

DEED OF AGREEMENT

BETWEEN

THE COMMONWEALTH OF AUSTRALIA

AND

[insert name of institution]

in respect of

Version 4

NHMRC RESEARCH FUNDING SCHEMES

THIS DEED is made on the day of 200....

BETWEEN

THE COMMONWEALTH OF AUSTRALIA as represented by the National Health and Medical Research Council (ABN 88 601 010 284)

of: GPO Box 1421
CANBERRA ACT 2601
("Commonwealth")

AND

Institution:

ABN:

of (address):
.....
.....
.....
("Institution")

WHEREAS:

- A. The *National Health and Medical Research Council Act 1992* provides for the establishment of an account, known as the Medical Research Endowment Account, which consists of such amounts as are appropriated from time to time by the Parliament of the Commonwealth and of income derived from the investment of these amounts, gifts or bequests given or made for the purposes of the Account and the income derived from the investment of these amounts.
- B. The purposes of the Account are to provide assistance, in such cases and subject to such conditions as the Minister of State of the Commonwealth responsible for the Act, acting upon the advice of the Chief Executive Officer of the National Health and Medical Research Council (NHMRC), determines:
 - 1 to Departments of the Commonwealth or of a State or Territory engaged in medical research; and
 - 2 to universities for the purposes of medical research; and
 - 3 to institutions and persons engaged in medical research; and
 - 4 in the training of persons in medical research; and

5 any other purpose that is prescribed,

on the condition that the recipients described in (1), (2) and (3) above comply with guidelines issued by the NHMRC relating to the conduct of medical and health research.

- C. The NHMRC, on behalf of the Commonwealth, administers the NHMRC Funding Schemes (which include the NHMRC Research Funding Schemes). The objectives of the NHMRC Research Funding Schemes include providing opportunities within biomedical, clinical, public health and/or health services research, and other research of relevance to human health, to:
1. extend knowledge in a specific field of research;
 2. undertake research to answer novel questions;
 3. develop and extend collaborations between researchers; and
 4. translate research outcomes into improved health.
- D. The Institution has applied for funding under the NHMRC Research Funding Schemes to undertake the Project.
- E. The Commonwealth has agreed to provide the funding to the Institution provided the Institution executes this Deed and complies with the legal obligations on the Institution to use the Funds in support of the objectives of the NHMRC Research Funding Schemes.

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ANNEXURE A INSTITUTIONAL APPROVALS

ANNEXURE B *National Principles of Intellectual Property Management for Publicly Funded Research*

THIS DEED PROVIDES that the parties be bound by the conditions of this Deed.

IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION

1.1 In this Deed, unless the contrary intention appears:

“**Account**” means the Medical Research Endowment Account established by the Act;

“**Act**” means the *National Health and Medical Research Council Act 1992* and any enactments amending the Act;

“**Administrative Costs**” means any costs associated with the performance of the Project not identified in the Approved Budget including overheads, staffing, administrative support, information technology services, premises, resources and capital purchases;

“**Annual Financial Report**” means a statement of receipts and expenditure for each calendar year as specified in Clause 6.1;

“**Application**” means the application under the NHMRC Research Funding Schemes that was lodged with the Commonwealth by the Institution and given the application number that appears at Item C;

“**Approved Budget**” means the budget approved by the Commonwealth, as specified in Item E;

“**Australian Accounting Standards**” refers to the standards of that name maintained by the Australian Accounting Standards Board referred to in section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth);

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

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

“**Chief Investigator**” means the person or persons so designated at Item I; and “**Chief Investigator (A)**” means the person so designated at Item I who will act, on behalf of all Chief Investigators, as the person with primary responsibility for the scientific oversight and the management of the Project, as is pertinent;

“**Co-funding**” means the amount, if any, specified in Item F, being the contribution by the Institution or a third party for the Project;

“**Commonwealth**” means the Commonwealth of Australia;

“**Commonwealth Material**” means any material, except for Project Material, provided by the Commonwealth to the Institution for the purposes of this Deed, or derived at any time from such material;

“Conflict of Interest” means a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through the Institution engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Institution in performing the Project fairly and independently;

“Existing Material” means all material in existence prior to the date of this Deed incorporated in, supplied with (or as part of), or required to be supplied with (or as part of), the Project Material;

“Financial Acquittal” means a statement of receipts and expenditure as specified in Clause 6.3;

“Funds” means funds provided by the Commonwealth for the Project, as specified in Item D;

“Information Privacy Principles” means the Information Privacy Principles in the *Privacy Act 1988* (Cth);

“Institution” means the institution referred to at the commencement of this Deed and in Item C of the Schedule;

“Institutional Approvals” means the statements of compliance and ethics clearances specified at Annexure A;

“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;

“Item” refers to an item specified in a Schedule;

“New Institution” means another institution or body to which a Chief Investigator elects to move, provided the Chief Investigator is intending to continue with the Project (or part of the Project) at that other institution or body;

“NHMRC” means the National Health and Medical Research Council as defined and established by the Act;

“NHMRC Funding Schemes” means the funding schemes administered by the NHMRC on behalf of the Commonwealth;

“NHMRC Research Funding Schemes” means the research funding schemes, within the NHMRC Funding Schemes, administered by the NHMRC on behalf of the Commonwealth;

“Parties” means the two parties to this Deed of Agreement;

“Period of Funding” means the time period set out in Item B;

“Personal Information” means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion; (this definition has been taken from section 6 of the *Privacy Act 1988* (Cth));

“Personnel Support Package” means that part of the Funds to be provided by the Commonwealth for the purpose of funding personnel employed to work

on the Project, as may be identified in the Approved Budget set out in Item E;

“Project” means a research project or body of research work that is the subject of an Application as specified in Item C of a Schedule and **“Projects”**, as the context requires, means all of the Projects described in the Schedules;

“Project Material” means all material created, provided or required to be provided as part of, or for the purposes of the Project, and includes (without limitation) any material derived from such material and any documents, equipment, information or data stored by any means;

“Project Purposes” means those objectives, activities and outcomes specified in the Application identified at Item C;

“Progress Report” is defined in Clause 6.5.

“Responsible Officer” means the officer appointed by the Institution for the purposes of the administration of the Funds;

“Schedule” and **“Schedules”** means the schedule or schedules (as the case may be) to this Deed;

“Specified Personnel” means the personnel specified in Item I as personnel required to perform all or part of the work constituting the Project;

“Transfer Application” means an application to the Commonwealth made by the Institution, for approval to transfer the whole or part of the Funds, as applicable, to a New Institution;

“Type of Funding” means the category of Funds within the NHMRC Funding Schemes under which the Funds are provided, as specified in Item A;

“Working Day” means any day, but does not include Saturdays, Sundays, public holidays or any other day on which the National Health and Medical Research Council is closed for business to the public.

- 1.2 Except where the context otherwise requires:
- (a) words importing a gender include any other gender;
 - (b) words in the singular number include the plural and words in the plural number include the singular;
 - (c) clause headings are for convenient reference only and have no effect in limiting or extending the meaning of the provisions to which they refer;
 - (d) where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning; and
 - (e) a reference to a person or body includes a partnership and a body corporate or body politic.
- 1.3 The Schedules and any document attached to them by reference or otherwise shall be deemed to be substantive parts of, and be construed in accordance with, this Deed.
- 1.4 This Deed may be executed in any number of counterparts. All of such counterparts taken together shall be deemed to constitute one and the same Deed.
- 1.5 Where any conflict arises between the terms and conditions contained in the

clauses of this Deed and any part of a Schedule (and attachments, if any), the terms and conditions of the clauses prevail.

- 1.6 Where any conflict arises between any part of a Schedule and any part of an attachment, the Schedule prevails.
- 1.7 Where the Institution consists of more than one person, those persons agree to be jointly and severally bound by the terms of this Deed.
- 1.8 The laws of the Australian Capital Territory apply to this Deed.
- 1.9 This Deed comprises the entire agreement between the parties in relation to its subject matter.
- 1.10 No variation of this Deed shall be legally binding on either party unless executed in the same manner as this Deed.
- 1.11 If a party does not exercise (or delays in exercising) any of its rights under this Deed or at law, that failure or delay does not operate as a waiver of those rights.
- 1.12 A single or partial exercise by a party of any of its rights under this Deed or at law does not prevent the further exercise of any right.
- 1.13 If a court or tribunal says any provision of this Deed has no effect or interprets a provision to reduce an obligation or right, this does not invalidate any other provision.
- 1.14 An uncertainty or ambiguity in the meaning of a provision of this Deed will not be interpreted against a Party just because that Party prepared the provision.

2. PERFORMANCE OF THE PROJECT

- 2.1 The Institution shall ensure that each Project is performed within the Period of Funding specified for that Project.
- 2.2 In performance of the Projects, the Institution shall:
 - (a) conduct the Projects in accordance with the Project Purposes and, in particular;
 - i. comply with the objectives of the NHMRC Research Funding Schemes as set out in the recitals to this Deed;
 - ii. comply with the objectives for the Project specified in the Application identified at Item C;
 - iii. undertake the activities specified in the Application identified at Item C;
 - iv. endeavour in good faith to achieve the expected outcomes for the Project specified in the Application identified at Item C and support the objectives of the NHMRC Funding Scheme; and
 - v. notify the Commonwealth of any expected or actual delay or suspension (over six (6) months) in the progress of the Project;
 - (b) provide the assistance, facilities and services necessary for the efficient conduct of the Projects;

- (c) meet the normal overhead and operating expenses of the Institution as required to support the Projects;
- (d) meet the expenses of the amount of any salary and other entitlements or conditions of service payable as a result of an enterprise or other agreement which is in excess of the amount of the Personnel Support Package levels provided for under the NHMRC Research Funding Schemes;
- (e) ensure that all relevant Institutional Approvals set out in Annexure A are obtained and maintained as required in Annexure A and the Institution must confirm this in every Progress Report (see clause 6.5 below);
- (f) for research involving humans, ensure access to a Human Research Ethics Committee that is registered with the NHMRC;
- (g) ensure that research under the Project is conducted in accordance with the principles outlined in the guidelines, codes and statements listed under the heading 'Statements of Compliance' in Annexure A;
- (h) ensure that any machine-readable data arising from a Project involving research relating to the social sciences is lodged with the Australian Consortium for Social and Political Research Inc. (ACSPRI) or any other appropriate archive for secondary use by other investigators. This should normally be done within two years of the conclusion of any fieldwork relating to the Project research. If the Chief Investigator is not intending to do so within the two-year period, s/he should include the reasons in the Project's Final Report; and
- (i) otherwise comply strictly with the terms and conditions of this Deed.

2.3 The Institution warrants to the Commonwealth that it has in place, and maintains, the following:

- (a) a security policy and procedures to a sufficiently high standard to prevent and protect against unauthorised access to all locations at which the Project, or any part of it, will be carried out; and
- (b) an appropriate security policy and procedures to protect all information technology hardware and software associated with the Project or any part of it;
- (c) a security policy and procedures to a sufficiently high standard to prevent and protect against unauthorised access to documents, including laboratory notebooks and the like, laptop computers and details of experiments; and
- (d) ethics approvals processes that comply with the *National Statement on Ethical Conduct in Research Involving Humans* as amended from time to time and other guidelines, statements and codes as listed in Annexure A.

2.4 The Commonwealth may, at any time, upon giving the Institution notice which is reasonable in all the circumstances, enter any premises owned or occupied by the Institution, or over which the Institution has control or right of access, in which the Project is being conducted or material related to the Project is being stored for the purposes of inspecting the premises and observing procedures and doing all things necessary to inform itself of whether the Institution is complying with appropriate security arrangements and ethics approval processes. Where any such entry and inspection occurs, the Institution may arrange for persons authorised by it to accompany the person or persons representing the Commonwealth.

- 2.5 The Commonwealth may at any time, vary any term or condition, of this Deed by giving the Institution notice in writing of such variation, accompanied by reasons for the variation, and the Institution agrees to be bound by such variation. Any variation made pursuant to this clause shall take effect immediately upon receipt by the Institution of the notice unless a different date is specified or provided for in the notice, in which case the date of effect shall be the date specified or provided for in the notice. The Commonwealth declares that, in exercising this right to vary, it will act in good faith and make any variation only for the good and proper administration of research funding.
- 2.6 The Institution will make its own arrangements with third parties as to the rights and obligations of personnel involved in the Project but not Parties to this Deed, and the Commonwealth is under no obligation to assist, participate or facilitate these arrangements including, without limitation, arrangements between the Institution and third parties in relation to Intellectual Property rights, rights in relation to data, financial management, ethics and co-operative research arrangements.

3. FUNDING AND CO-FUNDING

- 3.1 Subject to Parliamentary appropriation for the Account and compliance by the Institution with this Deed, the Commonwealth agrees to pay the Funds to the Institution in accordance with the payment schedule specified in Item D.
- 3.2 Unless otherwise specified in Item D, payment of the Funds will be made quarterly in advance in respect of all Approved Budget components other than equipment, for which payment in full will be made with the first payment in the year in which the Project is awarded.
- 3.3 The sum of all amounts to be contributed by the Commonwealth for the Project in accordance with this Deed shall not, without the written agreement of the Commonwealth, exceed the Funds.
- 3.4 The Funds are made available for a particular Project and are not transferable between Projects (except with the written approval of the Commonwealth).
- 3.5 Payment of the Funds will not commence until satisfactory evidence is provided to the Commonwealth that all Institutional Approvals required for the Project have been obtained by the Institution. Where any Institutional Approvals necessary for the research are withdrawn or not renewed during the Period of Funding in a manner otherwise than that provided for in Annexure A, the Institution must notify the Commonwealth as soon as practicable or in any event within one (1) month after the withdrawal or expiration of the Institutional Approval and the Commonwealth may in its absolute discretion terminate this Deed or suspend or terminate payment of the Funds for the Project pursuant to clause 15.
- 3.6 Payment of the Funds will only commence after the Institution has notified the Commonwealth of the proposed date of commencement for the Project. The Project must commence by the final date of commencement specified in Item B, or Funding will be terminated unless the Institution has obtained the written approval of the Commonwealth for the continuation of Funding, prior to the final date of commencement.
- 3.7 If there is any delay or suspension or an expectation or anticipation of a delay or suspension (of more than six (6) months) in the commencement or progress of the Project, the Institution must notify the Commonwealth as

soon as possible after becoming aware of the delay or expected delay. The Institution must request and obtain the Commonwealth's written approval for the continuation of the Project. In the event of a delay or expected delay to the commencement or progress of the Project, the Commonwealth may suspend, reduce or terminate payment of the Funds for that Project or terminate this Deed pursuant to clause 15. The Commonwealth pursuant to clause 16, may recover any Funds not expended in accordance with this Deed or that remain unexpended.

- 3.8 If Co-funding has been identified in the Approved Budget or specified in Item F and that Co-funding;
- (a) is not arranged within the time-frame specified in the Approved Budget;
 - (b) is reduced; or
 - (c) ceases at any time earlier than the time specified in the Approved Budget or at Item F,

the Commonwealth may, in its absolute discretion, by notice in writing to the Institution, terminate the Deed or terminate or reduce the scope of the relevant Project pursuant to clause 15.

4. USE OF FUNDS

- 4.1 The Institution shall use the Funds only for the purpose of performing the relevant Project in accordance with the Approved Budget (including the Personnel Support Package) as specified in Item E.
- 4.2 The Institution shall deposit all Funds into a bank account controlled solely by the Institution and keep proper accounts and records of its receipts and use of the Funds. The Institution must maintain individual ledgers within the bank account for each Project and use any apportioned interest earned on the Funds only for the purposes of the Projects.
- 4.3 The Institution shall not use the Funds for the purposes of expenditure on any Administrative Costs associated with the Projects.
- 4.4 The Institution shall only use the Funds during the Period of Funding.
- 4.5 If the relevant Project's Approved Budget contains an item of equipment to the value of \$10,000 or more, then the Institution must purchase that item of equipment or a substantially similar item of equipment that is required for conduct of the Project. If the Institution is unable to purchase the equipment, it must notify the Commonwealth and the Commonwealth may in such a case suspend, reduce or terminate payment of the Funds for that Project or terminate the Project or this Deed pursuant to clause 15.

5. ACCOUNTABILITY OF INSTITUTION FOR FUNDS

- 5.1 The Institution shall:
- (a) ensure that proper accounting controls are exercised over the Projects, including the Funds and the Co-funding; and
 - (b) maintain separate accounting records for all transactions in relation to each Project.
- 5.2 Where the Institution has not legally committed or expended the full amount

of the Funds during the Period of Funding, the Institution shall, within six (6) months after the end of the Period of Funding, pay to the Commonwealth any amount not so committed or expended, unless the Institution prior to the end of the Period of Funding advises the Commonwealth of the reasons for the non-expenditure, and requests and obtains the Commonwealth's written approval for the unexpended part of the Funds to be carried forward and for the Period of Funding to be varied.

6. REPORTING

Financial Reports- Annual

- 6.1 The Institution shall, by 31 March of each year, or upon written notice given by the Commonwealth or otherwise as specified in Item G, provide the Commonwealth with a written Annual Financial Report on each Project, relating to the previous calendar year. The report shall, include:
- (a) a financial statement in a form to be stipulated by the Commonwealth, specifying the total Funds received and expended by the institution;
 - (b) certification by the Chief Financial Officer or their delegate that the Funds were expended in accordance with the Deed; and
 - (c) the amount of Co-funding received by the Institution where Co-funding is specified as part of the Approved Budget.
- 6.2 The Institution shall, by 31 March of each year or upon written notice given by the Commonwealth or otherwise as specified in Item G, provide the Commonwealth with an independent annual audit report for the Institution.

Financial Acquittal - End of Period of Funding

- 6.3 The Institution shall, within six (6) months after the Period of Funding or at other times, as reasonably requested by the Commonwealth, provide a final **Financial Acquittal** that complies with Australian Accounting Standards, in a form to be stipulated by the Commonwealth. The acquittal must include:
- (a) a statement of income and expenditure for the Funds received and expended by the Institution for the **entire** period of Funding (or a time specified by the Commonwealth);
 - (b) the total interest attributable to the Funds under this Deed; and
 - (c) the amount of Co-funding received by the Institution where Co-funding is specified as part of the Approved Budget.
- 6.4 The Financial Acquittal provided by the Institution under subclause 6.3 shall be certified by the Chief Financial Officer.

Progress Reports - Annual

- 6.5 The Institution shall, by 31 March of each year, or upon written notice given by the Commonwealth or otherwise as specified in Item G, provide the Commonwealth with a written report (**Progress Report**), in the form required by the Commonwealth, on the progress of the performance of the Project relating to the period 1 January to 31 December of the preceding year.

Final Report – End of Period of Funding

- 6.6 The Institution shall, within six (6) months after the Period of Funding or

termination of this Deed, whichever the earlier, provide the Commonwealth with a final report, in the form required by the Commonwealth, in respect of each Project.

NHMRC Annual Report

- 6.7 The Institution agrees that the name, and any other details relevant to qualifications or expertise, of the Chief Investigator may, at the absolute discretion of the Commonwealth and without notice to or consultation with the Institution, be included in any Annual Report given by the NHMRC pursuant to section 83 of the Act.
- 6.8 The Institution represents and warrants to the Commonwealth that either:
- (a) The Institution has obtained the consent of the Chief Investigator to the inclusion in any Annual Report of the personal information referred to at clause 6.7; or
 - (b) The Institution:
 - i. has informed the Chief Investigator that the personal information referred to in clause 6.7 may be included in any Annual Report; and
 - ii. will inform any other person who may become the Chief Investigator pursuant to this Deed that the personal information referred to in clause 6.7 may be included in any Annual Report.

7. EVALUATION OF PROJECT

- 7.1 The Institution shall provide to the Commonwealth such information relating to the Projects as the Commonwealth may reasonably request for the purpose of auditing and evaluating the Projects.
- 7.2 The Institution shall:
- (a) upon fourteen (14) days' written notice given by the Commonwealth; and
 - (b) at times agreed to by the parties during the performance of, or up to five (5) years after the completion of, the Projects;

make itself available for visits by officers of the Commonwealth (including officers of the Australian National Audit Office or any other person nominated by the NHMRC) for the purpose of auditing and evaluating the Projects.

8. INSPECTION OF DOCUMENTS

- 8.1 The Institution shall, if requested in writing by the Commonwealth, make available for inspection and audit (and copying if required) by officers of, or by other persons authorised by the Commonwealth (including officers of the Australian National Audit Office), all books, accounts, receipts, printed or electronic material and other documents relating to:
- (a) the expenditure by the Institution of the whole or any part of the Funds, up to five (5) years after the completion of, the Projects; and
 - (b) compliance with any of the Deed's clauses or annexures.

9. PROJECT MATERIAL AND INTELLECTUAL PROPERTY

- 9.1 Ownership of the Project Material and Intellectual Property rights in the Project Material will, subject to this clause 9, vest in the Institution, unless specified to the contrary in Item A.

Existing Material

- 9.2 This clause 9 does not affect the ownership of any Intellectual Property rights in any Existing Material.

Commonwealth Material

- 9.3 Ownership of all Commonwealth Material, including Intellectual Property rights in that material, remains vested at all times in the Commonwealth but the Commonwealth grants the Institution a licence to use, copy, reproduce, communicate, adapt and exploit that material only for the purposes of this Deed and in accordance with any conditions or restrictions the Commonwealth may notify to the Institution.

Licence to Project Material

- 9.4 If Item A indicates that the Institution is a commercial entity, then the Institution grants the Commonwealth a permanent, irrevocable, free, world wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, adapt and exploit the Intellectual Property rights in Project Material for any Commonwealth purpose.

Moral rights

- 9.5 In clause 9.6, 'Specified Acts' means any of the following classes or types of acts or omissions by or on behalf of the Commonwealth:

- (a) using, reproducing, adapting or exploiting all or any part of the Project Material, with or without attribution of authorship;
- (b) supplementing the Project Material with any other material;
- (c) using the Project Material in a different context to that originally envisaged;

but does not include false attribution of authorship.

- 9.6 If Item A indicates that the Institution is a commercial entity, then the Institution agrees:
- (a) to obtain from each author of any Project Material a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts by the Commonwealth or any person claiming under or through the Commonwealth;
 - (b) to obtain from each author of any Existing Material a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the Commonwealth's benefit in relation to the Commonwealth's licensed use of such material; and
 - (c) upon request, to provide the executed original of each such consent to the Commonwealth.

- 9.7 Clause 9.6 does not apply to any Commonwealth Material incorporated in the

Project Material.

Compliance with principles, policies and procedures

- 9.8 The Institution agrees to comply with the principles outlined in the *National Principles of Intellectual Property Management for Publicly Funded Research* ('National Principles'). For the removal of doubt, the current version of the National Principles are reproduced at Annexure B to this Deed. In the event that an amended version of the National Principles is endorsed by the NHMRC, the Commonwealth will advise the Institution in writing of the amended National Principles, in which case those amended National Principles will be deemed to form part of this Deed and will replace the existing Annexure B.
- 9.9 Institutions must have in place policies and relevant procedures relating to Intellectual Property management which:
- (a) ensure that staff are aware of their obligations and responsibilities to protect and manage Intellectual Property;
 - (b) determine the ownership and associated rights or assignment of Intellectual Property (including, without limitation, any Intellectual Property rights in relation to transgenic animals created as a result of the Project) and require personnel performing work on a Project to acknowledge any relevant Intellectual Property ownership and rights; and
 - (c) comply with *the National Principles of Intellectual Property Management for Publicly Funded Research* referred to in clause 9.8.

Right to publish

- 9.10 The parties agree that the Commonwealth has the right to use or publish any report provided by the Institution under this Deed, in whole or in part, as the Commonwealth in its absolute discretion determines.

Indemnity and disclaimer

- 9.11 The Institution shall at all times indemnify and hold harmless the Commonwealth, its officers, employees and agents (in this clause referred to as 'those indemnified') from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person in respect of any infringement of Intellectual Property rights by the Institution, its employees, agents or subcontractors in the course of, or incidental to, performing the Project or the use by the Commonwealth of reports provided by the Institution.

10. EQUIPMENT AND ANIMALS

- 10.1 Ownership of items of equipment and animals purchased with the Funds, shall vest and remain vested in the Institution, except:
- (a) where and to the extent that Item H specifically states that ownership vests in the Commonwealth;
 - (b) where and to the extent that the Commonwealth transfers the benefit of the Funds to a New Institution in accordance with clause 11; or

- (c) where the Deed is terminated by the Commonwealth pursuant to clause 15.
- 10.2 Where ownership of equipment purchased by or in the possession of the Institution is vested in the Commonwealth, the Institution shall, during the Period of Funding, retain possession of the equipment, maintain it in good condition and return it at the completion of the relevant Project in the same condition in which it was received, fair wear and tear excepted.
- 10.3 If the Chief Investigator or other person named as Specified Personnel moves to a New Institution before completion of a Project, then:
 - (a) upon the making of a Transfer Application to the Commonwealth by the Chief Investigator; and
 - (b) where the Commonwealth approves the Transfer Application in accordance with clause 11,

the Institution shall bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to transfer ownership of the equipment and animals purchased with the Funds relevant to the Project or part of the Project to the New Institution.

- 10.4 Where this Deed or a Project under this Deed is terminated by the Commonwealth pursuant to clause 15, the Commonwealth may give such directions as the Commonwealth in its absolute discretion thinks fit concerning the transfer of ownership of the equipment and animals purchased with the Funds, and the Institution shall bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to transfer ownership in accordance with the Commonwealth directions.
- 10.5 An item of equipment or animals purchased with the Funds shall be used for the relevant Project Purposes and to that end, the Institution shall ensure such use is subject to the control and supervision of the Chief Investigator.
- 10.6 Any purchase by the Institution of clinical electro-medical equipment must only be of a type acceptable to the relevant State or Territory biomedical engineering authority or health authority, and any modification to such equipment must meet the requirements of those authorities relating to equipment to be installed in hospitals.
- 10.7 The Institution must list all items of equipment with a value of \$10,000 or more in an assets register, which must be available for inspection by the Commonwealth upon reasonable notice.
- 10.8 The assets register must record the date of purchase, purchase price, description (including any identifying marks and numbers) and location of the items of equipment. The assets register must also record, where applicable, the details of the disposal of any items of equipment, including the sale price and to whom sold.
- 10.9 The Institution must ensure that equipment purchased with the Funds is made available to personnel in respect of whom funding under a NHMRC Funding Scheme (including under this Deed) is provided by the Commonwealth.

11. MOBILITY

- 11.1 The Parties acknowledge that a Chief Investigator may, at any time, make a Transfer Application to their Institution, so as to enable the Chief Investigator

to continue the conduct of a Project or part of a Project at a New Institution.

- 11.2 The Institution will notify the Commonwealth of the receipt of any Transfer Application. The Institution may make submissions to the Commonwealth in relation to such Transfer Application.
- 11.3 The Commonwealth may, in its absolute discretion, approve the Transfer Application and may impose such conditions on that approval as the Commonwealth thinks fit.
- 11.4 Notwithstanding any other provision of this Deed, if the Commonwealth approves a Transfer Application, the Commonwealth may cease or reduce the Funds to the Institution by such amount as the Commonwealth, in its absolute discretion, thinks appropriate. The Commonwealth shall not be liable to pay any costs or compensation to the Institution resulting from any action by the Commonwealth under this clause.
- 11.5 The Institution agrees to do all necessary things and sign all necessary documents to facilitate the making of a Transfer Application and to give effect to an approval by the Commonwealth of the Transfer Application.
- 11.6 In regards to a Project which is the subject of the Transfer Application, the Institution agrees to do all things reasonably required by the Commonwealth to facilitate the smooth and orderly transfer of the management and operation of the Project to any other entity as directed by the Commonwealth within the timeframe reasonably specified by the Commonwealth, including the transfer of any unexpended Funds remaining for the Project to the new Institution.

12. ACKNOWLEDGMENTS

- 12.1 The Institution shall properly acknowledge the contribution of the Commonwealth and the NHMRC to the Projects in any relevant correspondence, public announcement, advertising material, research reports or other material produced by, on behalf of or through the Institution in any manner relating to the Projects.
- 12.2 Any published material must include the NHMRC application number for the Project as identified at Item C.
- 12.3 The Institution must not use the NHMRC logo without the prior written consent of the NHMRC.
- 12.4 If the Institution wishes to use the NHMRC logo, it must first write to the NHMRC seeking approval for the proposed use and setting out the circumstances and details of the proposed use, including details of any payment the Institution may receive directly or indirectly as a result of the publication or dissemination of any material, whether in “hard copy” format or electronic format, associated with the proposed use.
- 12.5 The NHMRC has absolute discretion to consent or refuse to give consent to the proposed use of the NHMRC logo.
- 12.6 Where the NHMRC gives consent to the use by the Institution of the NHMRC logo, the NHMRC may, at its absolute discretion, impose terms and conditions that are reasonable in the circumstances, including the payment of a sum of money for such use of the NHMRC logo.
- 12.7 Where the NHMRC consents to any use of the NHMRC logo, all Intellectual Property rights in the logo remain with the NHMRC and no assignment or

diminution of such Intellectual Property rights is to be inferred from any consent.

13. SPECIFIED PERSONNEL AND OTHER PERSONNEL

- 13.1 The Institution shall ensure that the Specified Personnel listed at Item I perform the activities specified in the relevant Application in relation to the Project and in accordance with this Deed.
- 13.2 Where Specified Personnel are unable to perform, or to continue to perform, the activities in relation to a Project, the Institution shall notify the Commonwealth immediately.
- 13.3 Where Specified Personnel are unable to perform, or to continue to perform, the activities in relation to a Project, the Commonwealth may request the Institution to provide, at no additional cost to the Commonwealth, replacement personnel suitable to the Commonwealth, to perform the activities in relation to the Project.
- 13.4 The Commonwealth may request the Institution to make available to the Commonwealth, the services of Chief Investigators for the purposes of reviewing or assessing applications made under the NHMRC Funding Schemes during the Period of Funding, and the Institution will use its best endeavours to facilitate compliance by the Chief Investigator(s).
- 13.5 If the Institution does not comply with this clause, the Commonwealth may terminate this Deed, whereupon the provisions of clause 15 shall apply.

14. TERMINATION FOR CONVENIENCE

- 14.1 The Commonwealth may, at any time by written notice, suspend or defer any payment of the Funds, terminate this Deed or reduce the scope of a Project. If this Deed is terminated or reduced in scope, the Commonwealth shall, subject to subclause 14.3 and subclause 14.4, be liable only for:
 - (a) Funds payable under this Deed up to the effective date of termination or reduction; and
 - (b) any reasonable costs incurred by the Institution and directly attributable to the termination or reduction (excluding costs arising pursuant to the termination of an employment contract which exceed the equivalent of four (4) weeks' salary).
- 14.2 Upon receipt of a notice of termination or reduction, the Institution must:
 - (a) stop work 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 Project, continue work on any part of the Project not affected by the notice; and
 - (d) immediately repay to the Commonwealth so much of the Funds not spent or acquitted to the satisfaction of the Commonwealth as relate to any part of the Project affected by the notice as at the date of the notice.
- 14.3 In the event of reduction in the scope of the Project, the Commonwealth's obligation to pay Funds shall abate proportionately to the reduction in the

Project.

- 14.4 The Commonwealth is not liable to pay any other amount in respect of a termination or reduction under this clause.

15. TERMINATION AND SUSPENSION

15.1 Where:

- (a) the Commonwealth is reasonably satisfied that any of the terms and conditions of this Deed have not been complied with by the Institution;
- (b) the Commonwealth is reasonably satisfied that the terms of clause 2.2(a) or clause 2.2 (e) have not been complied with by the Institution;
- (c) the Commonwealth, by notice in writing, requests the Institution to take action to implement an expected outcome specified in the Schedule and, after one month from the date of the notice, the Institution has failed to take that action;
- (d) the Commonwealth is reasonably satisfied that any statement made in the Application is incorrect or incomplete in a way which would have affected the original decision to approve the Funds;
- (e) the Commonwealth is reasonably satisfied that the Chief Investigator or Specified Personnel are, or have within the previous three (3) years, engaged in research misconduct;
- (f) subject to the provisions of clause 15.2, the Institution:
 - i. has received a complaint or an allegation, or has resolved to conduct or has commenced to conduct, an investigation into allegations of research misconduct by the Chief Investigator or Specified Personnel; and
 - ii. has not informed the NHMRC within ten Working Days of receipt of the complaint or allegation, or of the resolution to commence the investigation or of the fact that an investigation has commenced;
- (g) the Commonwealth is not reasonably satisfied that the purposes and activities of the Institution remain compatible with the objectives of the Project;
- (h) the Institution, in the reasonable opinion of the Commonwealth, fails to adequately comply with its reporting obligations under clause 6;
- (i) as a result of any change in government policy or lack of appropriation by the Commonwealth Parliament, Funds for the Project are to cease or be reduced;
- (j) the Commonwealth approves a Transfer Application;
- (k) the Institution is using the Funds for purposes other than the relevant Project; or
- (l) where a clause of this Deed provides that this clause 15 applies,

the Commonwealth may, in its absolute discretion, by notice in writing given to the Institution:

- (m) terminate either a relevant Project or this Deed; or
- (n) suspend or reduce payment of the Funds, pending a review by the Commonwealth of the future performance of the Project.

- 15.2 For the purposes of 15.1(f):
- (a) the Institution must have in place procedures for dealing with instances of suspected or alleged research misconduct which are consistent, as a minimum standard for the purposes of clause 15(1)(f), with the *Joint NHMRC/AVCC Statement and Guidelines on Research Practice (1997)* (“Joint Statement”) or its successor document, the *Australian Code for the Responsible Conduct of Research*, once it has been adopted;
 - (b) where formal investigation of possible research misconduct is indicated, the Institution must determine, having regard to the gravity of the suspected or alleged misconduct, whether an independent investigation by a third party is appropriate and must be able to provide justification for this decision if requested by the NHMRC;
 - (c) the NHMRC reserves the right at its absolute discretion, in any instance of suspected or alleged research misconduct notified to the NHMRC by the Institution in accordance with clause 15.1(f), to discuss or consult with the Institution as to the appropriate form of formal investigation;
 - (d) the NHMRC reserves the right at its absolute discretion, where an Institution is conducting an investigation, whether preliminary or formal, to suspend funding to that Institution, for the relevant project or award under investigation, pending the outcome of the investigation;
 - (e) the Institution must notify the NHMRC of the outcome of any preliminary or formal investigation, whether conducted internally or independently, and reasons for the decision within ten days following the decision; and
 - (f) the Institution must, in all cases, conduct any investigation or enquiry in such a manner as to ensure that any person who is the subject of such an investigation or enquiry is afforded natural justice.
- 15.3 In this clause 15, ‘research misconduct’ includes research misconduct, misconduct and scientific misconduct (as those terms are defined in the Joint Statement, or in any replacement document), and includes (without limitation) failure to adhere to research proposals approved by either a Human Research Ethics Committee or Animal Ethics Committee.
- 15.4 Nothing in this clause 15 is intended to prevent the NHMRC from unilaterally suspending or withdrawing all funding to an Institution in a situation where the NHMRC considers it appropriate having regard to all the circumstances.
- 15.5 Where the Commonwealth terminates a Project or this Deed under clause 15.1, the Commonwealth shall not be obliged to pay to the Institution any outstanding amount of the Funds.
- 16. RECOVERY OF FUNDS**
- 16.1 If at any time the Commonwealth is reasonably satisfied that any part of the Funds has been expended or committed by the Institution other than in accordance with this Deed, the Commonwealth may recover that amount as a debt due to the Commonwealth.
- 16.2 If the Institution, in the reasonable opinion of the Commonwealth, fails to adequately comply with its reporting obligations under clause 6, the Commonwealth may recover, as a debt due to the Commonwealth, so much

of the Funds as the Commonwealth considers reasonable, having regard to the decreased usefulness of the Project to the Commonwealth for:

- (a) analysis of the conduct and outcomes of the Project; and
- (b) further policy initiatives,

and in this regard, the Institution acknowledges that the reports to be provided pursuant to this Deed provide substantial value to the Commonwealth as a source of information for these purposes.

- 16.3 The Commonwealth may, following the submission of any report, or following the time that the Financial Acquittal was due to be submitted under subclause 6.3, whichever is the earlier, recover from the Institution as a debt due to the Commonwealth any part of the Funds which:
- (a) the Commonwealth is not reasonably satisfied has been expended in accordance with this Deed; or
 - (b) remains unexpended.

17. INDEMNITY

- 17.1 The Institution shall indemnify, at all times, the Commonwealth, its officers, employees and agents (in this clause referred to as 'those indemnified') from and against all action, claims, demands, costs and expenses (including the cost of defending or settling any action, claim or demand) made, sustained, brought or prosecuted in any manner based upon, occasioned by, or attributable to any loss or damage to any person, or loss or damage to property which may arise from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by a wilful, unlawful or negligent act or omission of the Institution, its employees, agents or subcontractors in connection with this Deed.
- 17.2 The Institution's liability to indemnify the Commonwealth under clause 17.1 will reduce proportionately to the extent that any negligent or other tortious act or omission of the Commonwealth contributed to the relevant liability, loss or damage, or loss or expense.

18. INSURANCE

- 18.1 Unless the Commonwealth otherwise agrees, the Institution must, for so long as any obligations remain in connection with this Deed:
- (a) effect and maintain workers' compensation insurance as required by law, and public risk insurance policies for appropriate amounts to cover all the obligations of the Institution under this Deed, including those which survive the expiration or termination of this Deed; and
 - (b) upon request, provide proof of insurance acceptable to the Commonwealth.
- 18.2 All insurance under clause 18.1 is to be taken out with an insurer recognised by the Australian Prudential Regulation Authority or regulated by a State or Territory Auditor-General.

19. USE OF INFORMATION

- 19.1 If any agency or body of the Commonwealth receives information from the Institution in relation to the Project, the Institution consents to the provision by the agency or body of such information to the NHMRC.
- 19.2 The Institution acknowledges that the Commonwealth may be required to provide information in relation to this Funds or this Deed, as required by the operation of any law, judicial or parliamentary body or government agency.
- 19.3 The Commonwealth reserves the right to publicise and report on the awarding of funding to the Institution. The Commonwealth may do this by including general information about the Institution, the Funds, title and a brief description of the Project in media releases, general announcements about the Funds and in annual reports.
- 19.4 The Institution acknowledges that its performance of the Project and any failure to comply with this Deed, including, without limitation:
- (a) any failure to provide full and thorough reports pursuant to clause 6; or
 - (b) any careless use or misuse of the Funds,

may be taken into consideration by the Commonwealth in any future application by the Institution for funding under any scheme.

20. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

- 20.1 The Institution agrees not to represent itself, and to use its best endeavours to ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth or the NHMRC, or as otherwise able to bind or represent the Commonwealth or the NHMRC.
- 20.2 The Institution, its officers, employees, agents and subcontractors do not by virtue of this Deed become an officer, employee, partner or agent of the Commonwealth or the NHMRC, nor does the Institution have any power or authority to bind or represent the Commonwealth or the NHMRC.

21. COMPLIANCE WITH LAW

- 21.1 The Institution shall ensure that in carrying out its functions and expending the Funds, it complies with all relevant Commonwealth, State and local government laws, regulations and by laws (including any amendment, modification or re-enactment of them) and including, without limiting the generality of the foregoing:
- (a) the *Research Involving Human Embryos Act 2002* (Cth);
 - (b) the *Prohibition of Human Cloning Act 2002* (Cth);
 - (c) the *Gene Technology Act 2000* (Cth);
 - (d) the *Crimes Act 1914* (Cth);
 - (e) the *Racial Discrimination Act 1975* (Cth);
 - (f) the *Sex Discrimination Act 1984* (Cth);
 - (g) the *Disability Discrimination Act 1992* (Cth);

- (h) the *Equal Opportunity for Women in the Workplace Act 1999* (Cth);
- (i) the *Therapeutic Goods Act 1989* (Cth); and
- (j) all those relating to employment terms and conditions.

22. CONFLICT OF INTEREST

- 22.1 The Institution warrants that, at the date of signing this Deed no Conflict of Interest exists or is likely to arise in the performance of its obligations under this Deed.
- 22.2 If during the term of this Deed, a Conflict of Interest, arises in respect of the Institution, or an employee or agent of the Institution, the Institution must immediately notify the NHMRC in writing of that Conflict of Interest.
- 22.3 If a Conflict of Interest is experienced by the Institution, or an employee or agent of the Institution, the Institution must take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with that Conflict of Interest.
- 22.4 If the Institution fails to notify the NHMRC under this clause 22, or is unable or unwilling to resolve or deal with the Conflict of Interest as required, the Commonwealth may terminate this Deed in accordance with clause 15 (Termination and Suspension).

23. PROTECTION OF PERSONAL INFORMATION

- 23.1 This clause applies only where the Institution deals with Personal Information when, and for the purpose of, conducting the Project under this Deed.
- 23.2 The Institution agrees to be treated as a contracted service provider and agrees to:
 - (a) use Personal Information held in connection with the performance of the Projects under this Deed only for the purposes of fulfilling its obligations under this Deed;
 - (b) not to do any act or engage in any practice which if done or engaged in by an agency, would be a breach of an Information Privacy Principle (IPP);
 - (c) carry out and discharge the obligations contained in the IPPs as if the Institution were an agency;
 - (d) notify individuals whose Personal Information the Institution holds, that complaints about the Institution's acts or practices may be investigated by the Privacy Commissioner who has power to award compensation against the Institution in appropriate circumstances;
 - (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the *Privacy Act 1988* (direct marketing), a National Privacy Principle (NPP), (particularly NPPs 7 to 10) or an Approved Privacy Code (APC), unless:
 - i. in the case of section 16F - the use or disclosure is explicitly required under this Deed; or
 - ii. in the case of an NPP or an APC - where the act or practice is explicitly required under this Deed ;

- (f) comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this Deed (if any) that are inconsistent with an NPP or an APC binding on a Party);
- (g) immediately notify the Commonwealth if the Institution becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 23, whether by the Institution or any subcontractor;
- (h) comply with the *Privacy Act 1988* (to the extent that Act applies to the Institution), including any guidelines issued by the NHMRC and approved for the purposes of that Act;
- (i) comply with any relevant privacy law of State or Territory (to the extent that such law applies to the Institution);
- (j) comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause 23;;
- (k) ensure that any of the Institution's employees, agents, officers or volunteers who are required to deal with Personal Information for the purposes of this Deed are made aware of the Institution's obligations set out in this clause 23; and
- (l) indemnify the Commonwealth as the circumstances require, in respect of any loss, liability or expense suffered or incurred by the Commonwealth, arising out of or in connection with a breach of the obligations of the Institution under this clause 23 or any misuse of Personal Information by the Institution or any disclosure by the Institution in breach of an obligation or confidence, whether arising under the *Privacy Act 1988* or otherwise.

23.3 The Institution agrees to ensure that any subcontract entered into for the purpose of fulfilling the Institution's obligations under this Deed imposes on the subcontractor the same obligations as the Institution has under this clause 23, including the requirement in relation to subcontracts.

23.4 In this clause 23, the terms 'agency', 'Approved Privacy Code' (APC), 'contracted service provider', 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the *Privacy Act 1988*, and 'subcontract' and other grammatical forms of that word has the meaning given in section 95B(4) of the *Privacy Act 1988*.

24. DISPUTE RESOLUTION

24.1 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 Deed, including by referring the matter to persons who may have authority to intervene and direct some form of resolution.

24.2 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.

24.3 Notwithstanding the existence of a dispute, the Institution must continue to perform its obligations under this Deed.

25. NOTICES

- 25.1 Any notice, request or other communication to be given or served pursuant to this Deed shall be in writing and addressed to the other party at the address as set out in Item J or such other address as a Party may notify the other party from time to time.
- 25.2 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) business days after the date on which it was sent;
 - (c) if sent by facsimile, on the business day following the day of dispatch provided that the sender receives an "OK" code in respect of the transmission and is not notified by the Institution by close of business of the next business day following the day of dispatch that the transmission was illegible; or
 - (d) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

26. RESPONSIBLE OFFICER

- 26.1 The Institution shall notify the Commonwealth in writing of the name and title of the Responsible Officer. All correspondence and reports relating to the Funds shall be made by or through the Responsible Officer and all documents signed by the Responsible Officer shall be binding on the Institution.
- 26.2 The Responsible Officer shall supply all necessary information reasonably requested by Commonwealth in relation to the purposes for which the Funds are used.

27. ASSIGNMENT AND OTHER ENCUMBRANCES

- 27.1 The Institution shall not without the written consent of the Commonwealth assign, mortgage, charge or encumber this Deed or any benefit, moneys or rights (apart from Intellectual Property benefits or rights) obtained or to be obtained under this Deed.

28. CEO MAY ACT

- 28.1 The CEO may exercise, on behalf of Commonwealth, any of the powers conferred upon the Commonwealth by this Deed.

29. SURVIVAL OF PROVISIONS

- 29.1 The provisions of clauses 2.2(h) [LODGEMENT OF DATA], 2.3(c) [PREVENTION OF UNAUTHORISED ACCESS], 5 [ACCOUNTABILITY OF INSTITUTION FOR FUNDS], 6 [REPORTING], 7.1 [EVALUATION OF PROJECT], 9 [PROJECT MATERIAL AND INTELLECTUAL PROPERTY], 10.4 [EQUIPMENT AND ANIMALS], 11 [MOBILITY], 12 [ACKNOWLEDGMENTS], 16 [RECOVERY OF FUNDS], 17

[INDEMNITY], 18 [INSURANCE], 19 [USE OF INFORMATION], 21 [COMPLIANCE WITH LAW], 22 [CONFLICT OF INTEREST], 23 [PROTECTION OF PERSONAL INFORMATION] and 26 [RESPONSIBLE OFFICER] will survive the expiration or earlier termination of this Deed.

30. TAXES, DUTIES AND CHARGES

- 30.1 Except as provided by this clause 30, the Institution must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Deed.
- 30.2 The following terms have the meanings respectively given to them in the *A New Tax System (Goods and Services Tax) Act 1999*: consideration; GST; input tax credit; supply; taxable supply; and tax invoice.
- 30.3 Unless otherwise indicated, the fees and all other consideration for any supply made under this contract is exclusive of any GST imposed on the supply.
- 30.4 If one Party (the supplier) makes a taxable supply to the other Party (the recipient) under this Deed, 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.
- 30.5 No Party may claim from the other Party under this Deed any amount for which the first Party may claim an input tax credit.

IN WITNESS WHEREOF the Parties have executed this DEED

SIGNED, SEALED AND DELIVERED)
on behalf of the COMMONWEALTH)
OF AUSTRALIA by:)

.....)
(print name))

.....)
(Signature))

.....)
(position))

in the presence of:)

.....)
(print name))

.....)
(Signature))

.....)
(position))

SIGNED, SEALED AND DELIVERED)
on behalf of the)

.....)
(Institution name))

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

.....)
(Signature))

.....)
(position))

in the presence of:)

.....)
(print name))

.....)
(Signature))

.....)
(position))

ANNEXURE A – INSTITUTIONAL APPROVALS

Clearance requirements:

The Institution must meet the following clearance requirements and obtain and maintain as required, the necessary approvals for the duration of the Projects:

(i) Research Involving Humans

All research involving humans shall be conducted in accordance with the requirements of the '*National Statement on Ethical Conduct in Research Involving Humans*' (1999) and associated guidelines, as amended from time to time.

Approval shall be obtained from a Human Research Ethics Committee (HREC) that is registered with the NHMRC before commencement of the Project, and shall be maintained for the duration of the Project and reobtained if required for the duration of the Project. Institutions and HRECs shall be responsible for monitoring the conduct of the Project and ensuring that ethical approval is obtained for amendments to the Project.

Despite the preceding paragraph, the Institution is not obliged to reobtain or maintain HREC approval if the HREC determines that the human research portion of the Project is complete, and that such approvals are no longer required.

(ii) Animal experimentation

Experiments involving the use of animals shall be conducted, and experimental animals shall be housed, maintained and controlled, in accordance with the current '*Australian Code of Practice for the Care and Use of Animals for Scientific Purposes*' and any additional policy statements adopted by the NHMRC.

Approval shall be obtained from the relevant Animal Ethics Committee (AEC) before commencement of the Project, and shall be maintained for the duration of the Project and reobtained if required for the duration of the Project. Institutions and AECs shall be responsible for monitoring the conduct of the Project and ensuring that ethical approval is obtained for amendments to the Project.

Despite the preceding paragraph, the Institution is not obliged to reobtain or maintain AEC approval if the AEC determines that the animal research portion of the Project is complete, and that such approvals are no longer required.

(iii) Use of radioactive substances, ionising radiation, recombinant DNA, biohazardous material, potent teratogens or carcinogens

Clearance for Projects which involve any of the above must be obtained

from the appropriate Institutional Bio-safety Committee and/or, where relevant, the appropriate Ethics Committee.

If a Project involves the use of ionising radiation, the Institution shall ensure that any personnel performing procedures involving ionising radiation are appropriately trained and hold a relevant current licence from the appropriate State or Territory authority, and that all relevant State or Territory legislation is complied with. The Institution shall retain all such licences and shall provide them to the Commonwealth if required to do so.

Despite the preceding paragraph, the Institution is not obliged to reobtain or maintain licenses if the appropriate authority determines that the relevant portion of the Project is complete, and that such licenses are no longer required.

(iv) Administration to humans of drugs, chemical agents or vaccines

Any Project involving the above will be subject to prior clearance by the relevant Human Research Ethics Committee.

(v) Import of Experimental Organisms

The Institution must ensure that, before experimental organisms are imported into Australia for the purposes of a Project, the Institution or the Chief Investigator of the Project must obtain authorisation for the importation from the appropriate Commonwealth and State authorities.

(vi) Storage of Biological Materials

Any biological material accumulated during the course of a Project shall be transferred to an Australian body with statutory responsibility for control of such material. If no such body is available to take control of the biological material then the Institution shall dispose of the material in accordance with the Institution's established safeguards.

(vii) Genetic Manipulation

All work involving recombinant nucleic acids must conform to the requirements set out in the *Gene Technology Act 2000* (Cth) as amended from time to time.

If a Project involves the preparation and/or use of recombinant nucleic acids constructed *in vitro* from sources that do not ordinarily recombine genetic information, approval in writing by the Institution's Biosafety Committee must be obtained.

If a Project involves or concerns the use of recombinant DNA techniques on animals or humans then, before the proposed research commences, the

Institution shall ensure that the research has been approved by the relevant Ethics or Biosafety Committee of the Institution. The Institution shall retain all certificates of approval relating to the above and will provide such evidence to the Commonwealth if required to do so.

Statements of Compliance

The Institution must ensure that research under the Projects is conducted in accordance with the principles outlined in the following guidelines, codes and statements:

- (a) National Statement on Ethical Conduct in Research Involving Humans (NHMRC, 1999) or any replacement versions
- (b) Joint NHMRC/AVCC Statement and Guidelines on Research Practice (1997) or any replacement versions
- (c) Australian code of practice for the care and use of animals for scientific purposes (NHMRC, 2004)
- (d) Values and Ethics: Guidelines for ethical conduct in Aboriginal and Torres Strait Islander health research (NHMRC, 2003)
- (e) Ethical guidelines on the use of assisted reproductive technology in clinical practice and research (NHMRC, 2004)
- (f) Guidelines for Genetic Registers and Associated Genetic Material (NHMRC, 1999)
- (g) Guidelines for Ethical Review of Research Proposals for Human Somatic Cell Gene Therapy and Related Therapies (NHMRC, 2000)
- (h) Guidelines issued under section 95 of the *Privacy Act 1988* (Cth)
- (i) Guidelines approved under section 95A of the *Privacy Act 1988* (Cth)

ANNEXURE B

NATIONAL PRINCIPLES OF INTELLECTUAL PROPERTY MANAGEMENT FOR PUBLICLY FUNDED RESEARCH

**The Australian Research Council
The Australian Tertiary Institutions Commercial Companies Association
The Australian Vice-Chancellors' Committee
The Department of Education, Training and Youth Affairs
The Department of Industry, Science and Resources
IP Australia
The National Health and Medical Research Council**

Foreword

Introduction

Principles

- 1. Institutional Policies**
- 2. Identification of IP**
- 3. Protection of IP**
- 4. Ownership of IP**
- 5. Assessment of Existing IP**
- 6. Management of IP**
- 7. Sharing of Benefits**
- 8. Transparency and Reporting**
- 9. Potential Conflict of Interest**

Commercialisation of Research Findings

FOREWORD

Knowledge and research findings have become the most important resources, and the key elements, in the new business paradigm for economic development. The Government's strategic policy direction to reinforce research investment and commercialisation is clearly reflected in a number of reports and discussion papers, including, the *Health and Medical Research Strategic Review (Wills Report)*ⁱ; *Knowledge and Innovation: A policy statement on research and research training (White Paper)*ⁱⁱ; the Science Capability Review *Chance to Change*ⁱⁱⁱ; and the Innovation Action Plan: *Backing Australia's Ability*^{iv}. It has become essential, at both institutional and national levels, that appropriate principles and mechanisms are in place to identify, protect, develop and commercialise these resources.

To this end, a working party was established that comprises some key organisations involved with, or with an interest in the outcomes from, publicly funded research in Australia: the Australia Research Council (ARC), the Australian Tertiary Institutions Commercial Companies Association (ATICCA), the Australian Vice-Chancellors' Committee (AVCC), the Department of Education, Training and Youth Affairs (DETYA), the Department of Industry, Science and Resources (DISR), IP Australia and the National Health and Medical Research Council (NHMRC). These agencies have worked together to develop a consistent national framework for the management and the exploitation of intellectual property (IP) generated by publicly funded research.

The purpose of developing the National Principles of IP Management for Publicly Funded Research is to assist researchers, research managers and their research institutions, in ensuring that they have access to best practices for the identification, protection and management of IP, and therefore, to maximise the national benefits and returns from public investment in research.

It is important to emphasise that the public research funding agencies, including the ARC, the NHMRC and other government agencies, will continue to support the best research in the national interest and will continue to pursue the vision of advancing the nation's capacity for quality research for the economic, social and cultural benefit of the community. The ARC and the NHMRC do not wish to hold a stake in direct ownership of IP nor do they intend to benefit directly from commercial outcomes of the research funded through their financial support. The intention of the National Principles is simply to improve the commercial outcomes from publicly funded research where a commercial outcome is appropriate.

The National Principles are expected to evolve over time in the light of the experiences of the funding agencies, research institutions and researchers. Organisations may wish to develop their own detailed IP management strategies within the framework of these principles to best suit their particular environments and needs. The NHMRC recognises that further consideration needs to be given to intellectual property issues in health and medical research involving indigenous people and communities, and where research has the potential to benefit public health in an international context^v.

ⁱ The Health and Medical Research Strategic Review 'The Virtuous Cycle: Working together for health and medical research' (1999). Commonwealth of Australia

ⁱⁱ Knowledge and Innovation: A policy statement on research and research training (2000). Commonwealth of Australia

ⁱⁱⁱ Australian Science Capability Review, 'The Chance to Change' (2000). Commonwealth of Australia

^{iv} Backing Australia's Ability: an innovation action plan for the future (2001). Commonwealth of Australia

^v World Health Assembly Resolution WHA54.13 and (draft)A54/48, May 2001 http://www.who.int/wha-1998/EB_WHA/english/newANG_navigat.htm

INTRODUCTION

What is Intellectual Property (IP)?

IP is generally regarded as representing ‘... *the property of your mind or intellect.*^{vi}’
Methods for the protection and exploitation of IP include, but are not limited to:

- **patent** for new or improved products or processes;
- **copyright** for original material in literary, artistic, dramatic or musical works, and in other works that include films, broadcasts, multimedia and computer programs;
- **trade mark** for words, symbols, pictures, sounds, smells or a combination of these, to distinguish the goods and services of one trader from those of another;
- **design** for the shape or appearance of manufactured goods;
- **circuit layout right** for the 3-dimensional configuration of electronic circuits in integrated circuit products or layout designs;
- **plant breeder's right** for new plant varieties;
- **trade secret** including know-how, other confidential or proprietary information and background knowledge.

Many of the major issues concerning IP relate to the inventor's and/or owner's legal rights to exploit this property. Many of these issues, at least in the context of the university environment, have been canvassed in detail by the AVCC^{vii}.

Certain types of IP require registration with a relevant Government agency, for example patents, trademarks and designs. Other IP, such as copyright, does not, even though the rights associated with it are strongly established by legislation and legal precedent. Still other types of IP, for example trade secrets and know-how, can be protected only under the Common Law.

^{vi} IP Australia (2000)

^{vii} Australian Vice-Chancellors' Committee (1995) 'Ownership of Intellectual Property in Universities' - under review

PRINCIPLES

1. Institutional policies

Research institutions will have policies approved by their Governing Body relating to the ownership, protection and exploitation of IP.

2. Identification of IP

Research institutions will have procedures that provide support to publicly funded researchers so that they can recognise when their discoveries may have potential commercial value and provide for a review process to identify IP that can be protected and/or exploited.

3. Protection of IP

Research institutions will have policies that make clear to staff their responsibilities in relation to IP protection including, where appropriate the maintenance of research laboratory records and the prevention of premature public disclosure of research results prior to obtaining IP protection.

Institutions should provide, wherever possible, assistance to researchers in fulfilling these obligations and responsibilities as well as rewarding and encouraging their participation in any subsequent commercialisation process.

4. Ownership of IP

Public funding agencies should have a clear policy on whether they will claim any ownership and/or associated rights for IP generated from their supported research. Recognising the Common Law rights of research institutions as employers, the ownership and the associated rights of all IP generated by the NHMRC and the ARC supported research will initially be vested in the research institutions administering the grants.

Research institutions will have policies and relevant procedures in place for determining the subsequent ownership and/or assignment of IP rights, and will have clear agreements with employees and grant holders registered through the research institutions on ownership and/or associated rights of IP.

Research institutions will also have clear policies and agreements in place regarding students including postgraduate students, who are not covered under the Common Law in this context, on ownership of IP generated during their course of study, research and training. Particular attention should be given to cases where IP impinges or potentially impinges on the cultural, spiritual or other aspects of indigenous peoples.

5. Assessment of existing IP

Institutions will have procedures in place to guide researchers in assessing the existing IP in the field that is likely to affect their research in order to determine their freedom to operate in that field of research.

6. Management of IP

Research institutions will have procedures for the regular review of IP and associated commercial activities and outcomes arising from publicly funded research.

Research institutions will have procedures in place to provide advice to the creators of the IP on the options that are available for commercialising IP.

7. Sharing of benefits

Research institutions will have policies that recognise the rights and needs of all stakeholders involved in the research supported by public funds.

These policies will define the way in which benefits from the development and exploitation of the IP will be allocated.

8. Transparency and reporting

In order for funding agencies to fulfil their reporting requirements to the government on the outcomes of the funded research, research institutions must be in a position to report annually on IP management of their publicly funded research.

9. Potential conflict of interest

Research institutions will have policies and procedures that provide guidance in relation to potential conflicts of interest concerning ownership, management, protection and exploitation of IP.

COMMERCIALISATION OF RESEARCH FINDINGS

Research institutions, and where appropriate, individual researchers, are expected to consider the most appropriate way of exploiting the IP generated from publicly funded research. It is acknowledged that there is no single 'best approach' for commercialising (or exploiting) IP, and each case should be considered individually. Options range from exclusive and non-exclusive licences, research agreements or contracts through to joint ventures or the establishment of spin-off companies.

SCHEDULES TO THIS DEED OF AGREEMENT

SIGNATURE BLOCK FOR SCHEDULE

(Note references in the Schedule are to clauses in the NHMRC Research Funding Schemes Deed Version 4)

This Schedule is made on the day of 200....

The parties agree to be bound by the terms and conditions set out in the Deed dated *{insert date Deed was signed}*

IN WITNESS WHEREOF the Parties have executed this Schedule as a DEED

SIGNED, SEALED AND DELIVERED)
on behalf of the COMMONWEALTH)
OF AUSTRALIA by:)

.....)
(print name))

.....)
(Signature))

.....)
(position))

in the presence of:)

.....)
(print name))

.....)
(Signature))

.....)
(position))

SIGNED, SEALED AND DELIVERED)
on behalf of the)

.....)
(Institution Name))

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

.....)
(Signature))

.....)
(position))

in the presence of:)

.....)
(print name))

.....)
(Signature))

.....)
(position))