

**Trustees of
The HCF Health and Medical Research Foundation**

ABN 40 577 146 605

and

Name

ABN ?? ??? ??? ???

Research agreement

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Research agreement between:

The Trustees of the HCF Health and Medical Research Foundation ABN 40 577 146 605 of 403 George Street Sydney NSW ("**the Foundation**") and

Name ABN of Address ("**the Researcher**")

Recitals

- A. The Foundation wishes to engage the Researcher to produce the research defined in annexure "A".
- B. The Researcher has agreed to produce the research for the Foundation on the terms of this Agreement.

Operative clauses

1. Definitions and interpretation

1.1 Definitions

In this Agreement, including the recitals, unless a contrary intention appears:

"Agreement" means this document and includes any schedule or annexure to it, including the Research Program Application Form.

"Business Day" means a day on which banks are open for business in Sydney excluding a Saturday, Sunday or public holiday in New South Wales.

"Commencement Date" means the date that the Researcher commenced to provide the Research, which was **[INSERT DATE]**.

"Confidential Information" includes all information relating to the current or future business interests, methodology or affairs of a Party and any Related Body Corporate or any person or entity with which it deals or is concerned with, including, without limitation, all:

- (a) Inventions;
- (b) technical data;
- (c) research and development information;
- (d) business records, information, notes, products, know how, trade secrets, engineering or other data;
- (e) designs, specifications, processes, formulae;
- (f) manufacturing, planning or marketing procedures, techniques or information;

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- (g) accounting procedures or financial information;
- (h) names and details of consumers, customers, suppliers and agents; and
- (i) secret information;

reasonably regarded as confidential, being information not:

- (a) in the public domain;
- (b) in the Recipient's possession prior to the disclosure to it by the Disclosing Party and was not acquired directly or indirectly from the Disclosing Party or from any person who owed any obligation of confidence to the Disclosing Party;
- (c) after disclosure of the Confidential Information, received in good faith by the Recipient from a third party not in breach of any obligation of confidence owing by the third party to the Disclosing Party; or
- (d) known to competitors of the Disclosing Party or any Related Body Corporate of the Disclosing Party,

together with:

- (a) the possible or likely function, purpose or application of that information whether in the current activities of the Disclosing Party or any Related Body Corporate of the Disclosing Party or fields to which the activities of the Disclosing Party or any Related Body Corporate of the Disclosing Party may reasonably extend from time to time;
- (b) any part of, or improvements to that information; and
- (c) any recommendation, test or report of the Disclosing Party or any Related Body Corporate of the Disclosing Party or any consultant or agent in connection with that information,

and whether:

- (a) oral, written, recorded or stored by electronic, magnetic, electromagnetic or other form of process or otherwise in a machine readable form;
- (b) translated from the original form, re-compiled, made into a compilation, wholly or partially copied, modified, updated or otherwise altered; or
- (c) originated or obtained by, or coming into the possession, custody, control or knowledge of the Disclosing Party or a Related Body Corporate of the Disclosing Party either alone or jointly.

“Disclosing Party” means a Party that discloses or gives access to its Confidential Information to the other Party;

"**Grant**" means the amounts set out in the document annexed hereto and marked "A", which are to be reviewed in the manner and at the intervals (if any) set out therein.

"**GST**" means goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999* ("the GST Act") and terms referable to the GST have the meanings as defined in the GST Act.

"**Intellectual Property Rights**" includes:

- (a) any copyright (including future copyrights), patent, trade mark (whether registered or unregistered), registered design or other design right, and any corresponding property or right under the laws of any jurisdiction, and any right to apply for the grant or registration of the same; and
- (b) any rights in respect of an invention, discovery, novel design, trade secret, confidential information, know-how, concept, idea, information, data or formula.

"**Invention**" includes any invention, drawing, design, model, contrivance, structure, specification, improvement, discovery, creation, idea, concept, formula, process and other work or contribution however developed, created, made, discovered or conceived and whether or not:

- (a) patented or patentable (whether by renewal or otherwise);
- (b) registered or registrable as a design (whether by renewal or otherwise);
- (c) protected by copyright; or
- (d) otherwise protected or capable of protection by law anywhere.

"**Party**" or "**Parties**" means the Foundation or the Researcher or both.

"**Recipient**" means the Party which receives or is given access to Confidential Information from the Disclosing Party.

"**Related Body Corporate**" means a body corporate that is taken under section 50 of the *Corporations Act 2001* (Cth) to be related to a Party at any time during the Term, and for the purposes of this Agreement includes any related entity to the Foundation including the Trustees and the Hospitals Contribution Fund of Australia Ltd.

"**Research**" means the research as described in the document annexed hereto and marked "A", which may be amended or replaced from time to time during the Term, but only by a document in writing executed by both Parties.

"**Term**" means the period commencing on the Commencement Date and continuing:

- (a) until all Research have been completed to the satisfaction of the Foundation (as notified in writing by the Foundation to the Researcher) and the Foundation has paid to the Researcher all fees; or

- (b) any specified period as agreed in relation to the Grant; or
 - (c) until terminated in accordance with this Agreement,
- whichever occurs first.

"Third Party Obligation" means an obligation in relation to confidentiality or Intellectual Property Rights, owed at any time by:

- (a) the Foundation;
- (b) a Related Body Corporate of a Party; or
- (c) the Researcher;

to a person who is not a party to this Agreement evidenced by this document.

"Trustees" means the Trustees of the Foundation as constituted from time to time in accordance with the trust deed, and where the context requires includes a person to whom the Trustees have delegated their rights and obligations.

1.2 Interpretation

Unless expressed to the contrary:

- (a) words importing:
 - (1) the singular include the plural and vice versa;
 - (2) any gender include the other gender;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:
 - (1) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (2) a person includes its legal personal representatives, successors and permitted assigns;
 - (3) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (4) a right includes a benefit, remedy, discretion, authority or power;

- (5) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (6) provisions or terms of this Agreement or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
 - (7) time is to local time in New South Wales;
 - (8) "\$" or "dollars" is a reference to the lawful currency of Australia;
 - (9) this Agreement or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
 - (10) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission; and
 - (11) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
- (d) where time is to be reckoned by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this Agreement.

2. Engagement of Researcher

The Foundation engages the Researcher to provide the Research and the Researcher must provide the Foundation with the Research during the Term in accordance with the terms of this Agreement.

3. Performance

3.1 Manner of performance of Research

The Researcher must ensure that the Research is performed in a proper and efficient manner and in accordance with this Agreement and as set out in annexure "A".

3.2 Time for performance of Research

The Researcher must comply with any time limits for the performance of the Research:

- (a) set out in annexure "A";

- (b) agreed to in writing by the Researcher on or before the Commencement Date; or
- (c) agreed in writing by the Parties during the Term.

3.3 Utmost good faith

Each Party must act with the utmost good faith in all of that Party's dealings with the other Party and any Related Body Corporate of the other Party.

3.4 Duty not to harm Foundation

The Researcher must not, while performing the Research, intentionally do anything that is harmful to the reputation of the Foundation.

3.5 Reporting to the Trustees

The Researcher must, when requested by the Trustees, report to the Trustees, or any person which the Trustees resolves, all information, explanations and advice which the Trustees requires or as to which the Trustees should properly be informed in relation to:

- (a) the Researcher's engagement; and
- (b) the progress of the Research.

Details of reporting requirements appear in annexure "A", and may include such other reports as the Foundation reasonably requires.

3.6 Audit

- (a) The Researcher must maintain complete and accurate accounting records in connection with the Research in accordance with generally accepted accounting principles to substantiate its funding.
- (b) On request by the Foundation on reasonable notice, the Researcher must provide the Foundation access during business hours to its accounting records relating to the Research to the extent reasonably required for audit purposes, provided that representatives of the Foundation sign any necessary confidentiality undertakings before obtaining such access.
- (c) The Foundation must not allow access to the Researcher's accounts to any person not authorised in writing by the Researcher and must notify the Researcher of any unauthorised access as soon as it becomes aware of such unauthorised access.

4. Intellectual Property

- 4.1** Unless otherwise specified in annexure "A" or agreed in writing by the Parties, the Foundation acknowledges that the Intellectual Property Rights in the programs,

software, processes, solutions or other material relating to the Research provided by the Researcher remain the property of the Researcher.

5. Confidential Information

5.1 Acknowledgement

The Recipient acknowledges that all of the Confidential Information of the Disclosing Party is and will be the sole and exclusive property of the Disclosing Party.

5.2 Confidentiality

The Recipient must:

- (a) keep confidential all Confidential Information of the Disclosing Party; and
- (b) not disclose any Confidential Information of the Disclosing Party to any person, except:
 - (1) to the Recipient's employees, officers, agents and Researchers to whom it is necessary to disclose the Confidential Information for the purposes of carrying out its obligations under this Agreement;
 - (2) as required by law;
 - (3) with the prior written consent of the Disclosing Party; or
 - (4) to the Disclosing Party's agents, employees or advisers in the proper performance of the Recipient's responsibilities and duties under this Agreement.

5.3 Use

The Recipient must not use any Confidential Information of the Disclosing Party for the benefit of any person except the Disclosing Party or a Related Body Corporate of the Disclosing Party.

5.4 Confidential Information in the public domain

Subject to **subclause 5.5** if Confidential Information is lawfully within the public domain then to the extent that the Confidential Information is public, the Recipient's obligations under this **clause 5** in relation to that Confidential Information cease.

5.5 Uncertainty

In the event of uncertainty as to whether:

- (a) any information is Confidential Information; or
- (b) any Confidential Information is lawfully within the public domain,

that information is taken to be Confidential Information and the Confidential Information is taken to be not in the public domain, unless the Recipient is informed by the Disclosing Party in writing to the contrary.

5.6 Security

The Recipient must:

- (a) maintain proper and secure custody of all Confidential Information; and
- (b) use its best endeavours to prevent the use or disclosure of the Confidential Information by third parties.

5.7 Delivery

The Recipient must immediately deliver all Confidential Information of the Disclosing Party that is in physical form, including all copies of computer files and tapes to the Disclosing Party:

- (a) on the expiration or earlier determination of the Term; or
- (b) at any time on the request of the Disclosing Party.

5.8 Confidential Information may be destroyed

If requested by the Disclosing Party, the Recipient must instead of delivering the Confidential Information to the Disclosing Party under **subclause 5.7**, destroy the Confidential Information (in the case of computer software or other computer data, by erasing it from the magnetic media on which it is stored, except from back-up tapes and certify in writing to the Disclosing Party that the Confidential Information has been destroyed or deleted.

5.9 Warranty in relation to Third Party Obligations

Each Party warrants that no Third Party Obligation will be breached as a result of a Party's performance of its obligations under or arising from this Agreement.

5.10 Obligations to continue

The obligations of each Party under this **clause 5** survive expiration of the Term and are enforceable at any time whether in law or in equity and continue to the benefit of and are enforceable by each Party.

6. Indemnity, limitation of liability and insurance

6.1 Indemnity

Each Party (**Indemnifying Party**) indemnifies the other Party (**Indemnified Party**) against any damage, loss, liability cost, charge, expense, outgoing or payment, which the Indemnified Party suffers or incurs arising directly from:

- (a) death or personal injury or damage to property caused by the negligent or wrongful act or omission of the Indemnifying Party; and
- (b) any claim or demand against the Indemnified Party relating to an infringement or an alleged infringement of the Intellectual Property Rights of any person which occurs by reason of any possession, use or authorised development by the Indemnified Party of any intellectual property provided by the Indemnifying Party under this Agreement,

except to the extent that the said loss is attributable to the act or omission of the Indemnified Party.

6.2 Limitation of liability

- (a) Subject to **clause 6.2(b)**, the aggregate liability of either Party (**First Party**) under this Agreement for loss or damage sustained by the other Party in connection with this Agreement, regardless of the basis on which the other Party is entitled to claim damages from the First Party (including material breach, negligence, misrepresentation or other contract or tort claim), is limited to an amount equal to the sum of all fees paid or payable to the Researcher by the Foundation.
- (b) The limitation of liability in **clause 6.2(a)** does not apply in relation to any liability arising out of:
 - (1) the indemnities provided for in **clause 6.1**; or
 - (2) any breach of **clause 4**, **clause 5** and/or **clause 11**.
- (c) Neither Party will be liable to the other for any indirect, consequential, special or incidental damages or loss of profits or loss of data arising under or in connection with this Agreement.

6.3 Insurance

The Researcher must hold and keep current for the Term of the agreement workers' compensation insurance as required by law and public liability risk insurance on terms and for amounts reasonably satisfactory to the Foundation. The Researcher will supply evidence of these insurances and details of these insurances to the Foundation if requested.

7. Funding

7.1 Invoice

The Researcher must, within seven days of signing this Agreement and with seven days after the end of each quarter [3 months] during the Term, deliver an invoice to the Foundation in writing specifying:

- (a) the invoice number;

- (b) the period covered by the invoice being the immediately following quarter; and
- (c) the amount of Grant payable by the Foundation in respect of the Research provided during the immediately following quarter month and the detailed calculation of the amount of the Grant, including the number of hours to be spent by the Researchers undertaking the Research, and

provide to the Foundation a tax invoice within the meaning of the GST Act.

7.2 Payment

The Foundation must, within 30 days of receiving from the Researcher a valid invoice that complies with **subclause 7.1**, pay the Researcher the Grant specified in the invoice. Payment will be made to the administering institution advised by the Researcher and listed in annexure "A".

7.3 Expenses

Unless agreed in writing by the Parties, the Researcher is responsible for, and the Foundation will not be required to pay, any costs and other expenses arising out of, or in connection with, the Researcher's performance of its obligations under this Agreement including, without limitation, all travelling, accommodation, dining, photocopying, printing, telephone and facsimile expenses.

8. Termination and Suspension

Where:

- (a) the Foundation is reasonably satisfied that any of the terms and conditions of this Agreement have not been complied with by the Researcher; or
- (b) the Foundation, by notice in writing, requests the Researcher to take action to implement an expected outcome specified in annexure "A" and, after one month from the date of the notice, the Researcher has failed to take that action; or
- (c) the Foundation is reasonably satisfied that any statement made in the Researcher's original application for funding is incorrect or incomplete in a way which would have affected the original decision to approve the Grant; or
- (d) the Foundation is not reasonably satisfied that the purposes and activities of the Researcher remain compatible with the objectives of the Research; or
- (e) the Researcher, in the reasonable opinion of the Foundation, fails to adequately comply with its reporting obligations under this Agreement; or
- (f) the Researcher is using the Grant for purposes other than the relevant Research;

the Foundation may, at its absolute discretion, by notice in writing given to the Researcher:

- (i) terminate this Agreement; or
- (ii) suspend or reduce payment of the Grant, pending a review by the Foundation of the future performance of the Research.

Where the Foundation terminates this Agreement under clause 7, the Foundation shall not be obliged to pay to the Researcher any outstanding amount of the Grant.

9. Recovery of Grant

- (a) If at any time the Foundation is reasonably satisfied that any part of the Grant has been expended or committed by the Researcher other than in accordance with this Agreement, the Foundation may recover that amount as a debt due to the Foundation.
- (b) If the Researcher, in the reasonable opinion of the Foundation, fails to adequately comply with its reporting obligations under this Agreement, the Foundation may recover, as a debt due to the Foundation, any part of the Grant that has been paid to the Researcher to date.
- (c) In this regard, the Researcher acknowledges that the reports to be provided pursuant to this Agreement provide substantial value to the Foundation as a source of information for these purposes.
- (d) The Foundation may, following the submission of any report, recover from the Researcher as a debt due to the Foundation any part of the Grant which:
 - (1) the Foundation is not reasonably satisfied has been expended in accordance with this Agreement; or
 - (2) remain unexpended.

10. Misrepresentation

The Researcher must not:

- (a) at any time intentionally make any untrue statement in relation to the Foundation or a Related Body Corporate of the Foundation; or
- (b) after the expiration of the Term represent itself as currently engaged by the Foundation as a Researcher or connected with the Foundation or a Related Body Corporate of the Foundation.

11. Privacy

The Researcher may receive or have access to personal information in order to provide the Research to the Foundation and the Researcher agrees that it will, in respect of that personal information:

- (a) comply, and ensure that its employees and/or Researchers comply, with the National Privacy Principles as if the Privacy Act 1988 (Cth) applies to the Researcher, and in particular, but without limitation, that it will:
 - (1) not use any personal information which it receives except to provide the Research;
 - (2) not disclose any personal information which it receives to any third party other than the Researcher's agents and Researchers to whom it is necessary to disclose the personal information for the purposes of carrying out its obligations under this Agreement;
 - (3) take all reasonable steps to ensure that the personal information is protected against loss, misuse, unauthorized access, modification and/or disclosure;
 - (4) ensure that only those personnel needing access to the personal information are authorized to access the personal information;
 - (5) ensure that only authorized personnel have access to the personal information;
 - (6) ensure no unauthorized copy is made of personal information or records containing personal information; and
 - (7) ensure all records containing personal information are destroyed as soon as they are no longer needed to provide the Research;
- (b) immediately notify the Foundation if it becomes aware that disclosure of personal information may be required by law, or if it has breached any of its obligations referred to above;
- (c) maintain a privacy policy as required by the Privacy Act 1988 (Cth) and consider any amendments to that policy reasonably requested by the Foundation within 21 days of receiving a written request from the Foundation to do so;
- (e) actively monitor and if requested by the Foundation on reasonable notice, permit the Foundation or its authorized auditor to audit compliance with the privacy policy referred to above, provided that the Researcher is not required to provide any level of access to any premises, materials, systems or personnel:
 - (1) outside business hours;

- (2) for purposes exceeding what is reasonably required for audit purposes; or
- (3) to any representatives of the Foundation who have not signed the Researcher's confidentiality undertakings; and
- (f) comply generally with the *Privacy Act* 1988 (Cth) and any other statute, regulation or law in Australia or elsewhere which relates to the protection of personal information and which the Researcher must observe.

12. Nature of relationship

12.1 Independent Researcher

The Researcher renders the Research to the Foundation as an independent contractor and is not and cannot be taken to be:

- (a) in partnership or in a joint venture relationship with the Foundation; or
- (b) an employee, servant or agent of the Foundation.

12.2 Researcher not to bind the Foundation

The Researcher must not:

- (a) bind or commit or purport to bind or commit the Foundation in any way; or
 - (b) pledge the credit of the Foundation for any purpose,
- without prior written authorisation from the Trustees.

13. Notices

13.1 General

A notice, demand, certification, process or other communication relating to this Agreement is to be written in English and may be given by an agent of the sender.

13.2 Method of service

In addition to any lawful means, a communication may be given by:

- (a) being personally served on a Party;
- (b) being left at the Party's current address for service;
- (c) being sent to the Party's current address for service by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid air mail; or
- (d) facsimile to the Party's current number for service.

13.3 Particulars of service

- (a) The particulars for service of each Party are initially:

The Foundation: The HCF Health and Medical Research Foundation

Address: Level 6, 403 George Street, Sydney NSW 2000

Facsimile: (02) 9299 4834

Attention: Dr Karen Beatty

The Researcher: Name

Address: [INSERT HERE]

Facsimile: [INSERT HERE]

Attention: [INSERT HERE]

- (b) Either Party may change from time to time its particulars for service by notice to the other Party.

13.4 Service

If a communication is given by:

- (a) post it is taken as received if posted within Australia to an Australian address 3 Business Days (in the place of receipt) after posting and in any other case 7 Business Days (in the place of receipt) after posting; or
- (b) facsimile and the sender's facsimile machine produces a transmission report indicating that the facsimile was sent to the addressee's facsimile machine, the report will be prima facie evidence that the facsimile was received by the addressee in legible form at the time indicated on that report.

13.5 Service after hours

If a communication to a Party is received by it:

- (a) after 5.00pm in the place of receipt; or
- (b) on a day which is not a Business Day,

it is taken to have been received at the commencement of the next Business Day.

14. Miscellaneous

14.1 Stamp duty

- (a) As between the Parties the Foundation is liable for and must duly pay all stamp duty (including any fine or penalty except where it arises from default of the Researcher) on or relating to this Agreement and any document executed under it.
- (b) If any Party other than the Foundation pays any stamp duty (including any fine or penalty) on or relating to this Agreement or any document contemplated by it, the Foundation must pay that amount to that Party on demand.

14.2 Legal costs

Each Party must bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.

14.3 Amendment

This agreement may only be varied, supplemented or replaced by a document in writing duly executed by both Parties.

14.4 Waiver and exercise of rights

- (a) A single or partial exercise or waiver of a right under this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

14.5 Rights cumulative

Subject to any express provision in this Agreement to the contrary, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

14.6 Approvals and consent

Subject to any express provision in this Agreement to the contrary, a Party may conditionally or unconditionally give or withhold any consent contemplated by this Agreement and is not obliged to give its reasons for doing so.

14.7 Further assurance

Each Party must promptly execute all documents and do all things that the other Party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement and transactions contemplated by it.

14.8 Governing law

- (a) This agreement is governed by and is to be construed in accordance with the laws applicable in New South Wales.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

14.9 Process service

Any process or other document relating to litigation, administration or arbitral proceedings in relation to this Agreement may be served by any method contemplated by **clause 12** or in accordance with any applicable law.

14.10 Assignment

A Party must not assign any right under this Agreement without the prior written consent of the other Party, which consent must not be unreasonably withheld.

14.11 Counterparts

- (a) This agreement may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.
- (b) This agreement is not binding on any Party unless one or more counterparts have been duly executed by, or on behalf of, persons named as Parties to the document.

14.12 Entire understanding

- (a) This agreement embodies the entire understanding and agreement between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and are of no force or effect whatever and no Party is liable to the other Party in respect of those matters.

14.13 Survival

Clauses 4, 5, 6, 8, 10, 11 and this **clause 14.13** impose continuing obligations on the relevant parties and survive the termination or expiry of this Agreement.

15. GST

15.1 Grant, fees etc exclusive of GST

The Grant and all other amounts agreed to be paid by the Foundation to the Researcher are exclusive of GST.

15.2 Foundation to meet Researcher's GST liability

If the Researcher is liable for GST for any amounts payable under this Agreement being consideration for any taxable supply, the Foundation will pay the Researcher, the additional amount of GST, together with the payment to which the GST liability relates.

15.3 GST liability to be reduced by input tax credits

If the Researcher is entitled to an input tax credit in relation to any amount recoverable from the Foundation, the amount payable by the Foundation is to be reduced by the amount of the input tax credit which the Researcher has received or has claimed and is entitled to receive.

15.4 Researcher to deliver tax invoices

In respect of and prior to each payment by the Foundation under **subclause 15.2**, the Researcher will deliver to the Foundation, as required under the GST Act, tax invoices in a form which complies with the GST Act and the regulations, to enable the Foundation to claim input tax credits in respect of the taxable supply.

16. Public releases

Unless otherwise specified in annexure "A" or otherwise agreed in writing by the parties:

- (a) Neither Party may refer to or divulge details of the terms of this Agreement in any public release, announcement, publication or advertisement without the express written authorisation of the other Party; and
- (b) Neither Party may refer to or use the name of the other Party in any public release, announcement, publication or advertisement in such a way as to imply an association between the Parties without the express written consent of the other Party.
- (c) The Researcher will acknowledge the funding support provided under this Agreement by incorporating in all material, publications and correspondence concerning the Research an acknowledgement of the funding support using the words "supported by the HCF Health and Medical Research Foundation" or such other wording as agreed between the parties.

17. Force Majeure

17.1 Meaning of Force Majeure

In this **clause 17** Force Majeure means an act of God; war, revolution or any other unlawful act against public order or authority; an industrial dispute including strike or other labour disturbances, a government restraint; a shortage or unavailability of raw materials, production capacity or transportation; and any other event which is not within the reasonable control of the Researcher.

17.2 Suspension of obligations

Where Force Majeure prevents or delays the Researcher from performing any obligation under this Agreement, that obligation is suspended as long as the Force Majeure continues.

17.3 Liability for delay

The Researcher will not be liable for any delay or failure to perform its obligations under this Agreement if the delay or failure to perform is caused by a Force Majeure.

17.4 Termination

If a delay or failure caused by a Force Majeure continues for more than 30 Business Days, either Party may terminate this Agreement with immediate effect.

18. Dispute resolution

18.1 Notice of Dispute

- (a) If a dispute arises between the parties arising out of or in connection with this Agreement, including a dispute concerning a claim in tort, under statute or for breach of contract, then either Party will within 14 days give to the other Party a notice in writing identifying, and providing details of, the dispute (**Notice of Dispute**).
- (b) A Party must not commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a dispute to which this **clause 18** applies without first complying with the provisions of this **clause 18**.
- (c) Notwithstanding anything in this **clause 18**, a Party may at any time commence court proceedings in relation to any dispute or claim arising under or in connection with this Agreement where that Party seeks urgent interlocutory relief.

18.2 Mediation

- (a) If the dispute is not resolved within 21 days of delivery of the Notice of Dispute, then either Party may give written notice to the other Party (**Notice of Mediation**) submitting the dispute to mediation in accordance with, and

subject to, the Institute of Arbitrators & Mediators Australia Rules for Mediation of Commercial Disputes.

- (b) The mediator will be selected by the parties. In the event that the parties are unable to agree on a mediator within 14 days of delivery of the Notice of Mediation, the mediator will be appointed by the President for the time being of The Institute of Arbitrators Australia or a state or territory Chapter Chairman appointed by the President to make the appointment.

18.3 Courts

If the dispute is not resolved within 30 days of the submission to mediation (unless such period is extended by agreement of the parties), the dispute will be subject to resolution in the courts of New South Wales, Australia.

18.4 Performance

Notwithstanding the existence of a dispute, each Party will continue to perform its obligations under this Agreement to the extent that such obligations are not the subject of a dispute.

Executed on

2010

SIGNED FOR AND ON BEHALF OF the Trustees of **The HCF Health and Medical Research Foundation** ABN 40 577 146 605
by

Signature:

Signature:

Name and Position:
PLEASE PRINT

Name:
PLEASE PRINT

Witness

SIGNED FOR AND ON BEHALF OF
[INSERT NAME OF Researcher]
ABN XX XXX XXX XXX

Signature:

Signature:

Name and Position:
PLEASE PRINT

Name:
PLEASE PRINT

Witness

Annexure "A" – The Research

The Research is supplied in accordance with this Agreement

The Research: The Researcher will provide the Research as detailed in the attached Research Program Application Form dated [DATE] which forms part of this annexure "A".

[ATTACH COPY RESEARCH PROGRAM APPLICATION FORM]

The Grant: Foundation agrees to pay the Researcher [GRANT AMOUNT] over the [PERIOD] for the Research whenever provided during the term of this Agreement.

Schedule of Payment: Payment of the grant by Foundation will be initiated from tax invoices submitted by the Researcher

Administering Institution: [NAME]
 [ABN NUMBER]
 [ADDRESS]
 [CONTACT OFFICER]
 [CONTACT DETAILS]

Schedule of Reporting Each invoice will be accompanied by a written update the objectives of which are to:

- to track and measure progress in terms of cost, tasks and deliverables against the Research as planned.

- to forecast future deviations from the plan based on progress to date.

- to provide a briefing of progress to the Trustees; and

- to assist in the identification and implementation of actions to correct any slippage and identify impact on key milestones and deliverables.