

Research Agreement

Dated 2019

Parties

HCF Research Foundation Ltd ACN 604 776 070 as trustee for the **HCF Research Foundation** ABN 40 577 146 605 of 403 George Street, Sydney NSW 2000 ("**Foundation**")

and

[Insert full legal name of the Researcher] **[Insert ACN or ABN]** of **[Insert address]**
 ("**Researcher**")

Contents

Recitals	1	12. Termination.....	14
Operative clauses	2	13. Nature of relationship	15
1. Definitions and interpretation.....	2	14. GST.....	16
2. Engagement of Researcher.....	6	15. Taxes	16
3. Performance of Research	6	16. Force Majeure	16
4. Researcher's obligations.....	6	17. Dispute Resolution	17
5. Confidential Information and Announcements	7	18. Notices	17
6. Intellectual property and moral rights ...	9	19. Miscellaneous	19
7. Privacy	10	Signing page	22
8. Insurance	11	Schedule 1	23
9. Warranties.....	12	Schedule 2	24
10. Indemnity.....	13	Annexure 1 – Research Application Form	25
11. Funding.....	13		

Recitals

- A. The Foundation requires the Research to be rendered.
- B. The Researcher has the expertise and resources to perform the Research.
- C. The Researcher has represented to the Foundation that the Researcher Personnel have the qualifications and the ability to independently render the Research in a professional and competent manner.
- D. The Researcher has agreed to render, and the Foundation has agreed to fund, the Research in accordance with 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, including any schedule or annexure to it.

Business Day means a day other than a Saturday, Sunday or public holiday in Sydney, New South Wales.

Commencement Date has the meaning given to that term in **Schedule 1**.

Communications has the meaning given to that term in **clause 5.8(a)**.

Confidential Information means, whether or not in material form:

- (a) the existence of this Agreement;
- (b) all information of, related to or connected with the HCF Group or its transactions, operations and affairs, employees or clients including client lists, products, business methods, systems, software, finances, strategies and trade secrets directly or indirectly disclosed by or on behalf of the HCF Group to the Researcher or the Researcher Personnel before or after the Commencement Date and whether through any officers, employees, contractors, agents or advisers of the HCF Group;
- (c) all other information of a confidential or proprietary nature directly or indirectly disclosed by or on behalf of the HCF Group to the Researcher or the Researcher Personnel; and
- (d) any note, calculation, conclusion, summary, record, or other material based on, or derived or produced partly or wholly from, or incorporating any of, the information referred to in paragraphs (b) and (c).

Corporations Act means the *Corporations Act 2001* (Cth).

Dispute has the meaning given to that term in **clause 17.1(a)**.

Dispute Notice has the meaning given to that term in **clause 17.1(b)**.

Due Date has the meaning given to that term in **clause 4(e)**.

Expiry Date has the meaning given to that term in **Schedule 1**.

Fee means the fees set out in **Schedule 1** and payable in accordance with **Schedule 2**.

Foundation Material means any information, material or content in any form owned or licensed by the Foundation and provided to the Researcher or the Researcher Personnel in connection with this Agreement.

GST Act has the meaning given to that term in **clause 14.1**.

HCF Group means the Foundation, The Hospitals Contribution Fund of Australia Limited and any of its Related Bodies Corporates (as that term is defined in the Corporations Act).

Insolvency Event means the happening of any of these events in relation to the Researcher:

- (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$10,000 upon any of the Researcher's property and is not satisfied, set aside or withdrawn within seven days of its issue;
- (b) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Researcher which is not satisfied within 7 days;
- (c) the Researcher suspends payment of its debts;
- (d) the Researcher becomes an externally-administered body corporate under the Corporations Act;
- (e) steps are taken by any person towards making the Researcher an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);
- (f) a controller (as defined in section 9 of the Corporations Act) is appointed in respect of any of the property of the Researcher or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 14 days);
- (g) the Researcher is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act;
- (h) a resolution is passed for the reduction of capital of the Researcher or notice of intention to propose such a resolution is given, without the prior written consent of the Foundation;
- (i) the Researcher no longer exists as a legal entity or authority pursuant to its incorporating or establishing statute; or
- (j) an event happens analogous to an event specified in (a) to (i) above to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the laws of Australia applied.

Insurances has the meaning given to that term in **Schedule 1**.

Intellectual Property Rights means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable, whether existing in Australia or otherwise.

These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and

(c) all rights in the nature of these rights, but excluding Moral Rights.

Invoice has the meaning given to that term in **clause 11.1(a)**.

Loss includes but is not limited to any damage, loss, liability, cost, charge, expense, outgoing or payment, whether direct or indirect, consequential or incidental.

Moral Rights means:

- (a) the right of attribution of authorship or performership;
- (b) the right not to have authorship or performership falsely attributed; and
- (c) the right of integrity of authorship or performership;

conferred by the *Copyright Act 1968* (Cth) and rights of a similar nature anywhere in the world, that exist now or that may come to exist in the future.

Party means the Foundation or the Researcher and "**Parties**" means both of them.

Personal Information means personal information as defined in the Privacy Act.

Phase has the meaning given to that term in **Schedule 2**.

Principal Investigator means the person or persons identified in **Schedule 1** and any replacement made under **clause 3(a)(iii)**.

Privacy Act means the *Privacy Act 1988* (Cth).

Progress Report means the document to be completed by the Researcher to assist the Foundation with project oversight and payment of Invoices, the latest version of which can be found on the Foundation Website (<http://www.hcf.com.au/about-us/hcf-foundation/>).

Progress Report Due Date has the meaning given to that term in **Schedule 2**.

Research means the services as described in **Schedule 1** which may be amended or replaced from time to time during the Term, but only by a document in writing executed by both Parties.

Research Application Form means the application form for the Research submitted by the Researcher to the Foundation prior to the date of this Agreement, a copy of which is annexed as **Annexure 1**.

Researcher Personnel means the Principal Investigator and any of the Researcher's officers, employees, agents or contractors involved in rendering the Research.

Term means the period from the Commencement Date to the Expiry Date (inclusive) and includes any extension agreed to by the Parties in writing.

1.2 Interpretation

Unless expressed to the contrary:

- (a) words importing:
 - (i) the singular include the plural and vice versa;

- (ii) 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:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and permitted assigns;
 - (iii) 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;
 - (iv) a right includes a benefit, remedy, discretion, authority or power;
 - (v) 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;
 - (vi) provisions or terms of this Agreement or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
 - (vii) time is to local time in Sydney, New South Wales;
 - (viii) "\$" or "dollars" is a reference to the lawful currency of Australia;
 - (ix) this Agreement or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the Parties;
 - (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission; and
 - (xi) anything (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;
- (d) mentioning anything after **include, includes** or **including** does not limit what else might be included; and
- (e) 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

On and from the Commencement Date, the Foundation appoints the Researcher to provide the Research on a non-exclusive basis during the Term. The Researcher agrees to provide the Research to the Foundation on the terms of this Agreement.

3. Performance of Research

- (a) The Researcher:
 - (i) must ensure the Research is performed in a proper and efficient manner and to a standard that could reasonably be expected of a market leader in the industry in which the Research is being provided;
 - (ii) will ensure that the Principal Investigator is engaged to perform the Research for the Term; and
 - (iii) may only change the Principal Investigator with the prior written consent of the Foundation.
- (b) During the Term, the Researcher will not, and will ensure that the Principal Investigator does not, provide any services to another person, if in the opinion of the Foundation, doing so will adversely affect the Researcher's ability to perform the Research in accordance with this Agreement.
- (c) The Researcher must, at its own expense, supply all tools, equipment and other resources to provide the Research except as otherwise previously agreed by the Foundation in writing.

4. Researcher's obligations

- (a) The Researcher must ensure that the Research is performed:
 - (i) in accordance with this Agreement;
 - (ii) with all due skill and care and to the best of its knowledge and expertise and to the satisfaction of the Foundation;
 - (iii) in accordance with any directions given by any person nominated by the Foundation from time to time; and
 - (iv) in compliance with all applicable laws.
- (b) The Researcher must ensure that the Researcher Personnel:
 - (i) act in accordance with this Agreement;
 - (ii) are suitably competent and qualified to perform the Research;
 - (iii) provide the Research in a professional and responsible manner;
 - (iv) act with all due care and skill and to the best of their knowledge and expertise in performing the Research;
 - (v) act in accordance with any directions given by any person nominated by the Foundation from time to time;

- (vi) act in compliance with all applicable laws; and
- (vii) act in compliance with all policies of the Foundation as current from time to time and as notified to the Researcher.
- (c) The Researcher must not, and must ensure the Researcher Personnel do not:
 - (i) assume or create or attempt to assume or create, directly or indirectly, any obligation of or in the name of the Foundation; or
 - (ii) intentionally do anything while performing the Research that is or may be harmful to the reputation of the Foundation.
- (d) The Researcher will be liable to the Foundation for the acts, omissions, defaults and negligence of the Researcher Personnel as if they were the acts, omissions, defaults or negligence of the Researcher.
- (e) The Researcher must ensure all Progress Reports are provided by the relevant Progress Report Due Date set out in **Schedule 2** or such other date determined by the Foundation (**Due Date**).
- (f) The Researcher must maintain, and make available to the Foundation upon request, complete and accurate:
 - (i) accounting records to substantiate the use of the Fees, within generally accepted accounting principles; and
 - (ii) records of the Research undertaken and the Foundation's progress against its objectives in **Schedule 2**.
- (g) The Researcher must, when requested by the Foundation, provide all information, explanations and advice which the Foundation requires in relation to the Researcher's engagement and the performance of the Research.

5. Confidential Information and Announcements

5.1 Acknowledgement

The Researcher acknowledges that the Confidential Information is and will be the sole and exclusive property of the Foundation and that a breach of this clause will be harmful to the Foundation.

5.2 Confidentiality

During this Agreement and after its termination or expiry, the Researcher must:

- (a) keep confidential all Confidential Information; and
- (b) not disclose any Confidential Information to any person, except:
 - (i) to the Researcher Personnel to whom it is necessary to disclose the Confidential Information for the purposes of carrying out its obligations under this Agreement;
 - (ii) as required by law; or

- (iii) with the prior written consent of the Foundation.

5.3 Exceptions

Clause 5.2(a) does not apply to any information which:

- (a) was in the public domain at the time of its provision;
- (b) became part of the public domain after its provision, otherwise than through a disclosure by the Researcher or any person to whom the Researcher has disclosed that information;
- (c) is independently developed by the Researcher without the use of the Confidential Information; or
- (d) is or came lawfully into the possession of the Researcher other than as a result of a disclosure in breach of an obligation of confidence.

5.4 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 Researcher is informed by the Foundation in writing to the contrary prior to disclosure of that information.

5.5 Security

The Researcher must:

- (a) maintain proper and secure custody of the Confidential Information;
- (b) use its best endeavours to prevent the use or disclosure of the Confidential Information by third parties; and
- (c) immediately notify the Foundation if it has reasonable grounds to believe that any person has disclosed or intends to disclose Confidential Information.

5.6 Remedies for breach

Each Party acknowledges that:

- (a) an award of damages or an account of profits may not adequately compensate the Foundation if this **clause 5** is breached; and
- (b) without in any way compromising its right to seek damages or any other form of relief, the Foundation may seek and obtain injunction to prohibit or restrain the Researcher from any breach or threatened breach of this **clause 5**.

5.7 Delivery

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

- (a) on the expiration of the Term or termination of this Agreement; or
- (b) at any time on the request of the Foundation.

5.8 Announcements

- (a) The Researcher must not make any press release, publication, announcement or any other external communication (**Communications**) about the Foundation (including representing that the Researcher or the Principal Investigator is endorsed by the Foundation), this Agreement or the Research without the prior written consent of the Foundation.
- (b) The Researcher acknowledges that if the Foundation provides its consent under **clause 5.8(a)**, the Researcher will acknowledge, into perpetuity, the funding provided by the Foundation under this Agreement by incorporating into all Communications about the Research the expression 'supported by the HCF Research Foundation' or such other words as reasonably requested by the Foundation.

5.9 Disclosure of Research results

- (a) Without limitation to the other provisions of this **clause 5**, the Researcher and Researcher Personnel must not disclose any results of the Research to, or otherwise directly disclose the nature of the Research to, any third party including any health insurance provider (or any person whom the Researcher or Researcher Personnel ought reasonably be aware may disclose the results to a health insurance provider) except:
 - (i) with the prior written consent of the Foundation (which may be withheld in its absolute discretion); or
 - (ii) once those results of the Research have been published or otherwise entered the public domain in accordance with **clause 5.8**.

6. Intellectual property and moral rights

- (a) The Foundation owns or licences all Intellectual Property Rights in the Foundation Material. Nothing in this Agreement transfers any ownership rights in the Foundation Material to the Researcher or Researcher Personnel. The Foundation grants to the Researcher for the Term a non-exclusive, non-transferrable, royalty free license to use the Foundation Material in Australia solely for the purpose of providing the Research in accordance with this Agreement and such licence terminates on termination or expiry of this Agreement. Upon termination or expiry of this Agreement the Researcher must, at its own cost, return all Foundation Material to the Foundation.
- (b) The Researcher owns or licences all Intellectual Property Rights in the Research. The Researcher irrevocably grants a worldwide, perpetual, royalty free licence to the HCF Group to use, including to sub-licence, on its own terms all Intellectual Property Rights in the Research.
- (c) The Researcher acknowledges that it will during the Term have an intellectual property policy in place which is reviewed annually and covers among other things the ownership and availability of Intellectual Property Rights generated as a result of the Research including:

- (i) registration of ownership of such rights with IP Australia where applicable; and
- (ii) protecting such rights through licensing and accessibility arrangements.
- (d) The Researcher warrants that its Researcher Personnel have given consents and waivers in relation to their Moral Rights to the fullest extent possible under the laws of any applicable jurisdiction. The consents and waivers are sufficient to ensure the Foundation's unimpeded use of the Research under **clause 6(a)**.

7. Privacy

- (a) The Researcher may collect or have access to Personal Information held by the HCF Group or in the course of undertaking the Research (**HCF PI**) and the Researcher agrees that it will, in respect of that information:
 - (i) comply, and ensure that Researcher Personnel comply, with the Australian Privacy Principles in the Privacy Act, and in particular, that it will:
 - (A) not directly or indirectly use, disclose, alter or otherwise handle HCF PI except to provide the Research;
 - (B) not disclose any HCF PI to any third party other than Researcher Personnel, without obtaining the Foundation's prior written consent, a condition of which may be that the person to whom disclosure is proposed to be made agrees to be bound by the provisions of this clause;
 - (C) take all reasonable steps (including maintaining appropriate operational and technological processes and procedures) to ensure that HCF PI is protected against misuse, interference, loss, and unauthorized access, modification and/or disclosure;
 - (D) ensure that only those Researcher Personnel needing access to HCF PI for the purpose of providing the Research are authorized to access HCF PI, and that those Researcher Personnel are trained with respect to the correct handling of HCF PI so as to minimise the risk of accidental security breaches and breach of the Privacy Act or other applicable laws which relate to the protection of HCF PI;
 - (E) ensure that only Researcher Personnel have access to HCF PI;
 - (F) ensure no unauthorized copy is made of HCF PI or records containing HCF PI; and
 - (G) ensure all records containing HCF PI are returned to the Foundation via courier or, with the prior agreement of the Foundation, are permanently destroyed as soon as they are no longer needed to provide the Research;
 - (ii) promptly notify the Foundation if the Researcher becomes aware of:
 - (A) any request for access to any HCF PI, or any circumstances where the Researcher becomes aware that use or disclosure of

- any HCF PI other than in providing the Research, is required or authorised by or under law;
- (B) any accidental or unauthorised access to any HCF PI, or any other disclosure or use of HCF PI not for the purpose of providing the Research;
 - (C) any loss of any HCF PI;
 - (D) any breaches of its security and/or network, whether or not the breach involves any HCF PI; and
 - (E) any breach of this **clause 7**;
- (iii) if any of the events specified in **clause 7(a)(ii)** occur, or either Party has reason to believe that any of those events have occurred, comply with all the Foundation's policies and procedures that apply to that event, or any reasonable directions given by the Foundation;
 - (iv) provide assistance to the Foundation in a timely manner to enable the Foundation to investigate any alleged or suspected privacy breach or complaint in respect of that information;
 - (v) promptly disclose or give access to HCF PI received from the Foundation to third parties if instructed to do so in writing by the Foundation and provided that any access is during business hours;
 - (vi) maintain a privacy policy as required by the Privacy Act 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;
 - (vii) actively monitor and if requested by the Foundation in writing, 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:
 - (A) outside business hours; or
 - (B) for purposes exceeding what is reasonably required for audit purposes; and
 - (viii) comply generally with the Privacy Act and any other statute, regulation or law in Australia or elsewhere which relates to the protection of HCF PI and which the Researcher must observe.

8. Insurance

- (a) The Researcher must maintain and keep the Insurances during the Term and for three years after termination or expiry of this Agreement.
- (b) The Researcher must provide the Foundation with a copy of the certificate of currency for the Insurances when requested to do so by the Foundation but in any event not later than two Business Days from the date of the request.

9. Warranties

- (a) The Researcher warrants and represents that:
- (i) it is validly existing under the laws of its state or territory of incorporation;
 - (ii) it has the power to enter into and perform its obligations under this Agreement;
 - (iii) it has taken all necessary corporate action to authorise the entry into and performance of this Agreement;
 - (iv) its obligations under this Agreement are valid and binding and enforceable against it in accordance with their terms;
 - (v) its execution, delivery and performance of this Agreement will not:
 - (A) result in a breach of, or constitute a default under, any agreement or arrangement to which it is a party or by which it is bound; or
 - (B) result in a breach of any law or order, judgment or decree of any court, governmental agency or regulatory body to which it is a party or by which it is bound;
 - (vi) all information given to and each warranty and representation made to the Foundation by the Researcher is correct, complete and not misleading including any information contained in the Research Application Form and the Progress Report;
 - (vii) the Insurances are enforceable against the insurer in accordance with their terms and are not void or voidable;
 - (viii) it is able to pay its debts as they fall due; and
 - (ix) no HCF PI received by the Researcher in the course of performing the Research will be stored or sent outside Australia by the Researcher or the Researcher Personnel or will be accessed by any person outside of Australia.
- (b) The Researcher further warrants and represents that:
- (i) the Researcher and the Researcher Personnel will at all times act honestly and without negligence or misconduct and in the best interests of the Foundation;
 - (ii) when attending the Foundation's premises, the Researcher and the Researcher Personnel will carry and display at all times appropriate company identification unless otherwise agreed by an authorised officer of the Foundation;
 - (iii) the Researcher and the Researcher Personnel will not otherwise act in any manner which could disrupt or adversely affect the Foundation's business operations, reputation, interests or goodwill;

- (iv) all Research created by the Researcher or the Researcher Personnel will be original and all Intellectual Property Rights in such Research will be owned by the Researcher;
 - (v) the Foundation's use of the Research and receipt of the Research in accordance with the purposes contemplated in this Agreement will not infringe the Intellectual Property Rights of any third party; and
 - (vi) the Researcher and the Researcher Personnel will comply with all laws and codes of conduct that may apply to the performance of the Research.
- (c) The warranties and representations in **clause 9(a)** and **clause 9(b)** are taken to be made:
- (i) on the Commencement Date; and
 - (ii) on the last Business Day of each month after the Commencement Date.
- (d) The Researcher acknowledges that the Foundation has entered into this Agreement in reliance of the warranties and representations in this **clause 9**.

10. Indemnity

10.1 Indemnity

The Researcher indemnifies the Foundation against any Loss which the Foundation suffers or incurs arising from:

- (a) the performance or lack of performance by the Researcher or the Researcher Personnel of the Research;
 - (b) any breach of this Agreement by the Researcher;
 - (c) death or personal injury or damage to property caused by an act or omission of the Researcher or the Researcher Personnel; or
 - (d) the Research infringing any Intellectual Property Rights of any third party,
- except to the extent that the Loss is attributable to the act or omission of the Foundation.

10.2 Limitation of liability

To the extent permitted by law, the aggregate liability of the Foundation to the Researcher under or in respect of this Agreement whether in contract, tort, statute or any other cause of action is limited to an amount equal to the sum of all Fees paid or payable to the Researcher by the Foundation.

11. Funding

11.1 Invoice

The Researcher must, in accordance with the **Schedule 2**, deliver to the Foundation no earlier than five Business Days after the relevant Due Date:

- (a) a tax invoice which complies with the GST Act (**Invoice**) and sets out:

- (i) the project ID as notified in writing to the Researcher by the Foundation on or about the Commencement Date;
 - (ii) the Invoice number; and
 - (iii) the Phase for which the Invoice has been raised and the amount payable by the Foundation; and
- (b) a copy of the completed Progress Report for that Phase.

11.2 Payment

The Foundation must, within 20 Business Days of receiving an Invoice and accompanying Progress Report, pay the Fees specified in the Invoice to the Researcher unless:

- (a) the Foundation, at its reasonable discretion, by notice in writing given to the Researcher, defers payment of the Invoice if any part of the Fees paid to date by the Foundation are unexpended at the date of the Invoice; or
- (b) the Researcher has not met the objectives set out in **Schedule 2** which were due on or prior to the relevant Progress Report Due Date to the satisfaction of the Foundation, in which case, payment of the Invoice will be delayed until such objectives are met to the satisfaction of the Foundation.

11.3 Recovery of Fees

At any time, the Foundation may recover from the Researcher, as a debt due to the Foundation, any part of the Fees which:

- (a) the Foundation is not reasonably satisfied has been expended in accordance with this Agreement;
- (b) is unexpended at the completion of a Phase or the expiration or termination of this Agreement; or
- (c) the Foundation deems appropriate for a failure by the Researcher to meet the objectives set out in **Schedule 2**.

12. Termination

12.1 Termination

- (a) The Foundation may terminate this Agreement immediately by giving written notice to the Researcher if:
 - (i) the Foundation is not reasonably satisfied that the Researcher is making appropriate progress against its objectives set out in **Schedule 2**;
 - (ii) the Researcher breaches any obligation under this Agreement and does not remedy that breach within 30 days of receipt of a written notice from the Foundation specifying the breach and requiring the breach to be remedied;
 - (iii) the Researcher suffers an Insolvency Event; or

- (iv) the employment of Principal Investigator is terminated by the Researcher or the Principal Investigator resigns from his or her employment with the Researcher.
- (b) The Foundation may at any time without cause terminate this Agreement by giving to the Researcher not less than three months' prior written notice.
- (c) The Researcher may at any time without cause terminate this Agreement by giving to the Foundation not less than three months' prior written notice.

12.2 After termination

- (a) Termination of this Agreement is without prejudice to the rights of each Party against the other accrued up until the date of termination.
- (b) If this Agreement expires or if it terminated under **clause 12.1**, within 15 Business Days after the date of expiry or termination:
 - (i) the Researcher must return all property of the Foundation (including any Confidential Information in accordance with **clause 5**) and must ensure that the Researcher Personnel do the same; and
 - (ii) the Foundation must pay the Researcher all amounts it owes the Researcher for Research performed up to, and including, the date of expiry or termination provided that it is in receipt of the necessary Invoices and relevant Progress Reports required to be provided by the Researcher.

13. Nature of relationship

13.1 Independent provider

The Researcher acknowledges that:

- (a) The Researcher will supply the Research to the Foundation as an independent service provider;
- (b) this Agreement does not create a relationship of employer and employee, principal and agent or partnership between the Foundation and
 - (i) the Researcher; or
 - (ii) the Researcher Personnel; and
- (c) this Agreement does not give the Researcher or the Researcher Personnel authority to bind the Foundation.

13.2 Employment related expenses and indemnity

If at any time (including after the termination or expiry of this Agreement) the Foundation is considered an employer and is obliged to make payments in respect of the amounts paid or benefits provided to or in relation to the Researcher or the Researcher Personnel, then the Researcher must:

- (a) make all such payments on the Foundation's behalf; and

- (b) indemnify the Foundation against all such payments made by the Foundation, including:
 - (i) any additional tax, levy or other payment whatsoever, including any interest, penalty or late fee that may be payable in respect of the late or non-payment of such tax, levy or other payment; and
 - (ii) remuneration, annual leave, sick leave, long service leave, bereavement leave or other leave, or any other payment or entitlement to be paid or provided to such persons.

14. GST

14.1 Definitions

Words or expressions used in this clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the same meaning given to them in the GST Act.

14.2 GST

If GST applies to any supply made under this Agreement, then the Party making that supply may, in addition to any other amount payable in this Agreement, recover from the other Party an additional amount on account of GST, such amount to be calculated on the basis of the current GST rate. Unless otherwise specified, any amount payable under this Agreement is exclusive of GST.

15. Taxes

Subject to **clause 14**, the Researcher must pay all taxes and levies and maintain all registrations, licences and insurances required by law in connection with this Agreement and the performance of the Research, including income tax instalments, payroll tax instalments and superannuation guarantee levy contributions.

16. Force Majeure

16.1 Meaning of Force Majeure

In this **clause 16 "Force Majeure"** means any flood, storm or other natural disaster, fire, labour dispute, war, riot or terrorism, act of God or any other unlawful act against public order or authority or any other circumstance beyond the Researcher's reasonable control.

16.2 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.

16.3 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 and not due in any way to its own negligence.

16.4 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 and **clause 12.2** applies.

17. Dispute Resolution

17.1 Resolving Disputes

- (a) Except where a Party seeks urgent interlocutory relief, if a dispute arises in relation to the rights and obligations of the Parties under this Agreement ("**Dispute**"), the Parties must follow the procedures set out in this clause before escalating the Dispute to litigation or arbitration.
- (b) The dispute resolution procedures in this clause will arise upon a Party notifying the other Parties in writing (providing reasonable details) as to the existence and nature of the Dispute and setting out the reasons for its dissatisfaction or claim of breach of this Agreement ("**Dispute Notice**").
- (c) The Parties must use their best endeavours to settle the Dispute within 10 Business Days after service of a Dispute Notice. If the Dispute remains unresolved after this time, the respective Parties must authorise a person or persons holding the required level of authority to meet within 5 Business Days to attempt to resolve the Dispute.

17.2 Refer to Mediation

If the Dispute remains unresolved after the procedures in **clause 17.1** have been completed, the Parties agree to use their best endeavours to settle the Dispute by mediation administered by a mediator accredited by the Resolution Institute (unless each Party agrees otherwise) on the following basis:

- (a) the Parties must use their best endeavours to agree on the appointment of a mediator within 5 Business Days, failing which the Parties agree to the President of the Law Society of New South Wales appointing the mediator;
- (b) the Resolution Institute Mediation Rules apply to any mediation, except where they conflict with this clause 17;
- (c) the costs of the mediation and the mediator will be split equally between the Parties to the Dispute;
- (d) the Parties must conduct the mediation as expeditiously as possible;
- (e) the mediation will be held in Sydney in accordance with the laws governing this Agreement; and
- (f) the mediation will be non-binding.

18. Notices

18.1 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.

18.2 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) email to the Party's current email address.

18.3 Particulars of service

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

The Foundation:

Address: Level 8, 403 George Street, Sydney NSW 2000

Email: hcf_foundation@hcf.com.au

Telephone: 0400 002 105

Attention: HCF Research Foundation Manager

The Researcher:

Address: [insert]

Email: [insert]

Telephone: [insert]

Attention: [insert]

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

18.4 Service

If a communication is given by:

- (a) personal service or by being left at a Party's address, at the time the communication is served or left;
- (b) post it is taken as received if posted within Australia to an Australian address 5 Business Days (in the place of receipt) after posting and in any other case 10 Business Days (in the place of receipt) after posting; or
- (c) email it is taken to be received at the place of receipt on the day it was sent,

unless, for communication under **clauses 18.4(a), 18.4(b) or 18.4(c), clause 18.5** applies.

18.5 Service after hours

If a communication to a Party is received by it:

- (a) after 5.00 pm 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.

19. Miscellaneous

19.1 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.

19.2 Amendment

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the Parties.

19.3 Waiver and exercise of rights

- (a) A Party does not waive a right, power or remedy if it fails to exercise or delays exercising the right, power or remedy.
- (b) A single or partial exercise or waiver of a right, power or remedy does not prevent another or further exercise of that right, power or remedy.
- (c) A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

19.4 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.

19.5 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.

19.6 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.

19.7 Assignment

- (a) The Researcher must not assign or transfer any right or obligation arising under or in connection with this Agreement, including any of its Intellectual Property Rights in the Research, without the prior written consent of the Foundation. The

Foundation will not unreasonably withhold consent to an assignment by the Researcher of its Intellectual Property Rights in the Research if:

- (i) the Researcher gives prior written notification to any assignee of the existence and the terms of the licence granted to the Foundation in **clause 6(b)**; and
 - (ii) the assignee acquires the Intellectual Property Rights in the Research (or part thereof) subject to the licence granted to the Foundation in **clause 6(b)** and, if required by Foundation, takes a novation of the licence granted in that clause from the Researcher on terms reasonably acceptable to the Foundation.
- (b) The Foundation may assign part or all of its rights or obligations arising out of this Agreement, including the licence granted to it in **clause 6(b)**, with immediate effect by giving notice to the Researcher.

19.8 Severability

Part or all of any clause of this Agreement that is illegal or unenforceable will be severed from this Agreement and the remaining provisions of this Agreement continue in force.

19.9 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.

19.10 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.

19.11 Set off

The Foundation may set off any amounts the Researcher owes the Foundation against any amounts the Foundation owes the Researcher except for amounts the Foundation is not entitled by law to set off.

19.12 Survival

Clauses 4(f), 5, 6, 7, 8, 10, 11.3, 12, 13.2, 17, 18 and 19 and all clauses required to give effect to these clauses survive the termination or expiry of this Agreement.

19.13 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.

Signing page

Executed as an agreement

Executed by **HCF Research Foundation Ltd** ACN 604 776 070 **as trustee for the HCF Research Foundation** ABN 40 577 146 605 in accordance with section 127 of the *Corporations Act 2001*:

Signature of director

←

Signature of director/company secretary

←

Print name

Print name

Executed by **[Insert Researcher Name]**
ACN **[Insert ACN]** in accordance with
section 127 of the *Corporations Act 2001*:

Signature of director

←

Signature of director/company secretary

←

Print name

Print name

Schedule 1

Term	Commencement Date [the date of this Agreement <i>OR</i> insert date] Expiry Date [insert date]
Principal Investigator	The Principal Investigator is [insert name and position of Principal Investigator] or such other person agreed by the Parties from time to time.
Research	<p>The Researcher will:</p> <ul style="list-style-type: none"> • perform services with the aim of [insert aim from the Application Form]; • [insert other information as relevant to the methodology, measures and performance indicators]; • deliver to the Foundation Progress Reports as outlined in Schedule 2; and <p>such other services as the Foundation may request from time to time.</p>
Fees	The fees for the Research are \$[insert amount] and are payable in installments in accordance with Schedule 2 .
Insurances	<p>The Researcher must obtain the following Insurances:</p> <ol style="list-style-type: none"> (a) public liability insurance with a minimum value of \$10 million for any one event; (b) professional indemnity insurance with a minimum value of \$5 million for each claim and in the aggregate with at least one automatic reinstatement; (c) workers compensation insurance as required by law (which covers both statutory law and common law damages); and (d) such other insurances requested by the Foundation from time to time.

Schedule 2

Payment Schedule

Phase	Objective/goal	Phase Completion Date	Payment amount (\$)	Progress Report Due Date
1.				
2.				
3.				
4.				

Annexure 1 – Research Application Form

[to be inserted]