

1. Formation of Agreement

1.1 An Agreement is formed between the Researcher and PQ when the Researcher accepts the Quotation and the terms of the Agreement are the following:

- (a) these conditions;
- (b) the Quotation;
- (c) the Protocol; and
- (d) any annexures or attachments referred in the documents above.

1.2 In the event of any conflict between the documents specified in clause 1.1, the order of precedence to resolve the conflict will be in the above order.

1.3 This Agreement supersedes all prior representations, agreements, statements and understandings between the Researcher and PQ, whether oral or in writing relating to the subject matter of the Agreement.

1.4 The Researcher may issue PQ with a purchase order in relation to this Agreement. The parties acknowledge and agree the terms and conditions set out in any purchase order do not apply and are void to the extent that they conflict with, or detract from, the terms of this Agreement.

2. Term and termination

2.1 This Agreement commences on the date the Researcher accepts the Quotation and continues until the earlier of:

- (a) the date on which all Services have been performed;
- (b) the Researcher notifies PQ that its funding has not been provided;
- (c) the Agreement is terminated for breach in accordance with clause 2.2; or
- (d) the Agreement is terminated by written agreement of the Parties.

2.2 If either party breaches this Agreement and the breach is not remedied within 30 days of the breaching party receiving notice from the non-breaching party requesting that the breach be remedied in which case this Agreement will terminate on the date specified in that notice or, if no date is specified, on expiration of 30 days of the breaching part receiving notice of the breach.

3. Provision of the Services

3.1 PQ agrees to provide the Services, as an independent contractor, in a competent and professional manner on the terms of this Agreement.

3.2 PQ must provide the Services in accordance with the Quotation and Protocol unless otherwise agreed in writing by the parties.

3.3 PQ will comply with the accreditation requirements of NATA (AS:15189) and the Royal College of Pathologists of Australasia (RCPA) and maintain certification to ISO 9001 Quality Management System.

4. Researcher's Obligations

4.1 The Researcher must at its cost:

(a) ensure that all Samples have been collected, handled, and transported to PQ in accordance with the Ethics Approval, Protocol, the requirements of the National Safety and Quality Health Service Standards, and any relevant law, policy, guidelines and standards; and

(b) do all things necessary to deliver the Samples to PQ at the times specified in the Protocol unless otherwise agreed in writing by the parties.

5. Intellectual Property

5.1 The parties agree that nothing in this Agreement alters the ownership of any Intellectual Property Rights which existed at the commencement of this Agreement, or which are developed independently of this Agreement.

5.2 Title to, and Intellectual Property Rights in, Deliverables will, upon its creation, vest in the Researcher.

5.3 The Researcher grants to PQ a perpetual, non-exclusive, non-transferable, royalty free licence, including the right to sub-licence to Queensland public sector health system entities, to use any Intellectual Property Rights in the Protocol and Deliverables for the purpose of providing the Services for the Term.

5.4 The parties agree that, if they are parties to a research agreement for the Project, that in the event of any conflict between any terms relating to Intellectual Property Rights and this clause the terms in the research agreement will prevail.

6. Warranties

6.1 The Researcher represents and warrants that:

- (a) it will only use the Deliverables for the purposes of the Project;
- (b) it has complied with its obligations in clause 4.1(a);
- (c) has the right and authority to grant the licence in clause 5.3; and
- (d) the use of the Protocol and Samples by PQ will not infringe the Intellectual Property Rights or other rights of any third party.

7. Payment

7.1 If the Services are provided in accordance with the Agreement, the Researcher will within 14 days, or such longer period agreed in writing with PQ, of receipt of a valid tax invoice, pay PQ the Fee.

7.2 The Fee is exclusive of GST and, if the Fee is consideration for a taxable supply:

- (a) the Researcher must pay the GST Amount to PQ in addition to the Fee; and
- (b) PQ must remit the GST Amount to the Commissioner of Taxation in accordance with the GST Legislation.

7.3 Where the amount of GST collected by PQ under this Agreement differs, for any reason, from the amount of GST paid or payable by PQ to the Commissioner of Taxation then PQ must issue an appropriate GST adjustment note and the difference must be paid by or to the Researcher as the case may be.

<p>8. Confidentiality</p> <p>8.1 Each party must:</p> <p>(a) keep the Confidential Information of the other party confidential and secure;</p> <p>(b) not use or copy the Confidential Information of the other party for any purpose other than to perform that party's obligations or exercise that party's rights under this Agreement;</p> <p>(c) only allow access to the Confidential Information of the other party to the officers, employees, agents and advisers of that party who have a need to know the Confidential Information and who are bound by obligations of confidence to that party to at least the standard contemplated by this clause 8.1;</p> <p>(d) not disclose the Confidential Information of the other party to any third party; and</p> <p>(e) not use the Confidential Information of the other party to the disadvantage of that other party.</p> <p>8.2 The obligations of confidence contemplated by clause 8.1 do not apply to the extent that the Confidential Information is required to be disclosed under applicable law.</p> <p>8.3 Each party acknowledges and agrees that:</p> <p>(a) if a party (the 'First Party') breaches this clause 8 in relation to the other party's (the 'Second Party's') Confidential Information, then the Second Party may suffer loss or damage as a result of that breach for which monetary remedies would not be adequate; and</p> <p>(b) if a party (the 'First Party') attempts to breach or threatens to breach this clause 8 in relation to the other party's (the 'Second Party's') Confidential Information, then the Second Party may seek injunctive relief including an injunction restraining the First Party from committing any breach of this Agreement without the necessity of proving that any actual loss or damage has been sustained or is likely to be sustained by the Second Party.</p> <p>9. Acknowledgement</p> <p>9.1 The Researcher must acknowledge PQ's provision of the Services in any publications relating to the Project.</p> <p>10. Liability</p> <p>10.1 The liability of a party (the 'First Party') to the other party (the 'Second Party') under the Agreement for Loss sustained will be reduced proportionately to the extent that the Loss was caused or contributed to by the Second Party's negligence, unlawful act or omission and/or failure to comply with its obligations and responsibilities under and/or in connection with the Agreement or otherwise at law.</p> <p>10.2 The maximum aggregate liability of a party to the other party, whether in contract, tort (including negligence) or otherwise in connection with the Agreement, is limited to the total of the Fees paid under this Agreement.</p> <p>10.3 The cap on liability in clause 10.2 does not apply to a party's liability in relation to:</p> <p>(a) personal injury, including sickness, injury or death;</p>	<p>(b) loss of, or damage to, tangible property;</p> <p>(c) breach of confidentiality;</p> <p>(d) breach of privacy; or</p> <p>(e) Intellectual Property Rights or Moral Rights infringement,</p> <p>and any payments in relation to those forms of liability will not deplete the cap on liability.</p> <p>10.4 PQ has the benefit of current policies with the Queensland Government Insurance Fund in relation to public liability insurance and workers' compensation insurance for its employees in relation to its activities under this Agreement.</p> <p>11. Insurance</p> <p>11.1 For the Term of this Agreement, the Researcher must hold current Professional Indemnity insurance that includes cover for clinical trials, research projects and breach of confidentiality for not less \$10,000,000.00 per claim and \$10,000,000.00 in the annual aggregate policy period.</p> <p>12. Clauses to Survive Termination</p> <p>12.1 Clauses 5, 6, 7, 8, 9, 10, 13, 13 and 14 survive termination or expiry of this Agreement.</p> <p>13. General Provisions</p> <p>13.1 (relationship) The relationship of the parties under the Agreement is one of principal and contractor.</p> <p>13.2 (waiver) Rights, remedies or powers under this Agreement can only be waived in writing signed by an authorised delegate of a party. Neither party waives a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power, or has on a previous occasion waived that right, remedy or power in relation to a particular obligation or breach.</p> <p>13.3 (governing law) This Agreement is governed by and construed in accordance with the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.</p> <p>13.4 (laws) The parties must comply with all relevant laws in performing their obligations under the Agreement.</p> <p>13.5 (severance) If a provision or part of this Agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this Agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or part or any other provision or part of this Agreement.</p> <p>13.6 (further assurances) Each party, must at their own expense, do all things reasonably required by the other party to give effect to the Agreement.</p> <p>13.7 (variation) This Agreement may only be varied by agreement of the parties in writing.</p> <p>13.8 As a pre-condition to this Agreement that is satisfied on formation of this Agreement, the parties agree that formation of this Agreement and any notices under it may be communicated by electronic means in satisfaction of electronic transactions legislation.</p>
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14. **Definitions**

In this Agreement:

Agreement means the agreement constituted by the documents specified in clause 1.1.

Business Day means between 9.00am and 5.00pm on a day other than a Saturday, Sunday or public holiday in Brisbane.

Confidential Information means Personal Information and any information disclosed by either party (the 'Discloser') to the other party (the 'Recipient'), except for information:

- (a) can be shown was already known to, in the rightful possession of or independently developed by the Recipient in good faith and free of any obligation of confidence; or
- (b) that the Recipient can show is in the public domain otherwise than by a breach of this Agreement or other obligation of confidence.

Deliverable means anything (tangible or intangible) PQ is required to provide to, or for, the Researcher in the course of providing the Services.

Ethics Approval means an approval to conduct the Project given to the Researcher by a Human Research Ethics Committee or other ethics committee, as applicable to the Research, constituted and approved in accordance with the requirements of the National Health and Medical Research Council.

Fee means the amount payable by the Researcher to PQ for the Services.

GST means a goods and services tax imposed through the GST Legislation.

GST Amount means the amount of GST payable in respect of any taxable supply under this Agreement calculated at the rate of GST applicable at the time.

GST Legislation means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related tax imposition law (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any such laws.

Intellectual Property Rights includes all copyright, trade mark, design, patent, semiconductor or circuit layout rights, plant breeders rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before, on or after the commencement of this Agreement, but excludes Moral Rights.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing before, on or after the commencement date of the Contract.

Personnel means officers, directors, employees, agents and contractors of an entity.

Personal Information has the meaning given to that term in the Privacy Laws.

Privacy Laws means either of the following as applicable to the entity:

- (a) *Information Privacy Act 2009* (Qld); or
- (b) *Privacy Act 1988* (Cth).

Project means the research project specified in the Quotation.

Protocol means the protocol which has received Ethics Approval.

PQ means the State of Queensland acting through Queensland Health represented by Pathology Queensland.

Researcher means the organisation or person specified in the Quotation.

Samples means the biological material specified in the Quotation and Protocol.

Services means the services specified in the Quotation.

15. **Interpretation**

In this Agreement, unless it is expressly stated that a different rule of interpretation will apply:

- (a) headings do not affect interpretation;
- (b) words in the singular include the plural and vice versa;
- (c) other grammatical forms of a defined word or phrase have a corresponding meaning;
- (d) a reference to a 'person' includes any legal entity;
- (e) a reference to a clause, part, annexure, exhibit or schedule is a reference to a corresponding part of this Agreement;
- (f) a reference to a document (including this Agreement and any laws) includes all amendments or supplements to, or replacements or novations of, that document;
- (g) a reference to law includes common law and statutory laws, regulations, orders, subordinate legislation, ministerial directions, directions of relevant regulators and binding codes of conduct;
- (h) a reference to a party includes that party's executors, administrators, successors and permitted assignees; and
- (i) if anything under this Agreement is required to be done by or on a day that is not a Business Day in the place where the thing is to be done, that thing must be done by or on the next Business Day.