



Funding Agreement – Research Fellowship

Between

State of Queensland acting through Queensland Health

And

#[Insert fellow name]#

#[Insert type of fellowship]#

#[Insert project name]#

#[Insert year commenced and duration]#

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Funding Agreement – Research Fellowship

Between	State of Queensland acting through Queensland Health ABN 66 329 169 412 of 33 Charlotte Street, Brisbane (Department)
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And	The person or entity specified in the Application as the administering organisation (Recipient)
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Recitals	A. The Department has agreed to provide the Funding to the Recipient to be disbursed by the Recipient in accordance with this Agreement.
	B. The Recipient agrees to accept and apply the Funding in accordance with the terms of this Agreement and the associated Funding Rules.

The Parties agree as follows:

1. Agreement

- 1.1 The Agreement will be formed between the Department and Recipient when both Parties have executed the Agreement.
- 1.2 The Agreement is made up of:
- (a) the Project Details included as Schedule 1;
 - (b) the Terms and Conditions included as Schedule 8;
 - (c) the remaining Schedules 2 to 7; and
 - (d) any other document expressly incorporated by reference in any Schedule.
- 1.3 If there is any inconsistency between the abovementioned documents, then the following will prevail in descending order of precedence:
- (a) the Project Details included as Schedule 1;
 - (b) the Terms and Conditions included as Schedule 8;
 - (c) the remaining Schedules 2 to 7; and
 - (d) any other document expressly incorporated by reference in any Schedule.

Execution page

Schedule 1: Project Details

Schedule 2: Project Research Milestones

Schedule 3: Project Expenditure Table

Schedule 4: Project Deliverables

	Project Deliverable	Deliverable due date	Outcome of successful completion
1	<ul style="list-style-type: none"> Confirmation by the Recipient of the details in Schedule 1 (Project Details), and the Project Research Milestones and Project Expenditure Table as set out in Schedules 3 and 4. The approval of the Application as evidenced by the execution of the Agreement by the delegated officer from the Department. 	On or after the Commencement Date.	The release of payment 1 [upon receipt of an invoice (non HHS)] OR [through an invoice generated or via the Inter-Entity Invoicing Process (HHS)]
2	<ul style="list-style-type: none"> The submission of a satisfactory first Progress Report. 	13 months after the Commencement Date	The release of payment 2 [upon receipt of an invoice (non HHS)] OR [through an invoice generated or via the Inter-Entity Invoicing Process (HHS)]
3	<ul style="list-style-type: none"> The submission of a satisfactory further Progress Report. 	Every 12 months from the due date of Progress Report #1 (if fellowship duration is greater than 24 months)	The release of payment 3 [upon receipt of an invoice (non HHS)] OR [through an invoice generated or via the Inter-Entity Invoicing Process (HHS)]
4	<ul style="list-style-type: none"> The submission of a satisfactory Final Report. 	3 months after the Completion Date	<p>The release of final payment [upon receipt of an invoice (non HHS)] OR [through an invoice generated or via the Inter-Entity Invoicing Process (HHS)]</p> <p>and</p> <p>the finalisation of the Project.</p>

Schedule 5: Share of Net Proceeds

1. The Recipient and the Department may agree to a Share of Net Proceeds in relation to the Commercialisation of the Project IP.
2. In calculating the Share of Net Proceeds, the Recipient and the Department may take into account the following factors:
 - (i) the respective inventive contributions of each party to the Project IP;
 - (ii) the respective intellectual contributions of each party to the Project to the extent such contributions add value to the Project IP;
 - (iii) the relative cash and in-kind contributions by each party to the development of Project IP;
 - (iv) the total cash and in-kind contributions of each party to the Project;
 - (v) the degree to which a party's Background IP contributed to the development of the Project IP to be Commercialised;
 - (vi) the competitive environment;
 - (vii) the historic costs for similar technology;
 - (viii) all Commercialisation costs and costs associated with protecting Project IP and the parties which contributed those costs; and
 - (ix) any other factors that the parties consider relevant to the negotiation.
3. If the Department and the Recipient are unable to agree on a Share of Net Proceeds, the Recipient must refer the matter for Expert Determination, and the Department and Recipient agree to be bound by the distribution determined by the Expert. The cost of the Expert will be borne by the Recipient and the Department in equal shares.

Schedule 6: Application

Schedule 7: Funding Rules

Schedule 8: Terms and Conditions

1. Term

- 1.1 This Agreement starts on the Commencement Date and ends on the Agreement End Date, unless otherwise terminated earlier or extended by the Parties.

2. Recipient Obligations

- 2.1 The Recipient agrees to support the Project in accordance with this Agreement.

- 2.2 In supporting the Project, the Recipient must:

- (a) exercise reasonable diligence, care and skill;
- (b) administer the Funding in accordance with the Agreement to support the Fellow to complete the Project;
- (c) not replace the Fellow named in the Application with another person;
- (d) complete the Project Deliverables by the relevant Deliverable due dates. This includes the provision of the required Reports, financial acquittal statements and valid tax invoices;
- (e) ensure that the Fellow completes the Project Research Milestones as set out in Schedule 2;
- (f) ensure that the Fellow is duly qualified as a health professional in the applicable discipline or field and that the Fellow is registered to lawfully practice in Queensland with the applicable registration board;
- (g) ensure that the Project expenditure is managed in accordance with the project expenditure table in Schedule 3;
- (h) notify the Department of any matter that may affect the

Fellow's eligibility for Funding under the Funding Rules;

- (i) notify the Department if the Fellow travels outside of Queensland for more than six consecutive weeks per annum during the Term of the Agreement;
- (j) notify the Department if the Fellow moves residence to outside of Queensland;
- (k) notify the Department of any breach of these terms or any matter that may affect the performance of the Agreement;
- (l) ensure that the Project is cleared by all relevant ethical committees prescribed by the Recipient's research rules;
- (m) comply with all relevant Queensland, Commonwealth and international laws, statutory requirements, codes, standards, policies, directives and guidelines; and
- (n) comply with the Funding Rules.

- 2.3 The Recipient must at all times ensure that (where relevant) the Project complies with:

- (a) the Australian Code for the Responsible Conduct of Research;
- (b) the National Statement on Ethical Conduct in Human Research;
- (c) the Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research;
- (d) TGA Good Clinical Practice Guidelines; and
- (e) the Code of Conduct for the Queensland Public Service.

- 2.4 The Recipient must at all times ensure that the Fellow has obtained (and maintains throughout the Term) all necessary approvals and clearances for the Fellow to lawfully conduct the Project and otherwise comply with the Department's policies, including all relevant approvals under:

- (a) the *Australian code for the care and use of animals for scientific purposes* 8th edition (2013);
- (b) the *Gene Technology Act 2000* (Cth), *Gene Technology Regulations 2001* (Cth) and *Gene Technology (Queensland) Act 2016* (Qld);
- (c) the *Research Involving Human Embryos Act 2002* (Cth), *Prohibition of Human Cloning for Reproduction Act 2002* (Cth) and *Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003* (Qld);
- (d) the *Public Health Act 2005* (Qld); and
- (e) the *Coroners Act 2003* (Qld).

2.5 The Recipient must ensure that evidence of compliance with this clause is provided, if requested by the Department.

2.6 For the avoidance of doubt, the Department may suspend payments under this Agreement at any time, if the Recipient does not provide evidence of the approvals and clearances required under clause 2, or does not submit the reports required under clause 4.1(a).

3 Change of circumstances

3.1 The Recipient must immediately notify the Department in writing if during the Term, the Recipient becomes aware that circumstances have changed in a manner that may impact the Fellow's ability to undertake the Fellowship or to perform the Project or otherwise comply with the terms of this Agreement. Such notice must contain all relevant details of the change in financial and administrative functions (as applicable), milestones or timeframes or such other matters as may be relevant and the effects of this change on the Fellow's ability to undertake the Fellowship in accordance with this Agreement.

4. Deliverables, records, access and audit

4.1 The Recipient agrees to:

- (a) submit the Reports outlined in Item 10 of Schedule 1 by their due dates;
- (b) submit an interim Report if the project ends prematurely or if there are significant changes to the Project described in the Application;
- (c) maintain records of the expenditure of the Funding;
- (d) provide financial acquittal statements in relation to expenditure of the Funding as required in Schedule 4;
- (e) provide information to the Department regarding the outcomes of the Project up to twenty-four (24) months after submitting the Final Report, if requested by the Department;
- (f) provide any information reasonably requested by the Department, including the completion of surveys about the Project;
- (g) allow the Department's employees, contractors and agents to access the premises and inspect records and documentation related to the Agreement and/or audit the performance of the Agreement, upon reasonable notice.

4.2 The Recipient must ensure that all records and information to which clause 4.1 relates are kept for a minimum of seven (7) years from the Agreement End Date.

5. Payment

5.1 The Department agrees to pay the Funding to the Recipient within thirty (30) days upon the Recipient:

- (a) achieving the relevant Project Deliverable;
- (b) ensuring the Fellow achieves the relevant Project Research Milestone(s);
- (c) providing any Reports, surveys and financial statements due in accordance with the Agreement; and

- (d) providing the Department with a valid Tax Invoice (where the Recipient is not a HHS).

Where the Recipient is a HHS, the Department agrees to pay the Funding to the Recipient in accordance with Inter Departmental Processes.

- 5.2 Any claim for payment of the Funding under clause 5.1 from the Recipient must be given to the Department no later than thirty (30) days before an instalment is required to be paid.
- 5.3 The Department may by notice withhold payment of any amount where it reasonably believes the Recipient:
 - (a) has not complied with the requirements set out in this clause 5;
 - (b) has not complied with any other part of this Agreement; or
 - (c) is unable to undertake any part of this Agreement.
- 5.4 A notice under clause 5.3 will contain the reasons for any payment being withheld and the steps the Recipient can take to address those reasons.
- 5.5 The Department will pay the withheld amount once the Recipient has satisfactorily addressed the reasons contained in a notice under clause 5.3.
- 5.6 The Department may defer or reduce the amount of a payment where a Project report or financial acquittal statement reveals that the Recipient holds unspent Funding. The Department may pay the deferred or withheld funding upon receiving evidence of expenditure of the unspent Funding.
- 5.7 If a Tax Invoice provided by the Recipient is later found to be incorrect, the Department must notify the Recipient within fourteen (14) days of discovering that the Tax Invoice is incorrect.
- 5.8 If the Department later determines that a paid claim for payment has been incorrectly rendered by the Recipient, the Department may:

- (a) deduct the difference from any future invoices payable to the Recipient; or

- (b) recover the difference as a debt due and payable to the Department.

- 5.9 Withholding or suspension of Funding by the Department does not release the Recipient from performing any or all of its obligations under this Agreement.

- 5.10 The Department is not responsible and accepts no liability for:

- (a) the payment of any amount over and above the Funding that may be needed for the Project;
- (b) any cost overruns or overspends in relation to the Project; or
- (c) any other circumstances where the Recipient has insufficient funds to carry out the Project.

6. GST

- 6.1 Unless otherwise defined in this Agreement, terms used in this clause have the meaning given to them in GST Law and all amounts payable under this Agreement are excluding GST.

- 6.2 Where an invoice rendered under this Agreement is for:

- (a) a Taxable Supply; and
- (b) consideration for a supply that excludes GST,

the Department must pay an amount equal to the GST in addition to the consideration payable for the Taxable Supply.

- 6.3 The amount of GST will be calculated at the prevailing GST rate.

- 6.4 If the GST rate is varied, the consideration payable for any Taxable Supply under this Agreement will be varied to reflect the change of rate and any reduction in any other tax, duty or statutory charge connected with the rate change.

- 6.5 Where GST applies to a Taxable Supply made under this Agreement, the Recipient will deliver to the Department a valid Tax Invoice or

Adjustment Note at, or before the time payment for the Taxable Supply is required.

6.6 If an Adjustment Event occurs in connection with any Taxable Supply made under this Agreement:

- (a) the amount payable by the Department will be recalculated to reflect the Adjustment Event; and
- (b) payment for the Adjustment Event will be made by the Department to the Recipient or by the Recipient to the Department, as the case may be.

6.7 Where a party is required under this Agreement to pay or reimburse an expense of outgoing of another party, the amount to be paid or reimbursed will be the sum of:

- (a) the amount of the expense or outgoing less any Input Tax Credits for the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

7. Repayment

7.1 If the Department forms the reasonable opinion at any time that any Funding has been used, spent or committed other than in accordance with this Agreement, then the Department may by notice in writing to the Recipient require the Recipient to repay to the Department the amount specified in the notice, within twenty (20) Business Days of the date of the notice.

7.2 If on the expiry or termination of this Agreement, any Funding:

- (a) remains unspent; or
- (b) cannot, by reconciliation between the accounts and records maintained by the Recipient, be shown to the reasonable satisfaction of Department to have been spent or committed in accordance with this Agreement,

the Department may by notice in writing to the Recipient require the Recipient to repay to the Department the amount specified in the notice, within twenty (20) Business Days of the date of the notice.

7.3 If the Recipient fails to repay the Funding in accordance with a notice issued under clause 7.1 or 7.2, the amount specified in the notice, together with Default Interest on that amount, will be recoverable by the Department as a debt due to the Department by the Recipient.

8. Intellectual Property Rights

8.1 Nothing in this Agreement affects the ownership of Intellectual Property Rights in Background IP.

8.2 For Background IP belonging to the Department, the Department grants the Recipient a perpetual, non-exclusive, non-transferable, royalty-free licence to use the Department's Background IP for:

- (a) purposes related to discharging the Recipient's obligations under this Agreement; and
- (b) developing any Project IP.

8.3 For Background IP belonging to the Recipient, the Recipient grants the Department a world-wide, perpetual, irrevocable, non-exclusive, royalty-free licence (including the right to sublicense) at no additional cost to the Department to use its Background IP to:

- (a) use;
- (b) exploit; and/or
- (c) otherwise exercise all rights comprised in the copyright in relation to,

the Background IP but only as part of the Project IP and of any future development of the Project IP.

8.4 Otherwise than as set out in this clause 8, the Department hereby expressly disclaims any legal or equitable interest in Project IP.

8.5 Intellectual Property Rights in Reports vest upon creation in the Department.

- 8.6 The Recipient must, by way of its usual reporting requirements, notify the Department upon the development or creation of any Project IP and shall provide details of any Background IP incorporated into the Project IP.
- 8.7 The Recipient grants to the Department a perpetual, irrevocable, worldwide, non-exclusive, royalty-free licence (including the right to sublicense) at no additional cost to the Department to use, reproduce, communicate, modify and adapt the Project IP for Internal Use.
- 8.8 The Recipient must not Commercialise the Project IP without first complying with the process set out in this clause 8 and in Schedule 5.
- 8.9 The Recipient must notify the Department in writing within seven (7) days if the Recipient determines the Project IP is capable of Commercialisation.
- 8.10 The Parties agree to negotiate in good faith, in a timely fashion and use reasonable commercial endeavours to agree to Commercialisation terms, including agreeing a Share of Net Proceeds.
- 8.11 In each Financial Year that Commercialisation of the Project IP generates Net Proceeds of Commercialisation, the Recipient must pay the Department its Share of Net Proceeds.
- 8.12 If any Project IP is or may be incorporated into a product for end use with health service applications, the Recipient (in consultation with the Department) will negotiate with any applicable third party licensee or commercialising party:
 - (a) using all reasonable endeavours, to secure the rights for the Department to acquire the relevant product or intellectual property free of charge or, if those terms cannot be obtained;
 - (b) using all reasonable endeavours, to secure the rights for the Department to acquire the relevant product or intellectual property at cost price or, if those

terms cannot be obtained;

- (c) using best endeavours, to secure the rights for the Department to receive such product or intellectual property on best customer terms.

9. Publicity

- 9.1 Subject to clause 9.3, the Recipient must use best endeavours to ensure the dissemination of, through publications and conference presentations, the Fellow's research findings arising out of the Project, including within the Department, provided that the Fellow does not disclose any research findings that may prejudice the protection of any Intellectual Property Rights of the Department.
- 9.2 The Recipient must identify any publication or presentation related to the Project in the Progress and Final Reports.
- 9.3 The Recipient must not make any Public Statement in relation to the Fellowship without the prior written consent of the Department.
- 9.4 Subject to clause 9.3, the Recipient agrees to acknowledge the Department's support in Public Statements published in connection with this Agreement.
- 9.5 The Department may publicly disclose the Recipient, Fellow, Funding and the general details of the Project, subject to notified commercial-in-confidence restrictions.
- 9.6 The Parties agree to make their officers available for media opportunities.

10. Privacy

- 10.1 When dealing with Personal Information in performing their obligations, the Parties agree not to do anything which, if done by the Department, would be a breach of a National Privacy Principle.

11. Confidentiality

- 11.1 A Receiver of Confidential Information:

- (a) must not, without the prior approval of the Discloser, use, make public or disclose to any person any Confidential Information;
- (b) must immediately notify the Discloser if it becomes aware of any unauthorised use or disclosure of the Confidential Information;
- (c) must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it;
- (d) may disclose Confidential Information only:
 - (i) to its personnel who are aware that the Confidential Information is confidential and are subject to the same obligations of confidentiality as the Receiver and only to the extent necessary to exercise its rights and perform its obligations under this Agreement;
 - (ii) to the extent required by law, provided that the Receiver must use its best endeavours to immediately notify the Discloser prior to the information being disclosed; and
 - (iii) to the Receiver's professional advisers;
- (e) will ensure that its personnel comply with any obligations of confidentiality in relation to the Confidential Information and will enforce those obligations in case of breach;
- (f) must, upon receiving a request from the Discloser, deliver or destroy all documents, records or files in its possession or control which contain Confidential Information.

11.2 The Receiver may retain a copy of the Discloser's Confidential Information to the extent required or authorised by law, provided that the Receiver continues to be bound by this Agreement in relation to that

Confidential Information.

12. Dispute Resolution

- 12.1 The Parties agree not to initiate legal proceedings in relation to a dispute unless they have tried and failed to resolve the dispute by negotiation.
- 12.2 The Parties agree to continue to perform their respective obligations under this Agreement while a dispute exists.
- 12.3 The procedure for dispute resolution does not apply to action relating to termination or urgent interlocutory relief.

13. Termination for Default

- 13.1 The Department may terminate this Agreement immediately by notice where it reasonably believes the Recipient has:
 - (a) breached this Agreement, if the Department reasonably considers such breach is not capable of remedy;
 - (b) submitted information in relation to the Project which is found to have been incomplete, inaccurate, false or misleading;
 - (c) failed (or the Fellow has failed) to maintain satisfactory progress towards completion of the Project;
 - (d) failed to comply with its reporting obligations under this Agreement;
 - (e) failed to maintain any necessary approvals under clause 2;
 - (f) become (or the Fellow has become) ineligible for Funding under the Funding Rules;
 - (g) withdrawn (or the Fellow has withdrawn) from the Project; or
 - (h) become bankrupt or insolvent, entered into a scheme of arrangement with creditors, or come under any form of external administration.
- 13.2 The Department may immediately terminate this Agreement by notice, if the Recipient has failed to remedy a breach of the Agreement within

twenty (20) Business Days of service of a notice on the Recipient detailing the breach.

13.3 Upon the termination of this Agreement:

- (a) all payments due under this Agreement will immediately cease; and
- (b) the Recipient must immediately suspend dealing with any or all of the funds in its possession or control.

13.4 Upon termination or expiration of the Agreement, the Recipient must deliver to the Department (within twenty (20) Business Days):

- (a) all Reports due under the Agreement at the date of termination or expiration;
- (b) the pro-rata amount of the Funding, calculated from the date of termination or expiration to the Completion Date, that the Recipient is not entitled to; and
- (c) any unspent or legally uncommitted Funding, or Funding not spent in accordance with the Agreement, which will be a debt due to and recoverable by the Department.

14. Termination for Convenience

14.1 The Department may terminate this Agreement by twenty (20) Business Days' notice, due to a change in government policy.

14.2 The Recipient agrees on receipt of a notice of termination under clause 14.1, to stop the performance of its obligations as specified in the notice and take all available steps to minimise loss resulting from that termination.

14.3 In the event of termination under clause 14.1, the Department will be liable only to:

- (a) pay any part of the Funding due and owing for activities satisfactorily performed, to the Recipient under the Agreement at the date of the notice; and

- (b) reimburse any reasonable expenses the Recipient unavoidably incurs that relate directly to the termination and are not covered by clause 14.3(a).

14.4 The Department's liability to pay any amount under this clause:

- (a) is subject to the Recipient's compliance with this Agreement; and
- (b) will not exceed the total amount of the Funding payable pursuant to this Agreement.

15. Indemnities

15.1 Subject to clause 15.4, the Department's liability in connection with this Agreement is limited in aggregate to the Funding amount.

15.2 The Recipient releases and indemnifies the Department, its employees, contractors and agents (**those indemnified**) against any claim, Loss, expenses, damages or costs (on a solicitor and own client basis arising out of or in connection with:

- (a) any act or omission (including, without limitation, any wilful, negligent or unlawful act or omission) of the Recipient and its employees, contractors and agents; or
- (b) the Recipient's breach of the Agreement.

15.3 The Recipient's obligation to indemnify the Department will reduce proportionally to the extent any act or omission involving fault on the part of the Department contributed to the claim, loss or damage.

15.4 The Parties will not in any circumstances be liable for any loss of revenue, profit, opportunity, goodwill, reputation or any indirect or consequential loss in connection with the Agreement.

16. Insurance

16.1 The Recipient agrees to maintain adequate insurance, as outlined in Item 11 of Schedule 1 of the

Agreement, for the duration of the Agreement.

- 16.2 The Recipient must promptly provide evidence of the required insurances, if requested by the Department.

17. General

- 17.1 **Governing Law** – The Agreement is governed by the law of the State of Queensland and the Parties agree to submit to the jurisdiction of the courts of the State of Queensland.
- 17.2 **Entire Agreement** – The Agreement constitutes the entire agreement between the Parties and supersedes all prior communications and negotiations (oral or written) between the Parties.
- 17.3 **Waiver** – No right under this Agreement will be deemed to be waived except by notice in writing agreed by the waiving Party. A failure by a Party to enforce any provision of the Agreement will not constitute a waiver of that Party's rights.
- 17.4 **Severability** – The invalidity or unenforceability of any provision of the Agreement does not invalidate the remaining provisions. Any illegal or invalid provision will be severable and all other provisions will remain in effect.
- 17.5 **Variation** – This Agreement may be varied in writing only, signed by the Parties.
- 17.6 **Force Majeure** – The time for a Party to meet its obligations under this Agreement may be suspended or extended in the event of a Force Majeure, but for no longer than the duration of the Force Majeure. The Party so affected will immediately give notice to the other Party in writing of the Force Majeure and the affected Party must continue to perform all unaffected obligations in accordance with this Agreement.
- 17.7 **Agency, etc** - This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.
- 17.8 **Counterparts** –

- (a) This Agreement may be executed in two or more identical copy counterparts, each of which together will be deemed an original, but all of which together will constitute one and the same instrument.
- (b) If the signature of a Party executing this Agreement is delivered by email delivery of a scanned '.pdf' format data file or equivalent of the entire Agreement to the other Party or its legal representative, the signature will create a valid and binding obligation of the Party with the same force and effect as if the signature were an original.
- (c) For the avoidance of doubt, this Agreement may be in the form of an electronic document and may be electronically signed.
- 17.9 **Further Assurances** – Each Party must do all things and execute all documents reasonably required to give effect to this Agreement.
- 17.10 **Costs** – Each Party agrees to pay their own costs associated with the negotiation, preparation and execution of this Agreement.
- 17.11 **Assignment and Novation** – The Recipient must not assign, transfer, novate or subcontract any or all of its rights under this Agreement at any time.

18. Definitions

- 18.1 In this Agreement, unless the contrary appears:

Agreement means these terms and conditions, including the Schedules.

Agreement End Date means the date three (3) months after the Completion Date, as set out in Item 7 of Schedule 1.

Application means the Department's Research Fellowship funding application document and any annexures to it, as attached in Schedule 6.

Background IP means any Intellectual Property Rights that were in existence before the Commencement Date, or that were generated independently of this

Agreement.

Business Day means any day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland and the place where the Recipient operates their principal place of business.

Commencement Date means the date specified in Item 5 of Schedule 1 of the Agreement being the date the Project starts.

Commercialisation means to develop, manufacture, sell, hire or otherwise exploit for financial gain or other advantage whether directly or through a third party in relation to any:

- (a) product;
- (b) process or information;
- (c) service;
- (d) licence or sub-licence;
- (e) joint venture; or
- (f) any arrangement similar to the preceding paragraphs,

but does not include Research and Development.

Completion Date means the date specified in Item 6 of Schedule 1 of the Agreement as the date for completing the Project.

Confidential Information of a Party (**Discloser**) means information belonging to the Discloser and its activities of which the other Party (**Receiver**) becomes aware in connection with this Agreement or in the course of the Project that by its nature is confidential, is communicated as confidential or the Receiver knows or ought to know is confidential and, in the case of the Department, includes information:

- (a) concerning clinical processes, policies, commercial operations, financial arrangements, information technology systems and programs or other affairs of the Department; and
- (b) information that is defined as 'confidential information' by Department portfolio legislation,

including the *Hospital and Health Boards Act 2011* (Qld) and *Public Health Act 2005* (Qld),

and in the case of both Parties, includes:

- (c) information relating to any Intellectual Property Rights of the Discloser;
- (d) information relating to the internal management and structure of the Discloser or the personnel, internal policies and strategies of the Discloser;
- (e) information that is of actual or potential commercial value to the Discloser;
- (f) information concerning the commercial operations, financial arrangements or affairs of the Discloser;
- (g) information concerning the clients, affiliates and suppliers of the Discloser; or
- (h) the terms of this Agreement,

but does not include information:

- (i) which is publicly known, other than by breach of this Agreement;
- (j) which is lawfully received from a third party, by the Discloser prior to any obligation of confidentiality, or independently developed by a Party; or
- (k) that a Party is required by law, or by this Agreement, to disclose.

Default Interest means a percentage interest rate per annum equal to the corporate overdraft reference rate charged by the Commonwealth Bank of Australia.

Deliverables means the performance requirements set out in Schedule 4.

Department means the State of Queensland acting through Queensland Health, and as the context requires, includes any officers, employees, agents and contractors of the Department.

Exception Report means a Report the Fellow is required to prepare and

the Recipient is required to endorse and submit to the Department upon request in the format and including the information as specified by the Department from time to time.

Expert means an expert experienced in making determinations in relation to Commercialisation of Intellectual Property Rights, appointed by the Australian President of the Licensing Executives Society of Australia and New Zealand Inc.

Expert Determination means the decision determined by the Expert in relation to the Net Proceeds of Commercialisation.

Fellow means the person named in the Application as the fellow who is the primary researcher supported under the Agreement.

Fellowship means the funding awarded under the Fellowship program that is administered by the Department under which the Funding is made available in accordance with the Funding Rules and this Agreement.

Final Report means a Report the Fellow is required to prepare and the Recipient is required to endorse and submit with a financial acquittal statement in relation to expenditure of the Funding to the Department in a format notified by the Department, in accordance with Item 10 of Schedule 1.

Force Majeure means any circumstance beyond the reasonable control of a Party which results in that Party being unable to observe or perform on time an obligation under this Agreement including but not limited to:

- (a) acts of God, lightning, industrial disputes beyond the reasonable control of a Party, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (c) industrial strikes.

Funding means the money, or any

part of it, payable by the Department to the Recipient as specified in the Agreement.

Funding Rules means the Department's Research Fellowship Funding Rules published by the Department, as attached in Schedule 7.

HHS means a Hospital and Health Service as defined in the *Hospital and Health Boards Act 2011 (Qld)*.

Intellectual Property Rights means all registered and unregistered rights in Australia and throughout the World for:

- (a) copyright;
- (b) trade or service marks;
- (c) designs;
- (d) patents;
- (e) semiconductors or circuit layouts;
- (f) source codes and object codes;
- (g) trade, business or company names;
- (h) indications of source or appellations of origin;
- (i) trade secrets;
- (j) know-how and confidential information;
- (k) the rights to registration of any of the above; and
- (l) the right to bring an action for infringement of any of the above,

but excludes Moral Rights.

Inter Departmental Processes means funding that is provided for a specified period of time through an invoice generated by HHSs to Queensland Health or via the Inter-Entity Invoicing Process established between the Department and HHSs.

Internal Use means non-commercial use by the Department, which includes use by any entity or agency which is part of the State of Queensland (including a HHS) including its officers, employees, agents and sub-contractors as applicable. Internal Use includes use by the Department or a HHS in performing their functions under the *Hospital and Health Boards Act 2011 (Qld)*, including providing services or enhancing the efficiency of the

services provided by the Department or a HHS to the community located in the State of Queensland, teaching, non-commercial Research and Development and publication in accordance with the terms of this Agreement.

Law means any applicable:

- (a) common law; or
- (b) Federal, State or Local Government statute, regulation, ordinance that is in force.

Loss includes, and is not limited to:

- (a) any loss, liability, tax, prohibition, penalty, fine, expense, injury or damage to persons or property; and
- (b) all costs, including legal costs on an indemnity basis, that are reasonably and properly incurred by the Department.

Moral Rights has the meaning given to it in section 189 of the *Copyright Act 1968 (Cth)*.

National Privacy Principle has the same meaning as in the *Information Privacy Act 2009 (Qld)*.

Net Proceeds of Commercialisation means with respect to Project IP, the revenue actually received by the Recipient from Commercialising the Project IP (including royalties, licence fees, milestone payments, dividends and proceeds from the sale of shares and any other items specified as revenue) less any reasonable expenses directly relating to the protection, registration, management, marketing, commercialising or enforcing of that Project IP (including legal fees, patent attorney fees, financial and technical advice, insurance, marketing and travel, creation of prototypes, taxes, bank fees and transaction fees).

Party means the Recipient or the Department, as the context requires.

Personal Information has the same meaning as in the *Information Privacy Act 2009*.

Progress Report means a Report the Fellow is required to prepare and the Recipient is required to endorse and

submit with a financial acquittal statement in relation to expenditure of the Funding to the Department in a format notified by the Department, in accordance with Item 10 of Schedule 1.

Project means the Fellowship project outlined in the Application and described in Schedule 1.

Project Deliverables means the Project deliverables set out in Schedule 4.

Project IP means all Intellectual Property Rights created by the Fellow in the course of undertaking the Project. For the avoidance of doubt, Project IP does not include any Reports.

Project Research Milestones means the Project research milestones set out in Schedule 2.

Public Statement means any formal statement or address by the Recipient or on the Recipient's behalf in relation to the Project which is intended for the public domain, including:

- (a) media releases about the Project;
- (b) discussions about the Project with television or newspaper journalists;
- (c) presentations at conferences about the Project;
- (d) promotional and advertising material; and
- (e) any recording or publication resulting from the Project (including, without limitation, reprints) which is intended to be distributed into the public domain.

Recipient means the administering organisation specified in the Application to carry out the Project and includes, where relevant, its officers, employees, contractors and agents.

Report means a written report in a format notified by the Department which includes:

- (a) an outline of the key research findings of the Project;
- (b) an outline of the implications of the findings for Queensland and

- the Fellow's field of research;
- (c) details of fellowship staffing, including the names of staff, their position and their full-time equivalence employment status;
- (d) the completion of the Project Research Milestones as set out in Schedule 2;
- (e) a statement of the general Project outcomes achieved;
- (f) the number of specific outcomes completed, including but not limited to, the numbers of: refereed publications accepted; patents filed or approved; new collaborations; additional grants secured; higher degree students supervised; new products, services or practices created; and new spin-out or start-up companies created.

Research and Development means any research and development activities conducted by a Party with or without the cooperation of third parties that is authorised by Law and is for:

- (a) non-commercial purposes; or
- (b) other internal purposes that do not include Commercialisation.

Schedule means a schedule to this Agreement.

Share of Net Proceeds means the share of Net Proceeds of Commercialisation calculated in accordance with the factors set out in Schedule 5.

Term means the period set out in clause 1.

18.2 In this Agreement, except where the context otherwise requires:

- (a) a reference to a Party, includes the Party's executors, administrators, successors, and substitutes;
- (b) the meaning of general words is not limited by specific examples;
- (c) a reference to a government entity includes any successor or replacement government entity;
- (d) a reference to a document includes the document as altered, amended or replaced from time to time;

- (e) a rule of construction does not apply to the disadvantage of a Party because that Party drafted the Agreement;
- (f) where an obligation must be performed on a day that is not a Business Day, the obligation must be performed on or by the next Business Day.
- (g) words importing a gender include any other gender;
- (h) words in the singular include the plural and vice versa;
- (i) all dollar amounts refer to Australian currency;
- (j) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (k) a reference to an individual or person includes a corporation, authority, association, joint venture (whether incorporated or unincorporated), partnership, trust or other legal entity;
- (l) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (m) a reference to "notice" or "notify" means written notice or written notification;
- (n) a reference to "consent" means prior written consent;
- (o) a reference to "includes" in any form is not a word of limitation;
- (p) clause headings have been included for convenience only and are not intended to affect the meaning or interpretation of this Agreement;
- (q) if any expression is defined, other grammatical forms of that expression will have corresponding meanings; and
- (r) if there is any inconsistency between:
 - (i) the operative provisions in this Agreement; and

- (ii) any schedules or attachments to the operative provisions or any document incorporated into the Agreement,

the operative provisions in this Agreement will prevail to the extent of any inconsistency.

19. Notices

- 19.1 Any notice under this Agreement must be given by being sent or delivered to the address of the relevant party listed in Item 12 of Schedule 1.
- 19.2 A notice will be deemed to be given:
- (a) if posted by:
 - (i) regular Australia Post, six (6) Business Days after the date of posting;
 - (ii) priority Australia Post, four (4) Business Days after the date of posting;
 - (iii) express Australia Post, one (1) Business Day after the date of posting; or
 - (iv) a method other than the above, in accordance with the published standard expected delivery times of the postal service provider;
 - (b) if delivered by hand, including courier, on the date of delivery; or
 - (c) if emailed, on the date the

recipient's email system receives the complete email.

- 19.3 Despite the preceding clauses in this clause, any email that is received after 5:00 pm will be deemed to be given on the next Business Day.

20. Survival

- 20.1 The following clauses survive the termination or expiry of this Agreement:
- (a) Clause 4 - Deliverables, records, access and audit
 - (b) Clause 6 - GST
 - (c) Clause 7 - Repayment
 - (d) Clause 8 - Intellectual Property Rights
 - (e) Clause 9 - Publicity
 - (f) Clause 10 - Privacy
 - (g) Clause 11 - Confidentiality
 - (h) Clause 13 - Termination for Default
 - (i) Clause 14 - Termination for Convenience
 - (j) Clause 15 - Indemnities
 - (k) Clause 16 - Insurance
 - (l) Clause 17 – General, and
 - (m) Clause 20 - Survival.