Australian Government

Department of Health

FUNDING AGREEMENT

BETWEEN

THE COMMONWEALTH OF AUSTRALIA

and

[*INSERT NAME OF ADMINISTERING INSTITUTION*]

Regarding provision of Funding from the Medical Research Future Fund (MRFF) for Research Activities

Effective [*to be inserted*]

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THIS AGREEMENT is made on the……. day of …… 2019….

BETWEEN THE

COMMONWEALTH OF AUSTRALIA (the Commonwealth) as represented by the Minister who administers the *National Health Act 1953* (Cth) or his or her delegate (ABN 83 605 426 759)

AND

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

ACN or ABN: ……..

of: (insert address)……..

WHEREAS:

A. The *Medical Research Future Fund Act 2015* (the **Act**) provides for the establishment of the Medical Research Future Fund Special Account (**MRFF Special Account**) and the Medical Research Future Fund Health Special Account (the **Account**). Having regard to the Australian Medical Research and Innovation Priorities and other matters specified in section 15A of the Act, the Health Minister (or his or her delegate under s61A of the Act) may require the Finance Minister to debit a specified amount from the MRFF Special Account for the purpose of transferring that amount to the Account.

B. Section 26 of the Act requires that as soon as practicable after that amount is credited to the Account, the Health Minister (or his or her delegate under s61A of the Act) has put administrative arrangements in place to ensure that the Account is debited for the purpose of providing one or more grants (**Funding**) from the Account, for the purposes of supporting medical research and medical innovation, to a body of a kind described in section 24 of the Act. The Administering Institution is a body of a kind described in section 24 of the Act.

C. Section 27 of the Act provides that the terms and conditions on which the Funding is to be provided from the Account to a body of a kind described in section 24 of the Act are to be set out in an agreement between that body and the Commonwealth and that the Health Minister (or his or her delegate under section 61A of the Act) may enter into that agreement on behalf of the Commonwealth. This Agreement is such an agreement for the purpose of section 27 of the Act.

D. In accordance with section 61A of the Act, the Health Minister has delegated his or her powers and functions under s15A, 26 and 27 of the Act to individuals holding specific Senior Executive Service (**SES**) positions within the Department of Health and NHMRC.

E. In accordance with clause 2.3 and 4 of this Agreement, the Department of Health has appointed NHMRC to administer this Agreement on behalf of the Commonwealth.

F. The Administering Institution is required to account for all Funding it and its Participating Institutions receive under this Agreement.

G. In accordance with the terms of this Agreement, the Administering Institution must use the Funding in support of the purpose and objectives of each Scheme as specified in the Funding Policy for that Scheme or as otherwise set out in the Schedule. In accordance with section 27 of the Act, the Administering Institution acknowledges that it is required to comply with all of its obligations under this Agreement, including but not limited to:

   a. managing and being accountable for the Funds;

   b. conducting the Research Activities in an ethical manner in accordance with NHMRC Approved Standards and Guidelines and all applicable Commonwealth and State and Territory laws and regulations;

   c. maintaining a high standard of governance;

   d. ensuring its Participating Institutions perform the Research Activities and administer the Funds so as to give effect to this Agreement; and

   e. providing information, advice and Reports to Health, and obtaining approvals from Health as required under this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions

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

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

"Account" means the Medical Research Future Fund Health Special Account established under section 23 of the Act;

"Acquittal Statement" has the meaning given in clauses 10.11 to 10.14;

"Act" means the *Medical Research Future Fund Act 2015* (Cth);

“Additional Report” has the meaning given in clause 10.24;

"Administering Institution" means the organisation that is a Party to this Agreement and which must be an Eligible Institution and, where the context permits, includes its Personnel;

"Administering Institutions Policy" means the document of that name issued, and amended from time to time, by NHMRC;

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

"Annual Financial Statement" has the meaning given in clauses 10.3 to 10.6;

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

"Approved Auditor" means a person who is:

a. registered as a company auditor under the *Corporations Act 2001* (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia, the Institute of Public Accountants or CPA Australia; and

b. not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the Administering Institution or of a related body corporate (the terms 'related entity' and 'related body corporate' have the same meaning as in section 9 of the *Corporations Act 2001* (Cth)); and

c. not an accountant of the Administering Institution or a Participating Institution;

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

a. People Support Scheme – the amount and purpose of the Funds for the Research Activity that have been approved by Health as specified in the Research Activity's Schedule; and

b. Research Support Scheme or any Other Scheme – the budget contained in the Application for that Research Activity to the extent that budget has been approved by Health;

"Asset" means:

a. any item of property (including Equipment and animals) which has a GST-exclusive cost of more than $10,000; and

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

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

"Audited Financial Statement" has the meaning given in clauses 10.15 to 10.17;

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

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

"**Australian Medical Research and Innovation Priorities**" means the priorities determined under section 32E of the Act;

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

"Bankruptcy Act" means the *Bankruptcy Act 1966* (Cth);

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

a. a change in its actual or beneficial ownership or control; and

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

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

"Chief Investigator" means, in respect of a Research Activity that is funded under a Research Support Scheme, each person specified in the Schedule for that Research Activity, or subsequently approved by Health using the RGMS, as such and includes, without limitation, the Chief Investigator (A) for the Research Activity;

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

"Commonwealth" means the Commonwealth of Australia;

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

"Commonwealth Purposes" means the following:

a. Health or NHMRC verifying and assessing funding proposals, including an Application;

b. Health or NHMRC administering, Monitoring, reporting on, auditing, publicising and evaluating a funding program, including a Scheme;

c. Health or NHMRC preparing, managing, reporting on, auditing and evaluating agreements under a Scheme, including this Agreement;

d. Health or NHMRC Monitoring, reporting on, auditing, publicising and evaluating projects funded under a Scheme, including a Research Activity;

e. Health or NHMRC developing and publishing policies, programs, guidelines and reports, including annual reports;

f. Health or NHMRC providing information about a Scheme, an agreement under a Scheme or a project funded under a Scheme, including to:

    i. a Minister of the Australian Government or the Commonwealth Parliament; or

    ii. the public, including through the NHMRC website and the Health website;

g. Health or NHMRC disclosing information that Health or NHMRC is authorised or required by law to disclose;

h. any other activity of Health or NHMRC that gives effect to a function of a Minister or Health, under the Act;

i. Health or NHMRC disclosing information to another Commonwealth agency for its internal purposes where this serves the Commonwealth's legitimate interests; and

j. for avoidance of doubt, includes NHMRC providing information to Health for any of the purposes identified above;

but, in all cases:

k. excludes the commercialisation (being for-profit use) of the Research Material by the Commonwealth; and

l. excludes Health disclosing any Confidential Information contained in an Application or a Report except as permitted under clause 27.

"Confidential Information" means any information which the Parties agree in writing is confidential and that is by its nature confidential;

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

"Corporations Act" means the *Corporations Act 2001* (Cth);

"Direct Research Costs" means direct research costs as described in the NHMRC Direct Research Costs Guidelines as well as any direct research costs described in the Funding Policy for the relevant Scheme;

"Eligible Institution" means, in respect of a Scheme, an organisation that is described in s 24 of the Act and that also meets all of the requirements specified in the Administering Institutions Policy as well as those specified in the Funding Policy for that Scheme;

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

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

"Fellow" means a person who is specified as a ‘Fellow’ in the Schedule for a Research Activity that is funded under a People Support Scheme;

"Final Report" has the meaning given in clauses 10.20 and 10.21;

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

"Funds" or **"Funding"** means the amount payable under this Agreement in accordance with the Act for the Research Activities specified in the Schedules;

"Funding Condition" means a condition, standard or guideline specified in a Schedule (or an attachment to a Schedule), or imposed by Health, in respect of a

Research Activity and with which the Administering Institution is required to comply in respect of that Research Activity;

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

"Funding Period" means, in respect of a Research Activity, the time period set out in the relevant Schedule for the performance of that Research Activity as may be amended or extended under clause 5 of this Agreement;

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

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

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

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

"Health" means the Commonwealth acting through the Department of Health, ABN 83 605 426 759 and pursuant to clause 4, includes a reference to NHMRC;

"**Health Delegate**" means an SES (Senior Executive Service) officer within Health to whom the Health Minister has delegated his or her power under section 27 of the Act to enter into agreements for the provision of Funding in accordance with s61A of the Act;

"Health Minister" means the Commonwealth Minister who, from time to time, administers the *National Health Act 1953* (Cth) or his or her delegate under s61A of the Act;

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

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

"Infrastructure Support" means the provision of any funding by Health for research activities that involves the acquisition, management and/or use of infrastructure;

"Institutional Annual Compliance Report" means the report of that name described in clauses 10.22 and 10.23;

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

"Intellectual Property" includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and

unregistered trademarks (including service marks), registered designs and circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields but excludes Moral Rights and rights in relation to Confidential Information;

"Interest" (in clauses 8.11, 15.2 and 16.6) means interest calculated at an interest rate equal to the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points, on a daily compounding basis;

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

“Misconduct” includes Research Misconduct and fraudulent conduct.

“Misconduct Policy” means the document entitled *NHMRC Policy on Misconduct related to NHMRC Funding* issued, and amended from time to time, by NHMRC;

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

a. is false, including making a false claim in relation to a publication record (e.g. describing a paper as being ‘in press’ or ‘accepted’ if it has only been submitted);

b. is based upon a fictitious track record, fabrication or falsification of data (even if published) or plagiarism;

c. inflates funds obtained from other sources; and/or

d. omits or fails to disclose relevant information;

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

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

a. the right of attribution of authorship;

b. the right of integrity of authorship; and

c. the right not to have authorship falsely attributed;

"MRFF" means the Medical Research Future Fund established under the Act;

"New Institution" means the Eligible Institution to which a Research Activity and its Funding are transferred as agreed by the Administering Institution, that Eligible Institution and Health in accordance with clause 5.19;

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

"NHMRC Act" means the *National Health and Medical Research Council Act 1992* (Cth);

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

a. Australian Code for the Responsible Conduct of Research (2018);

b. Australian code for the care and use of animals for scientific purposes 8th edition (2013);

c. National Statement on Ethical Conduct in Human Research (2007 – updated May 2015);

d. Guidelines approved under Section 95A of the *Privacy Act 1988* (2014);

e. Guidelines under Section 95 of the *Privacy Act 1988* (2014);

f. National Principles of Intellectual Property Management for Publicly Funded Research (2013);

g. Policy on the Care and Use of Non-Human Primates for Scientific Purposes (2003);

h. Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research (2003); and

i. Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research (2007);

as may be introduced, amended or replaced from time to time by NHMRC in accordance with clause 18.2;

“NHMRC Delegate” means an SES (Senior Executive Service) officer within NHMRC to whom the Health Minister has delegated his or her power under section 27 of the Act to enter into agreements for the provision of Funding in accordance with s61A of the Act;

“NHMRC Direct Research Costs Guidelines” means the guidelines of that name, which are published on the NHMRC website and which describe direct research costs as amended from time to time;

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

“Other Scheme” means any other funding scheme or grant opportunity funded by Health under the MRFF and administered under this Agreement and includes any future Infrastructure Support;

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

"Party" means a party to this Agreement being the Commonwealth and the Administering Institution;

"People Support Scheme" means an NHMRC-managed Scheme under which funding is provided by Health under the MRFF for research activities that provide post-graduate training, post-doctoral training, career development or other opportunities to individual researchers;

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

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

"Probity Event" means any event or occurrence which:

a. has a material adverse effect on the integrity, character or honesty of the Administering Institution, a Participating Institution or Personnel involved in a Research Activity; or

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

"Progress Report" has the meaning given in clauses 10.18 and 10.19;

"Register of Administering Institutions" means NHMRC's register of organisations that comply with the requirements of NHMRC's Administering Institutions Policy;

"Reports" means all of the reports, statements and acquittals described in clause 10;

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

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

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

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

"Research Support Scheme" means a Scheme that supports health and medical research and under which funding is provided by Health under the MRFF for research activities that are carried out by individuals or teams of researchers (including Chief Investigators and, where a Scheme's Funding Policy allows, Fellows, Scholars and other researchers). The MRFF's Lifting Clinical Trials and Registries Capacity program and Antimicrobial Resistance Targeted Call for Research program, are examples of Research Support Schemes;

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

"RGMS" means the system used by NHMRC to manage research grants, including any Funds provided under this Agreement and includes any replacement systems;

"Salary Support Package" means, in respect of a Research Activity, the Funds for the salaries or Stipends and related costs of the Research Activity's Personnel identified in the Approved Budget for the Research Activity;

"Schedule" means a document signed by the Parties (including in accordance with clauses 2.3 and 4), which is substantially in the form of, and contains the information required by, the template provided by Health and includes any attachment to the Schedule;

"Scheme" means a funding scheme or grant opportunity administered by NHMRC and funded by the MRFF, including:

a. a Research Support Scheme;

b. a People Support Scheme; and

c. any Other Scheme;

"Scholar" means a person who is specified as a Scholar in the Schedule for a Research Activity that is funded under a People Support Scheme;

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

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

"Summary" means, in respect of a Research Activity, a summary of the Research Activity that the Administering Institution is required to provide to Health, prior to the commencement of the Research Activity, which Health may use to provide information to the general public and others about the Research Activity; **"Transfer Acquittal Statement"** has the meaning in clauses 10.8 to 10.10;

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

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

2. Interpretation

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

a. words in the singular number include the plural and words in the plural number include the singular;

b. words importing a gender include any other gender;

c. words importing persons include a partnership and a body whether corporate or otherwise;

d. clause headings and words capitalised or in bold or italic format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;

e. all references to clauses are to clauses in this Agreement, and all references to items are references to items in a Schedule to this Agreement;

f. all references to dollars are to Australian dollars and this Agreement uses Australian currency;

g. reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, replaced or supplemented, is a reference to that statute or other legislation as amended, replaced or supplemented;

h. where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and

i. to the extent that a clause in this Agreement requires a Research Activity Funded under a Research Support Scheme to be conducted in accordance with the Application for that Research Activity, that clause does not itself require the Administering Institution to comply with the Approved Budget for that Research Activity.

2.2. The Parties intend and agree that each Schedule that they sign after the date they execute this Agreement is to be incorporated into, and form part of, this Agreement on and from the date that the NHMRC Delegate signs that Schedule in accordance with clause 2.3. A separate Schedule may be signed for each Research Activity or Scheme under which Health provides Funding to the Administering Institution. If Health agrees to provide funds for a new research project under a Scheme:

a. the NHMRC Delegate and the Administering Institution may sign a new Schedule that sets out, or refers to another Schedule that set outs, that project; or

b. the NHMRC Delegate and the Administering Institution may sign a new Schedule for that Scheme, in which case that new Schedule will replace any earlier Schedule that was signed in respect of that Scheme.

2.3. The Parties intend and agree that new Schedules and variations (including replacement) of existing Schedules can be agreed and signed electronically by the NHMRC Delegate and the Administering Institution using the RGMS, and that Schedules and variations (including replacement) of Schedules that are so signed electronically using the RGMS are legally binding.

2.4. Where this Agreement provides that something can be done using the RGMS, it must be done in accordance with any requirements of the RGMS and any instructions provided by Health or NHMRC.

2.5. If a Party does not exercise (or delays in exercising) any of its rights under this Agreement or at law, that failure or delay does not operate as a waiver of those rights.

2.6. A single or partial exercise by a Party of any of its rights under this Agreement or at law does not prevent the further exercise of any right.

2.7. If a court or tribunal says any provision of this Agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate any other provision within the Agreement.

2.8. Any uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a Party just because that Party prepared the provision.

2.9. This Agreement is subject to the Act. To the extent of any inconsistency between this Agreement and the Act, the Act prevails.

2.10. The laws of the Australian Capital Territory apply to this Agreement.

2.11. This Agreement constitutes the entire agreement between the Parties in relation to its subject matter and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement.

2.12. If a requirement specified in the following list conflicts with any other requirement specified in the list, then the requirement that is specified earlier in the list shall take precedence in the event of any inconsistency between the two:

a. a provision of the Act;

b. a Funding Condition for a Research Activity specified in the Schedule for that Research Activity;

c. a clause of this Agreement;

d. any item (other than a Funding Condition) specified in the Schedule for a Research Activity;

e. a requirement in the Administering Institutions Policy;

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

g. a requirement in the Funding Policy for the relevant Scheme; and

h. a requirement in the Misconduct Policy.

2.13. Except to the extent expressly specified otherwise in the relevant Funding Policy, the Parties intend and agree that all NHMRC policies including:

a. the Misconduct Policy;

b. the NHMRC Approved Standards and Guidelines;

c. the NHMRC Direct Research Costs Guidelines; and

d. any other policies referred to in this Agreement or otherwise notified by Health to the Administering Institution,

apply to this Agreement and the Research Activity to the maximum extent possible and as if:

e. a reference to 'NHMRC Funding' or 'NHMRC Funds' includes a reference to 'MRFF Funding' or 'MRFF Funds';

f. a reference to 'NHMRC Funding Agreement' includes a reference to this Agreement;

g. a reference to 'NHMRC' includes a reference to 'Health'; and

h. any references to the 'Commissioner of Complaints' were omitted and, if it is not already provided for in the relevant NHMRC policy, a reference to the Commonwealth Ombudsman is inserted.

3. Term

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

4. Administration of this Agreement

4.1. The Administering Institution acknowledges that, without limiting Health's ability to exercise any or all of the Commonwealth's rights or perform any of its functions or obligations under this Agreement itself, Health may, in its absolute discretion, appoint one or more persons to administer any or all aspects of this Agreement on the Commonwealth's behalf, including exercising any or all of Health's rights and performing any or all of its functions or obligations under this Agreement.

4.2. As at the commencement of this Agreement and until Health notifies the Administering Institution in writing otherwise, Health appoints NHMRC pursuant to this clause 4 to

administer all aspects of this Agreement and act on the Commonwealth's behalf for the purposes set out in clause 4.1, including:

a. the NHMRC Delegate agreeing and signing Schedules electronically on behalf of the Commonwealth through the RGMS in accordance with clause 2.3; and

b. communicating with the Administering Institution on behalf of Health including through RGMS.

4.3. The Administering Institution acknowledges that a reference to 'Health' in this Agreement includes a reference to NHMRC whilst it is appointed by Health pursuant to this clause 4 unless the contrary intention appears.

5. Performance of the Agreement and Research Activities

5.1. The Administering Institution must fully comply, at all times during the term of this Agreement, with the Administering Institutions Policy.

5.2. The Administering Institution must ensure that each Research Activity is carried out in an ethical, responsible, diligent and competent manner, and in accordance with this Agreement, the Administering Institutions Policy, the Funding Policy that applies to the Scheme under which the Research Activity is Funded, any Funding Conditions that apply to the Research Activity and all applicable NHMRC Approved Standards and Guidelines (including obtaining, maintaining and complying with any Institutional Approvals).

5.3. The Administering Institution must also ensure that each Research Activity is conducted in accordance with the Application for that Research Activity, subject to any revisions to the Application approved or required by Health and subject also to clauses 2.1(i) and 8.15 of this Agreement.

5.4. Where the Administering Institution consists of more than one person, those persons agree to be jointly and severally bound by the terms of this Agreement.

5.5. The Administering Institution shall ensure that each Research Activity is performed within the Funding Period for that Research Activity. The Funding Period for any Research Activity may not be varied by Health without it giving reasonable advance written notice to the Administering Institution.

5.6. For each Research Activity, the Administering Institution must ensure:

a. the provision of the assistance, resources, facilities and services specified in the Application or necessary for the efficient conduct of the Research Activity including:

i. accommodation (e.g. a laboratory and office that is suitably equipped and furnished for the Research Activity);

ii. access to a basic library collection, standard reference materials and funding for abstracting services;

iii. provision of computers, including laptops, and basic computing facilities such as printers, word processing and other standard software; and

iv. use of photocopiers, telephones, mail, fax, email and internet services; and

b. in addition to meeting all Direct Research Costs for the Research Activity, that all other expenses are met as required to support the Research Activity (including,

but not limited to, administration, insurance, rent, taxes, repairs, salaries, communications and utility charges that relate to the Administering Institution's or a Participating Institution's business as a whole but are not Direct Research Costs).

5.7. The Administering Institution represents and warrants that it will ensure that there are security policy and procedures in place to:

a. prevent unauthorised access to all locations at which any part of a Research Activity is conducted;

b. protect all information technology hardware and software associated with a Research Activity; and

c. prevent unauthorised access to documents and data (including research information and experiment details) pertaining to a Research Activity.

Commencement

5.8. The Administering Institution must ensure that a Research Activity commences no later than the commencement date specified in the Schedule for that Research Activity (or as otherwise approved by Health under clause 5.9).

Deferment

5.9. If the Administering Institution wishes to defer commencement of a Research Activity beyond the commencement date specified in the Schedule for the Research Activity, or the commencement date previously approved by Health under this clause 5.9, the Administering Institution must submit a request to Health using the RGMS, and where possible, prior to the existing commencement date. Health may at its sole discretion approve or reject a deferral request using the RGMS. The Parties may use the RGMS to vary this Agreement to reflect the deferral.

Suspension

5.10. If the Administering Institution wishes to suspend performance of a Research Activity during the Research Activity's Funding Period, the Administering Institution must submit a request to Health using the RGMS, and where possible, prior to the proposed start of the suspension. Health may at its sole discretion approve or reject a suspension request using the RGMS and may suspend the payment of Funding for that Research Activity for the period of the suspension. The Parties may use the RGMS to vary this Agreement to reflect the suspension.

Extensions

5.11. If an Administering Institution wishes to extend a Research Activity's Funding Period, the Administering Institution must submit a request to Health using the RGMS, and where possible, prior to the existing completion date for that Funding Period. Health may at its sole discretion approve or reject an extension request using the RGMS. The Parties may use the RGMS to vary this Agreement to reflect the extension.

Personnel

5.12. Unless the Chief Investigator (A) or Fellow for a Research Activity is an employee of the Administering Institution or a Participating Institution, the Administering Institution must enter into a legally enforceable written agreement with the Chief Investigator (A)

or Fellow in respect of the conduct of the Research Activity and the expenditure of the Funds for the Research Activity which requires the Chief Investigator (A) or Fellow to act in a manner that is consistent with, and enables the Administering Institution to give effect to, all of the Administering Institution's obligations under this Agreement.

5.13. The Administering Institution must ensure that the Specified Personnel for a Research Activity perform the Research Activity in accordance with the Application and this Agreement.

5.14. Where a Specified Person is unable to perform, or to continue to perform, all or part of a Research Activity, Health may request the Administering Institution arrange for a replacement Specified Person who is acceptable to Health, to perform all or part of the Research Activity at no additional cost to Health and the Administering Institution must promptly comply with any such request. If Health does not consider a Research Activity viable without the contribution of a particular Specified Personnel who ceases to perform all or part of a Research Activity, Health may take action under clause 16.

5.15. The Administering Institution must ensure that Personnel who are employed full-time on a Research Activity, and in respect of whom a Salary Support Package is provided for that Research Activity, do not accept any remuneration from any source other than the Administering Institution or a Participating Institution in respect of the Personnel's work on the Research Activity without the prior agreement of Health or unless otherwise permitted under the relevant Scheme's Funding Policy. In this clause 5.15 'remuneration' excludes income generated from the exploitation of Intellectual Property rights in the Research Activity's Existing Material.

5.16. In respect of Personnel:

a. the provision of salaries, recreation leave, sick leave and other conditions of employment for those Personnel shall be determined by the Administering Institution or a Participating Institution; and

b. the provision of all salaries and related costs and expenses remains the responsibility of the Administering Institution or a Participating Institution.

Transfers

5.17. The Parties acknowledge that:

a. a Specified Person for a Research Activity that is Funded under a People Support Scheme; and

b. a Chief Investigator (A) for a Research Activity that is Funded under a Research Support Scheme,

may, at any time, make a Transfer Application to his or her Administering Institution for the transfer of the conduct of that Research Activity, and the Funding for that Research Activity, to another Eligible Institution.

5.18. The Administering Institution must do all things necessary and complete and sign all necessary documents to facilitate the making of a Transfer Application by a Specified Person referred to in clause 5.17. The Administering Institution will notify Health of its receipt of a Transfer Application from a Specified Person. The Administering Institution may make its own submissions to Health in relation to a Transfer Application.

5.19. Funding for a Research Activity that is the subject of a Transfer Application will only be transferred from the Administering Institution to another Eligible Institution if Health, the Administering Institution and the Eligible Institution each agree in writing to the Transfer Application, in which case:

a. the Eligible Institution will become the New Institution;

b. Health will cease or reduce the Funding for that Research Activity to the Administering Institution by such an amount as Health, in its absolute discretion, thinks appropriate as a result of the Transfer Application;

c. the Schedule for the Research Activity will be amended by Health to reflect the transfer of the Research Activity, and its remaining Funding, from the Administering Institution to the New Institution in accordance with clause 18.1; and

d. the Administering Institution:

i. must do all things necessary and complete and sign all necessary documents, including the Transfer Acquittal Statement to give effect to the Transfer Application (including providing the New Institution with access to the Assets, records, Material and Intellectual Property rights necessary to enable the Research Activity to be undertaken at the New Institution and assisting the New Institution enter into agreements with the Participating Institutions that are working on that Research Activity that meet the requirements specified in the New Institution's funding agreement with Health);

ii. must transfer to the New Institution any Funds the Administering Institution has received in respect of the Research Activity and has not spent or committed for the Research Activity in accordance with this Agreement up to the date of the transfer; and

iii. remains responsible for the Funds it spent and committed for the Research Activity prior to the date of the transfer.

5.20. Health shall not be liable to pay any costs or compensation to the Administering Institution resulting from any action it takes in relation to a Transfer Application.

6. Formal Agreements with Participating Institutions and other third party agreements

6.1. Notwithstanding that the Administering Institution may have subcontracted some or all of its obligations under this Agreement (including to its Participating Institutions), the Administering Institution remains responsible to Health for the performance of this Agreement (including the performance of the Research Activities and the administration of the Funds) and is required to do all things incidental or reasonably necessary to give effect to this Agreement.

6.2. The Administering Institution must enter into a Formal Agreement with each Participating Institution that is performing any part of the Administering Institution's Research Activities.

6.3. The Administering Institution acknowledges that it has an on-going obligation to monitor and report on each Participating Institution's adherence to the terms of its Formal Agreement with the Administering Institution.

6.4. Health is under no obligation to assist with, participate in or facilitate any arrangements that the Administering Institution makes with a Participating Institution or any other third party in relation to a Research Activity. The Administering Institution must not:

a. allow a Participating Institution to commence performing any part of a Research Activity; nor

b. provide Funding to that Participating Institution for that Research Activity,

until the Administering Institution has entered into a Formal Agreement with that Participating Institution for that Research Activity. The Administering Institution must retain a copy of each Formal Agreement it makes with a Participating Institution (and any other agreement it makes with a third party) in relation to its Research Activities and make them available to Health as and when required.

6.5. Subject to clause 6.7, each Formal Agreement that the Administering Institution has with a Participating Institution must require the Participating Institution to act in a manner that is consistent with, and enables the Administering Institution to give effect to, all of the Administering Institution's obligations under this Agreement. Without limiting the breadth of this clause 6.5, each Formal Agreement must:

a. specify the Funding to be provided by the Administering Institution to the Participating Institution for the Research Activity as well as the role of, and any financial or in-kind contribution to be provided by, the Participating Institution for the Research Activity;

b. outline the part of the Research Activity to be undertaken by the Participating Institution;

c. outline each of the Administering Institution's and Participating Institution's responsibilities for the payment of salaries and any Stipends for the Specified Personnel for that Research Activity;

d. outline the respective roles and responsibilities of Personnel from the Administering Institution and the Participating Institution to ensure sound research governance, including notification of Misconduct in accordance with the Misconduct Policy and notification and management of breaches of the *Australian Code for the Responsible Conduct of Research (2018)*;

e. require the Participating Institution to deal with the Funds it receives from the Administering Institution in the same way as the Administering Institution is required to deal with the Funding under clause 8 of this Agreement (except that the Participating Institution is required to provide information to, and seek approval from, the Administering Institution rather than Health);

f. require the Participating Institution to repay to the Administering Institution any Funds provided by the Administering Institution to the Participating Institution for a Research Activity that the Participating Institution has not spent on the Research Activity in accordance with its Formal Agreement;

g. require the Participating Institution to provide the Administering Institution with the information that the Administering Institution requires to provide the Reports required under clause 10 of this Agreement in relation to the Research Activities;

h. require the Participating Institution to provide the Commonwealth with the access specified in clause 12 of this Agreement;

i. describe the Intellectual Property arrangements between the Administering Institution and the Participating Institution that will apply to the outcome or results generated by the Research Activity. Such arrangements must comply with the *National Principles of Intellectual Property Management for Publicly Funded Research (2013)* and in a manner that is consistent with, and gives effect to, clause 13 of this Agreement;

j. require the Participating Institution to cooperate with the Administering Institution in relation to any allegations of Research Misconduct;

k. require the Participating Institution to use the MRFF logo and acknowledge the Funding consistently with the requirements in clause 21; and

l. provide that if this Agreement is terminated or reduced in scope, the Formal Agreement will be similarly terminated or reduced in scope.

6.6. The Administering Institution must advise Health if a Formal Agreement between the Administering Institution and a Participating Institution is terminated, suspended or expires.

6.7. Where a Participating Institution:

a. is not incorporated or established in Australia;

b. will perform its part of a Research Activity solely in a country other than Australia; and

c. will not receive any Funds for its performance of part of the Research Activity,

the Administering Institution need not comply with clause 6.5 in respect of the Participating Institution's involvement in that Research Activity provided that the Formal Agreement between the Administering Institution and the Participating Institution:

d. outlines the part of the Research Activity that is to be undertaken by the Participating Institution;

e. states that no Funding will be paid to the Participating Institution for its performance of that Research Activity; and

f. requires the Participating Institution to comply with either:

i. the NHMRC Approved Standards and Guidelines; or

ii. other research policies, standards and guidelines that apply in the country in which the Participating Institution is performing its part of the Research Activity and which the Administering Institution reasonably considers at least meet the requirements of the NHMRC Approved Standards and Guidelines.

7. Payment of Funds

7.1. Subject to sufficient appropriation and the terms of this Agreement, Health agrees to pay the Funds for a Research Activity to the Administering Institution.

7.2. Payment of Funds for a Research Activity will be made monthly within the month to which the payment relates unless the relevant Schedule specifies an alternative payment arrangement for that Research Activity, in which case that alternative payment arrangement will apply.

7.3. Health may, at its sole and absolute discretion, make a payment of Funds for a Research Activity before it would otherwise be due under this clause 7.

7.4. Indexation may be applied to the Funds for a Research Activity as specified in the Schedule for that Research Activity.

8. Use of and Accountability for Funds and Other Contributions

8.1. Funds may only be used for the Research Activity for which they are provided and then only in accordance with:

a. this Agreement;

b. the Funding Policy for the Research Activity's Scheme; and

c. any Funding Conditions that apply to the Research Activity.

The Funds must not be used for any other purpose without the prior written approval of Health.

8.2. The Administering Institution must deposit Funding in a Bank account and maintain a separate accounting ledger for each Research Activity.

8.3. The Administering Institution must hold the Funds in a Bank account which it solely controls, unless it is prohibited from doing so by legislation or government regulation.

8.4. The Administering Institution must account for the Funds provided for each Research Activity and maintain up-to-date and accurate accounts and records for each Research Activity, in accordance with applicable Australian Accounting Standards.

8.5. As and when requested by:

a. Health;

b. a Specified Person for a Research Activity Funded under a People Support Scheme; or

c. the Chief Investigator (A) for a Research Activity Funded under a Research Support Scheme,

the Administering Institution must arrange for its and its Participating Institution's records for that Research Activity to be made available to the requesting person.

8.6. The Administering Institution must identify any overpayment of Funds that it receives under this Agreement and must notify Health of that overpayment within 20 Working Days of identifying the overpayment. Health may recover the amount of any overpayment from the Administering Institution in accordance with clause 16.

8.7. The Administering Institution must advise Health in a timely manner of any Other Contributions (including any other Commonwealth financial or in-kind assistance) that will be provided for a Research Activity.

8.8. Health may recover from the Administering Institution (under clause 16) any part of the Funding that has been provided for a particular purpose where Health considers that the Administering Institution or Participating Institution is also receiving other Commonwealth assistance for that purpose.

8.9. The Administering Institution is responsible for monitoring the expenditure of Funds. If at any time, a Responsible Officer for the Administering Institution considers that

Funds provided for a Research Activity are not being spent for the purpose of the Research Activity by the Administering Institution in accordance with this Agreement (or by a Participating Institution in accordance with its Formal Agreement), the Administering Institution must inform Health immediately and, unless Health directs otherwise, take all action necessary to cease or minimise further expenditure in relation to that Research Activity.

8.10. Any Funds that have not been spent or legally committed for the Research Activity by the Administering Institution in accordance with this Agreement (and, where the Funds for that Research Activity have been provided to a Participating Institution, that Participating Institution in accordance with its Formal Agreement) as at the completion of the Funding Period must, at Health's discretion, either be:

a. repaid to Health within 20 Working Days after the date of a notice from Health requiring the Administering Institution to repay those Funds; or

b. off-set by Health against one or more further payments of Funds under this Agreement.

8.11. If Funds that are required to be repaid under clause 8.10 are not repaid by the Administering Institution within the timeframe specified in that clause, Interest will accrue on the outstanding amount until it is repaid in full to Health. The Administering Institution agrees that any such Interest represents a reasonable pre-estimate of loss incurred by Health. Any amount that is not repaid in accordance with clause 8.10 may, at the absolute discretion of Health, be recovered as a debt due to Health without further proof of the debt being necessary.

8.12. Any expenditure incurred in respect of a Research Activity that exceeds the amount of Funding approved for that Research Activity is the responsibility of the Administering Institution. Health will not pay or reimburse any such excess costs under any circumstances.

8.13. The Administering Institution must ensure that any Other Contributions that are referred to in the Schedule for a Research Activity are provided or received as specified in the Application for that Research Activity (and, if additional Other Contributions details are set out in the Schedule, the Schedule).

People Support Scheme

8.14. Funds provided for a Research Activity under a People Support Scheme may only be spent on the Research Activity's Direct Research Costs. All such expenditure must comply with the Approved Budget for that Research Activity.

Research Support Scheme

8.15. Funds provided for a Research Activity under a Research Support Scheme may only be spent on the Research Activity's Direct Research Costs (as agreed by the Administering Institution and the Research Activity's Chief Investigator (A)). However, those Direct Research Costs may differ from those specified in the Approved Budget for that Research Activity.

Other Scheme

8.16. Except to the extent otherwise specified in a Funding Policy for a Research Activity under an Other Scheme, Funds provided for that Research Activity may only be spent

on its Direct Research Costs and all such expenditure must comply with the Approved Budget for that Research Activity.

9. Record Keeping

9.1. The Administering Institution must ensure that the appropriate Specified Personnel establish and maintain detailed and accurate records regarding the conduct of each Research Activity, including the creation and disposal of Intellectual Property rights and Assets and the use and management of the Funds provided for that Research Activity.

9.2. The records maintained in accordance with this clause 9 must include such information as is necessary to ensure the completion, and any future transfer of, the Research Activity.

9.3. The records for a Research Activity referred to in this clause 9 must be retained for a period of no less than five (5) years after the end of the Funding Period.

10. Reports

10.1. The Administering Institution must submit to Health the Reports specified in this clause 10 (and any other Reports that are specified in the relevant Schedule) in respect of each Research Activity and in the manner, within the timeframes, in the format, and containing the information, specified in this Agreement or the relevant Funding Policy or as otherwise specified by Health.

10.2. Each Report must be prepared by the Personnel specified in this Agreement or, if no such Personnel is so specified, suitably qualified and experienced Personnel engaged by the Administering Institution.

Financial Reports

Annual Financial Statements

10.3. The Administering Institution must submit a separate financial statement (Annual Financial Statement) for each Research Activity for each calendar year of the Funding Period, other than the last calendar year for that Research Activity, within the timeframe referred to in clause 10.1.

10.4. The Annual Financial Statement for a Research Activity must show the Administering Institution's and its Participating Institution's receipt and expenditure of all of the Funding attributable to the relevant calendar year for the Research Activity.

10.5. The Administering Institution's Chief Financial Officer (or his or her authorised delegate) must certify in the Annual Financial Statement that it has been prepared using accounts and records that were properly maintained in accordance with applicable Australian Accounting Standards.

10.6. The Administering Institution's Responsible Officer (or his or her authorised delegate) must certify in the Annual Financial Statement for a Research Activity that all Funds provided and spent for that Research Activity have been used for that Research Activity in accordance with the terms of this Agreement.

Carry Over of Unspent Funds

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

Transfer Acquittal Statements

10.8. If Health approves (and the Administering Institution and New Institution agree to) the transfer of a Research Activity to a New Institution, the Administering Institution must provide Health with a transfer acquittal statement (Transfer Acquittal Statement) within the timeframe referred to in clause 10.1. The Transfer Acquittal Statement must state the amount of Funds received and spent or committed for that Research Activity by the Administering Institution in accordance with the Agreement attributable up to the effective date of the transfer.

10.9. The Administering Institution's Chief Financial Officer (or his or her authorised delegate) must certify in the Transfer Acquittal Statement that it has been prepared using accounts and records that were properly maintained in accordance with applicable Australian Accounting Standards.

10.10. The Administering Institution's Responsible Officer (or his or her authorised delegate) must certify in the Transfer Acquittal Statement that all Funds provided to the Administering Institution for that Research Activity have been used for the Research Activity, or transferred to the New Institution for that Research Activity, in accordance with the terms of this Agreement.

Acquittal Statements

10.11. The Administering Institution shall, within the timeframe referred to in clause 10.1, and at any other time reasonably requested by Health, provide an acquittal statement (Acquittal Statement) in the form stipulated by Health, for all of the Funding received by the Administering Institution for that Research Activity.

10.12. The Acquittal Statement must comply with applicable Australian Accounting Standards and include a statement of income and expenditure in respect of the Funds received in respect of the Research Activity attributable to its entire Funding Period (or other period specified by Health) that is certified by the Chief Financial Officer (or his or her authorised delegate) and demonstrates:

a. the Administering Institution's receipt and expenditure of the Funds for that Research Activity; and

b. each of its Participating Institution's receipt and expenditure of the Funds for that Research Activity.

10.13. The Administering Institution's Chief Financial Officer (or his or her authorised delegate) must certify in the Acquittal Statement that it has been prepared using accounts and records that were properly maintained in accordance with applicable Australian Accounting Standards.

10.14. The Administering Institution's Responsible Officer (or his or her authorised delegate) must certify in the Acquittal Statement that all Funds provided for a Research Activity have been used for that Research Activity in accordance with the terms of this Agreement.

Audited Financial Statements

10.15. If requested by Health, the Administering Institution must, within the timeframe referred to in clause 10.1, provide Health with an audited financial statement (Audited Financial Statement) for all of the Funding received by the Administering Institution, and any Other Contributions provided, for a Research Activity. The Audited Financial Statement must show the income and expenditure in respect of the Funds and any Other Contributions received in respect of the Research Activity attributable to each calendar year of its Funding Period and include:

a. the Administering Institution's receipt and expenditure of the Funds provided for that Research Activity; and

b. each of its Participating Institution's receipt and expenditure of the Funds provided for that Research Activity.

10.16. Subject to clause 10.17, an Audited Financial Statement must:

a. use a financial statement that is prepared by the Administering Institution's Chief Financial Officer or other qualified accountant in accordance with applicable Australian Accounting Standards; and

b. be audited in accordance with Australian Auditing Standards by an Approved Auditor.

10.17. The Audited Financial Statement must be audited by an independent auditor unless Health consents, at its absolute discretion and prior to the due date for the Audited Financial Statement, to the Administering Institution's internal auditor, who must be registered as a company auditor under the Corporations Act 2001 (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia, the Institute of Public Accountants or CPA Australia, preparing the Audited Financial Statement. If Health so consents, the Administering Institution must ensure that:

a. its internal auditor submits the Audited Financial Statement directly to Health and certifies that this has occurred; and

b. its internal auditor receives instructions directly from Health on the conduct and scope of the audit.

Non-Financial Reports

Progress Reports

10.18. If requested by Health, the Administering Institution must ensure that progress reports (**Progress Reports**) are submitted in respect of the Research Activity within the timeframes referred to in clause 10.1.

10.19. If Health is not satisfied with the completeness or accuracy of the information supplied in a Progress Report, or the Administering Institution fails to provide a Progress Report as and when required under this Agreement, Health may require the Administering Institution to submit a more detailed, complete and accurate Progress Report within a timeframe specified by Health and may withhold, in accordance with clause 16, any further payment of Funds until that report is provided and accepted by Health. If the Administering Institution fails to provide the required complete and accurate Progress Report by the date specified by Health, Health may exercise any of its rights under clause 16.

Final Reports

10.20. The Administering Institution shall, within the timeframe and in the format referred to in clause 10.1, provide Health with a final report (**Final Report**) in respect of the Research Activity.

10.21. If a Final Report for a Research Activity is considered by Health to be inadequate, Health may seek further information (including a more detailed, complete and accurate Final Report) about the Research Activity from the Specified Personnel who worked on that Research Activity. If Health requires the Administering Institution to provide a more detailed, complete and accurate Final Report by the date specified by Health and the Administering Institution fails to do so, Health may exercise any of its rights under clause 16.

Institutional Annual Compliance Report

10.22. The Administering Institution shall, within the timeframe and in the format referred to in clause 10.1, for each calendar year provide a Report (**Institutional Annual Compliance Report**) that details the Administering Institution's, the Participating Institution's and the Specified Personnel's compliance with NHMRC Approved Standards and Guidelines.

10.23. If Health is not satisfied with the completeness or accuracy of the Institutional Annual Compliance Report Health may exercise any of its rights under clause 16.

Additional Reports

10.24. The Administering Institution is to provide Health with any other Report in respect of any Research Activity within the timeframe, in the format and containing the information referred to in clause 10.1.

11. Provision of information and evaluation

11.1. In addition to any other requirement in this Agreement, the Administering Institution must:

a. provide information to Health, as Health reasonably requires, and agrees it may be used for Commonwealth Purposes;

b. comply with all reasonable requests, directions, or Monitoring requirements issued by Health; and

c. co-operate with and assist Health in any review or other evaluation that Health undertakes of the Research Activities, the Funds or any Scheme or program funded under the MRFF.

11.2. The Administering Institution agrees that Health may conduct an evaluation of the outcome of a Research Activity and shall provide Health with any information relating to the Research Activity as Health may reasonably require for the evaluation.

12. Access to premises and documents

12.1. The Administering Institution must, at all reasonable times, ensure that Health or any person authorised in writing by Health (including the Auditor-General and the Information Commissioner) has:

a. access to:

i. the Administering Institution's and its Participating Institutions' employees, including but not limited to the Specified Personnel and any other Personnel working on a Research Activity;

ii. premises occupied by the Administering Institution, a Participating Institution and any other premises at which any part of a Research Activity is being conducted;

iii. information (including records and accounts) relevant to the Research Activities and the Funds; and

iv. Assets, Research Material and Incorporated Material; and

b. reasonable assistance to:

i. inspect the performance of any or all Research Activities;

ii. locate and inspect information (including records, accounts, Research Material and Incorporated Material) relating to any Research Activity or the Funds, the Administering Institution's compliance with this Agreement or a Participating Institution's compliance with its Formal Agreement; and

iii. make copies of any such information and remove those copies and use them for any purpose connected with this Agreement (including to confirm information contained in a Report, evaluate a Research Activity or audit expenditure of the Funds).

For clarity, this clause 12.1 does not require the Administering Institution to disclose, or require a Participating Institution to disclose, information of a third party (other than the Administering Institution or the Participating Institution) that is by its nature the Confidential Information of that third party.

12.2. The access rights in clause 12.1 are subject to:

a. the provision of any reasonable prior notice required by the Administering Institution (which must not exceed 5 Working Days); and

b. the Administering Institution's and/or a Participating Institution's reasonable security procedures.

12.3. If a matter is being investigated where, in the opinion of the Health Delegate or NHMRC Delegate, the Administering Institution or Participating Institution may be involved in an actual or suspected breach of the law in performance of the Research Activity, clause 12.2 will not apply.

12.4. Nothing in clauses 12.1 to 12.3 inclusive affects the obligation of Health and the Administering Institution to continue to perform their respective obligations under this Agreement unless otherwise agreed between them.

13. Intellectual Property

Intellectual Property policy

13.1. The Administering Institution must adhere to an Intellectual Property policy, approved by the Administering Institution's governing body, which has as one of its aims the maximisation of benefits arising from research.

13.2. The Administering Institution's Intellectual Property policy referred to in clause 13.1 must comply with the 'National Principles of Intellectual Property Management for

Publicly Funded Research 2013' (available on the NHMRC website) as amended from time to time.

Commonwealth Material

13.3. Ownership of all Commonwealth Material, including Intellectual Property rights in that Material and the MRFF logo referred to in clause 21, remains vested at all times in the Commonwealth. The Commonwealth's ownership of Commonwealth Material is not affected in any way by Health consenting to the Administering Institution, Participating Institution or a Specified Personnel using Commonwealth Material under this clause 13.3 or clause 21. However, the Commonwealth grants the Administering Institution a licence to use, copy, reproduce, communicate and sub-licence that Material only for the purposes of this Agreement and in accordance with any conditions or restrictions the Commonwealth may notify to the Administering Institution including those specified in clause 21 in respect of the MRFF logo.

Ownership of Material

13.4. Health makes no claim on the ownership of:

a. Intellectual Property brought into being as a result of the Research Activities (including the Research Material); or

b. Existing Material (including the Incorporated Material).

Licence to use Research Material and Incorporated Material

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

Moral Rights

13.6. In clause 13.7, '**Specified Acts**' means any of the following classes or types of acts or omissions by the Commonwealth or its licensees for the Commonwealth Purposes:

a. using, reproducing, communicating, modifying or adapting all or any part of the Research Material or Incorporated Material, with or without attribution of authorship;

b. supplementing the Research Material or Incorporated Material with any other material;

c. using the Research Material or Incorporated Material in a different context to that originally envisaged;

but does not include false attribution of authorship.

13.7. The Administering Institution agrees to:

a. use its best endeavours to obtain from each author of any Research Material or Incorporated Material a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends to the performance of the Specified Acts by the Commonwealth or any person claiming under or through the Commonwealth; and

b. upon request, provide the executed original of each such consent to Health.

If, despite its best endeavours, the Administering Institution is unable to obtain a consent referred to in clause 13.7.a, it must notify the Commonwealth as soon as the Administering Institution becomes aware of that inability.

13.8. Clauses 13.4 to 13.7 do not apply to any Commonwealth Material incorporated into the Research Material.

Provision of access to data and publications

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

13.10. Any research outputs from a Research Activity that have been, or will be, deposited in such a repository by the due date for the Final Report for that Research Activity must be identified in that Final Report.

14. Assets

14.1. An Asset purchased, leased or created with Funds provided for a Research Activity must be used for that Research Activity. The Administering Institution must ensure such use is subject to the control and supervision of the Specified Personnel working on that Research Activity and that the first priority for that Asset's use is the Research Activity.

14.2. The ownership of any Asset purchased or created wholly or partly with the Funding shall be vested in the Administering Institution, located at its or a Participating Institution's premises and listed in the Administering Institution’s assets register except to the extent:

a. the Application specifies, or the relevant Schedule requires, otherwise or Health otherwise agrees;

b. the Research Activity or this Agreement is terminated, in which case Health may, by notice in writing and at its absolute discretion, require the Administering Institution to:

i. if the Asset is purchased or created solely with the Funds, transfer the Asset to the Commonwealth or other person specified in the notice; or

ii. sell the Asset for the best price reasonably available and pay to Health the proportion of the sale proceeds (minus reasonable sale costs) that reflects the proportion of the Asset's cost that was met by the Funds; or

c. the Asset is required to be transferred to a New Institution in accordance with clause 5.19. If the New Institution does not require the Asset, Health may require the Administering Institution to:

i. if the Asset is purchased or created solely with the Funds, transfer the Asset to the Commonwealth or other person specified in the notice; or

ii. sell the Asset for the best price reasonably available and pay to Health the proportion of the sale proceeds (minus reasonable sale costs) that reflects the proportion of the Asset's cost that was met by the Funds.

14.3. The Administering Institution must ensure that a Participating Institution does not use the Funds to purchase land or purchase or create any buildings or fixtures.

14.4. The Administering Institution must, during the Funding Period, ensure that each Asset is maintained in good condition.

14.5. Where ownership of an Asset vests in the Commonwealth, the Administering Institution must at the completion of the relevant Research Activity and at the discretion of Health:

a. sell the Asset and return the sale proceeds (minus reasonable sale costs) to Health; or

b. return the Asset to Health in the same condition in which it was received, fair wear and tear excepted.

14.6. At the end of a Research Activity's Funding Period, or where a Research Activity or this Agreement is terminated, Health may give such directions as it, in its absolute discretion, thinks fit concerning the Assets created or purchased solely with the Funding provided for that Research Activity or this Agreement (as the case may be) and the Administering Institution must comply with any such directions, including bringing into existence, signing, executing or otherwise dealing with any document which may be necessary or desirable to transfer ownership of those Assets in accordance with those directions.

14.7. Any Asset purchased, leased or created by the Administering Institution in whole or part with the Funds must meet any applicable State and Territory legislative requirements, and any modification to an Asset must also meet those requirements.

14.8. The Administering Institution must keep a register of all Assets acquired in whole or part with the Funding that contains the information specified in clause 14.9. On receipt of a written request from Health, and the provision of reasonable notice, the Administering Institution must make its Assets register available for inspection by Health.

14.9. The Asset register referred to in clause 14.8 must record the Funding Identification Number and the date of purchase, lease or creation, purchase, creation or lease price, description (including any identifying marks and numbers) and location of each Asset. The Asset register must also record the details of any Asset disposal, including the sale price and to whom it was disposed.

15. Termination for Convenience/Reduction in scope

15.1. Health may, at any time by written notice, immediately terminate or reduce the scope of this Agreement (including by terminating or reducing the scope of a Research Activity).

15.2. Upon receipt of a notice terminating or reducing the scope of this Agreement, the Administering Institution must:

a. stop or reduce its performance of the Agreement as specified in the notice;

b. take all available steps to minimise loss resulting from that termination or reduction;

c. in the case of reduction in the scope of the Agreement, continue to perform any part of the Agreement not affected by the notice; and

d. immediately, and in any event within 10 Working Days of the date of Health's notice to the Administering Institution, repay to Health the Funding required under clause 15.3.e or 15.3.f (whichever applies) or deal with that Funding as otherwise directed by Health. If Funds that are required to be repaid under this clause 15.2.d are not repaid by the Administering Institution within this timeframe, Interest will accrue on the outstanding amount until it is repaid in full to Health. The Administering Institution agrees that any such Interest represents a reasonable pre-estimate of loss incurred by Health. Any amount that is not repaid in accordance with this clause 15.2.d may, at the absolute discretion of Health, be recovered as a debt due to Health without further proof of the debt being necessary.

15.3. If this Agreement is terminated or reduced in scope by Health giving a written notice under this clause 15:

a. where this Agreement is terminated, Health will be liable only for payments of Funds due and owing to the Administering Institution under the payment provisions of this Agreement prior to the date of the notice;

b. where this Agreement is reduced in scope Health will, in respect of the part of the Agreement that has been removed as a result of the reduction in scope (the **Removed Part**), be liable only for payments of Funds due and owing to the Administering Institution under the payment provisions of this Agreement in respect of the Removed Part prior to the date of the notice;

c. Health will be liable to reimburse the Administering Institution for any reasonable costs it incurs that are directly attributable to the termination or reduction in scope of the Agreement (excluding costs arising pursuant to the termination of an employment contract which exceed the equivalent of four (4) weeks' salary);

d. Health will not be liable to pay any amounts under this clause 15 that would, when added to any payments already paid to the Administering Institution under this Agreement, together exceed the total Funding specified in this Agreement; and

e. where the Agreement is terminated, Health will be entitled to recover from the Administering Institution any part of the Funds that:

i. is not due and payable by the Administering Institution in accordance with this Agreement (and, where the Funds have been provided to a Participating Institution, by that Participating Institution in accordance with its Formal Agreement) by the earlier of the date that the notice is received or is deemed by clause 31.3 to be received by the Administering Institution; or

ii. has, in Health's opinion, been spent by the Administering Institution other than in accordance with this Agreement (or, where the Funds have been provided to a Participating Institution, by that Participating Institution other than in accordance with its Formal Agreement); and

f. where part of the Agreement has been removed as a result of the reduction in the scope of the Agreement (the **Removed Part**), Health will be entitled to recover

from the Administering Institution any part of the Funds provided for the Removed Part that:

i. is not due and payable by the Administering Institution in accordance with this Agreement (and, where the Funds have been provided to a Participating Institution, by that Participating Institution in accordance with its Formal Agreement) for the Removed Part by the earlier of the date the notice is received or is deemed by clause 31.3 to be received by the Administering Institution; or

ii. has, in Health's opinion, been spent by the Administering Institution other than in accordance with this Agreement (or, where the Funds have been provided to a Participating Institution, by that Participating Institution other than in accordance with its Formal Agreement).

15.4. Health's liability to pay any compensation under or in relation to this clause 15 is subject to:

a. the Administering Institution's compliance with this clause 15; and

b. the Administering Institution's substantiation of any amount claimed under clause 15.3.c.

15.5. Health is not liable to pay any other amount to the Administering Institution in respect of a termination or reduction under this clause 15.

15.6. Notwithstanding any other provision of this Agreement, the Administering Institution is not entitled to any compensation for loss of prospective profits or loss of any benefits that would have been conferred on the Administering Institution but for the termination or reduction in scope of the Agreement.

16. Events of default and their consequences

16.1. Health may, upon written notice to the Administering Institution, immediately take any of the actions specified in clause 16.2 if:

a. it reasonably considers that the Administering Institution or a Participating Institution has failed to comply with a term or condition of this Agreement, the Administering Institutions Policy, the NHMRC Approved Standards and Guidelines or a Funding Policy;

b. within the last 3 years a Specified Person has been found to have engaged in proven Misconduct related to funding provided by Health or NHMRC;

c. it reasonably considers that the Administering Institution or Specified Personnel have provided Misleading Information, including in an Application or a Report;

d. it reasonably considers that the purposes and activities of the Administering Institution no longer remain compatible with the objectives of a Research Activity;

e. it reasonably considers the progress of a Research Activity to be unsatisfactory;

f. it has given the Administering Institution written notice to deliver an expected or overdue Research Activity outcome specified in a Schedule and 20 Working Days after the Administering Institution receives that notice, that outcome has not been delivered;

g. any Institutional Approval necessary for the performance of a Research Activity has not been obtained by the time it is necessary for such performance, or is withdrawn or not renewed during the Funding Period for that Research Activity;

h. a Probity Event occurs;

i. the Administering Institution or a Participating Institution becomes unable to pay all its debts as and when they become due and payable;

j. the Administering Institution or a Participating Institution has applied to come under, received a notice requiring it to show cause why it should not come under, or has otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in legislation of the States and Territories pertaining to incorporated associations or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or an order has been made for the purpose of placing the Administering Institution or a Participating Institution under external administration;

k. the Administering Institution or a Participating Institution undergoes a Change of Control;

l. another provision of this Agreement provides for the application of this clause 16; and/or

m. the Administering Institution notifies Health that it is ceasing a Research Activity, withdrawing from this Agreement or wishes to be removed from the Register of Administering Institutions.

16.2. Where an event specified in clause 16.1 occurs, Health may take any of the following actions:

a. temporarily withhold some or all of the Funds for one or more Research Activities until that event is rectified to the satisfaction of Health;

b. impose a new Funding Condition in respect of one or more Research Activities;

c. terminate one or more, but not all, of the Research Activities on and from the date specified in the notice given by Health under clause 16.1;

d. terminate the Agreement (and thus all of the Research Activities) on and from the date specified in the notice given by Health and request that NHMRC consider removing, and NHMRC may if it considers it appropriate remove, the Administering Institution from the Register of Administering Institutions;

e. require the Administering Institution to repay by the date specified in Health's notice referred to in clause 16.1 (or Health may off-set against other Funds payable to the Administering Institution in the future):

i. some or all of the Funds that are not due and payable by the Administering Institution in accordance with the terms of this Agreement (and, where the Funds have been provided to a Participating Institution, by that Participating Institution in accordance with its Formal Agreement) by the date that the Administering Institution receives the notice referred to in clause 16.1; and/or

ii. any Funds that have, in Health's opinion, been spent by the Administering Institution other than in accordance with this Agreement (or, where the

Funds have been provided to a Participating Institution, by that Participating Institution other than in accordance with its Formal Agreement); and/or

iii. in circumstances where Health reasonably considers that:

(1) Specified Personnel have engaged in Misconduct related to funding provided by Health or NHMRC;

(2) the Administering Institution or Specified Personnel have provided Misleading Information; or

(3) the Administering Institution has failed to adequately comply with its Reporting obligations under clause 10,

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

iv. any amount that has been overpaid to the Administering Institution by Health; and/or

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

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

16.3. In addition, if Health amends this Agreement or a policy is amended under clause 18 and the Administering Institution, acting reasonably, considers that it cannot comply with the Agreement or that policy as so amended, the Administering Institution may, by signed, written and dated notice to Health, terminate this Agreement and, subject to any other rights Health has under clause 16.1:

a. Health may request that NHMRC consider removing, and NHMRC may if it considers it appropriate remove, the Administering Institution from the Register of Administering Institutions;

b. Health will not be obliged to make any further payment to the Administering Institution in relation to this Agreement; and

c. the Administering Institution must repay to Health:

i. any Funds that are not due and payable by the Administering Institution in accordance with the terms of this Agreement (and, where the Funds have been provided to a Participating Institution, by that Participating Institution in accordance with its Formal Agreement) by the date of the Administering Institution's notice of termination; and

ii. any Funds that have, in Health's opinion, been spent by the Administering Institution other than in accordance with this Agreement (or, where the Funds have been provided to a Participating Institution, by that Participating Institution other than in accordance with its Formal Agreement).

16.4. Where a Research Activity or this Agreement is terminated under this clause 16, the Administering Institution must provide, unless Health advises otherwise, a Final Report, an Acquittal Statement, and if Health requests, an Audited Financial Statement for each Research Activity affected by the termination.

16.5. In determining what, if any, action to take under this clause 16, Health will have regard to, and act in accordance with, the Misconduct Policy.

16.6. If the Administering Institution is required to repay an amount of Funds to Health under clause 16.2.e or 16.3.c and the Administering Institution does not do so within the time period specified in that notice:

a. Interest will accrue on the outstanding amount until it is repaid in full to Health and the Administering Institution agrees that any such Interest represents a reasonable pre-estimate of loss incurred by Health; and

b. any amount remaining unpaid may, at the absolute discretion of Health, be recovered as a debt due to Health without further proof of the debt being necessary.

16.7. The giving of a notice of termination of a Research Activity, or this Agreement, under this clause 16 ceases any obligation that Health would otherwise have to make a payment of Funds in respect of that Research Activity or this Agreement (as the case may be).

17. Research Misconduct

17.1. If a complaint or allegation of Misconduct is made to the Administering Institution that relates to any Specified Personnel or Research Activities, the Administering Institution must notify NHMRC in accordance with the Misconduct Policy.

17.2. The Administering Institution must, in all cases, conduct any investigation or inquiry into any alleged Research Misconduct in a manner that is consistent with the Australian Code for the Responsible Conduct of Research.

17.3. Health may, at its absolute discretion and after consulting with the Administering Institution and NHMRC in relation to the Misconduct allegation, withhold Funds, or impose a new Funding Condition, in accordance with clauses 16.2.a and 16.2.b respectively, pending the outcome of an investigation or inquiry into the alleged Misconduct.

17.4. The Administering Institution represents and warrants to Health that it:

a. has informed the Specified Personnel prior to their involvement in the Research Activity that their Personal Information may be disclosed to Health under this Agreement including this clause 17 and clause 31;

b. will inform any other person who may become Specified Personnel pursuant to this Agreement prior to their involvement in the Research Activity that their Personal Information may be disclosed to Health under this Agreement including this clause 17 and clause 31; and

c. will inform any affected Specified Personnel of any proposed action or action taken by Health in accordance with the Misconduct Policy.

18. Variations

Variation of this Agreement by Health

18.1. Health may at any time vary any term or condition of this Agreement (or item of a Schedule) by giving the Administering Institution notice in writing of such variation and the Administering Institution agrees to be bound by such variation. Any variation made

pursuant to this clause 18.1 shall take effect immediately upon receipt by the Administering Institution of the notice unless a different date is specified in the notice, in which case the date of effect shall be the date specified in the notice.

Variation of policies

18.2. The Administering Institution acknowledges that NHMRC may, at any time during the term of this Agreement, vary the Administering Institutions Policy, the Misconduct Policy, a Funding Policy, the NHMRC Approved Standards and Guidelines or any other applicable NHMRC policies.

18.3. The Administering Institution will not be required to comply with any variation specified in clause 18.2 notified to it by NHMRC until the date specified in that notice or any other date specified in writing by NHMRC. This date will be determined by NHMRC having regard to the nature of the variation and the Administering Institution and its role in administering Funding under this Agreement.

Other variations

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

19. Indemnity

19.1. The Administering Institution indemnifies (and agrees to keep indemnified) Health, Health's Personnel, NHMRC and NHMRC's Personnel (in this clause 19 referred to as 'those indemnified') from and against any:

a. cost or liability incurred by those indemnified;

b. loss of or damage to property of those indemnified; or

c. loss or expense incurred by those indemnified in dealing with any claim against them, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by those indemnified,

arising from:

d. any act or omission by the Administering Institution, its Personnel or a subcontractor (including a Participating Institution) in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense;

e. any breach by the Administering Institution of the Agreement;

f. any breach of a Formal Agreement by a Participating Institution;

g. use or disposal of any Asset by the Administering Institution, its Personnel or a subcontractor (including a Participating Institution);

h. the infringement of a person's Intellectual Property rights or Moral Rights by the Administering Institution, its Personnel or a Participating Institution in the performance, or as a result, of a Research Activity; or

i. the use of the Research Material or Incorporated Material, and the doing of any of the Specified Acts in clause 13.6, for the Commonwealth Purposes, including a claim in respect of:

i. Moral Rights relating to the use of the Research Material or Incorporated Material for the Commonwealth Purposes; or

ii. the ownership of Intellectual Property in the Research Material or Incorporated Material or any right or licence to use the Research Material or Incorporated Material for the Commonwealth Purposes.

19.2. In this clause 19 'fault' means any negligent or unlawful act or omission or wilful misconduct.

19.3. The Administering Institution's liability to indemnify those indemnified under this clause 19 will reduce proportionately to the extent that any act or omission involving fault on the part of those indemnified contributed to the relevant liability, cost, damage, loss or expense.

19.4. The right of those indemnified to be indemnified under this clause 19 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but those indemnified are not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

20. Insurance

20.1. The Administering Institution must, for so long as any obligations remain in connection with this Agreement, effect and maintain the following insurances:

a. workers' compensation insurance as required by law;

b. a public liability insurance policy for an amount sufficient to cover all the obligations of the Administering Institution under this Agreement, including those which survive the expiration or termination of this Agreement; and

c. insurance to cover the replacement cost of all of the Assets acquired or created by the Administering Institution for the Research Activities in the event they are lost or damaged; and

d. professional indemnity insurance for not less than $10 million in respect of the advice and opinions contained in the Reports provided under this Agreement; and

upon request, provide proof of insurance acceptable to Health.

20.2. All of the insurance required by clause 20.1 is to be taken out with an insurer recognised by the Australian Prudential Regulation Authority (APRA) or regulated by a State or Territory Auditor-General, except if the Administering Institution is a body that self-insures.

21. Acknowledgements of Health's funding and use of MRFF logo

21.1. The Administering Institution must ensure that the Funding from Health for a Research Activity is properly acknowledged (including in accordance with any requirements specified in a Funding Condition) in any correspondence, public announcement, advertising material, research report or other material produced by, on behalf of or through the Administering Institution or a Participating Institution that relates to that Research Activity. The Administering Institution must notify Health about any

Research Activity launch, and any other media event relating to the Research Activity, and provide a reasonable opportunity for the Health Minister or their representative to attend.

21.2. Any material published in respect of a Research Activity must:

a. include the Funding Identification Number for the Research Activity; and

b. specify that the contents of the published material are solely the responsibility of the Administering Institution, a Participating Institution or individual authors and do not reflect the views of the Commonwealth.

21.3. The Administering Institution must ensure that the MRFF logo is not used without Health's prior written consent to that specific use of the logo, which Health may give, refuse or revoke in its absolute discretion. Health may give consent subject to any terms or conditions that it considers reasonable.

21.4. The Administering Institution must comply, and must ensure that each of its Participating Institutions complies, with Health's rules regarding the use of the logo including its font, colour, size and placement.

21.5. Health confirms that if the Administering Institution is a non-government organisation, subject to clause 21.6:

a. no right or obligation arising under this Agreement should be interpreted as limiting the Administering Institution or its Personnel from commenting on, advocating support for or opposing change to any matter established by law, policy or practice of the Commonwealth; and

b. Health does not require the Administering Institution to obtain advance approval of any involvement by it or its Personnel in any activity referred to in clause 21.5.a.

21.6. Nothing in clause 21.5 limits or derogates from the Administering Institution's obligations, arising under this Agreement or otherwise, to not disclose confidential information as defined in the *Not-for-profit Sector Freedom to Advocate Act 2013* (Cth) or Personal Information.

22. Use of Information

22.1. If any agency or body of the Commonwealth receives information from the Administering Institution in relation to the Research Activity, the Administering Institution consents to that agency or body providing that information to Health.

22.2. The Administering Institution acknowledges that Health may be required to provide information in relation to the Research Activities, the Funds or this Agreement, as required by the operation of any law, judicial or parliamentary body or government agency.

22.3. Health reserves the right to publicise and report on the awarding of Funding for a Research Activity to the Administering Institution and, where relevant, its Participating Institutions, including in accordance with the Act. Without limiting the preceding sentence, Health may do this by including general information about the Administering Institution, its Participating Institutions, the Funds and their disbursement between the Administering Institutions and Participating Institutions, the title and a brief description of the Research Activity (including its duration and location) in media releases, general

announcements, Health's and/or NHMRC's annual reports and on Health's and/or NHMRC's websites.

Use of Information in the NHMRC and Health Annual Reports

22.4. The Administering Institution agrees that the name, and any other details relevant to qualifications or expertise, of Specified Personnel may, at the absolute discretion of Health and without notice to or consultation with the Administering Institution, be reported under clause 22.3 and included in an NHMRC's annual report that is required under section 83 of the NHMRC Act and in Health's annual report.

22.5. The Administering Institution represents and warrants to Health that:

a. it has obtained the consent of the Specified Personnel to the inclusion in any NHMRC annual report and the Health annual report of the Personal Information referred to at clause 22.4; or

b. it:

i. has informed the Specified Personnel prior to their involvement in the Research Activity that their Personal Information referred to in clause 22.4 may be included in any NHMRC annual report and in any Health annual report; and

ii. will inform any other person who may become Specified Personnel pursuant to this Agreement prior to their involvement in the Research Activity that their Personal Information referred to in clause 22.4 may be included in any NHMRC annual report and in any Health annual report.

23. Negation of Employment, Partnership and Agency

23.1. The Administering Institution is not by virtue of this Agreement an officer, employee, partner or agent of the Commonwealth, nor does the Administering Institution have any power or authority to bind or represent the Commonwealth.

23.2. The Administering Institution agrees not to represent itself, and to ensure its Personnel, Participating Institutions and any other subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

24. Participation in peer review and assessment of funding applications

24.1. It is a condition of this Agreement that, notwithstanding the negation of employment under clause 23, during the term of this Agreement, the Administering Institution must make available to Health, free of charge but subject to Health providing reasonable notice to the Administering Institution, the services of Specified Personnel to provide professional input into reviewing or assessing applications made under a Scheme in the Personnel's area of expertise as required by Health. Each Specified Person may be required to review at least five (5) Scheme applications each calendar year.

25. Compliance with laws, NHMRC Approved Standards and Guidelines and other NHMRC policies

25.1. In carrying out this Agreement, the Administering Institution must comply, and require its Participating Institutions to comply, with:

a. the provisions of any applicable statutes, regulations, by-laws, and requirements of the Commonwealth and any State, Territory or local authority; and

b. subject to clauses 18.2 and 18.3, the NHMRC Approved Standards and Guidelines and any other applicable NHMRC policies,

except to the extent otherwise specified in the relevant Funding Policy.

26. Protection of Personal Information

26.1. The Administering Institution agrees, in conducting the Research Activity:

a. not to do any act or engage in any practice which, if done or engaged in by the Commonwealth, would be a breach of the requirements of Division 2 of Part III of the *Privacy Act 1988* (Cth);

b. ensure that any person under the control of the Administering Institution who has access to any Personal Information is made aware of, and undertakes in writing, to observe the Administering Institution's obligations under this clause 26;

c. to comply with any directions, guidelines, determinations or recommendations of Health, to the extent that they are consistent with the Administering Institution's obligations under clause 26.1.a;

d. not to transfer Personal Information held in connection with this Agreement outside Australia, or to allow parties outside Australia to have access to it, without the prior approval of Health; and

e. to comply with any policy guidelines laid down by the Commonwealth or issued by the Information Commissioner from time to time relating to the handling of Personal Information.

27. Confidential Information

Confidential Information not to be Disclosed

27.1. Subject to clause 27.3, **Error! Reference source not found.** and 27.11:

a. the Administering Institution must not, without the prior written consent of Health; and

b. Health must not, without the prior written consent of the Administering Institution,

disclose any Confidential Information of the other to a third party.

Written Undertakings

27.2. The Administering Institution must, at the request of Health, arrange for:

a. its Personnel;

b. an employee of a Participating Institution; or

c. any other person with an interest in the Funding,

to give a written undertaking in a form acceptable to Health relating to the use and non-disclosure of Health's Confidential Information.

Exceptions to Obligations

27.3. The obligations under this clause 27 will not be taken to have been breached to the extent that Confidential Information:

a. is disclosed by Health, NHMRC or the Administering Institution to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;

b. is disclosed by Health, NHMRC or the Administering Institution to its internal management Personnel, solely to enable effective management or auditing of Agreement related activities;

c. is disclosed by Health or NHMRC to one another for purposes related to this Agreement, the Act, the NHMRC Act or the Account;

d. is disclosed by the Administering Institution to a Participating Institution in order to comply with the Administering Institution's obligations, or to exercise the Administering Institution's rights, under this Agreement;

e. is disclosed by Health or NHMRC to its responsible Minister or another Australian Government Minister;

f. is disclosed by Health or NHMRC in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;

g. is shared by Health within Health, NHMRC or with another Commonwealth agency, where this serves the Commonwealth's legitimate interests,

h. is disclosed to State or Territory governments for particular purposes;

i. is authorised or required by law to be disclosed; or

j. is in the public domain otherwise than due to a breach of this clause 27.

27.4. Where Health or the Administering Institution discloses Confidential Information to another person pursuant to clauses 27.3.a to 27.3.h, the disclosing party must notify the receiving person that the information is confidential.

27.5. In the circumstances referred to in clauses 27.3.a, 27.3.b, 27.3.d and 27.3.g, the disclosing party agrees not to provide the Confidential Information unless the receiving person agrees to keep the information confidential.

27.6. The Administering Institution agrees to secure all of Health's Confidential Information against loss and unauthorised access, use, modification or disclosure.

27.7. A Summary must not contain any Confidential Information.

Period of Confidentiality

27.8. The obligations under this clause 27 will continue, notwithstanding the expiry or termination of this Agreement, for the period agreed by the Parties in writing in respect of an item of Confidential Information.

No reduction in obligations relating to Personal Information

27.9. This clause 27 does not detract from any of the Administering Institution's obligations under the *Privacy Act 1988* (Cth) or under clause 26, in relation to the protection of Personal Information.

NHMRC Act

27.10. Notwithstanding clause 27.3, if section 80 of the NHMRC Act applies to confidential commercial information that an Administering Institution provides to NHMRC, an NHMRC officer must not disclose that confidential commercial information except where the disclosure occurs in the performance of duties, or the exercise of powers or functions, under the NHMRC Act or is otherwise permitted under section 80 of the NHMRC Act.

27.11. For the purpose of and without limiting clause 27.10, the Administering Institution understands that the CEO of NHMRC (or his or her delegate) intends to disclose to Health and/or the Health Minister any confidential commercial information that the Administering Institution provides under this Agreement. The Administering Institution must, at the time it provides any confidential commercial information under this Agreement:

a. clearly mark that information as 'confidential commercial information'; and

b. if it requires that such information not be disclosed to Health and/or the Health Minister, provide an accompanying statement commenting on the proposed disclosure to Health and/or the Health Minister setting out why the Administering Institution considers that information should not be disclosed by NHMRC to Health and/or the Health Minister (or any other person).

28. Taxes and Duties

28.1. Except as provided by this clause 28 or otherwise specified in a Schedule, the Administering Institution must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

28.2. The following terms have the meanings respectively given to them in the GST Act: consideration; GST; input tax credit; supply; taxable supply; tax invoice and recipient created tax invoice.

28.3. Unless otherwise indicated, any consideration for a supply made under this Agreement is exclusive of any GST imposed on the supply.

28.4. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier or issue of an recipient created tax invoice (**RCTI**) pursuant to clause 28.6, the recipient must pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

28.5. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party may claim an input tax credit or decreasing adjustment.

Recipient Created Tax Invoices

28.6. If the Administering Institution is registered for GST, Health must (unless it advises the Administering Institution otherwise) issue the Administering Institution an RCTI in respect of the Funding provided for a taxable supply. The RCTI must include any applicable GST amount attributable to that Funding and the following obligations and requirements also apply:

a. the Administering Institution must not issue tax invoices in respect of taxable supplies for which Health has issued RCTIs;

b. the Administering Institution, and the Commonwealth represented by Health or NHMRC, each acknowledge and agree that it is registered for GST; and

c. the Administering Institution, and the Commonwealth represented by Health or NHMRC, each acknowledge and agree that it has quoted its Australian Business Number to the other and it must notify the other of any change to the matters covered by this clause 28.6.

Application of section 9-17 of the GST Act

28.7. If either clause 28.7.a or 28.7.b applies to a supply made in connection with a Research Activity, then the Parties rely on section 9-17 of the GST Act for no GST being imposed in connection with that supply under this Agreement:

a. the Funding for the Research Activity:

i. is paid to a Government Related Entity for a supply;

ii. is covered by an appropriation under an Australian law; and

iii. is calculated on the basis that the sum of:

(1) the Funding relating to the supply; and

(2) anything that the Administering Institution receives from another entity in connection with, or in response to, or for the inducement of, the supply, or for any other related supply,

does not exceed the Administering Institution's anticipated or actual costs of making those supplies; or

b. the Funding for the Research Activity is paid to a Government Related Entity and the Funding payment is of a kind specified in regulations made for the purposes of section 9-17 of the GST Act.

29. Conflict of Interest

29.1. The Administering Institution warrants that, at the date of signing this Agreement and to the best of its knowledge after making reasonable inquiries, either:

a. no Conflict of Interest exists in its or a Participating Institution's or the Specified Personnel's performance of this Agreement; or

b. it has fully declared to Health the details of each Conflict of Interest that it, a Participating Institution or the Specified Personnel has in relation to this Agreement and obtained Health's written consent to the Administering Institution, Participating Institution or the Specified Personnel performing this Agreement notwithstanding that declared Conflict of Interest.

29.2. If during the term of this Agreement, a Conflict of Interest arises in respect of the Administering Institution, or a Participating Institution, the Administering Institution must:

a. immediately notify Health in writing of the full details of that Conflict of Interest and of the steps the Administering Institution proposes to resolve or otherwise deal with the Conflict of Interest;

b. take such steps as Health may reasonably require to resolve or otherwise deal with that Conflict of Interest; and

c. if the Administering Institution fails to notify Health under paragraph 29.2.a, or is unable or unwilling to resolve or deal with the Conflict of Interest as required by Health under paragraph 29.2.b, Health may take any of the actions specified in clause 16.

30. Dispute Resolution

30.1. Before resorting to external dispute resolution mechanisms (except for urgent interlocutory relief) the Parties must attempt to settle by negotiation any dispute in relation to this Agreement, and may agree to do so by referring the matter to persons who have authority to intervene and direct some form of resolution.

30.2. If a dispute is not settled by the Parties within twenty (20) Working Days of one Party first sending to the other Party written notice of the dispute, the dispute may be the subject of court proceedings or may be submitted to some alternative dispute resolution mechanism as may be agreed in writing between the Parties.

30.3. Notwithstanding the existence of a dispute, the Administering Institution must continue to perform its obligations under this Agreement.

31. Notices and Research Administration Officer

31.1. Any notice, request or other communication to be given or served pursuant to this Agreement shall be in writing and addressed to the other Party at the address as set out in the Agreement or such other address as a Party may notify the other Party from time to time.

31.2. The Research Administration Officer shall be the Administrative Institution's primary contact person for administrative matters relating to this Agreement.

31.3. A notice, request or other communication will be deemed to be received:

a. if delivered by hand, upon delivery;

b. if sent by pre-paid ordinary post within Australia, upon the expiration of two (2) Working Days after the date on which it was sent;

c. if sent by facsimile, on the Working 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 Administering Institution by close of business of the next Working Day following the day of dispatch that the transmission was illegible; or

d. if transmitted electronically, upon receipt by the sender of an acknowledgement that the communication has been properly transmitted to the recipient.

31.4. The Administering Institution must immediately notify Health in writing if:

a. it ceases to fully comply with the Administering Institutions Policy, the NHMRC Approved Standards and Guidelines, the NHMRC Direct Research Costs Guidelines, or a Funding Policy that applies to a Research Activity, or any other requirement specified in this Agreement;

b. it becomes aware that a Participating Institution has ceased to fully comply with the NHMRC Approved Standards and Guidelines or a Funding Policy that applies

to a Research Activity, or any other requirement specified in its Formal Agreement;

c. it becomes aware of any failure to obtain an Institutional Approval necessary for the performance of a Research Activity, or of the withdrawal or non-renewal of any Institutional Approval necessary for the performance of a Research Activity during the Funding Period for that Research Activity;

d. it changes its trading or business name or legal status;

e. it or a Participating Institution becomes unable to pay all its debts as and when they become due and payable;

f. it or a Participating Institution has applied to come under, received a notice requiring it to show cause why it should not come under, or has otherwise come under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in legislation of the States and Territories pertaining to incorporated associations or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or an order has been made for the purpose of placing the Administering Institution or Participating Institution under external administration;

g. it or a Participating Institution under goes a Change of Control;

h. it becomes aware of a Probity Event, or a Conflict of Interest;

i. it becomes aware of any delay of six months or more that is likely to occur in relation to the performance of a Research Activity;

j. it determines that it will cease a Research Activity, withdraw from this Agreement, request its removal from the Register of Administering Institutions or terminate the Agreement under clause 16.3;

k. it (or a Participating Institution) does not spend all of the Funds provided to it for a Research Activity;

l. a Specified Person is unable to perform, or to continue to perform, all or part of a Research Activity; or

m. the Administering Institution becomes aware of a breach or possible breach of any of its obligations under clause 26.

31.5. In addition to any other requirement in this Agreement, if the Administering Institution notifies Health under clause 31.4, the Administering Institution must provide to Health any further information reasonably requested by Health.

32. Responsible Officer(s)

32.1. The Administering Institution shall notify Health in writing via RGMS of the name and title of each of its Responsible Officers and the business matters for which each is responsible. All correspondence and reports relating to the Funds shall be provided by or through the Responsible Officers and all documents signed by the Responsible Officers shall be binding on the Administering Institution.

32.2. A Responsible Officer must supply all necessary information reasonably requested by Health in relation to the use of the Funds in a timely and responsive manner and within ten (10) Working Days of the receipt of the request.

33. Assignment and Encumbrances

33.1. The Administering Institution must not without the prior written consent of Health assign, mortgage, charge or encumber this Agreement or any benefit, moneys or rights obtained under this Agreement. This clause 33 does not apply to Intellectual Property rights, provided the encumbrance does not obstruct the operation of clause 13.

34. Counterparts

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

35. Survival of Provisions

35.1. Clauses:

a. 8 to 10 (Use of and Accountability for Funds and Other Contributions, Record Keeping and Reports);

b. 11 and 12 (Provision of information and evaluation, Access to premises and documents);

c. 13 (Intellectual Property);

d. 14 (Assets);

e. 15 (Termination for Convenience/Reduction in scope) and 16 (Events of default and their consequences);

f. 17 (Misconduct);

g. 19 (Indemnity);

h. 20 (Insurance);

i. 21 (Acknowledgements of Health's Funding and use of MRFF logo);

j. 22.3 to 22.5 (Use of Information);

k. 26 (Protection of Personal Information); and

l. 27 (Confidential Information),

survive the expiration or earlier termination of this Agreement.

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

SIGNED, SEALED AND DELIVERED	)	
on behalf of the COMMONWEALTH	)	
OF AUSTRALIA	)	
by the following Health Delegate under	)	
the Act:	)	
	)	
	)	
……	)	……
(print name)	)	(Signature)
	)	
……	)	
(position)	)	
	)	
in the presence of:	)	
	)	
……	)	……
(print name)	)	(Signature)
	)	
……	)	……
(position)	)	(Date)

SIGNED, SEALED AND DELIVERED	)	
on behalf of the	)	
	)	
……	)	
(Administering Institution name)	)	
	)	
by ……	)	……
(print name) who warrants they have the authority to bind the Administering Institution)		(Signature)
	)	
……	)	
(position)	)	
	)	
in the presence of:	)	
	)	
……	)	…….
(print name)	)	(Signature)
	)	
……	)	
(position)	)	