Subject to clause 26.3 and 26.4, a Party must not, without the prior written consent of the other Party, disclose any Confidential Information of the other Party to a third party.

### **Written Undertakings**

- 26.2. The Administering Institution must, at the request of NHMRC, arrange for:
- a. its Personnel;
  - b. an employee of a Participating Institution; or
  - c. any other person with an interest in the Funding,
- to give a written undertaking in a form acceptable to NHMRC relating to the use and non-disclosure of NHMRC's Confidential Information.

### **Exceptions to Obligations**

- 26.3. The obligations on the Parties under this clause 26 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by a Party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
  - b. is disclosed by a Party to its internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
  - c. is disclosed by the Administering Institution to a Participating Institution in order to comply with the Administering Institution's obligations, or to exercise the Administering Institution's rights, under this Agreement;
  - d. is disclosed by NHMRC to the responsible Minister or another Australian Government Minister;
  - e. is disclosed by NHMRC in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - f. is shared by NHMRC within NHMRC, or with another Commonwealth agency, where this serves the Commonwealth's legitimate interests,
  - g. is disclosed to State or Territory governments for particular purposes;
  - h. is authorised or required by law to be disclosed; or
  - i. is in the public domain otherwise than due to a breach of this clause 26.
- 26.4. Notwithstanding clause 26.3, where section 80 of the Act applies to Confidential Commercial Information of the Administering Institution, NHMRC must not disclose that Confidential Commercial Information unless doing so is permitted under that



section of the Act.

- 26.5. Where a Party discloses Confidential Information to another person pursuant to clauses 26.3.a to 26.3.g, the disclosing Party must notify the receiving person that the information is confidential.
- 26.6. In the circumstances referred to in clauses 26.3.a, 26.3.b 26.3.c and 26.3.f, the disclosing Party agrees not to provide the Confidential Information unless the receiving person agrees to keep the information confidential.
- 26.7. The Administering Institution agrees to secure all of NHMRC's Confidential Information against loss and unauthorised access, use, modification or disclosure.
- 26.8. A Summary must not contain any Confidential Information.

**Period of Confidentiality**

- 26.9. The obligations under this clause 26 will continue, notwithstanding the expiry or termination of this Agreement for the period agreed by the Parties in writing in respect of an item of Confidential Information.

**No reduction in obligations relating to Personal Information**

- 26.10. This clause 26 does not detract from any of the Administering Institution's obligations under the *Privacy Act 1988* (Cth) or under clause 25, in relation to the protection of Personal Information.

## **27. Taxes and Duties**

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- 27.1. Except as provided by this clause 27 or otherwise specified in a Schedule, the Administering Institution must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.
- 27.2. The following terms have the meanings respectively given to them in the GST Act: consideration; GST; input tax credit; supply; taxable supply; and tax invoice.
- 27.3. Unless otherwise indicated, any consideration for a supply made under this Agreement is exclusive of any GST imposed on the supply.
- 27.4. If one Party (the supplier) makes a taxable supply to the other Party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient must pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 27.5. No Party may claim or retain from the other Party any amount in relation to a supply made under this Agreement for which the first Party may claim an input tax credit or decreasing adjustment.
- 27.6. If either clause 27.6.a or 27.6.b applies to a supply made in connection with a Research Activity, then the Parties rely on section 9-17 of the GST Act for no GST being imposed in connection with that supply under this Agreement:
- a. the Funding for the Research Activity:
    - i. is paid to a Government Related Entity for a supply;
    - ii. is covered by an appropriation under an Australian law; and
    - iii. is calculated on the basis that the sum of:
      - (1) the Funding relating to the supply; and
      - (2) anything that the Administering Institution receives from another entity in connection with, or in response to, or for the inducement of, the supply, or for any other related supply,does not exceed the Administering Institution's anticipated or actual costs of making those supplies; or
  - b. the Funding for the Research Activity is paid to a Government Related Entity and the Funding payment is of a kind specified in regulations made for the purposes of section 9-17 of the GST Act.

## **28. Recipient Created Tax Invoices (RCTIs)**

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- 28.1. If the Administering Institution is registered for GST, NHMRC must (unless it advises the Administering Institution otherwise) issue the Administering Institution an RCTI in respect of the Funding provided for a taxable supply. The RCTI must include any applicable GST amount attributable to that Funding and the following obligations and requirements also apply:
- 28.2. the Administering Institution must not issue tax invoices in respect of taxable supplies for which NHMRC has issued RCTIs;

- 28.3. the Administering Institution, and the Commonwealth represented by NHMRC, each acknowledge and agree that it is registered for GST; and
- 28.4. the Administering Institution, and the Commonwealth represented by NHMRC, each acknowledge and agree that it has quoted its Australian Business Number to the other and it must notify the other of any change to the matters covered by this clause 28.

## **29. Conflict of Interest**

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- 29.1. The Administering Institution warrants that, at the date of signing this Agreement and to the best of its knowledge after making reasonable inquiries, either:
- a. no Conflict of Interest exists in its or a Participating Institution's or the Specified Personnel's performance of this Agreement; or
  - b. it has fully declared to NHMRC the details of each Conflict of Interest that it, a Participating Institution or the Specified Personnel has in relation to this Agreement and obtained NHMRC's written consent to the Administering Institution, Participating Institution or the Specified Personnel performing this Agreement notwithstanding that declared Conflict of Interest.
- 29.2. If during the term of this Agreement, a Conflict of Interest arises in respect of the Administering Institution, or a Participating Institution, the Administering Institution must:
- a. immediately notify NHMRC in writing of the full details of that Conflict of Interest and of the steps the Administering Institution proposes to resolve or otherwise deal with the Conflict of Interest;
  - b. take such steps as NHMRC may reasonably require to resolve or otherwise deal with that Conflict of Interest; and
  - c. if the Administering Institution fails to notify NHMRC under paragraph 29.2.a, or is unable or unwilling to resolve or deal with the Conflict of Interest as required by NHMRC under paragraph 29.2.b, NHMRC may take any of the actions specified in clause 15.2.

## **30. Dispute Resolution**

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- 30.1. Before resorting to external dispute resolution mechanisms (except for urgent interlocutory relief) the Parties must attempt to settle by negotiation any dispute in relation to this Agreement, and may agree to do so by referring the matter to persons who have authority to intervene and direct some form of resolution.
- 30.2. If a dispute is not settled by the Parties within twenty (20) Working Days of one Party first sending to the other Party written notice of the dispute, the dispute may be the subject of court proceedings or may be submitted to some alternative dispute resolution mechanism as may be agreed in writing between the Parties.
- 30.3. Notwithstanding the existence of a dispute, the Administering Institution must continue to perform its obligations under this Agreement.

### **31. Notices and Research Administration Officer**

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- 31.1. Any notice, request or other communication to be given or served pursuant to this Agreement shall be in writing and addressed to the other Party at the address as set out in the Agreement or such other address as a Party may notify the other Party from time to time.
- 31.2. The Research Administration Officer shall be the Administrative Institution's primary contact person for administrative matters relating to this Agreement.
- 31.3. A notice, request or other communication will be deemed to be received:
- a. if delivered by hand, upon delivery;
  - b. if sent by pre-paid ordinary post within Australia, upon the expiration of two (2) Working Days after the date on which it was sent; or
  - c. if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.
- 31.4. The Administering Institution must immediately notify NHMRC in writing if:
- a. it ceases to fully comply with the requirements relating to Administering Institutions, the NHMRC Approved Standards and Guidelines, the NHMRC Direct Research Costs Guidelines, a Funding Policy that applies to a Research Activity, or any other requirement specified in this Agreement;
  - b. it becomes aware that a Participating Institution has ceased to fully comply with the NHMRC Approved Standards and Guidelines, the NHMRC Direct Research Costs Guidelines, a Funding Policy that applies to a Research Activity, or any other requirement specified in its Formal Agreement;
  - c. it becomes aware of any failure to obtain an Institutional Approval necessary for the performance of a Research Activity, or of the withdrawal or non-renewal of any Institutional Approval necessary for the performance of a Research Activity during the Funding Period for that Research Activity;
  - d. it changes its trading or business name or legal status;
  - e. it or a Participating Institution becomes unable to pay all its debts as and when they become due and payable;
  - f. it or a Participating Institution has applied to come under, received a notice requiring it to show cause why it should not come under, or has otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in legislation of the States and Territories pertaining to incorporated associations or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or an order has been made for the purpose of placing the Administering Institution or Participating Institution under external administration;
  - g. it or a Participating Institution undergoes a Change of Control;
  - h. it becomes aware of a Probity Event, or a Conflict of Interest;
  - i. it becomes aware of any delay of six months or more that is likely to occur in relation to the performance of a Research Activity, which includes failure to spend Funds provided under an Infrastructure Scheme within six months of receiving

those Funds;

- j. it determines that it will cease a Research Activity, withdraw from this Agreement, request that NHMRC withdraw its status as an Administering Institution or terminate the Agreement under clause 15.3;
  - k. it (or a Participating Institution) does not spend all of the Funds provided to it for a Research Activity;
  - l. a Specified Person is unable to perform, or to continue to perform, all or part of a Research Activity; or
  - m. the Administering Institution becomes aware of a breach or possible breach of any of its obligations under clause 25.
- 31.5. In addition to any other requirement in this Agreement, if the Administering Institution notifies NHMRC under clause 31.4, the Administering Institution must provide to NHMRC any further information reasonably requested by NHMRC.

## **32. Responsible Officer(s)**

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- 32.1. The Administering Institution shall notify NHMRC via the NHMRC grants management system of the name and title of each of its Responsible Officers and the business matters for which each is responsible. All correspondence and reports relating to the Funds shall be provided to NHMRC by or through the Responsible Officers and all documents signed by the Responsible Officers shall be binding on the Administering Institution.
- 32.2. A Responsible Officer must supply all necessary information reasonably requested by NHMRC in relation to the use of the Funds in a timely and responsive manner and within ten (10) Working Days of the receipt of the request.

## **33. Assignment and Encumbrances**

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- 33.1. The Administering Institution must not without the prior written consent of NHMRC assign, mortgage, charge or encumber this Agreement or any benefit, moneys or rights obtained under this Agreement. This clause 33 does not apply to Intellectual Property rights, provided the encumbrance does not obstruct the operation of clause 12.

## **34. CEO may act**

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- 34.1. The CEO, or the CEO's delegate under the Act, may exercise, on behalf of NHMRC, any of the powers conferred upon NHMRC by this Agreement and by the Act.

## **35. Counterparts**

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- 35.1. This Agreement may be executed in any number of counterparts. All of such counterparts taken together shall be deemed to constitute one and the same Agreement.

## **36. Survival of Provisions**

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- 36.1. Clauses:
- a. 7 to 9 (Use of and Accountability for Funds and Other Contributions, Record Keeping and Reports);

- b. 10 and 11 (Provision of information and evaluation, Access to premises and documents);
- c. 12 (Intellectual Property);
- d. 13 (Assets);
- e. 14 (Termination for Convenience/Reduction in scope) and 15 (Events of default and their consequences);
- f. 16 (Misconduct related to NHMRC Funding);
- g. 18 (Indemnity);
- h. 19 (Insurance);
- i. 20 (Acknowledgements of NHMRC Funding and use of NHMRC logo);
- j. 21.3 to 21.5 (Use of Information);
- k. 25 (Protection of Personal Information);
- l. 26 (Confidential Information); and
- m. 34 (CEO may act),

survive the expiration or earlier termination of this Agreement.

IN WITNESS WHEREOF the Parties have executed this AGREEMENT as a deed

SIGNED, SEALED AND DELIVERED )

on behalf of the COMMONWEALTH )

OF AUSTRALIA by: )

)

..... )

(print name) )

)

..... )

(position) )

)

in the presence of: )

)

..... )

(print name) )

)

..... )

(position) )

.....

(Signature)

.....

(Signature)

.....

(Date)

SIGNED, SEALED AND DELIVERED )

on behalf of the )

)

..... )

(Administering Institution name) )

)

by ..... )

(print name) who warrants they have the authority to bind the Administering Institution)

.....

(Signature)

)

..... )

(position) )

)

in the presence of: )

)

..... )

(print name) )

.....

(Signature)

)

..... )

(position) )