Department of Industry, Innovation and Science

Accelerating Commercialisation

Funding Agreement [Project number]

Commonwealth of Australia (Commonwealth)

[insert] (Recipient)

[insert Recipient’s name] ACN [insert] ABN [insert] (Recipient)

NOTE: If the Recipient is an incorporated trustee, please identify the Recipient as ‘[insert name of Recipient] [insert Recipient ABN] in its own capacity and as trustee of the [insert name of trust] [insert trust ABN].

If the Recipient is a Commercialisation Office (CO) of a Publicly Funded Research Organisation (PFRO) that is not a separate corporation from the PFRO, the Recipient should be named: [Insert name of PFRO] as represented by [Insert name of CO]. However, if the CO is a separate corporation from the PFRO, then the CO should be named as the Recipient in its own right.
Details

Date

\[
\begin{array}{ccc}
\text{Day} & / & \text{month} & / & 20 & \text{year}
\end{array}
\]

Parties

Name

The Commonwealth of Australia as represented by the Department of Industry, Innovation and Science

Short form name

Commonwealth

ABN 74 599 608 295

Name

[insert name of Recipient]

ACN [insert]

ABN [insert]

NOTE: If the Recipient is an incorporated trustee, please identify the Recipient as ‘[insert name of Recipient] [insert Recipient ABN] in its own capacity and as trustee of the [insert name of trust] [insert trust ABN]’

Short form name

Recipient

Background

A. Accelerating Commercialisation is a key offering under the Entrepreneurs’ Programme, and aims to help Australian entrepreneurs, researchers, inventors, start-ups, Commercialisation Offices and small and medium enterprises address the challenges associated with commercialising novel intellectual property in the form of new products, processes and/or services.

B. The Commonwealth is required by law to ensure accountability for the Funds and accordingly the Recipient is required to be accountable for all Funds received.

C. The Commonwealth has agreed to provide the Funds to the Recipient for the purposes of the Project, subject to the terms and conditions of this Agreement.

D. The Recipient accepts the Funds for the purposes of the Project, and subject to the terms and conditions of this Agreement.
Funding Agreement

Details 2

Funding Agreement 3

Agreed terms 5

Part 1 – Project and Funds 5
1. Definitions and interpretation 5
2. Priority of documents 13
3. Duration of Agreement 13
4. Project 13
5. Commercialisation 15
6. Contributions 16
7. Funds 17
8. GST 20
9. Use of Funds 21
10. Repayment 22
11. Monitoring progress and reporting 24

Part 2 – General requirements 25
12. Subcontractors and Personnel 25
13. Other Project assistance 26
15. Moral Rights 28
16. No dealing with Recipient’s Rights 28
17. Indemnity 29
18. Insurance 29
19. Acknowledgement of Support and Publicity 29
20. Confidentiality 30
21. Work health and safety 31
22. Protection of personal information 32
23. Conflict of interest 34
24. Books and records 34
25. Audit and access 35
26. Dispute resolution 36
27. Termination 37
28. Survival 40
29. Notices and other communications 40
30. Miscellaneous 41
Schedule 1 – Agreement Details 44
Schedule 2 – Project Details 46
Schedule 3 – Special terms and conditions 49
Schedule 4 – Deed Poll 50
Signing page 53
### Part 1 – Project and Funds

1. Definitions and interpretation

#### 1.1 Defined terms

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accelerating Commercialisation</td>
<td>The element of the Programme described in Schedule C of the Programme Guidelines.</td>
</tr>
<tr>
<td>Accounting Standards</td>
<td>The standards of that name maintained by the Australian Accounting Standards Board (created by section 226 of the Australian Securities and Investments Commission Act 2001 (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.</td>
</tr>
<tr>
<td>Advisers</td>
<td>(a) the financial or legal advisers of a party;</td>
</tr>
<tr>
<td></td>
<td>(b) the respective officers and employees of those financial or legal advisers;</td>
</tr>
<tr>
<td></td>
<td>(c) Commercialisation Advisers; or</td>
</tr>
<tr>
<td></td>
<td>(d) Business Development – Commercialisation Advisers.</td>
</tr>
<tr>
<td>Agreed Terms</td>
<td>Clauses 1 to 30 of this Agreement, which set out terms and conditions agreed by the parties.</td>
</tr>
<tr>
<td>Agreement</td>
<td>This agreement between the Commonwealth and the Recipient, as varied from time to time in accordance with clause 30.4, and includes its schedules and any attachments.</td>
</tr>
<tr>
<td>Agreement Commencement Date</td>
<td>The date on which this Agreement commences, as specified in item 4 of Schedule 1.</td>
</tr>
<tr>
<td>Agreement End Date</td>
<td>The date on which this Agreement will end (unless terminated earlier), as specified in item 5 of Schedule 1.</td>
</tr>
<tr>
<td>Agreement Material</td>
<td>any Material created on or following the:</td>
</tr>
<tr>
<td></td>
<td>(a) Project Start Date; or</td>
</tr>
<tr>
<td></td>
<td>(b) Agreement Commencement Date,</td>
</tr>
<tr>
<td></td>
<td>whichever is earlier, for the purpose of or as a result of the Recipient performing the Project or its obligations under this Agreement.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Agreement Period</td>
<td>the period from the Agreement Commencement Date to the Agreement End Date.</td>
</tr>
<tr>
<td>Annual Capped Amount</td>
<td>means, for a Financial Year, the relevant amount stated in item 11 of Schedule 2 for the Project, and in the absence of an amount being stated, the relevant amount for that Financial Year is zero.</td>
</tr>
<tr>
<td>Application</td>
<td>means the application and all supporting material in connection with it, submitted by the Recipient to the Commonwealth in an application for funding under Accelerating Commercialisation.</td>
</tr>
<tr>
<td>Application Acceptance Date</td>
<td>means the date the Commonwealth provides notice that an Application has been accepted for merit assessment.</td>
</tr>
<tr>
<td>Asset</td>
<td>any item of tangible property purchased, leased, created or otherwise brought into existence either wholly or in part with use of the Funds, but does not include Agreement Material.</td>
</tr>
<tr>
<td>Budget</td>
<td>the budget (if any) set out in item 10 of Schedule 2, as varied from time to time in accordance with clause 9.3 of this Agreement.</td>
</tr>
<tr>
<td>Business Day</td>
<td>a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the Notice is received.</td>
</tr>
<tr>
<td>Business Development – Commercialisation Adviser</td>
<td>means a business development adviser engaged by the Commonwealth to provide services in respect of the Portfolio.</td>
</tr>
<tr>
<td>Close Relative of a natural person</td>
<td>means, at any relevant time:</td>
</tr>
<tr>
<td></td>
<td>(a) a spouse or a de facto spouse of that person, whether current or within the period of 2 years from the relevant time;</td>
</tr>
<tr>
<td></td>
<td>(b) a father, mother, guardian, brother, sister, son or daughter of that person; or</td>
</tr>
<tr>
<td></td>
<td>(c) a father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of that person.</td>
</tr>
<tr>
<td>Commercialisation Adviser</td>
<td>has the same meaning as in the Programme Guidelines.</td>
</tr>
<tr>
<td>Commercialisation Office</td>
<td>has the same meaning as in the Programme Guidelines.</td>
</tr>
<tr>
<td>Commonwealth</td>
<td>the Commonwealth as specified in item 1 of Schedule 1.</td>
</tr>
<tr>
<td>Commonwealth Material</td>
<td>any Material provided to the Recipient by the Commonwealth.</td>
</tr>
<tr>
<td><strong>Term</strong></td>
<td><strong>Definition</strong></td>
</tr>
<tr>
<td>------------------------------</td>
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</tr>
<tr>
<td><strong>Confidential Information</strong></td>
<td>information that is by its nature confidential and:</td>
</tr>
<tr>
<td></td>
<td>(a) is designated by a party as confidential and is described in Schedule 3; or</td>
</tr>
<tr>
<td></td>
<td>(b) a party knows or ought to know is confidential, but does not include:</td>
</tr>
<tr>
<td></td>
<td>(c) information that is or becomes public knowledge otherwise than by breach of this Agreement or any other confidentiality obligation.</td>
</tr>
<tr>
<td><strong>Conflict of interest</strong></td>
<td>includes a real (or actual), apparent (or perceived) or potential conflict of interest.</td>
</tr>
<tr>
<td><strong>Control</strong></td>
<td>of a corporation means having control for the purposes of section 50AA of the Corporations Act.</td>
</tr>
<tr>
<td><strong>Controller</strong></td>
<td>has the same meaning as in the Corporations Act.</td>
</tr>
<tr>
<td><strong>Corporations Act</strong></td>
<td>the <em>Corporations Act 2001</em> (Cth).</td>
</tr>
<tr>
<td><strong>Customer Guidelines</strong></td>
<td>means the Customer Information Guide, the Guide to Managing Your Grant, the Eligible Expenditure Guidelines and any other guidelines the Programme Delegate publishes for the Programme.</td>
</tr>
<tr>
<td><strong>Customer Information Guide</strong></td>
<td>means the Customer Information Guide for Accelerating Commercialisation published by the Commonwealth and current as at the Application Acceptance Date.</td>
</tr>
<tr>
<td><strong>Deal With</strong></td>
<td>means:</td>
</tr>
<tr>
<td></td>
<td>(a) sell, transfer, assign, novate, declare a trust over, license, or otherwise procure or dispose or effect the disposal of, or in any way whatever deal with, any legal or equitable interest in, or any right in respect of, any subject matter; or</td>
</tr>
<tr>
<td></td>
<td>(b) effect a change in the beneficial interest or beneficial unit holding under a trust the trustee of which has an estate or interest in the subject matter.</td>
</tr>
<tr>
<td><strong>Department</strong></td>
<td>the Department of Industry, Innovation and Science and any successor department that may administer the Contract.</td>
</tr>
<tr>
<td><strong>Eligible Expenditure</strong></td>
<td>means the expenditure described as eligible in the Customer Information Guide.</td>
</tr>
<tr>
<td><strong>Eligible Expenditure</strong></td>
<td>means Appendix A to the Customer Information Guide.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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</tr>
<tr>
<td>Encumbrance</td>
<td>any:</td>
</tr>
<tr>
<td></td>
<td>(a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power, or title retention or flawed deposit arrangement;</td>
</tr>
<tr>
<td></td>
<td>(b) security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of any litigation;</td>
</tr>
<tr>
<td></td>
<td>(c) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;</td>
</tr>
<tr>
<td></td>
<td>(d) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy;</td>
</tr>
<tr>
<td></td>
<td>(e) third party right or interest or any right arising as a consequence of the enforcement of a judgment, or any agreement to create any of them or allow them to exist, or anything similar.</td>
</tr>
<tr>
<td>Expert Network</td>
<td>has the same meaning as in the Programme Guidelines.</td>
</tr>
<tr>
<td>Expert Network Member</td>
<td>means a person that is a member of the Expert Network.</td>
</tr>
<tr>
<td>Financial Year</td>
<td>means the 12 month period beginning 1 July of one year and ending 30 June of the following year.</td>
</tr>
<tr>
<td>Funds</td>
<td>the amounts payable by the Commonwealth under this Agreement as specified in Schedule 2.</td>
</tr>
<tr>
<td>Government Grant Source</td>
<td>has the same meaning as in the Customer Information Guide.</td>
</tr>
<tr>
<td>Guide to Managing Your Grant</td>
<td>the Guide to Managing Your Grant for the Programme, if any, issued by the Commonwealth from time to time.</td>
</tr>
<tr>
<td>Grant Percentage</td>
<td>means the percentage specified in Item 6 of Schedule 2, or, where no percentage is specified, 50%.</td>
</tr>
<tr>
<td>Initial Progress Payment</td>
<td>has the meaning given in clause 7.2 and is specified at item 12 of Schedule 2.</td>
</tr>
<tr>
<td>Insolvent</td>
<td>means:</td>
</tr>
<tr>
<td></td>
<td>(a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or</td>
</tr>
<tr>
<td></td>
<td>(b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
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</tr>
<tr>
<td>(c)</td>
<td>it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the financier); or</td>
</tr>
<tr>
<td>(d)</td>
<td>an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or</td>
</tr>
<tr>
<td>(e)</td>
<td>it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or</td>
</tr>
<tr>
<td>(f)</td>
<td>it is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the financier reasonably deduces it is so subject); or</td>
</tr>
<tr>
<td>(g)</td>
<td>it is otherwise unable to pay its debts when they fall due; or</td>
</tr>
<tr>
<td>(h)</td>
<td>something having a substantially similar effect to paragraphs (a) to (g) happens in connection with that person under the law of any jurisdiction.</td>
</tr>
<tr>
<td><strong>Intellectual Property Rights</strong></td>
<td>all intellectual property rights, including:</td>
</tr>
<tr>
<td>(a)</td>
<td>copyright, patents, trademarks (including goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts, domain names, plant breeders’ rights and any right to have confidential information kept confidential;</td>
</tr>
<tr>
<td>(b)</td>
<td>any application or right to apply for registration of any of the rights referred to in paragraph (a); and</td>
</tr>
<tr>
<td>(c)</td>
<td>all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.</td>
</tr>
<tr>
<td><strong>Know-how</strong></td>
<td>means expertise, knowledge, skills, techniques, methods, procedures, ideas and concepts.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-----------------------------</td>
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</tr>
<tr>
<td>Law</td>
<td>any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.</td>
</tr>
<tr>
<td>LEADR &amp; IAMA</td>
<td>the dispute resolution association with that name and the Australian Business Number 69 008 651 232.</td>
</tr>
<tr>
<td>Letter of Offer</td>
<td>means the letter from the Department offering the grant Funds to the Recipient for the purposes of the Project, including any conditions in that letter.</td>
</tr>
<tr>
<td>Material</td>
<td>includes property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.</td>
</tr>
<tr>
<td>Maximum Funds</td>
<td>the maximum amount of the Funds payable by the Commonwealth under this Agreement as specified in item 5 of Schedule 2.</td>
</tr>
<tr>
<td>Milestone</td>
<td>a stage of completion of the Project as set out in item 9 of Schedule 2.</td>
</tr>
<tr>
<td>Moral Rights</td>
<td>the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the Copyright Act 1968 (Cth).</td>
</tr>
<tr>
<td>Non Tax-Exempt Company</td>
<td>means a company incorporated in Australia under the Corporations Act, that is not a company to which Division 50 of the Income Tax Assessment Act 1997 (Cth) applies.</td>
</tr>
<tr>
<td>Notice</td>
<td>a notice, demand, consent, approval or communication issued under this Agreement.</td>
</tr>
<tr>
<td>Outcomes</td>
<td>the outcomes for the Project, as set out in item 8 of Schedule 2.</td>
</tr>
<tr>
<td>Personnel</td>
<td>in relation to a party, any employee, officer, or agent of that party, and in the case of the Recipient, of any subcontractor.</td>
</tr>
<tr>
<td>Pilot Manufacturing Plant</td>
<td>is a manufacturing plant that has been approved by the Commonwealth as a Pilot Manufacturing Plant in accordance with the Customer Information Guide.</td>
</tr>
<tr>
<td>Portfolio</td>
<td>has the meaning given in the Programme Guidelines.</td>
</tr>
<tr>
<td>Post-Project Reports</td>
<td>means reports designed to track project outcomes and Recipient progress since completion of the Project.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Programme</td>
<td>means the Entrepreneurs’ Programme.</td>
</tr>
<tr>
<td>Programme Delegate</td>
<td>has the same meaning as in the Programme Guidelines.</td>
</tr>
<tr>
<td>Programme Directions</td>
<td>means the ministerial directions for the Programme, if any.</td>
</tr>
<tr>
<td>Programme Funding</td>
<td>means the funding made available by the Commonwealth of Australia for the Programme in any given Financial Year, being the funding specified in the Portfolio Budget Statement (as varied by any Portfolio Additional Estimates Statement) for that year.</td>
</tr>
<tr>
<td>Programme Guidelines</td>
<td>the guidelines for the Programme as amended from time to time and available at business.gov.au.</td>
</tr>
<tr>
<td>Progress Payments</td>
<td>has the meaning given in clause 7.2.</td>
</tr>
<tr>
<td>Project</td>
<td>the Project set out in Schedule 2.</td>
</tr>
<tr>
<td>Project End Date</td>
<td>the date specified in item 4 of Schedule 2.</td>
</tr>
<tr>
<td>Project Period</td>
<td>means the period between the Project Start Date and the Project End Date.</td>
</tr>
<tr>
<td>Project Start Date</td>
<td>means the date specified in item 3 of Schedule 2.</td>
</tr>
<tr>
<td>Quarter</td>
<td>means each period of three months ending on 31 March, 30 June, 30 September or 31 December during the Term (or a part of such a Quarter occurring at the beginning or the end of the Term).</td>
</tr>
<tr>
<td>Quarterly Progress Payment</td>
<td>has the meaning given in clause 7.2.</td>
</tr>
<tr>
<td>Recipient</td>
<td>the party specified in item 2 of Schedule 1.</td>
</tr>
<tr>
<td>Recipient Contribution</td>
<td>has the meaning in clause 6.1.</td>
</tr>
<tr>
<td>Related Body Corporate</td>
<td>has the same meaning as in section 50 of the Corporations Act.</td>
</tr>
<tr>
<td>Reports</td>
<td>the reports to be provided under clause 11.2.</td>
</tr>
<tr>
<td>Retention Amount</td>
<td>the amount in item 13 Schedule 2.</td>
</tr>
<tr>
<td>Schedules</td>
<td>the schedules to this Agreement.</td>
</tr>
<tr>
<td>Specified Personnel</td>
<td>the Recipient's subcontractors and Personnel (if any) specified in item 7 of Schedule 2.</td>
</tr>
<tr>
<td>State-of-the-art Manufacturing Plant</td>
<td>is a manufacturing plant that has been approved by the Commonwealth as state-of-the-art manufacturing plant in accordance with the Customer Information Guide.</td>
</tr>
<tr>
<td>Term</td>
<td>means the period set out in clause 3.</td>
</tr>
<tr>
<td>WGE Act</td>
<td>means Workplace Gender Equality Act 2012 (Cth).</td>
</tr>
</tbody>
</table>
1.2 **Interpretation**

In this Agreement, except where the contrary intention is expressed:

(a) the singular includes the plural and vice versa, and a gender includes other genders;

(b) another grammatical form of a defined word or expression has a corresponding meaning;

(c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Agreement;

(d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

(e) a reference to A$, $A, dollar or $ is to Australian currency;

(f) a reference to time is to Canberra, Australia time;

(g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;

(h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

(i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

(k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

(l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

(m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;

(n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and

(o) headings are for ease of reference only and do not affect interpretation.

1.3 **Completion of Schedules**

To the extent that the parties have not completed items in a Schedule, unless otherwise stated in the Schedule, those items will be taken to be 'not applicable' for the purpose of this Agreement.

1.4 **Applicable versions of the guidelines**

(a) The versions of the various guidelines applicable to this Agreement are as follows:
(i) for the Programme Guidelines, the Programme Directions and the Customer Guidelines (except for the Guide to Managing Your Grant) - the version in effect at the Application Acceptance Date; and

(ii) for the Guide to Managing Your Grant - the version that is current and as amended from time to time, and notified to the Recipient by the Commonwealth.

2. Priority of documents

If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

(a) Agreed Terms;

(b) Schedules;

(c) any attachments to the Schedules; and

(d) documents incorporated by reference in this Agreement.

3. Duration of Agreement

This Agreement begins on the Agreement Commencement Date and continues until the Agreement End Date unless terminated in accordance with clause 27.

4. Project

4.1 Undertaking the Project

The Recipient must:

(a) undertake the Project diligently, effectively, to a high professional standard and in accordance with:

   (i) the terms of this Agreement

   (ii) all applicable Laws;

   (iii) the various guidelines referred to clause 1.4; and

   (iv) any Commonwealth policies and requirements;

(b) complete the Project by the Project End Date; and

(c) achieve the Milestones specified in item 9 of Schedule 2 by the due dates.

4.2 Milestones

(a) The Recipient must notify the Commonwealth promptly in writing if a Milestone is unlikely to be achieved by the date for completion of that Milestone.

(b) A Notice given under clause 4.2(a) must set out:

   (i) the reason for the delay;

   (ii) the action the Recipient proposes to take to address the delay;

   (iii) the anticipated date for achievement of the Milestone;
the anticipated effect the delay will have on the achievement of subsequent Milestones; and

the anticipated effect the delay will have on the undertaking and completion of the Project and compliance with the Budget.

(c) The Commonwealth may terminate this Agreement pursuant to clause 27 if it considers in its absolute discretion that the failure by the Recipient to achieve a Milestone may, in the Commonwealth’s reasonable opinion, compromise the capacity of the Recipient to achieve the Outcomes.

(d) The Commonwealth may exercise its rights under clause 4.2(c), notwithstanding any information in the notice from the Recipient, and regardless of whether the Recipient provides a notice to the Commonwealth under clause 4.2(b).

4.3 Warranties

The Recipient, after making reasonable inquiry, warrants as at the time the Recipient submitted its Application to the Commonwealth, and repeats this warranty on each day following that:

(a) all information that the Recipient has provided or provides to the Commonwealth:

   (i) from time to time under this Agreement (including information given in any report to the Commonwealth by the Recipient under this Agreement) is true and correct; and

   (ii) in, and in connection with, the Application is true and correct; and

   (iii) it has disclosed in writing to the Commonwealth all facts relating to it, the Project, this Agreement and all things in connection with them that are material to the assessment of the Application and the Commonwealth’s decision to providing Funding under this Agreement; and

(b) without limiting the generality of clause 4.3(a) the Recipient:

   (i) is a Non Tax-Exempt Company (this warranty is applicable only if the Recipient is a body corporate and in its Application the Recipient specified that it was, or would become, a Non Tax-Exempt Company); and

   (ii) if it is a trustee, it enters this Agreement personally and in its capacity as trustee and has the power to perform its obligations under this Agreement; and

   (iii) does not have any interests or obligations that conflict with its interests or obligations under this Agreement; and

   (iv) has complied and will at all times comply with any conditions set out in the Letter of Offer; and

   (v) the Material provided by the Recipient under this Agreement, and the Commonwealth's use of that Material, will not infringe the Intellectual Property Rights or Moral Rights of any person; and

   (vi) it has the necessary rights to commercialise the Project or the Outcomes under clause 5.1, to vest the Intellectual Property Rights in the Project and Agreement Material, to carry out the Project, and to grant the licences as provided in clause 14.1(b); and
has adequate financial resources to fund, and will fund, the Recipient Contribution as and when required, and no part of that contribution will be from Government Grant Sources; and

has the power to enter into and perform this Agreement and has obtained all necessary consents and authorisations to enable it to do so; and

it and its subcontractors and Personnel, including its Specified Personnel, have the necessary experience, skill, knowledge, expertise and competence to undertake the Project and (where appropriate) will hold such licences, permits or registrations as are required under any State, Territory or Commonwealth legislation to undertake the Project;

when conducting research using genetic material from humans (including human embryos, stem cells and all other human organs, tissues and cells), animals or plants, and/or undertaking projects involving experimentation in humans (including human embryos, stem cells and all other human organs, tissues and cells) or animals, the Recipient will ensure that those activities:

(A) will have received formal prior approval by a qualified regulatory body(s) or committee(s) as complying with all relevant ethics codes and guidelines adopted by the National Health and Medical Research Council, the office of the Gene Technology Regulator and all other relevant regulatory agencies operating in Australia and any other place in which the research will be conducted, that are applicable during the Term of this Agreement; and

(B) will comply with all relevant legal requirements of the Commonwealth and any State or Territory of Australia, and of any other place in which the research will be conducted, that are applicable during the Term of this Agreement; and

is not aware of any circumstances which adversely affect or might adversely affect the Recipient’s ability to lawfully fulfil its obligations under this Agreement; and

is able to pay its debts as and when they fall due, and not otherwise Insolvent; and

if it is required to under the WGE Act, it is compliant with that Act.

4.4 Recipient to notify of change of status
The Recipient must immediately inform the Commonwealth of any change in its status or circumstances that may affect its ability to comply with this Agreement, including its ability to implement the Project.

4.5 Recipient to notify of breach
If the Recipient becomes aware of a breach of a warranty, the Recipient must immediately notify the Commonwealth of that breach.

5. Commercialisation

5.1 Recipient’s obligations
(a) The Recipient must use its best endeavours during the Project Period to:

(i) ensure the Outcomes are achieved; and
(ii) commercialise the Project or the Outcomes, including any Intellectual Property Rights in the Project and Agreement Material:

(A) in accordance with the Application, to the extent that it is not inconsistent with this Agreement;

(B) on normal commercial terms; and

(C) on an arm’s length basis.

(b) Without limiting the operation of clause 5.1(a), the Recipient will have breached its obligations under that clause if the Commonwealth determines that during the Project Period the Recipient has acted:

(i) inconsistently with any material representation made to the Commonwealth (as determined by the Commonwealth acting reasonably) including with any representation that was part of the Application; or

(ii) in a manner so as to reduce or prevent the Outcomes from being achieved.

5.2 Notification

(a) The Recipient must immediately notify the Commonwealth (giving reasons) if at any time during the Project Period, the Recipient:

(i) believes the Recipient’s or the Project’s capacity to achieve the Outcomes has been compromised; or

(ii) wishes to commercialise the Project or the Outcomes other than as required under clause 5.1(a).

(b) If the Recipient provides notification to the Commonwealth pursuant to 5.2(a), the Recipient must take all reasonable steps requested by the Commonwealth.

5.3 Non-compliance with commercialisation obligations

If the Recipient fails to comply with either clause 5.1 or clause 5.2, the Commonwealth may by notice to the Recipient require the Recipient to repay such amount of the Funds paid to the Recipient as the Commonwealth reasonably determines and as set out in that notice. If the Recipient does not pay the amount by the due date set out in the notice, the Recipient must, if requested by the Commonwealth, pay Interest in accordance with clause 10.7.

6. Contributions

6.1 Recipient Contribution

The Recipient must fund all expenditure in relation to the Project, including any Eligible Expenditure, that is not covered by the Funds (Recipient Contribution).

6.2 Other Government Sources

(a) The Recipient must give the Commonwealth full details of any financial assistance for any part of the Project which the Recipient receives from another Government Grant Source. The details must include the amount and source of the funding and the name of the program under which it was provided, within 30 days of the Recipient receiving notice that the funding from that Government Grant Source has been approved.
(b) The Commonwealth may reduce, suspend or defer its payments of the Funds in the event the Recipient receives funding from another Government Grant Source for any part of the Project, but only to the extent of the value of that funding.

7. Funds

7.1 Payment

Subject to:

(a) clauses 7.2, 7.3, 7.4, 7.5, 7.6 and 7.7;

(b) sufficient funding being available for the Programme; and

(c) the Recipient complying with this Agreement,

the Commonwealth will pay the Funds to the Recipient in accordance with this clause 7.

7.2 Progress Payments

(a) For the first Quarter occurring after the Agreement Commencement Date, the Commonwealth will pay to the Recipient the Initial Progress Payment set out in Schedule 2, that is the Grant Percentage of the Eligible Expenditure that the Recipient reasonably estimates will be incurred in that Quarter plus the Grant Percentage of any previous Eligible Expenditure incurred by the Recipient under clause 7.4.

(b) For each Quarter occurring after the first Quarter, and following receipt of a Progress Report from the Recipient that is satisfactory to the Commonwealth, the Commonwealth will make Quarterly Progress Payments to the Recipient based on the sum of:

(i) the Grant Percentage of the Eligible Expenditure that the Recipient reasonably estimates will be incurred in that Quarter, as stated in the most recent Progress Report provided to the Commonwealth; and

(ii) the Grant Percentage of the Eligible Expenditure incurred by the Recipient in the previous Quarter, less the amount of the Progress Payment already paid by the Commonwealth for that previous Quarter.

(c) If the amount calculated under clause 7.2(b)(ii) produces a negative amount (that is, where the Grant Percentage of the Eligible Expenditure actually incurred by the Recipient in the previous Quarter is less than the Progress Payment paid to the Recipient for that Quarter), the difference will be deducted by the Commonwealth from the current or subsequent Quarterly Progress Payments.

(d) Notwithstanding clauses 7.2(a), (b) or (c), the Commonwealth will not make Progress Payments, that in aggregate, exceed the Annual Capped Amount for the Project in a Financial Year.

(e) Notwithstanding any provision of this Agreement to the contrary, the Commonwealth is not obliged to make a Progress Payment or may pay to the Recipient only part of a Progress Payment, unless and until the Commonwealth is satisfied that the Recipient:

(i) has expended a sufficient amount of the Recipient Contribution to meet all Eligible Expenditure incurred to date, that has not been met by the sum of the Progress Payments paid to date;
(ii) has a sufficient amount of the Recipient Contribution to meet all Eligible Expenditure reasonably estimated to be incurred during the next Quarter that will not be met by the next reasonably estimated Quarterly Progress Payment;

(iii) has made sufficient progress on the Project, including by having met all Milestones set out in this Agreement that have fallen due; and

(iv) has provided all audit certificates that have fallen due.

(f) A Progress Payment may be made in advance for the next Quarter or any subsequent Quarters, in the Commonwealth's absolute discretion.

(g) The date for payment of Progress Payments will be determined by the Commonwealth.

7.3 Retention Amount

(a) The Commonwealth will retain the Retention Amount from the Funds, until such time as the Recipient has completed to the Commonwealth’s satisfaction:

(i) the Project; and

(ii) all reports required under this Agreement in respect of the Project, except Post-Project Reports.

(b) The Commonwealth will determine the manner and timing of the retention of the Retention Amount and its payment, or non-payment.

(c) The Retention Amount will be varied if an additional funding is approved as part of a variation to the Project.

(d) Payment of the Retention Amount does not waive any of the Commonwealth’s rights under this Agreement.

7.4 Expenditure incurred before the Agreement Commencement Date

The Recipient may incur Eligible Expenditure in respect of the Project on and from the Application Acceptance Date. However, the Commonwealth will not make any Progress Payments to the Recipient prior to the Agreement Commencement Date.

7.5 Commonwealth may withhold payment

(a) The Commonwealth is not obliged to make a payment if, in the Commonwealth’s reasonable opinion, any one or more of the following events has or may have occurred in respect of the Recipient:

(i) the total of all Progress Payments paid to date, and the next Quarterly Progress Payment, would exceed the Grant Percentage of the total amount of the Eligible Expenditure made or incurred to date and forecast to be incurred in the next Quarter, as determined by the Commonwealth (such determination being final and binding);

(ii) a Progress Payment or the Recipient Contribution has not been used by the Recipient in accordance with this Agreement;

(iii) the Commonwealth has determined that some or all of the Recipient’s expenditure to which the proposed payment relates is not Eligible Expenditure. The Commonwealth’s determination as to whether expenditure by the Recipient is Eligible Expenditure is final and binding on the Recipient;
(iv) there has been a change to Specified Personnel and the Commonwealth has not approved, or has rejected, the alternative proposed replacement for the Specified Personnel;

(v) the Recipient will not be able to complete the Project to a standard reasonably acceptable to the Commonwealth;

(vi) the Recipient has not provided a report required under this Agreement by the due date for submission, or the report provided is not satisfactory to the Commonwealth;

(vii) the Recipient is in breach of any warranty in this Agreement;

(viii) the Recipient is, or is likely to become, Insolvent;

(ix) the Commonwealth has acted under, or purportedly under, its power to terminate this Agreement;

(x) the sum of the Progress Payment and other Progress Payments made in a Financial Year in respect of the Project would exceed the Annual Capped Amount for that Financial Year;

(xi) the Recipient has exceeded, or will exceed, any cap on expenditure set out in the Schedules; or

(xii) the Recipient breaches a term of this Agreement and that breach has not been remedied to the Commonwealth’s satisfaction.

(b) The Commonwealth may defer a payment otherwise due in a Financial Year to the next Financial Year if, in the Commonwealth’s reasonable opinion, insufficient Programme Funding may be available to meet that commitment in the first-mentioned Financial Year.

(c) The Commonwealth may withhold payment of the Retention Amount until such time as the Recipient has complied with clause 7.3(a).

(d) The Commonwealth may request the Recipient to provide to the Commonwealth any information the Commonwealth reasonably requires for the purposes of determining any of the matters described in this clause 7. The Recipient must comply with such a request within 14 days of its receipt.

(e) The Commonwealth is not obliged to make any payment after the Commonwealth has become entitled to terminate this Agreement.

7.6 Liability limited

Notwithstanding any other provision of this Agreement, the liability of the Commonwealth under this Agreement is limited:

(a) with respect to any Financial Year, to the lesser of:

(i) the Grant Percentage of the total amount of the Eligible Expenditure made or incurred by the Recipient in respect of the Project for that year; or

(ii) the Annual Capped Amount for the Project in that year; and

(b) in the aggregate, to the Grant Percentage of the total amount of the Eligible Expenditure made or incurred by the Recipient in respect of the Project.
7.7 Taxes
The Recipient must pay all:
(a) stamp duty (including penalties and interest) assessed or payable in respect of this Agreement and the Project; and
(b) Subject to clause 8, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

8. GST
8.1 Construction
In this clause 8 words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.

8.2 Consideration GST exclusive
Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

8.3 Payment of GST
If GST is payable by a supplier on any supply made under this Agreement, the recipient of the supply will pay to the supplier an amount equal to the GST payable on the supply, in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

8.4 Tax invoice
(a) Except where clause 8.4(b) applies:
   (i) the supplier must deliver a tax invoice or an adjustment note to the recipient of the supply before the supplier is entitled to payment of an amount under clause 8.3; and
   (ii) the recipient of the supply can withhold payment of the amount payable under clause 8.3 until the supplier provides a tax invoice or an adjustment note as appropriate.

(b) If GST is imposed on any supply made by the Recipient to the Commonwealth under this Agreement in return for all or any part of the Funds, the Commonwealth may issue a ‘recipient created tax invoice’ to the Recipient for the supply in question (and an adjustment note for any adjustment event in respect of that supply) and the Recipient must not issue a tax invoice (or adjustment note) for or in respect of the supply.

(c) Each party warrants that it is GST registered and agrees that it will promptly notify the other party if it ceases to be GST registered.

8.5 Adjustment event
If an adjustment event arises in respect of a taxable supply made by a supplier under this Agreement the amount payable by the recipient of the supply under clause 8.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient of the supply to the supplier or by the supplier to the recipient of the supply as the case requires.
8.6 Reimbursements
No party may claim from the other an amount for which the first party can obtain an input tax credit.

9. Use of Funds

9.1 What Funds can be used for
The Recipient must spend the Funds only:
(a) for Eligible Expenditure for the purposes of undertaking the Project;
(b) in accordance with this Agreement, the Programme Guidelines and the Customer Guidelines; and
(c) in accordance with the Budget, however, the Recipient may vary the Budget in accordance with clause 9.3.

9.2 When Funds cannot be used
(a) Without limiting any other right or remedy of the Commonwealth, the Commonwealth may by notice direct the Recipient not to spend Funds if:
   (i) the Recipient has not completed a Report that was due before the date of notification;
   (ii) the Recipient has not achieved a Milestone that was due to be achieved before the date of notification; or
   (iii) the Recipient is otherwise in breach or the Commonwealth is of the reasonable opinion that the Recipient will be in breach of this Agreement (Potential Breach) of this Agreement, and in the case of a Potential Breach has not satisfied the Commonwealth that the Potential Breach will be avoided.
(b) The Recipient must not spend any Funds after it receives notice from the Commonwealth under clause 9.2(a), and must not undertake Eligible Expenditure or make any other form of commitment the performance of which the Recipient depends on the Funds being received under this Agreement, unless and until the Commonwealth, at its discretion, notifies the Recipient otherwise.

9.3 Budget
(a) The Recipient’s Budget is set out in item 10 of Schedule 2. The Recipient may only use the Funding in accordance with the Budget for the Project.
(b) Subject to this clause, the Recipient may reallocate Budgeted expenditure in respect of categories of expenditure in the Budget, provided it does not materially change the Project, any Milestone(s) set out in this Agreement, the Outcomes or cause the Recipient to be in breach of any of its obligations under this Agreement.
(c) The Recipient must give the Commonwealth by:
   (i) 1 February each Financial Year; or
   (ii) at any time the Recipient wishes to request a variation to any one or more of the Annual Capped Amounts; or
   (iii) if otherwise requested by the Commonwealth,
a revised Budget in a form acceptable to the Commonwealth, so as to ensure the relevant Budget continues to accurately reflect planned Eligible Expenditure for the Project, and an explanation as to why the requested changes are proposed.

(d) The Commonwealth may, at its discretion, approve or reject a revised Budget provided under clause 9.3(c). The Commonwealth’s approval may be granted subject to conditions.

(e) If a revised Budget is approved by the Commonwealth, then the relevant Budget is replaced by the revised Budget approved under clause 9.3(c).

(f) Notwithstanding any change to the Budget, the Annual Capped Amount may not be exceeded unless the Commonwealth specifically approves an increase of that amount.

9.4 Bank account

The Recipient must:

(a) ensure that Funds paid to the Recipient are held in an account in the Recipient's name, and which the Recipient solely controls, with an authorised deposit-taking institution authorised under the Banking Act 1959 (Cth) to carry on banking business in Australia;

(b) notify the Commonwealth, prior to the receipt of any Funds, of details sufficient to identify the account;

(c) on notification from the Commonwealth, provide the Commonwealth and the authorised deposit-taking institution with an authority for the Commonwealth to obtain any details relating to the use of the account;

(d) if the account changes, notify the Commonwealth within 14 days of the change occurring, providing the Commonwealth with details of the new account, and comply with clause 9.4(c) in respect of the new account; and

(e) identify the receipt and expenditure of the Funds separately within the Recipient's accounting records so that at all times the Funds are identifiable and ascertainable.

9.5 No additional Funds

The Commonwealth is not responsible for the provision of additional money to meet any expenditure in excess of the Funds.

10. Repayment

10.1 During the Project Period

(a) During the Project Period, the Commonwealth is entitled to recover from the Recipient, and if required by the Commonwealth, the Recipient must pay to the Commonwealth promptly on demand:

(i) all Funds previously paid by the Commonwealth to the Recipient where the Recipient breaches or has breached any of the terms and conditions in this Agreement, and the Commonwealth:

(A) does not waive the breach in writing; or

(B) waives the breach conditionally, and the Recipient breaches, or fails to satisfy, that term or condition;
(ii) any Funds that have not been spent or legally committed in accordance with this Agreement;

(iii) the amount of any Funds which, in the Commonwealth's opinion, have been spent or legally committed other than in accordance with this Agreement and/or the Customer Guidelines;

(iv) subject to clause 16, all Funds where, in the Commonwealth’s opinion, the Intellectual Property Rights in the Project, or in any other material that has been developed using Funds, have been, or are intended to be, Dealt With or transferred outside of Australia; or

(v) subject to clause 16, all Funds where the Recipient undergoes a change of ownership or Control which results in the Recipient coming under foreign ownership or Control.

(b) If the Commonwealth wishes to exercise its rights under this clause 10.1 it must give the Recipient a written notice requiring repayment of the Funds.

10.2 At the end of the Project Period

After the end of the Project Period or on the earlier termination of the Agreement, the Commonwealth is entitled to recover from the Recipient, and the Recipient must pay to the Commonwealth on demand:

(a) any Funds which have not been spent, or legally committed by the Recipient;

(b) the amount of any Funds which, in the Commonwealth's opinion, have been spent or legally committed other than in accordance with this Agreement and/or the Customer Guidelines; and

(c) all Funds where the Recipient is, or was, otherwise in breach of this Agreement and the Commonwealth:

(i) does not waive the breach in writing; or

(ii) waives the breach conditionally, and the Recipient breaches, or fails to satisfy, that term or condition.

10.3 Timing for repayment

The Commonwealth does not need to terminate the Agreement to recover the Funds under clauses 10.1 or 10.2.

10.4 Repayment notice

(a) The Commonwealth may give the Recipient a notice requiring the Recipient to repay to the Commonwealth (or deal with as specified by the Commonwealth in that notice) an amount which the Recipient is obliged to repay to the Commonwealth under clause 10.1 or 10.2.

(b) If the Commonwealth gives the Recipient a notice under clause 10.4(a), the Recipient must repay the amount specified in the notice in full (or deal with it as specified by the Commonwealth in that notice) within 30 days of the date of the notice, whether or not the Recipient disputes the Commonwealth’s entitlement to recover, or the Recipient’s obligation to repay, the amount under this Agreement.
10.5 Failure to Repay
If the Recipient fails to make payment as required by the notice provided under clause 10.4, if requested by the Commonwealth, the Recipient must pay Interest in accordance with clause 10.7.

10.6 Amounts due to Commonwealth
(a) Without limiting any of the Commonwealth's other rights or remedies, any amount payable to the Commonwealth (including by way of refund or Interest), or which the Commonwealth is entitled to recover from the Recipient, under this Agreement will be recoverable by the Commonwealth as a debt due and payable to the Commonwealth by the Recipient.

(b) The Commonwealth may offset any money due for payment by the Commonwealth to the Recipient under this Agreement against any money payable by the Recipient to the Commonwealth under this Agreement.

10.7 Interest
If the Commonwealth requires interest to be paid by the Recipient in connection with an amount owing under this Agreement, the amount of that interest will be calculated:
(a) at the 90 day bank-accepted bill rate (available from the Reserve Bank) on the day the Funds were required to be repaid or reimbursed; and

(b) from and including the date the amount was originally due for payment by the Recipient, for the period the amount remains unpaid, or any lesser period specified by the Commonwealth.

11. Monitoring progress and reporting

11.1 Progress meetings
The parties will meet at the times and in the manner reasonably required by the Commonwealth to discuss any issues in relation to the Project or this Agreement. The Recipient and the Commonwealth must both provide representatives who are able to answer queries relating to this Agreement, its performance or the Project raised by either party.

11.2 Reporting
(a) The Recipient must provide the Commonwealth with all reports and audit certificates specified in Schedule 2:
   (i) by the due date and covering the Report period specified for each particular report in item 14 of Schedule 2;
   (ii) using the relevant templates and format requirements provided by the Commonwealth from time to time; and
   (iii) as otherwise required by the Customer Guidelines and the Commonwealth (from time to time).

(b) The Recipient must also provide to the Commonwealth any ad hoc report reasonably required by the Commonwealth from time to time, in the form and with the content reasonably required by the Commonwealth.

(c) If in the Programme Delegate’s opinion, the form or content of a report is unsatisfactory, the Programme Delegate may request in writing that the Recipient
submit a revised report within 30 days of receipt of that notice, or such other period as
the Programme Delegate sees fit.

(d) The issue of a notice under clause 11.2(c) does not limit the Commonwealth’s ability
to withhold payment under clause 7.5(a)(vi) or any other right of the Commonwealth.

11.3 Post-Project reports
Unless otherwise notified by the Commonwealth, Post-Project Reports are due within 30 days
after requested by the Commonwealth in writing, and must contain the information required
and be in the format specified by the Customer Guidelines or as otherwise notified by the
Commonwealth.

11.4 Auditing of Reports
(a) If the Commonwealth requires a Report or Project expenditure to be audited, the
Report must be audited by:
   (i) a member of the Institute of Chartered Accountants;
   (ii) a member of CPA Australia; or
   (iii) a member or fellow of the Institute of Public Accountants,
   (iv) not being:
       (A) an employee, shareholder, director, other officeholder of either the
           Recipient or of a Related Body Corporate of the Recipient;
       (B) a Close Relative of any person mentioned in (A); or
       (C) any person having had an involvement in the preparation of the
           Application or any other Report provided under this Agreement.

(b) The auditor engaged pursuant to this clause 11.4 must warrant to the Recipient they do
not have a Conflict of Interest.

11.5 Evaluation
In relation to any review or final evaluation of the Programme, the Recipient must within 30
days:
(a) provide all reasonable assistance to the Commonwealth;
(b) respond to all reasonable requests from the Commonwealth; and
(c) provide any information reasonably required by the Commonwealth.

Part 2 – General requirements

12. Subcontractors and Personnel

12.1 Subcontracting
(a) The Recipient must:
   (i) not, in any event, enter into a subcontract under this Agreement with a
       subcontractor named by the Director of the Workplace Gender Equality
       Agency in a report to the responsible Minister as an employer currently not
       complying with the reporting requirements of the WGE Act; and
(ii) unless the Commonwealth otherwise agrees in writing, ensure that all subcontractors it uses for the purposes of this Agreement are contractually required to comply with obligations consistent with those contained in:

(A) Clause 18 (Insurance);
(B) Clause 20 (Confidentiality);
(C) Clause 21 (Work health and safety);
(D) Clause 22 (Protection of personal information);
(E) Clause 23 (Conflict of interest);
(F) Clause 24 (Books and records);
(G) Clause 25 (Audit and access); and
(H) Clause 30.16 (False or misleading information).

(b) The Recipient is fully responsible for undertaking the Project even if the Recipient subcontracts any aspect of the Project and for the performance of all of the Recipient's obligations under this Agreement, and even if the Commonwealth has agreed to waive or modify the requirement to include any of the clauses in clause 12.1(a)(ii).

12.2 Use of Specified Personnel

The Recipient must:

(a) undertake the Project with the active involvement, and using the expertise, of the Specified Personnel; and

(b) ensure that each of the Specified Personnel is aware of and complies with the Recipient's obligations in undertaking the Project.

12.3 If the Specified Personnel are not available

Where one or more of the Specified Personnel is or will become unable or unwilling to be involved in the Project, the Recipient must notify the Commonwealth immediately. The Recipient must:

(a) if requested by the Commonwealth, provide a replacement person of suitable ability and qualifications at no additional charge and at the earliest opportunity; and

(b) obtain the Commonwealth's written consent prior to appointing any such replacement person. The Commonwealth's consent will not be unreasonably withheld.

13. Other Project assistance

13.1 Commercialisation Adviser

During the Project Period, the Commonwealth may arrange, with the Recipient’s agreement, for a Commercialisation Adviser to assist the Recipient in undertaking the Project.

13.2 Expert Network Member

(a) The Commonwealth may make available to the Recipient an Expert Network Member to assist the Recipient.
(b) In addition to the role of the Commercialisation Adviser under clause 13.1, the Recipient may:

(i) meet with the Expert Network Member, as arranged by the Commercialisation Adviser from time to time; and

(ii) consider the views of the Expert Network Member in undertaking the Project.

(c) The Recipient agrees to do all things necessary to release the Expert Network Member from any loss, liability, expense or cost incurred by the Recipient arising out of, or in connection with, the Expert Network Member’s assistance, including by entering into the deed poll attached at Schedule 4 on or before the Agreement Commencement Date.

13.3 Portfolio membership

(a) The Recipient will be a member of the Portfolio for up to two years from the Agreement Commencement Date or such other period as the Commonwealth may notify to the Recipient.

(b) Unless otherwise advised by the Commonwealth, the Recipient must meet its own costs of participating in the Portfolio.

(c) The Portfolio will provide the Recipient with:

(i) inclusion on a website listing of all Portfolio members;

(ii) specialist guidance from Commercialisation Advisers;

(iii) introduction (via a Commercialisation Adviser) to relevant members of the Expert Network; and

(iv) access to possible networking and promotional opportunities.

(d) The Recipient’s membership of the Portfolio may be terminated by:

(i) the Programme Delegate at the Programme Delegate’s absolute discretion if the Recipient is no longer contributing to the objectives of the Portfolio; or

(ii) the Recipient,

by the terminating party giving the other party at least 7 days written notice.


14.1 Intellectual Property Rights in Agreement Material

(a) All Intellectual Property Rights in the Agreement Material vest in the Recipient on creation.

(b) The Recipient grants to the Commonwealth a perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate all Material provided by the Recipient under this Agreement, for the purposes of reporting on, administering and evaluating this Agreement and the Programme.

(c) The Commonwealth acknowledges that whenever it exercises its licence in clause 14.1(b), it will comply with clause 20 (Confidentiality).
15. Moral Rights

15.1 Obtaining consents
To the extent permitted by laws and for the benefit of the Commonwealth, the Recipient consents, and must use its best endeavours to ensure that each author of Material provided by the Recipient to the Commonwealth under this Agreement consents in writing, to the use by the Commonwealth of the Material as permitted under clause 14.1(b), even if the use may otherwise be an infringement of their Moral Rights.

16. No dealing with Recipient’s Rights

16.1 Dealing with the Recipient’s rights
For two years from the Project Start Date, other than for the purposes of the Recipient meeting its obligations under clause 5.1 or with the Programme Delegate’s prior written consent in accordance with clause 16.3, or as otherwise permitted under this Agreement, the Recipient must not:

(a) Deal With, or grant or create any Encumbrance over, its rights under this Agreement, the Funds or its interest in or rights over the Intellectual Property Rights in the Project;

(b) Deal With any Pilot Manufacturing Plant or State-of-the-art Manufacturing Plant; or

(c) Deal With any Intellectual Property Rights in the Agreement Material or obtained either by using any part the Funds or otherwise in the course of the Project.

16.2 Change in control
A change in Control of the Recipient, and a sale of all or part of the Recipient’s Pilot Manufacturing Plant or State-of-the-art Manufacturing Plant associated with the Project, are each taken to be Dealing With the Recipient’s rights under this clause 16.

16.3 Programme Delegate’s consent

(a) The Programme Delegate’s consent may be given subject to conditions, including the requirement that the Recipient and any other person concerned in a transaction referred to in clause 16.1 to execute all documentation required by the Commonwealth. The Recipient must comply with any such conditions.

(b) When considering an application for consent in relation to Pilot Manufacturing Plant or State-of-the-art Manufacturing Plant, the Commonwealth may as a condition of its consent require the Recipient to repay, or deduct from future payments of the Funds, an amount that is equal to the difference between:

(i) the amount of the Funds received for the Pilot Manufacturing Plant or State-of-the-art Manufacturing Plant, for the period prior to the Recipient Dealing With the plant; and

(ii) the amount that the Recipient would have been entitled to receive under the Programme for plant expenditure over the same period (in accordance with the Eligible Expenditure Guidelines for plant expenditure), if the plant had not been a Pilot Manufacturing Plant or State-of-the-art Manufacturing Facility, or any lesser amount determined by the Commonwealth in its absolute discretion.
16.4 **Floating charges**

Notwithstanding the above, the parties agree that the giving of a floating charge over the assets and undertakings of the Recipient is not taken to be a breach of clauses 16.1 to 16.3 (inclusive).

17. **Indemnity**

(a) The Recipient indemnifies the Commonwealth, its officers, employees and contractors (‘those indemnified’) against any claim, loss or damage arising in connection with the Project.

(b) The Recipient's obligation to indemnify the Commonwealth will reduce proportionally to the extent any act or omission involving fault on the part of those indemnified contributed to the claim, loss or damage.

18. **Insurance**

18.1 **Obligation to maintain insurance**

Unless otherwise specified in item 6 of Schedule 1, in connection with the project, the Recipient must have and maintain at all times during the Project Period:

(a) workers’ compensation insurance for an amount required by the relevant State or Territory legislation; and

(b) public liability insurance for an amount and on terms that are consistent with good industry practice in the Recipient’s industry.

18.2 **Certificates of currency**

If requested by the Commonwealth, the Recipient must provide certificates of currency or other documentary evidence acceptable to the Commonwealth from its insurers or insurance brokers certifying that it has insurance as required by clause 18.1.

19. **Acknowledgement of Support and Publicity**

19.1 **Acknowledgement of support**

The Recipient must, for the Term, in all:

(a) publications, promotional and advertising materials in all media;

(b) public announcements, events and activities in relation to the Project; and

(c) any products, processes or inventions developed as a result of it;

acknowledge the financial and other support received from the Commonwealth.

19.2 **Publicity**

(a) The Recipient acknowledges that the Department is required to publish on its website information about this Agreement to fulfil its obligations under the Commonwealth Grants Rules and Guidelines.

(b) The Commonwealth, the Department and/or the Minister reserves the right to publicise and report on the awarding of the Funds and the Project in media releases, general announcements about the Programme annual reports and on its website. The information made available may include the Recipient's name, the amount of the
Funds, the title and a brief description of the Project and the Project Outcomes and, following consultation with the Recipient, any other information provided by the Recipient in relation to its Application and this Agreement which the Commonwealth considers not to be confidential.

(c) If the Commonwealth, the Department and/or the Minister advises the Recipient it wishes to be the first party to publicly announce the allocation of the Funds to the Recipient, the Recipient must delay making any public announcement regarding this Agreement or regarding any transaction contemplated by it until after the Commonwealth, the Department and/or the Minister have made its announcement, except if required by Law or a regulatory body (including a relevant stock exchange).

(d) If the Recipient is required by Law or a regulatory body to make a public announcement in connection with this Agreement or any transaction contemplated by this Agreement, the Recipient must, to the extent practicable, first consult with and take into account the reasonable requirements of the Commonwealth.

20. Confidentiality

20.1 Prohibition on disclosure

(a) Subject to clause 20.2, the Recipient must not, without the prior written consent of the Commonwealth, disclose any Commonwealth' Confidential Information to a third party.

(b) Subject to clause 20.2, the Commonwealth must not, without the prior written consent of the Recipient, disclose any Recipient' Confidential Information to a third party.

20.2 Exceptions to obligations

The obligations on each party under clause 20.1 will not be taken to have been breached to the extent that Confidential Information of the other party:

(a) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;

(b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of activities related to this Agreement;

(c) is disclosed by the Commonwealth to the responsible Minister;

(d) is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;

(e) is shared by the Commonwealth within the Department, or with another Commonwealth agency, where this serves the Commonwealth's legitimate interests;

(f) is disclosed by the Commonwealth to the Auditor-General, the Commonwealth Ombudsman or the Australian Information Commissioner;

(g) is required by Law to be disclosed; or

(h) is in the public domain otherwise than due to a breach of this Agreement.
20.3 **Obligation on disclosure**

Where a party discloses Confidential Information of the other party to another person:

(a) pursuant to clauses 20.2(a),(b) or (e), the disclosing party must:

(i) notify the receiving person that the information is Confidential Information; and

(ii) not provide the information unless the receiving person agrees to keep the information confidential, including in the case of Commonwealth’s Confidential Information, the receiving person giving the Commonwealth a legally binding undertaking to that effect in the form approved by the Commonwealth; or

(b) pursuant to clauses 20.2(c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information of the other party.

20.4 **Additional confidential information**

(a) The parties may agree in writing after the Agreement Commencement Date that certain additional information is to constitute Confidential Information for the purposes of this Agreement.

(b) Where the parties agree in writing after the Agreement Commencement Date that certain additional information is to constitute Confidential Information for the purposes of this Agreement, this documentation is incorporated into, and becomes part of this Agreement, on the date by which both parties have signed this documentation.

20.5 **Period of confidentiality**

The obligations under this clause 20 continue, notwithstanding the expiry or termination of this Agreement:

(a) in relation to an item of information described in Schedule 3, for the period set out in that Schedule in respect of that item; and

(b) in relation to any information which the parties agree in writing after the Agreement Commencement Date to constitute Confidential Information for the purposes of this Agreement, for the period agreed by the parties in writing in respect of that information.

20.6 **No reduction in privacy obligations**

Nothing in this Agreement derogates from any obligation which either party may have under the *Privacy Act 1988* (Cth) as amended from time to time, in relation to the protection of ‘personal information’ as defined in that Act or information that is protected by the *Census and Statistics Act 1905* (Cth), or any other Act, regulation or other legislative instrument requiring secrecy or confidentiality in dealing with information.

21. **Work health and safety**

21.1 **WHS Definition**

(a) The definitions set out below apply to this clause 21:

(i) **WHS Act** means the *Work Health and Safety Act 2011* (Cth) and any corresponding WHS Laws as defined in that Act;
(ii) **WHS Laws** means the WHS Act, regulations made under the WHS Act and any Code of Practice approved for the purpose of the WHS Act.

### 21.2 General safety obligations

(a) The Recipient must ensure the Project is undertaken in a safe manner.

(b) The Recipient must not, and must ensure its Personnel do not, by act or omission place the Commonwealth in breach of its obligations under the WHS Laws.

(c) The Recipient must, and must ensure its Personnel, if using or accessing the Commonwealth’s premises or facilities, comply with all reasonable instructions, directions, policies and procedures relating to work health and safety in operation at those premises or facilities whether specifically drawn to the attention of the Recipient or might reasonably be inferred from the circumstances.

(d) To the extent permitted by law the Commonwealth is not liable to the Recipient for any loss in connection with work health and safety in relation to any WHS Act defined workers or any other person performing services.

### 22. Protection of personal information

#### 22.1 Definitions

In this clause 22, the terms ‘agency’, ‘Australian Privacy Principle’ (**APP**s), ‘APP privacy policy’, ‘Australian Privacy Principle Code’ (**APP code**) and ‘contracted service provider’ have the same meaning as they have in section 6 of the Privacy Act, and ‘personal information’, which also has the meaning it has in section 6 of the Privacy Act, means:

‘information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not’.

#### 22.2 Application of this clause

This clause 22 applies only where the Recipient deals with personal information provided to the Recipient by the Commonwealth, for the purpose of, completing the Project under this Agreement.

#### 22.3 Obligations

The Recipient acknowledges that to the extent this clause 22 applies it is a ‘contracted service provider’ and agrees in respect of the Project under this Agreement to take all necessary measures to ensure that personal information in its possession or control in connection with this Agreement is protected against loss and unauthorised access, use, disclosure or modification.

(a) The Recipient must, on request from the Commonwealth, provide to the Commonwealth:

   (i) a copy of the Recipient’s and any subcontractor’s APP privacy policy which is compliant with APP 1;

   (ii) copies of the Recipient’s and any subcontractor’s security and data protection policies upon request by the Commonwealth; or

   (iii) details of the Recipient’s and any subcontractor’s processes and procedures implemented to ensure compliance with the Privacy Act.
(b) The Recipient agrees in respect of the Project under this Agreement:

(i) to use or disclose personal information obtained by the Recipient from the Commonwealth during the course of the Project under this Agreement, only for the purposes of this Agreement;

(ii) not to do any act or engage in any practice that would breach an APP contained in schedule 1 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that APP;

(iii) to carry out and discharge the obligations contained in the APPs as if it were an agency under the Privacy Act;

(iv) to notify individuals whose personal information the Recipient holds, that complaints about acts or practices of the Recipient may be investigated by the Privacy Commissioner who has power to award compensation against the Recipient in appropriate circumstances;

(v) not to use or disclose personal information or engage in an act or practice that would breach APP 7 (direct marketing) or a registered APP Code which is applicable to the Recipient, unless the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Agreement;

(vi) to follow any reasonable directions given by the Commonwealth to ensure compliance with the Privacy Act;

(vii) to not transfer or transmit personal information outside of Australia except with the prior written approval of the Commonwealth, which will not be unreasonably withheld. In giving its approval the Commonwealth may impose such conditions as it thinks fit. The Recipient must comply with any term or condition imposed by the Commonwealth under this clause 22.3(b)(vii);

(viii) to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an APP or a registered APP code which is binding on a party to this Agreement;

(ix) to immediately notify the Commonwealth if the Recipient becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 22, whether by the Recipient or any subcontractor (including any complaints made about acts or practices of the Recipient in connection with personal information);

(x) to notify the Commonwealth of any subpoena, warrant, order, demand or request made by a foreign court or other authority for the disclosure of personal information to which the Privacy Act applies and to not disclose such information without the prior written approval of the Commonwealth, which will not be unreasonably withheld. In giving its approval the Commonwealth may impose such conditions as it thinks fit. The Recipient must comply with any term or condition imposed by the Commonwealth under this clause 22.3(b)(x);

(xi) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, notified to the Recipient by the Commonwealth to the extent that they are not inconsistent with the requirements of this clause 22; and
to ensure that any employee of the Recipient who is required to deal with personal information for the purposes of this Agreement is made aware of the obligations of the Recipient set out in this clause 22.

22.4 Subcontracts
The Recipient must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Recipient has under this clause 22, including the requirement in relation to subcontracts.

22.5 Indemnity
The Recipient agrees to indemnify the Commonwealth in respect of any loss or liability suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Agreement under this clause 22, or a subcontractor under the subcontract provisions referred to in clause 22.4, or a subcontractor under the subcontract provisions referred to in clause 12.

23. Conflict of interest
23.1 Notification of a conflict of interest
If, during the Project a Conflict of Interest arises, or appears likely to arise, the Recipient must:

(a) notify the Commonwealth immediately in writing;
(b) make full disclosure of all relevant information relating to the conflict; and
(c) take such steps as the Commonwealth requires to resolve or otherwise deal with the conflict.

24. Books and records
24.1 Recipient to keep books and records
The Recipient must during the Project:

(a) keep and require its subcontractors to keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable:

(i) all receipts and payments related to the Project to be identified and reported in accordance with this Agreement; and
(ii) the amounts payable by the Commonwealth under this Agreement to be determined; and

(b) retain and require its subcontractors to retain for a period of seven years after the Project End Date or earlier termination of this Agreement, all books and records relating to the Project.

24.2 Costs
The Recipient must bear its own costs of complying with this clause 24.
25. Audit and access

25.1 Right to conduct audits

The Commonwealth or a representative may conduct audits relevant to the performance of the Recipient's obligations under this Agreement. Audits may be conducted of:

(a) the conduct and management of the Project;
(b) the Eligible Expenditure;
(c) any premises where the Project is being undertaken
(d) the Recipient's operational practices and procedures as they relate to this Agreement;
(e) the accuracy of the Recipient’s invoices and Reports;
(f) Material (including books and records) in the possession of the Recipient relevant to the Project or this Agreement; and
(g) any other matters determined by the Commonwealth to be relevant to the Project or this Agreement.

25.2 Access by the Commonwealth

(a) The Commonwealth may, at reasonable times and on giving reasonable notice to the Recipient:

(i) access the premises of the Recipient to the extent relevant to the performance of this Agreement;
(ii) require the provision by the Recipient, its employees, agents or subcontractors of records and information in a data format and storage medium accessible by the Commonwealth by use of the Commonwealth’s existing computer hardware and software;
(iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Recipient, its employees, agents or subcontractors; and
(iv) require assistance in respect of any inquiry into or concerning the Project or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.

(b) The Recipient must provide access to its computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under this clause 25, and provide the Commonwealth with any reasonable assistance requested by the Commonwealth to use that hardware and software.

25.3 Conduct of audit and access

The Commonwealth must use reasonable endeavours to ensure that:

(a) audits performed pursuant to clause 25.1; and
(b) the exercise of the general rights granted by clause 25.2 by the Commonwealth,
do not unreasonably delay or disrupt in any material respect the Recipient's performance of its obligations under this Agreement or its business.

25.4 Costs
Unless otherwise agreed in writing, each party must bear its own costs of any reviews and/or audits.

25.5 Auditor-General and Australian Information Commissioner
The rights of the Commonwealth under clause 25.2(a)(i) to 25.2(a)(iii) apply equally to the Auditor-General or a delegate of the Auditor-General, or the Australian Information Commissioner or a delegate of the Australian Information Commissioner, for the purpose of performing the Auditor-General's or the Australian Information Commissioner's statutory functions or powers.

25.6 Recipient to comply with Auditor-General's requirements
The Recipient must do all things necessary to comply with the Auditor-General’s or his or her delegate's or the Australian Information Commissioner's or his or her delegate's requirements, notified under clause 25.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Australian Information Commissioner, or his or her respective delegate.

25.7 No reduction in responsibility
The requirement for, and participation in, audits does not in any way reduce the Recipient's responsibility to perform its obligations in accordance with this Agreement.

25.8 Subcontractor requirements
The Recipient must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 25.

25.9 No restriction
Nothing in this Agreement reduces limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Australian Information Commissioner. The rights of the Commonwealth under this Agreement are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Australian Information Commissioner or a delegate of the Australian Information Commissioner.

Note: The effect of clause 28 of this Agreement is that this clause 25 applies for the duration of the Project and for a period of seven years after the Project End Date or earlier termination of this Agreement.

26. Dispute resolution

26.1 No arbitration or court proceedings
If a dispute arises in relation to the conduct of this Agreement (Dispute), a party must comply with this clause 26 before starting arbitration or court proceedings except proceedings for urgent interlocutory relief. After a party has sought or obtained any urgent interlocutory relief, that party must follow this clause 26.

26.2 Notification
A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.
26.3 **Parties to resolve Dispute**
During the 14 days after a notice is given under clause 26.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of their representatives to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

26.4 **Appointment of mediator**
If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 26.3, the chairperson of LEADR & IAMA or the chairperson's nominee will appoint a mediator.

26.5 **Role of mediator and obligations of parties**
The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 26.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

26.6 **Confidentiality**
Any information or documents disclosed by a party under this clause 26:
(a) must be kept confidential; and
(b) may only be used to attempt to resolve the Dispute.

26.7 **Costs**
Each party to a Dispute must pay its own costs of complying with this clause 26. The parties to the Dispute must equally pay the costs of any mediator.

26.8 **Termination of process**
A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 26.1 to 26.5. Clauses 26.6 and 26.7 survive termination of the dispute resolution process.

26.9 **Breach of this clause**
If a party to a Dispute breaches clauses 26.1 to 26.8, the other party does not have to comply with those clauses in relation to the Dispute.

27. **Termination**

27.1 **Termination and reduction for convenience**
(a) The Commonwealth may, at any time, by notice, terminate this Agreement or reduce the scope of the Project.

(b) On receipt of a notice of termination or reduction the Recipient must:
   (i) take all available steps to minimise loss resulting from that termination or reduction and to protect Commonwealth Material and Agreement Material; and
   (ii) continue to undertake any part of the Project not affected by the notice.

(c) Subject to clause 27.3, if this Agreement is terminated under this clause 27.1, the Commonwealth is liable only to pay any Progress Payments due, excluding Progress
 Payments that have been suspended or withheld by the Commonwealth in accordance with this Agreement, and not yet made to the Recipient as at the date of termination.

(d) If the scope of the Project is reduced, the Commonwealth's liability to pay the Funds or to provide Commonwealth Material abates in accordance with the reduction in the Project.

(e) The Commonwealth is not liable to pay compensation under clause 27.1(c) for an amount which would, in addition to any amounts paid or due, or becoming due, to the Recipient under this Agreement, exceed the Maximum Funds payable under this Agreement.

(f) The Recipient is not entitled to compensation for loss of prospective profits.

27.2 Termination for default

(a) Without limiting any other rights or remedies the Commonwealth may have against the Recipient arising out of or in connection with this Agreement, the Commonwealth may terminate this Agreement effective immediately by giving notice to the Recipient if:

(i) the Recipient breaches a material provision of this Agreement where that breach is not capable of remedy;

(ii) the Recipient breaches any provision of this Agreement and fails to remedy the breach within 21 days after receiving notice requiring it to do so (or within any longer period specified in the notice);

(iii) in the opinion of the Commonwealth, a Conflict of Interest exists which would prevent the Recipient from performing its obligations under this Agreement;

(iv) the Recipient is unable to provide the Recipient Contribution, or provide it in time to enable completion of the Project by the Project End Date;

(v) the Commonwealth is satisfied that any statement made in the Recipient's application for funding (if any) is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the provision of the Funds; or

(vi) an event specified in clause 27.2(c) happens.

(b) Without limitation, for the purposes of clause 27.1(a)(i) each of the following constitutes a breach of a material provision:

(i) breach of warranty under clause 4.3 (Warranties);

(ii) breach of clause 9.1 or 9.2 (Funds);

(iii) a failure to comply with clause 12 (Subcontractors and Personnel);

(iv) a failure to comply with clause 14 (Intellectual Property Rights);

(v) a failure to comply with clause 16 (No dealing with Recipient’s Rights);

(vi) a failure to comply with clause 18 (Insurance);

(vii) a failure to comply with clause 20 (Confidentiality);

(viii) a failure to comply with clause 22 (Protection of personal information); and
(ix) a failure to notify the Commonwealth of a conflict of interest under clause 23 (Conflict of interest).

(c) The Recipient must notify the Commonwealth immediately if:

(i) the Recipient disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;

(ii) the Recipient ceases to carry on business;

(iii) the Recipient ceases to be able to pay its debts as they become due or otherwise becomes Insolvent;

(iv) proceedings are initiated with a view to obtaining an order for the winding up of the Recipient, or any person convenes a meeting for the purpose of considering or passing any resolution for the winding up of the Recipient;

(v) the Recipient applies to come under, the Recipient receives a notice requiring it to show cause why it should not come under, an order has been made for the purpose of placing the Recipient under, or the Recipient otherwise comes under one of the forms of external administration referred to in Chapter 5 of the Corporations Act or Chapter 11 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) or equivalent provisions in State or Territory legislation in relation to incorporated associations;

(vi) the Recipient becomes non-compliant with the WGE Act; or

(vii) anything analogous to an event referred to in clause 27.2(c) occurs in relation to the Recipient.

27.3 Commonwealth rights

(a) Without limiting any of the Commonwealth's other rights or remedies, on termination of this Agreement, the Commonwealth:

(i) is not obliged to pay to the Recipient any outstanding amount of the Funds, except to the extent that those monies have been legally committed for expenditure by the Recipient in accordance with this Agreement and payable by the Recipient as a current liability (written evidence of which will be required) by the date the Recipient receives the notice of termination; and

(ii) is entitled to recover from the Recipient:

(A) any Funds which have not been spent, or legally committed for expenditure by the Recipient in accordance with this Agreement and payable by the Recipient as a current liability (written evidence of which will be required), by the date the Recipient receives the notice of termination; and

(B) the amount of any Funds which, in the Commonwealth's opinion, have been spent other than in accordance with this Agreement.

(b) The Commonwealth may give the Recipient a notice requiring the Recipient to repay to the Commonwealth (or deal with as specified by the Commonwealth) an amount which the Commonwealth is entitled to recover under clause 27.3(a)(ii).
(c) If the Commonwealth gives a notice under clause 27.3(b), the Recipient must repay
the amount specified in the notice in full (or deal with it as specified by the
Commonwealth) within 30 days of the date of the notice.

27.4 **Termination does not affect accrued rights**
Termination of this Agreement does not affect any accrued rights or remedies of a party.

28. **Survival**
The following clauses survive the expiry or termination of this Agreement:

(a) Clause 1 (Definitions and interpretation);
(b) Clause 8 (GST);
(c) Clause 10 (Repayment);
(d) Clause 11.2 (Reporting);
(e) Clause 11.5 (Evaluation);
(f) Clause 14 (Intellectual Property Rights);
(g) Clause 15 (Moral Rights);
(h) Clause 17 (Indemnity);
(i) Clause 18 (Insurance);
(j) Clause 20 (Confidentiality);
(k) Clause 22 (Protection of personal information);
(l) Clause 24 (Books and records) for a period of seven years from the Project End Date
or earlier termination of this Agreement;
(m) Clause 25 (Audit and access) for a period of seven years from the Project End Date or
earlier termination of this Agreement;
(n) Clause 27.3 (Commonwealth rights);
(o) Clause 28 (Survival); and
(p) Clause 30.2 (Amounts due to Commonwealth),
together with any provision of this Agreement which expressly or by implication from its
nature is intended to survive the expiry or termination of this Agreement.

29. **Notices and other communications**

29.1 **Service of Notices**
A Notice must be:

(a) in writing, in English and signed by a person duly authorised by the sender; and
(b) hand delivered or sent by prepaid post or other electronic means (facsimile and/or
email as specified) to the recipient’s address for Notices specified in item 7 of
Schedule 1, as varied by any Notice given by the recipient to the sender.
29.2 Effective on receipt

A Notice given in accordance with clause 29.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

(a) if hand delivered, on delivery;

(b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or

(c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice;

(d) if sent by email, as provided under sections 14 and 14A of the Electronic Transactions Act 1999 (Cth),

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

30. Miscellaneous

30.1 Not used

30.2 Amounts due to Commonwealth

(a) Without limiting any other of the Commonwealth's rights or remedies, any amount owed or payable to the Commonwealth (including by way of refund), or which the Commonwealth is entitled to recover from the Recipient, under this Agreement will be recoverable by the Commonwealth as a debt due and payable to the Commonwealth by the Recipient.

(b) The Commonwealth may set-off any money due for payment by the Commonwealth to the Recipient under this Agreement against any money due for payment by the Recipient to the Commonwealth under this Agreement.

30.3 Ownership of Agreement

All copyright and other Intellectual Property Rights contained in this Agreement remain the property of the Commonwealth.

30.4 Variation

No agreement or understanding varying or extending this Agreement is legally binding upon either party unless the agreement or understanding is in writing and signed by both parties.

30.5 Approvals and consents

Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

30.6 Assignment and novation

A party may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the other party.

30.7 Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.
30.8 **Counterparts**
This Agreement may be executed in counterparts. All executed counterparts constitute one document.

30.9 **No merger**
The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

30.10 **Entire agreement**
This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

30.11 **Further action**
Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

30.12 **Severability**
A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

30.13 **Waiver**
Waiver of any provision of or right under this Agreement:

(a) must be in writing signed by the party entitled to the benefit of that provision or right; and

(b) is effective only to the extent set out in any written waiver.

30.14 **Relationship**

(a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

(b) This Agreement does not create a relationship of employment, agency or partnership between the parties.

30.15 **Governing law and jurisdiction**
This Agreement is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

30.16 **False or misleading information**

(a) The Recipient acknowledges that giving false or misleading information to the Commonwealth is a serious offence under section 137.1 of the *Criminal Code Act 1995* (Cth).

(b) The Recipient must ensure that any subcontractor engaged in connection with the Agreement acknowledges the information contained in this clause.
Note: Under section 137 of the Criminal Code giving false or misleading information to a Commonwealth entity is an offence, but only if the Commonwealth entity took reasonable steps to inform the person of the offence.
## Schedule 1 – Agreement Details

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description</th>
<th>Clause Reference</th>
<th>Details</th>
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<td>Commonwealth</td>
<td>1.1</td>
<td>The Commonwealth of Australia as represented by the Department of Industry, Innovation and Science. ABN 74 599 608 295</td>
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<tr>
<td>2.</td>
<td>Recipient Name</td>
<td>1.1</td>
<td>[If the Recipient is a Commercialisation Office (CO) of a Publicly Funded Research Organisation (PFRO) that is not a separate corporation from the PFRO, the Recipient should be named: [Insert name of PFRO] as represented by [Insert name of CO]. However, if the CO is a separate corporation from the PFRO, then the CO should be named as the Recipient in its own right.] [Insert name of Recipient] ABN: [Insert]</td>
</tr>
<tr>
<td>3.</td>
<td>Trust details</td>
<td>1.1</td>
<td>[If the Recipient is a trustee, complete this section, otherwise, insert “Not applicable”] Trust name: [insert] Trust Agreement: [insert name, date and parties to Trust Agreement] [Note: If the Recipient is a trustee the Recipient will also need to provide the Commonwealth with a copy of the Trust Agreement and information on the Trust assets before the Funding Agreement is executed, so that the Commonwealth can confirm the trustees power to enter into the Funding Agreement.] ABN: [insert]</td>
</tr>
<tr>
<td>4.</td>
<td>Agreement Commencement Date</td>
<td>1.1 and 3</td>
<td>The date this Agreement is signed by the Commonwealth.</td>
</tr>
<tr>
<td>5.</td>
<td>Agreement End Date</td>
<td>1.1 and 3</td>
<td>The fifth anniversary of the Project End Date.</td>
</tr>
<tr>
<td>6.</td>
<td>Insurance</td>
<td>18</td>
<td>[If the insurance arrangements vary from what is described in clause 18, describe the arrangements here. If not, insert “As described in clause 18”]</td>
</tr>
<tr>
<td>Item number</td>
<td>Description</td>
<td>Clause Reference</td>
<td>Details</td>
</tr>
<tr>
<td>-------------</td>
<td>--------------------------</td>
<td>------------------</td>
<td>---------</td>
</tr>
</tbody>
</table>
| 7.          | Address for Notices      | 29               | **Commonwealth:**
The person occupying *[insert position of person]* currently *[name]* is to receive Notices.

*[insert postal address]*

*[insert street address]*

*[insert email address]*

**Recipient:**
The person occupying *[insert position of person]* currently *[insert name]* is to receive Notices *[insert postal address]*

*[insert place of business street address]*

*[insert email address]*
# Schedule 2 – Project Details

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description</th>
<th>Clause Reference</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Project reference number</td>
<td>1.1</td>
<td>[insert reference number]</td>
</tr>
<tr>
<td>2.</td>
<td>Project title</td>
<td>1.1</td>
<td>[insert project title]</td>
</tr>
<tr>
<td>3.</td>
<td>Project Start Date</td>
<td>1.1</td>
<td>[insert date the Project is to start e.g. dd/mm/yy]</td>
</tr>
<tr>
<td>4.</td>
<td>Project End Date</td>
<td>1.1</td>
<td>[insert date the Project is to be completed by e.g. dd/mm/yy]</td>
</tr>
<tr>
<td>5.</td>
<td>Maximum Funds</td>
<td>1.1</td>
<td>[insert maximum funds to be provided for the project]</td>
</tr>
<tr>
<td>6.</td>
<td>Grant percentage</td>
<td>1.1</td>
<td>[insert relevant grant percentage] [that is the percentage of Eligible Expenditure to be funded by the Funds – if this percentage is not completed, the percentage will be 50%]</td>
</tr>
<tr>
<td>7.</td>
<td>Specified Personnel</td>
<td>1.1</td>
<td>[insert names and positions of Specified Personnel. Otherwise insert 'not applicable']</td>
</tr>
</tbody>
</table>

8. **Outcomes and description** (clause 1.1)

[Set out objectives or outcomes], [Objectives and outcomes - ie what the Recipient is to achieve in undertaking the Project from C10 of the Application Form. It is important to include sufficient detail to allow the Department to judge whether what the Recipient is doing/spending the Funds on falls within the approved scope.]

9. **Milestones** (clauses 1.1 and 4.2)

<table>
<thead>
<tr>
<th>Milestone number</th>
<th>Milestone</th>
<th>Planned Milestone Achievement Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Insert milestone number]</td>
<td>[Insert milestone title]</td>
<td>[Insert milestone due date]</td>
</tr>
<tr>
<td></td>
<td>[Insert milestone description]</td>
<td></td>
</tr>
</tbody>
</table>
10. **Budget (Planned Eligible Expenditure by Financial Year)** (clauses 1.1 and 9.3)

<table>
<thead>
<tr>
<th>Total Eligible Expenditure $</th>
<th>Estimated Expenditure by Financial Year</th>
<th>Estimated Expenditure by Financial Year</th>
<th>Estimated Expenditure by Financial Year</th>
<th>Total $ [exclusive of GST]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Year</td>
<td>[yyyy/yy]</td>
<td>[yyyy/yy]</td>
<td>[yyyy/yy]</td>
<td></td>
</tr>
<tr>
<td>Labour Expenditure</td>
<td>$[amount]</td>
<td>$[amount]</td>
<td>$[amount]</td>
<td>$[amount]</td>
</tr>
<tr>
<td>Contract Expenditure</td>
<td>$[amount]</td>
<td>$[amount]</td>
<td>$[amount]</td>
<td>$[amount]</td>
</tr>
<tr>
<td>Plant Expenditure</td>
<td>$[amount]</td>
<td>$[amount]</td>
<td>$[amount]</td>
<td>$[amount]</td>
</tr>
<tr>
<td>State-of-the-art/Pilot Manufacturing Expenditure</td>
<td>$[amount]</td>
<td>$[amount]</td>
<td>$[amount]</td>
<td>$[amount]</td>
</tr>
<tr>
<td>Prototype Expenditure</td>
<td>$[amount]</td>
<td>$[amount]</td>
<td>$[amount]</td>
<td>$[amount]</td>
</tr>
<tr>
<td>Other Expenditure</td>
<td>$[amount]</td>
<td>$[amount]</td>
<td>$[amount]</td>
<td>$[amount]</td>
</tr>
<tr>
<td><strong>Total Expenditure</strong></td>
<td>$[amount]</td>
<td>$[amount]</td>
<td>$[amount]</td>
<td>$[amount]</td>
</tr>
</tbody>
</table>

11. **Annual Capped Amounts** (clause 1.1, 7, 9.3)

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Annual Capped Amount $</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Insert financial year: yyyy/yy]</td>
<td>$[amount]</td>
</tr>
<tr>
<td>[Insert financial year: yyyy/yy]</td>
<td>$[amount]</td>
</tr>
<tr>
<td>[Insert financial year: yyyy/yy]</td>
<td>$[amount]</td>
</tr>
<tr>
<td>[Insert financial year: yyyy/yy]</td>
<td>$[amount]</td>
</tr>
<tr>
<td><strong>Total $</strong></td>
<td>$[amount]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item number</th>
<th>Description</th>
<th>Clause Reference</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.</td>
<td>Initial Progress Payment</td>
<td>7.2</td>
<td>$[Insert]</td>
</tr>
<tr>
<td>13.</td>
<td>Retention Amount</td>
<td>1.1 and 7.3</td>
<td>$[Insert]</td>
</tr>
</tbody>
</table>

[Note: the Retention Amount will be withheld from the Maximum Funds and, subject to clause 7.3 will be paid to the Recipient as the final payment of Funds.]
14. Reports (clauses 7.5 and 11)

[Note: the table will need to be amended to be consistent with the requirements in the Customer Guidelines – in particular it must to contain the relevant timeframes.]

<table>
<thead>
<tr>
<th>Report Type</th>
<th>Due Date</th>
<th>Report Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Progress Report</td>
<td></td>
<td></td>
</tr>
<tr>
<td>End of Project Report</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Audited Financial Report</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Baseline KPI Report</td>
<td>30 days after request for completion</td>
<td>To be advised</td>
</tr>
<tr>
<td>Interim KPI Report</td>
<td>30 days after request for completion</td>
<td>To be advised</td>
</tr>
<tr>
<td>Completion KPI Report</td>
<td>30 days after request for completion</td>
<td>To be advised</td>
</tr>
<tr>
<td>Post Project Reports</td>
<td>30 days after request for completion</td>
<td>To be advised</td>
</tr>
</tbody>
</table>
1.1 **Additional terms and conditions**

The parties agree to insert the following terms and conditions into the Agreement as set out below:

<table>
<thead>
<tr>
<th>Item number</th>
<th>Detail</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Any approved higher overseas expenditure should be specified here.*

*If approved, the cap on State-of-the-art Manufacturing Facility or Pilot Manufacturing Plant Expenditure should also be specified here.*

1.2 **Designated confidential information (clauses 1.1 and 20.5(a))**

The parties agree that the following information is designated as Confidential Information and agree that the specified period of confidentiality applies: [Note: insert any Recipient Confidential Information, Commonwealth Confidential Information or provisions of this Agreement that the parties have specifically agreed to keep confidential. Note that for the Commonwealth to agree to keep Recipient information confidential, the Commonwealth must be satisfied of the reasons. The following is a guide:]

- **Criterion 1:** The information to be protected is specifically identified.
- **Criterion 2:** The information is commercially ‘sensitive’.
- **Criterion 3:** Disclosure would cause unreasonable detriment to the owner of the information or another party.
- **Criterion 4:** The information was provided under an understanding that it would remain confidential.

*In addition, the period of confidentiality must be reasonable.*

<table>
<thead>
<tr>
<th>Item description</th>
<th>Period of confidentiality</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Schedule 4 – Deed Poll

Recipient

<table>
<thead>
<tr>
<th>Name</th>
<th>(insert)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABN</td>
<td>(insert)</td>
</tr>
<tr>
<td>Address</td>
<td>(insert)</td>
</tr>
</tbody>
</table>

In favour of

The Commonwealth and the Expert Network Member.

Recitals

A

The Recipient has entered into the Accelerating Commercialisation Funding Agreement with the Commonwealth for the purpose of undertaking the Project (Funding Agreement). The Commonwealth and the Expert Network Member.

B

The Recipient agrees to release the Commonwealth and the Expert Network Member from all liability and loss arising out of, or in connection with, the assistance provided by the Expert Network Member, on the terms of this deed poll.

Governing law

The Australian Capital Territory

Date of deed

(insert)

1. Consideration

This deed poll is made by the Recipient for valuable consideration received from the Expert Network Member and the Commonwealth.

2. Expert Network Member

The Recipient agrees that:

(a) the role of the Expert Network Member is to provide general assistance only to the Recipient;

(b) it is not required to consult with an Expert Network Member, or implement any suggestions made by an Expert Network Member;

(c) neither the Expert Network Member, nor the Commonwealth, takes any responsibility for the success or failure of the Project or the Recipient’s business;

(d) it will not rely on any representation (whether oral or written) from the Expert Network Member as investment, financial, legal, taxation or commercial advice;

(e) any assistance provided by the Expert Network Member is not a substitute for professional advice; and

(f) the Expert Network Member is not an employee, agent, officer, representative, or partner of the Commonwealth.

3. Release

To the extent permitted by law, the Recipient releases the Expert Network Member and the Commonwealth from any Claims by the Recipient against the Expert Network Member and/or
the Commonwealth in respect of the assistance or lack of assistance provided by the Expert Network Member to the Recipient in respect of the Project.

4. Governing law

This deed poll is governed by the laws for the time being in force in the Australian Capital Territory.

5. Definitions

In this deed poll:

**Claim** means any allegation, debt, cause of action, Liability, claim from proceedings, suit or demand of any nature, howsoever arising and whether present or future, fixed or ascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

**Commonwealth** means the Commonwealth of Australia, as represented by the Department of Industry, Innovation and Science or such other department as may, from time to time, administer this Agreement on behalf of the Commonwealth.

**Expert Network Member** means a person made available by the Commonwealth from time to time to provide knowledge, skills and insight to the Recipient to assist the Recipient in undertaking the Project.

**Liability** means all liabilities (whether actual contingent or prospective) losses, damages, costs and expenses of whatsoever nature or description irrespective of when the acts, events or things giving rise to the liability occurred.

**Project** has the meaning given in the Funding Agreement.

EXEUCUTED as a deed poll

[Select one of the following execution clauses. Where the Recipient is a company, select the first execution block below, otherwise, select the second option.]

**Executed** by [insert name of company] in accordance with section 127 of the *Corporations Act 2001* in the presence of

<table>
<thead>
<tr>
<th>Signature of director</th>
<th>Signature of director/company secretary/sole director and sole company secretary (Please delete as applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of director (print)</td>
<td>Name of director/company secretary/sole director and sole company secretary (print)</td>
</tr>
</tbody>
</table>

Accelerating Commercialisation Funding Agreement | Version 6 October 2015 page 51
Signed by [insert Recipient party name] in the presence of

Signature of witness ___________________________ Signature of Recipient ___________________________

Name of witness (print) ___________________________

[Please use the following where the Recipient is an incorporated trustee]

Signed by [insert Recipient name] (insert Recipient ABN) in its own capacity and as trustee of the (insert trust name) (insert trust ABN) in the presence of

Signature of witness ___________________________ Signature of Recipient ___________________________

Name of witness (print) ___________________________
EXECUTED as an agreement.

Signed for and on behalf of the Commonwealth of Australia as represented by the Department of Industry, Innovation and Science by its duly authorised delegate in the presence of

________________________________________________________________________  _____________________________________________________________________
Signature of witness                                                  Signature of delegate

________________________________________________________________________  _____________________________________________________________________
Name of witness (print)                                              Name of delegate (print)

[Select one of the following execution clauses. Where the Recipient is a company, select the first execution block below, otherwise, select the second option.]

Executed by [insert name of company] in accordance with section 127 of the Corporations Act 2001 in the presence of

________________________________________________________________________  _____________________________________________________________________
Signature of director                                                  Signature of director/company secretary/sole director and sole company secretary
(Please delete as applicable)

________________________________________________________________________  _____________________________________________________________________
Name of director (print)                                              Name of director/company secretary/sole director and sole company secretary (print)

[Please use the following where the Recipient is an incorporated trustee]

Signed by [insert Recipient name] (insert Recipient ABN) in its own capacity and as trustee of the (insert trust name) (insert trust ABN) in the presence of

________________________________________________________________________  _____________________________________________________________________
Signature of witness                                                  Signature of Recipient

________________________________________________________________________
Name of witness (print)