



Cancer Council NSW

**Research Grant
Agreement**

October, 2018

Research Grant Agreement

Parties **The Cancer Council NSW** (ABN 51 116 463 846) of 153 Dowling St
Woolloomooloo NSW 2011 (**Cancer Council**)

insert Administering Institution of **insert address** (ABN: **insert**)
(**Administering Institution**)

insert Chief Investigator A name (**Chief Investigator A**)

each a Party and together the Parties

Background

- A Cancer Council awards various grants to encourage research and facilitate discoveries that will hasten the defeat of cancer (**Cancer Council Research Grant Funding Program**).
- B The Chief Investigator A has submitted a research grant application under the Cancer Council Research Grant Funding Program, as set out in Schedule A (**Grant Application**), and wishes to receive the benefit of research grant funding (the **Research Grant**) in order to carry out the work outlined in that Grant Application (the **Project**).
- C Cancer Council has approved the Grant Application in principle and now wishes to provide the Research Grant on the terms set out in this Agreement.
- D The Administering Institution wishes to receive and administer the Research Grant in order that the Chief Investigator A and his or her team may carry out the Project as outlined in the Grant Application.

Operative provisions

1 Definitions and interpretation

- 1.1 In this Agreement, unless the context requires another meaning:

Annual Progress Reports has the meaning given to that term in clause 10.1;

Background IP means Intellectual Property Rights used in connection with the Project owned by a Party prior to the date of this Agreement or created independently of this Agreement excluding Third Party IP and Cancer Council IP;

Cancer Council Research Grant Funding Program is the name given to the Cancer Council's research funding program, which aims to encourage research and facilitate discoveries that will hasten the defeat of cancer by the award of various types of research grants;

Cancer Council IP means Intellectual Property Rights owned by Cancer Council prior to the date of this Agreement or created independently of this Agreement;

Cancer Research Committee means the committee that reports to the Board of Cancer Council and has responsibility for providing guidance to the Board on cancer research policy and programs;

Chief Investigator means any of the persons listed as such in the Grant Application, and includes the **Chief Investigator A** unless otherwise specified;

Confidential Information means all information relating to Cancer Council's business, operations, strategies, intellectual property, or actual or prospective clients, customers, suppliers or competitors, provided that such information is confidential in fact, is reasonably regarded by Cancer Council as being confidential, is information that Cancer Council has advised the Administering Institution or Chief Investigator A is confidential, or is by its nature inherently or reasonably to be considered confidential. It excludes any information which is:

- (a) already in the public domain otherwise than as a result of a breach of this Agreement;
- (b) disclosed to the Administering Institution or Chief Investigator A without restriction by a third party and without any breach of confidentiality by the third party; or
- (c) developed independently by the Administering Institution or Chief Investigator A without reliance on any of Cancer Council's Confidential Information.

Conflict of Interest means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through a Party engaging in any activity, participating in any association, holding any membership or obtaining any interest that is likely to conflict with or restrict that Party from carrying out the Project;

End Date means the date identified in Item 5 of Schedule B

Force Majeure means events outside the reasonable control of the Party claiming Force Majeure and includes fires or other casualties or accidents, acts of God, severe weather conditions, war or other violence, or any law, order, proclamation, regulation, ordinance, common demand, or requirement of any governmental agency;

Full-Time Specified Personnel has the meaning given to that term in clause 6.2;

Funding Year means a calendar year during the Term in which funding is provided by Cancer Council to the Administering Institution under this Agreement;

Grant Application means the grant application submitted by the Chief Investigator A for the purpose of securing the Research Grant as set out in Schedule A;

Health Information has the meaning given to that term in the *Health Records and Information Privacy Act 2002 (NSW)*;

Income and Expenditure Statements has the meaning given to that term in clause 10.2;

Insolvency Event means an event by which a Party is:

- (a) declared bankrupt by a court of competent jurisdiction or commits an act of insolvency as that term is defined in the *Corporations Act 2001 (Cth)*;
- (b) rendered or deemed insolvent;
- (c) placed, by a court of competent jurisdiction, in or under:
 - (i) receivership;

- (ii) receivership and management;
- (iii) liquidation; or
- (iv) official management or administration;
- (d) wound up or dissolved, or a binding resolution is made for the winding-up of dissolution of the Party;
- (e) involuntarily made subject to any arrangement, assignment or composition (otherwise than as a result of voluntary corporate reconstruction); or
- (f) protected, by a court of competent jurisdiction, from any creditors under a statute;

Intellectual Property Rights means all rights in any (i) patent, patent application, and all related continuation, utility model patent, utility model application, certification of addition, application for certification of addition, extension and/or renewal thereof, and statutory invention registration, (ii) copyright, (iii) moral rights, (iv) database rights, (v) registered design or other design right, design registration and application for design registration, extension and/or renewal thereof, (vi) trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, slogan, company name, commercial name and designation, logo and other distinctive sign, internet domain name, (vii) rights relating to scientific work invention, scientific discovery, invention, design, semiconductor, circuit layout, chip topography right, Confidential Information or knowhow, including any registration, application, extension and/or renewal thereof, and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights owned, used, or intended to be used, by a Party whether or not registered, registrable or patentable;

Personal Information has the meaning given to that term in the *Privacy Act 1988 (Cth)*;

Project IP means any Intellectual Property Rights newly developed in conducting the Project under this Agreement;

Project means the research project described in the Grant Application;

Project Name has the meaning given to that term in clause 13.1, which is set out in Item 3 of Schedule B;

Project Funding Source means the source of funding for the Project as set out in Item 8 of Schedule B;

Research Ethics Committees means any Animal and/or Human Research Ethics Committee registered with the National Health and Medical Research Council (NHMRC) that is responsible for reviewing research proposals to ensure that they are ethically acceptable and in accordance with relevant standards and guidelines including those stipulated in the NHMRC's *National Statement on Ethical Conduct in Human Research (2007) (updated 2013)* and the *Australian Code for the Care and Use of Animals for Scientific Purposes 8th edition (2013)*, and all other relevant standards and guidelines.

Research Grant means the total amount of funding awarded and to be paid pursuant to this Agreement which is set out in Item 6 of Schedule B;

Sensitive Information has the meaning given to that term in the *Privacy Act 1988 (Cth)*;

Specified Personnel means the Chief Investigator(s) and any other researchers working on the Project from time to time;

Start Date means the date identified in Item 4 of Schedule B

Term means the period specified in clause 2.1;

Third Party IP means Intellectual Property Rights used in connection with the Project which are not Background IP, Cancer Council IP or Project IP; and

Transfer Application means a written application by the Chief Investigator A to the Administering Institution and Cancer Council seeking Cancer Council's approval to transfer the Project to another institution.

1.2 In this Agreement, unless the context requires another meaning, a reference:

- (a) to the singular includes the plural and vice versa;
- (b) to a document (including this Agreement) is a reference to that document (including any Schedules) as amended, consolidated, supplemented, novated or replaced;
- (c) to an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
- (d) to a party means a party to this Agreement;
- (e) to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this Agreement;
- (f) to a person (including a party) includes an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government agency and the person's successors, permitted assigns, substitutes, executors and administrators;
- (g) to a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
- (h) to 'dollars' or '\$' mean Australian dollars; and
- (i) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively.

1.3 Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

1.4 Headings are for convenience only and do not affect interpretation of this Agreement.

2 Term

2.1 This Agreement will commence on Start Date and will continue until the End Date or such later date as agreed by the Parties in writing in accordance with clause 2.2, unless the Agreement is terminated earlier in accordance with clause 20.

2.2 The Chief Investigator A may apply to Cancer Council in writing to extend the Term. Such application must be made in the last year of the Project:

- (a) in the Annual Progress Report; or

- (b) in writing made via the Administering Institution's research office at least 3 months prior to the End Date.

The extension application must nominate a proposed new end date, provide a justification for the extension request, and, if made through the Annual Progress Report may include an application to carry over unspent funds in accordance with clause 4.6. Cancer Council may approve or reject such a request in its absolute discretion.

- 2.3 To avoid doubt, the approval of a request made in accordance with clause 2.2 will not give rise to an entitlement to further funding.

3 Payment of funds

Payment terms

- 3.1 Cancer Council will pay the Research Grant to the Administering Institution twice yearly during the Term, according to the funding schedule set out in Item 7 of Schedule B. Payment will occur by transfer to the bank account nominated by the Administering Institution.
- 3.2 Before any payment can be made under this Agreement, Cancer Council must receive a completed authorisation to generate recipient-created tax invoices as set out in Schedule C from the Administering Institution. The Administering Institution agrees to update the details provided in Schedule C if they change during the Term.
- 3.3 Despite any other clause in this Agreement, all payments of the Research Grant shall be subject to and conditional upon the Administering Institution and the Chief Investigator A complying with the terms and conditions set out in this Agreement including the reporting requirements in clause 10.
- 3.4 The amount of funding awarded under the Research Grant is fixed and Cancer Council is under no obligation to provide additional funds. Any expenditure or costs incurred in relation to the Project in excess of the amounts approved in the Grant Application, including but not limited to salary increases, will be met by the Administering Institution.

Payments subject to accuracy of information provided

- 3.5 The provision of the Research Grant is conditional on the information provided in the Grant Application being complete, accurate and not misleading. If Cancer Council considers that the Grant Application is materially incomplete, inaccurate or misleading, it may elect to terminate this Agreement at any time in accordance with clause 20.

Tobacco Industry Funding

- 3.6 It is a condition of the award of the Research Grant that neither the Chief Investigator A nor the Administering Institution receives funds, directly or indirectly, from the tobacco industry or organisations reasonably considered by Cancer Council to be associated with the tobacco industry. If Cancer Council considers that the Chief Investigator A or the Administering Institution is in breach of this condition, or reasonably believes that the integrity of the Project is threatened by influence from tobacco interests, it may elect to terminate this Agreement at any time in accordance with clause 20.

Eligibility for other grants

- 3.7 The Chief Investigator A must inform Cancer Council in writing if funding is received from other sources for the same research as the Project funded under this Agreement and the steps that he or she proposes to take to resolve or otherwise deal with the overlap. Cancer Council will consider the information provided by the Chief Investigator A in good faith. If:

- (a) the Chief Investigator A fails to notify Cancer Council of funding received from other sources for the same research as the Project; or
- (b) the steps that the Chief Investigator A proposes to take to resolve or otherwise deal with the overlap in the funding is not satisfactory to Cancer Council;

Cancer Council may elect to terminate this Agreement in accordance with clause 20.

4 Use of Research Grant

Funds to be used in accordance with approved budget

- 4.1 The Administering Institution and the Chief Investigator A must ensure that the Research Grant is spent wholly on the Project and in accordance with the budget stated in the Grant Application as set out in Schedule A. The Chief Investigator A may apply to Cancer Council in writing to vary the budget. Any variation requests are to be received via the Administering Institution's research office. Cancer Council may approve or reject such a request in its absolute discretion.
- 4.2 The Research Grant must be used only for direct Project costs and not used to cover any indirect or overhead costs. The Administering Institution undertakes to meet all such costs. To avoid doubt, where the Grant Application includes provision for equipment expenses, the Research Grant may be used for these equipment expenses in accordance with clause 8.

Banking and accounting

- 4.3 The Administering Institution must deposit the Research Grant into an interest-bearing account and must maintain a separate accounting ledger for the Project. Any interest earned on the Research Grant must be applied only to the Project in accordance with clause 4, except with the prior written consent of Cancer Council.
- 4.4 At any time Cancer Council may request access to accounting records relating to the Research Grant. Following such request the Administering Institution must arrange for these records to be made available as soon as reasonably practicable and in the format reasonably required by Cancer Council.

Overpayment

- 4.5 The Administering Institution must identify any overpayment it receives under this Agreement and must notify Cancer Council in writing of the overpayment within 30 days of identifying the overpayment. The Administering Institution must repay such amount within 30 days. Nothing in this clause 4.5 limits Cancer Council's right to recover any overpayment from the Administering Institution.

Carry-over of unused funds

- 4.6 If the Research Grant is underspent by more than 25% in a Funding Year, the Administering Institution must ensure that the Chief Investigator A includes in the appropriate field of the next Annual Progress Report details of the reasons for the delay in expenditure of the funds; the impact of those delays on Project timelines and outcomes (if any); whether those funds have been committed for expenditure in the following year; how the funds would be spent in the next calendar year if carried over; and whether consent is sought to carry-over unspent funds to the next Funding Year.
- 4.7 If the Administering Institution does not request approval to carry over the unspent funds in accordance with clause 4.6, the Administering Institution must repay the unspent amount to

Cancer Council by no later than 31 March occurring immediately after the year in which the Annual Progress Report was due to be submitted.

- 4.8 Cancer Council may in its absolute discretion approve or reject a request by the Administering Institution for approval to carry over the unspent funds in accordance with clause 4.6. If the request to carry-over unspent funds is not approved, Cancer Council may, in its absolute discretion:
- (a) require the Administering Institution to repay unspent funds;
 - (b) suspend the next payment of the Research Grant; and/or
 - (c) offset an amount equivalent to the unspent funds against further funds payable to the Administering Institution under this Agreement.
- 4.9 If Cancer Council seeks to recover unspent funds under clause 4.8, the Administering Institution must repay such amount to Cancer Council's nominated bank account within 30 days of a written request to do so.

Outstanding amounts to be repaid to Cancer Council

- 4.10 At the end of the Term, any amount of the Research Grant that has not been spent or legally committed shall be repaid to Cancer Council within 30 days of the end of the Term.
- 4.11 If an amount that is required to be repaid under clause 4.7, 4.9 or 4.10 is not repaid within the specified timeframe, interest (calculated at an interest rate of 2% above the prevailing 90-day bank-accepted bill rate available from the Reserve Bank of Australia less 10 basis points) will accrue on the outstanding amount on a daily basis until it is repaid by the Administering Institution. The Administering Institution agrees that such interest represents a reasonable pre-estimate of loss incurred by Cancer Council.

5 Performance of the Project

- 5.1 The Chief Investigator A will conduct, and will ensure that the Specified Personnel conduct, the Project:
- (a) in accordance with the Grant Application as set out in Schedule A;
 - (b) in a diligent, professional and competent manner and with all due care and skill; and
 - (c) in accordance with:
 - (i) the terms of this Agreement;
 - (ii) any ethics approval obtained;
 - (iii) the *Australian Code for the Responsible Conduct of Research* (2007) and its successor documents;
 - (iv) the *National Statement on Ethical Conduct in Human Research* (2007) and its successor documents;
 - (v) currently available techniques and the highest scientific standards; and
 - (vi) all applicable laws and regulations.
- 5.2 The Administering Institution will do all things necessary to enable the Project to proceed in accordance with the Grant Application as set out in Schedule A.

- 5.3 Any change to the scope of the Grant Application must be approved by Cancer Council. The Chief Investigator may apply to Cancer Council in writing to vary the scope of the Grant Application via the Annual Progress Report, noting any budget adjustments. Cancer Council may approve or reject such a request in its absolute discretion. An increase in the scope will not give rise to any entitlement to additional funding
- 5.4 Prior to commencing the Project, Chief Investigator A must provide Cancer Council with a fully completed Schedule D that complies with clause 14.1.
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6 Specified Personnel

Specified Personnel to be employees of a recognised research institution

- 6.1 The Specified Personnel will be employees of the Administering Institution or another recognised research institution and will be subject to the conditions of employment of those institutions.
- 6.2 Specified Personnel who are listed in the Grant Application as providing 100% effort (**Full-Time Specified Personnel**) must be devoted full-time to the Project and for the duration of the Term. The Administering Institution will ensure that none of the Full-Time Specified Personnel shall accept any remuneration from any other source other than the Administering Institution in respect of work performed on the Project, except with the prior written consent of Cancer Council.

Change of Chief Investigator A or other Specified Personnel

- 6.3 The Chief Investigator A must notify Cancer Council via the Administering Institution's research office immediately in writing of any changes to the Project team nominated in the Grant Application including if any Chief Investigator resigns from the Project or substantially reduces their involvement in the Project and such resignation or reduction will become effective during the Term. In such event, the Chief Investigator A must provide, within 28 days of giving notice of the resignation or reduction of involvement (as applicable) of that Chief Investigator, a variation request to Cancer Council detailing:
- (a) progress that has been achieved since the commencement of the Term;
 - (b) an explanation as to whether and how the proposed change will impact upon the completion of the Project, in accordance with the Project's objectives and outcomes as set out in **Grant Application**;
 - (c) a proposal for the continuation of the Project including the curriculum vitae and evidence of the appropriateness of any proposed replacement Chief Investigator; and
 - (d) any other materials or documentation requested by the Cancer Research Committee.
- 6.4 After considering the variation request described in clause 6.3, or if a variation request is not forthcoming within the time specified, Cancer Council may in its absolute discretion elect to terminate this Agreement in accordance with clause 20.
- 6.5 If the Chief Investigator the subject of clause 6.3 is Chief Investigator A and Cancer Council does not elect to terminate this Agreement, the Parties will do all things necessary to facilitate the assignment of the rights and obligations of the Chief Investigator A under this Agreement to the proposed replacement or other replacement agreed in writing by the Parties. This replacement will thereafter become the Chief Investigator A.

- 6.6 If any of the Specified Personnel other than a Chief Investigator resigns, the Administering Institution must replace that person with another person of at least equivalent qualifications, skills and experience. The Administering Institution undertakes to make proper enquiries as to the qualifications, skills and experience of each potential candidate.
- 6.7 If a Chief Investigator other than Chief Investigator A relocates to another research institution and/or relocates outside of the state of NSW the Chief Investigator A must notify Cancer Council in writing within 28 days of becoming aware of the relocation. Such notification must include a variation request detailing:
- (a) proposal for the continuation of the Project, including what percentage of their time will be devoted to the Project;
 - (b) how they will manage their continued involvement in the Project; and
 - (c) how they will supervise any students working on the Project.
- 6.8 After considering the variation request described in clause 6.7, or if a variation request is not forthcoming within the time specified, Cancer Council may in its absolute discretion elect to terminate this Agreement in accordance with clause 20.
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7 Transfer of Project

- 7.1 The Chief Investigator A may at any time make a Transfer Application to transfer the Project to another research institution. In such event, the Chief Investigator A must submit a variation request to Cancer Council detailing:
- (a) The proposed effective date of transfer;
 - (b) whether the current Administering Institution approves the transfer;
 - (c) approval from the new administering institution, providing reassurance that they have the facilities to carry out the Project as set out in the Grant Application; and
 - (d) whether all Chief Investigators approve the transfer.
- 7.2 Cancer Council may approve or reject the Transfer Application in its absolute discretion, and will not be liable to pay any costs or compensation to the Chief Investigator A or the Administering Institution resulting from any action Cancer Council takes in relation to a Transfer Application.
- 7.3 If the Transfer Application is accepted, the Administering Institution must do all things necessary to facilitate the transfer of the Project to the nominated institution, including by:
- (a) providing a report to Cancer Council setting out all spent and committed funds in the current Funding Year;
 - (b) transferring funds identified in 7.3(a) to the nominated institution as directed by Cancer Council;
 - (c) assigning its rights and obligations under this Agreement to the new institution;
 - (d) providing access to any records, material, equipment and assigning any Intellectual Property Rights necessary to enable the Project to be undertaken at the new institution; and
 - (e) if requested by Cancer Council, signing a Deed of Novation in a form acceptable to Cancer Council.

- 7.4 The new institution will thereafter become the Administering Institution and will be entitled to receive any portion of the Research Grant not yet paid at the date of transfer, on the terms of this Agreement.
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8 Equipment

- 8.1 Where the purchase of equipment (including specialised equipment, data sets and software essential to the Project) is approved for use in the Project, such equipment is tied to the Project for the Term. Provided that the Project is satisfactorily completed, the equipment or apparatus becomes the property of the Administering Institution.
- 8.2 The Administering Institution undertakes to maintain equipment used in the Project in good working condition throughout the Term, and in a location where the Project is being conducted.
- 8.3 During the Term, the Administering Institution shall not acquire any equipment or apparatus to be paid under the Research Grant other than as disclosed in the Grant Application without the consent of Cancer Council, except where the total purchase price for all such equipment or apparatuses is less than \$10,000 in any one Funding Year.
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9 Record-keeping

- 9.1 The Administering Institution must ensure that the appropriate Specified Personnel maintain detailed and accurate records of the Project, including the management of the Research Grant and the ownership, use, creation and disposal of any Intellectual Property Rights.
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10 Reporting

Reports to be submitted

- 10.1 Using the Annual Progress Report template provided by Cancer Council, the Chief Investigator A will provide to Cancer Council annual reports of progress in the Project covering the matters referred to in the Grant Application (***Annual Progress Reports***) in any year or part-year during the Term.
- 10.2 The Administering Institution will provide to Cancer Council annual income and expenditure statements in respect of the Project (***Income and Expenditure Statements***) using the template provided by Cancer Council. Each Income and Expenditure Statement must certify that:
- (a) it has been prepared using accounts and records that were properly maintained in accordance with applicable accounting standards maintained by the Australian Accounting Standards Board; and
 - (b) the Research Grant has been expended solely upon the Project as specified in the Grant Application, and in accordance with clause 4.
- 10.3 In the Income and Expenditure Statement:
- (a) committed expenditure not yet expended must be incorporated and funds must be retained by the Administering Institution to meet such commitments; and
 - (b) details of any funds unspent in the Funding Year to which the Income and Expenditure Statement relates must be included. In accordance with clause 4.6, explanation must be provided at the appropriate field of the Annual Progress Report

in relation to unspent funds and any associated request to carry over those funds, and approval obtained from Cancer Council.

- 10.4 The Annual Progress Report and the Income and Expenditure Statement covering the period 1 January to 31 December in each year during the Term must be submitted by 28 February in the following year. For the avoidance of doubt, the Parties acknowledge and agree that the Annual Progress Report and the Income Expenditure Statement covering the final year of the Term will be submitted by 28 February in the following year, or no later than 3 months following the End Date, (whichever is the earlier) irrespective of whether this Agreement remains in effect.

Separate reports for each grant

- 10.5 If the Administering Institution is in receipt of more than one Cancer Council grant, whether under the Cancer Council Research Grant Funding Program or another funding program, separate Annual Progress Reports and Income and Expenditure Statements must be submitted for each grant.

Failure to provide reports

- 10.6 Failure to submit a complete Annual Progress Report and Income and Expenditure Statement by the due date may result in the following consequences:
- (a) if the Annual Progress Report or Income and Expenditure Statement (or both) are outstanding on the sixth working day after the 28 February due date, Cancer Council may in its absolute discretion reduce the overall remaining amount of the Research Grant payable in that Funding Year (according to the funding schedule set out in Schedule B) by 1%; and/or
 - (b) Cancer Council may in its absolute discretion reduce the amount of the Research Grant payable in that Funding Year by 1% overall for each week, or part thereof, that the Annual Progress Report or Income and Expenditure Statement (or both) remain outstanding.
- 10.7 Cancer Council may elect to terminate this Agreement in accordance with clause 20 if the Annual Progress Report and Income and Expenditure Statement remain outstanding after 30 April in any year, or if Cancer Council in its sole discretion considers that either the Annual Progress Report or the Income and Expenditure Statement is materially incomplete, inaccurate or misleading.

5 Year Look Back

- 10.8 Cancer Council may contact the Chief Investigator A approximately 5 years after the End Date requesting additional information on the outcomes of the Project and the impact of the research funded by the Research Grant. The Chief Investigator agrees to endeavour to provide such information as Cancer Council may reasonably request.

11 Confidential Information

- 11.1 Except as permitted or required by this Agreement, the Administering Institution and Chief Investigator A must not, and shall ensure that the Specified Personnel do not, use or disclose to any other person any of the Confidential Information, except:
- (a) when required to do so by law or any regulatory authority; or

- (b) where disclosure is reasonably required to give effect to this Agreement, and the Administering Institution or Chief Investigator A (as appropriate) obtains the written consent of Cancer Council prior to making such disclosure.

11.2 The provisions of this clause 11 will survive the termination or expiry of the Agreement.

12 Personal Information, Sensitive Information and Health Information

- 12.1 The Administering Institution shall ensure that Specified Personnel collect and handle Personal Information, Sensitive Information and/or Health Information only in accordance with the relevant policies of the Administering Institution, all approvals assigned to the Project by any Human Research Ethics Committee, all applicable laws and regulations and any direction of the Privacy Commissioner or other relevant Australian government agency.
 - 12.2 The provisions of this clause 12 will survive termination of this Agreement.
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13 Publications and publicity

- 13.1 This Project will be given the name set out in Item 3 of Schedule B (**Project Name**).
- 13.2 Any publications resulting from the Project (created during the Term and/or after completion of the Project) must acknowledge and state prominently that the study was supported by the **Project Funding Source** as set out in Item 8 of Schedule B, or as notified by Cancer Council to the Administering Institution or the Chief Investigator A from time to time. The Administering Institution and the Chief Investigator A will promptly advise Cancer Council when a publication resulting from the Project has been accepted for publication and provide Cancer Council with an electronic copy of the version to be published. Cancer Council must be given the opportunity to arrange or participate in media releases and other media and communications opportunities relating to that publication prior to it being published. All such publications must be listed in the next Annual Progress Report.
- 13.3 Any conference presentations, including both oral and poster presentations, or presentations at any internal or external event including but not limited to a workshop, symposium or training event, (whether during the Term and/or after completion of the Project) must acknowledge and state prominently that the study was supported by the **Project Funding Source** as set out in Schedule B or as notified by Cancer Council to the Administering Institution or the Chief Investigator A from time to time. The Administering Institution and the Chief Investigator A agree to advise Cancer Council of any conference presentation or external event relating to the Project and give Cancer Council the opportunity to arrange or participate in media releases and other media and communications opportunities relating to that conference presentation or external event. Cancer Council requires that all such presentations and events be listed in the next Annual Progress Report.
- 13.4 When releasing results derived from the Project to the media, (whether during the Term and/or after completion of the Project) the press release must acknowledge and state prominently that the study was supported by the **Project Funding Source** as set out in Schedule B or as notified by Cancer Council to the Administering Institution or the Chief Investigator A from time to time. Cancer Council shall be given the opportunity to participate in media releases relating to the results, and no media release shall be made without the prior approval of Cancer Council, such approval not to be unreasonably withheld.
- 13.5 The authors of the reports are solely responsible for the veracity of the published data.

- 13.6 The Administering Institution and the Chief Investigator A are responsible for ensuring the open access of all publications resulting from the Project (whether created during the Term and/or after completion of the Project) in compliance with the NHMRC Open Access Policy.
- 13.7 In accordance with the *Australian Code for the Responsible Conduct of Research (2007)* and the *NHMRC Statement on Data Sharing*, the Administering Institution and the Chief Investigator A will make all data resulting from the Project available free of charge for use by other researchers, subject to ethical, privacy, intellectual property and confidentiality limitations, and any additional obligations contained in clauses 11, 12 and 14 of this Agreement.
- 13.8 Nothing prevents Cancer Council from referring to the Project, any publication resulting from the Project or Cancer Council's funding of the Project including the role of the Administering Institution and Chief Investigator A for any purposes connected with or related to its mission, including but not limited to its marketing, promotion, fundraising, education, program development and consumer messaging.
- 13.9 The provisions of this clause 13 will survive termination of this Agreement.
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14 Intellectual property

- 14.1 The Administering Institution and the Chief Investigator A warrant that:
- (a) all Background IP and Third Party IP to be used in connection with the Project has been set out in Schedule D; and
 - (b) no Background IP or Third Party IP in addition to that set out in Schedule D will be used in the Project without Cancer Council's prior written consent.
- 14.2 The Administering Institution and Chief Investigator A warrant that they have all necessary licences and permissions to use Background IP and Third Party IP in the Project.
- 14.3 The Administering Institution and Chief Investigator A warrant that any Background IP and Third Party IP used in the Project will not infringe any third party's rights.
- 14.4 Cancer Council grants the Administering Institution and Chief Investigator A a non-exclusive, non-transferrable, royalty-free licence to use Cancer Council IP for the Project and for no other purpose.
- 14.5 Any Project IP shall be owned by the Administering Institution.
- 14.6 Cancer Council may use the Project IP and any Background IP and Third Party IP incorporated with the Project IP for any purposes connected with or related to its mission, including but not limited to the following:
- (a) marketing and promotion
 - (b) fundraising;
 - (c) development of intervention and educational programs; and
 - (d) consumer messaging.
- 14.7 The Administering Institution and Chief Investigator A must obtain all waivers and consents necessary for any act or omission in relation to moral rights in the Project IP and any Background IP or Third Party IP incorporated with the Project IP to ensure that Cancer Council, Administering Institution and Chief Investigator A and their permitted licensees and successors in title may do anything that would otherwise infringe moral rights.

- 14.8 The Administering Institution must comply with the *National Principles of Intellectual Property Management for Publicly Funded Research* by having in place policies and procedures relating to identification and, where appropriate, protection and commercialisation of intellectual property.
- 14.9 If the Administering Institution believes any Project IP has the potential for commercial exploitation including registering a patent or any other registrable right (**Commercial IP**), the Administering Institution must promptly notify the Cancer Council in writing of the commercialisation opportunity for the Commercial IP.
- 14.10 Within 21 days of receiving the notification from the Administering Institution specified in clause 14.9 the Cancer Council will advise the Administering Institution in writing as to which one of the following financial arrangements will apply in relation to commercialisation of the Commercial IP:
- (a) All of the costs associated with commercialising of the Commercial IP (including patent and legal costs) will be paid by the Administering Institution. Out of any gross proceeds received by the Administering Institution from commercialising the Commercial IP, the Administering Institution will pay 10% of all gross commercialisation proceeds to the Cancer Council, until such time as the Cancer Council has received an amount equal to the amount of the grant funding provided under this agreement multiplied by five (5); or
 - (b) the Administering Institution will pay 10% of all gross commercialisation proceeds received from exploitation of the Commercial IP to the Cancer Council in perpetuity. 10% of the costs associated with commercialising the Commercial IP (including patent and legal costs) will be paid by the Cancer Council by way of reimbursement to the Administering Institution as and when the costs fall due, and the remaining 90% of the commercialisation costs will be paid by the Administering Institution; or
 - (c) such other arrangement agreed between Cancer Council and the Administering Institution in writing.
- 14.11 The Administering Institution may commercialise the Commercial IP in its discretion, but will use reasonable endeavours to commercialise any Commercial IP for the purposes of achieving the mutual objectives of both the Administering Institution and the Cancer Council to hasten the defeat of cancer and improve the quality of health care available to cancer patients.
- 14.12 If Cancer Council believes that the Administering Institution is not using reasonable endeavours to commercialise the Commercial IP in accordance with clause 14.11 Cancer Council may commercialise the Commercial IP with the Administering Institution's prior written consent, such consent not to be unreasonably withheld.
- 14.13 The provisions of this clause 14 will survive termination of this Agreement.
-

15 Conflict of Interest

- 15.1 The Administering Institution and the Chief Investigator A warrant that, at the date of this Agreement and to the best of their knowledge no Conflict of Interest exists in their or the Specified Personnel's participation in the Project or their performance under this Agreement, except as declared to Cancer Council in writing.
- 15.2 If, during the Term, a Conflict of Interest arises in respect of the Administering Institution, the Chief Investigator A or any of the other Specified Personnel, the Administering Institution and/or the Chief Investigator A undertakes to notify Cancer Council promptly in writing of that

Conflict of Interest and any steps he or she proposes to take to resolve or otherwise deal with the Conflict of Interest.

- 15.3 If the Chief Investigator A fails to notify Cancer Council of a Conflict of Interest as required by clause 15.2, or the proposed resolution of the Conflict of Interest is not satisfactory to Cancer Council, Cancer Council may terminate this Agreement in accordance with clause 20.

16 Support for Cancer Council

- 16.1 The Administering Institution and the Chief Investigator A agree to support Cancer Council in any way reasonably required by Cancer Council including by:
- (a) participating in the annual research awards function;
 - (b) assisting in identification of publicity opportunities;
 - (c) contributing to the fundraising activities of Cancer Council including, but not limited to Australia's Biggest Morning Tea, Daffodil Day, Relay for Life and Pink events; and
 - (d) contributing to the publicity of the mission, priorities and principles of Cancer Council including, but not limited to, providing speakers, venues and technical assistance as requested by Cancer Council.
- 16.2 The Chief Investigator A consents to his/her photograph being used for Cancer Council promotion and/or publicity material.

17 Indemnity and Liability

- 17.1 The Administering Institution will indemnify Cancer Council, its officers, employees and agents against any liability, loss, damage, costs and expenses arising from any claim, suit, demand, action or proceeding by:
- (a) any person where such loss or liability was caused by the wilful misconduct, unlawful or negligent act or omission of the Administering Institution, its employees, agents or subcontracts in connection with this Agreement; or
 - (b) a third party that is based on a claim that the activities performed by the Administering Institution, including any results or deliverables generated under the Agreement, infringe or otherwise violate the Intellectual Property Rights of that third party; or
 - (c) Cancer Council for any breach of clause 14 by the Administering Institution or Chief Investigator A .
- 17.2 The Administering Institution's liability will be reduced proportionally to the extent that any act or omission of Cancer Council or its employees or agents contributed to the loss or liability.
- 17.3 Unless expressly provided otherwise, the Administering Institution and the Chief Investigator A shall be jointly and severally liable to Cancer Council for their obligations arising under, or in relation to, this Agreement.
- 17.4 This clause 17 shall survive termination of this Agreement.

18 Insurance

- 18.1 The Administering Institution will maintain adequate insurance throughout the Term, including:
- (a) a public liability insurance policy for an amount sufficient to cover all obligations of the Administering Institution under this Agreement, including those which survive termination of this Agreement; and
 - (b) insurance to cover the replacement cost of any equipment purchased with the Research Grant.
- 18.2 The provisions of this clause 18 will survive termination of this Agreement.

19 Goods and services tax

- 19.1 The Parties acknowledge the provisions of the *Goods and Services Tax Act 1999*, and any relevant amendments. Notwithstanding any other provisions of this Agreement, the amount to be paid for any taxable supply under this Agreement, whether expressed as an amount of money or otherwise, is exclusive of GST. To the extent any supply made, or to be made, under or in connection with this grant by the Administering Institution constitutes a taxable supply, Cancer Council will pay the GST amount to the Administering Institution with each payment instalment.

20 Termination

- 20.1 Cancer Council may immediately terminate the Agreement by notice in writing to the Chief Investigator A or the Administering Institution in any of the following circumstances:
- (a) the Administering Institution suffers an Insolvency Event;
 - (b) a bankruptcy or any other order controlling the estate of any Chief Investigator is made;
 - (c) any of the Specified Personnel, the Administering Institution or any employee, servant or agent of the Administering Institution engages in any conduct or makes any statement which, in the opinion of Cancer Council, brings the good name, public image or reputation of Cancer Council into disrepute;
 - (d) the specified Annual Progress Reports and Income and Expenditure Statements are not provided to Cancer Council within the time period provided in this Agreement;
 - (e) without limiting sub-clause (n), Cancer Council considers, after reviewing any Annual Progress Report and/or Income and Expenditure Statement, that progress with the Project is unsatisfactory;
 - (f) Cancer Council considers that the information contained in the Grant Application or any Annual Progress Report or Income and Expenditure Statement is materially incomplete, inaccurate or misleading;
 - (g) the Administering Institution or Chief Investigator A breach clause 14;
 - (h) Chief Investigator A has failed to notify Cancer Council of a Conflict of Interest in accordance with clause 15.2, or the proposal to resolve such Conflict of Interest is not satisfactory to Cancer Council;

- (i) the Administering Institution or Chief Investigator A are in contravention of clause 3.6;
- (j) Chief Investigator A has failed to notify Cancer Council that he or she has obtained funding for another source for the same research as is covered by the Project, or has failed to resolve such overlap in a manner satisfactory to Cancer Council in breach of clause 3.7; funds provided under the Research Grant are not spent in accordance with the approved budget as set out in the Grant Application;
- (k) any Chief Investigator ceases to be involved with the Project or substantially reduces his or her involvement in the Project, and:
 - (i) Cancer Council is not satisfied with the proposal put forward by the Chief Investigator A for continuation of the Project in the variation request that is to be provided pursuant to clause 6.3; or
 - (ii) The Chief Investigator A fails to provide such a variation request within the timeframe specified in clause 6.3;
- (l) any Chief Investigator relocates to another research institution and/or relocates outside of the state of NSW, and:
 - (i) Cancer Council is not satisfied with the proposal put forward by the Chief Investigator A for continuation of the Project in the variation request that is to be provided pursuant to clause 6.7; or
 - (ii) The Chief Investigator A fails to provide such variation request within the timeframe specified in clause 6.7;
- (m) the Administering Institution abandons the Project;
- (n) a review by Cancer Council at any time determines that performance of or progress with the Project is unsatisfactory. This includes but is not limited to:
 - (i) unapproved variations to the research design and protocol;
 - (ii) non-compliance with the National Statement on Ethical Conduct in Human Research (2007);
 - (iii) non-compliance with the Australian Code for the Responsible Conduct of Research (2007);
 - (iv) abandonment or significant delay in the progress of the Project; or
 - (v) delay in the commencement of the Project beyond one year from the date of funding approval, which may include delay associated with failure to obtain approvals required from Research Ethics Committee(s);
- (o) the Project is commenced without Cancer Council receiving a fully completed Schedule D that complies with clause 14.1; or
- (p) Cancer Council considers, acting reasonably, that the use of Background IP or Third Party IP as identified in Schedule D will unduly limit the contemplated uses of the Commercial IP.

20.2 To avoid doubt, reviews resulting in termination under clause 20.1(n) may take place at any time and are not limited to the annual reviews conducted following receipt of the Annual Progress Report or the Income and Expenditure Statement.

- 20.3 Following termination under clause 20.1, the Chief Investigator A will be required to provide to Cancer Council a report covering progress of the Project in the current Funding Year and an Income and Expenditure Statement covering the same period.
- 20.4 In the event of termination under clause 20.1, no further amount will be paid by Cancer Council to the Administering Institution under this Agreement, and Cancer Council reserves the right to recover some or all of the Research Grant paid to the Administering Institution, including all unspent funds and any funds not spent in accordance with the approved budget or this Agreement. The Administering Institution must repay any amount due under this clause 20.4 within 30 days of receiving written notice from Cancer Council that it intends to recover such amount.
- 20.5 If an amount that is required to be repaid under clause 20.4 is not repaid within the specified timeframe, interest (calculated at an interest rate of 2% above the prevailing 90-day bank-accepted bill rate available from the Reserve Bank of Australia less 10 basis points) will accrue on the outstanding amount on a daily basis until it is repaid by the Administering Institution. The Administering Institution agrees that such interest represents a reasonable pre-estimate of loss incurred by Cancer Council.
- 20.6 The Parties acknowledge that upon termination of the Agreement a copy of all documentation and data relating to the Project to date shall be delivered to Cancer Council who may use it for any of the purposes set out in clause 14.6.
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21 Dispute resolution

- 21.1 The Parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement until the procedure provided by this clause 21 is followed.
- 21.2 The Parties agree that the following procedure will be used in an expeditious way to resolve a dispute:
- (a) any of the Parties may refer the matter to the Cancer Research Committee;
 - (b) if the matter is not resolved by the Cancer Research Committee to the mutual satisfaction of the Parties, the dispute must be referred to the CEOs of Cancer Council and the Administering Institution or equivalent or their nominees, for discussion and resolution together with the Chief Investigator A; and
 - (c) if within 60 days of the dispute being referred to the CEOs under clause (b), the dispute is unresolved any Party may refer the dispute for mediation to the Australian Commercial Dispute Centre Limited (ACDC). If the dispute has not been resolved within sixty (60) days of referral to ACDC any Party is free to initiate proceedings in a court.
- 21.3 Nothing in this clause 21 restricts a Party's right to seek urgent interlocutory relief.
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22 General provisions

- 22.1 No Party may assign, sub-license, sub-contract, mortgage or otherwise transfer or dispose of this Agreement or any of its rights or obligations under it without the prior written approval of the other Parties.
- 22.2 All notices must be in legible writing and in English and addressed to the recipient set out in Schedule B. A notice is taken to be received if:
- (a) hand delivered, on delivery;

- (b) sent by registered post, 3 business days after posting;
 - (c) sent by facsimile, when the sender's facsimile generates a message confirming successful transmission of the total number of pages of the notice; and
 - (d) sent by email, on the same business day as received unless received after 5.00pm at the receiving party's location in which case it is deemed to be received on the next business day.
- 22.3 None of the Parties shall be liable for any delay or failure to perform any of its obligations under this Agreement if such delay or failure is due to Force Majeure, provided such Party immediately notifies the other Parties of the Force Majeure.
- 22.4 This Agreement including its Schedules constitutes the entire agreement of the parties about its subject matter and supersedes all other representations, negotiations, arrangements, understandings or agreements and all other communications.
- 22.5 If any part of this Agreement conflicts with any other part, that part higher in the following list shall take precedence:
 - (a) the terms and conditions contained in the clauses of the Agreement;
 - (b) the details contained in Schedule B: Research Grant details; and
 - (c) the Grant Application set out in Schedule A.
- 22.6 If this Agreement is terminated:
 - (a) the Parties are released from the obligation to continue to perform the Agreement, except those obligations that expressly or by their nature, survive termination; and
 - (b) each Party retains the rights and claims it has against the other Party for any past breach of the Agreement.
- 22.7 If a provision of this Agreement is invalid or unenforceable in a jurisdiction:
 - (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
 - (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.
- 22.8 This Agreement may be amended only by a document signed by all Parties.
- 22.9 This Agreement is governed by the laws of New South Wales, Australia. Each Party submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

Execution

Cancer Council NSW

Name: Jeff Mitchell

Position: Chief Executive Officer, Cancer Council NSW

Signed: _____

Date: _____

Chief Investigator

Name: **PLEASE INSERT**

Position: _____

Signed: _____

Date: _____

Administering Institution: PLEASE INSERT INSTITUTION NAME HERE IN BOLD

Name: _____

Position: _____

Signed: _____

Date: _____

Schedule A: Grant Application

Schedule B: Research Grant details

Item 1 - Type of Grant

Item 2 - Grant ID

Item 3 - Project Name

Item 4 - Start Date

Item 5 – End Date

Item 6 - Research Grant (total funds exclusive of GST)

Item 7 Research Grant Funding schedule:

Year	April	October
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2018		
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2019		
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2020		
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Item 8 - Project Funding Source:

The Cancer Council NSW <<insert Type of Grant>> Grant <<insert Grant ID>>.

Cancer Council's support for the Project must be acknowledged as follows: *This research was funded by the* Cancer Council NSW <<insert Type of Grant>> Grant <<insert Grant ID>>.

Item 9

Addresses for notices:

Cancer Council	Dr Jane Hobson, Manager, Research Grants Management Team 153 Dowling Street, WOOLLOOMOOLOO NSW 2011 02 9334 1712; research@nswcc.org.au
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Administering Institution	insert name and contact details
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Chief Investigator A	insert name and contact details
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Schedule C: Authorisation to generate recipient-created tax invoices

Authorisation for Cancer Council NSW to Generate Recipient Created Tax Invoices

In respect of research grant: <<insert Grant ID title>> <<insert Project Name >>

By signing the research grant agreement and completing the Authorisation to generate Recipient Created Tax Invoices, the recipient (Cancer Council NSW) and the supplier (insert organisation name) agree that, effective from 1 January 2019:

- (i) the recipient can issue tax invoices for the supplies;
- (ii) the supplier will not issue tax invoices for the supplies;
- (iii) the supplier is registered for GST at the time of entering into this agreement and will notify the recipient if it ceases to be registered and
- (iv) the recipient is registered for GST at the time of entering into this agreement and will notify the supplier if it ceases to be registered.

RECIPIENT

Organisation Name	Cancer Council NSW
ABN:	51 116 463 846
Contact Person	Dr John Williams, Research Grants Management Team
Phone	02 9334 1993
Email	research@nswcc.org.au

SUPPLIER

Organisation Name	
ABN	
Address	
Contact Person 1 (for accounts queries)	
Phone	
Email	
Contact Person 2 (to whom payment advice should be sent)	
Phone	
Email	
BSB Number	
Account Number	
Account Name	

Schedule D: Background IP and Third Party IP Disclosure

Background IP and Third Party IP

Clause 14.1 requires the Administering Institution and Chief Investigator A to warrant that any Background IP and Third Party IP to be used in the Project have been disclosed.

In order to facilitate this requirement, the Administering Institution and Chief Investigator A must complete and return the following table:

a) Background IP

Intellectual Property type	Description	How used	Registered owner	Registration details			Restrictions on use	Approval obtained?
				Date	Registration No	Place		
Patent								
Copyright								
Registered design								
Trade mark								
Trade secrets								
Confidential information								

No background IP used in this project ☐

b) Third Party IP

Intellectual Property type	Description	How used	Registered owner	Registration details			Restrictions on use	Approval obtained?
				Date	Registration No	Place		
Patent								
Copyright								
Registered design								
Trade mark								
Trade secrets								
Confidential information								

No Third Party IP used in this project ☐