

**RESEARCH SERVICES SUBCONTRACT –
RESEARCH AND DEVELOPMENT PROGRAM**

between

**The Pharmacy Guild of Australia
ABN 84 519 669143**

and

[Research Provider]

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THIS Agreement is made

BETWEEN the

THE PHARMACY GUILD OF AUSTRALIA ABN 84 519 669 143 of Level 2, Pharmacy Guild House, 15 National Circuit, Barton ACT 2600 (‘the **Participant**’)

AND

[RESEARCH PROVIDER] ABN [Insert] of [insert address] (‘**Research Provider**’)

RECITALS:

- A. The Participant has entered into an agreement with the Commonwealth of Australia as represented by the Department of Health and Ageing (‘**Commonwealth**’) under which it may receive funding from the Commonwealth to participate in the Project (‘**Project Agreement**’).
- B. The Participant has selected the Research Provider to provide the Research Services for the purpose of enabling the Participant to meet its obligations under the Project Agreement.
- C. The Participant and the Research Provider have agreed that the Research Provider will perform the Research Services on the terms and conditions set out in this Agreement.
- D. The Research Provider acknowledges and agrees that the Research Services are to be provided ultimately for the benefit of the Commonwealth, and that its representations, warranties and covenants under this Agreement are given for the benefit of the Participant and the Commonwealth.

THE PARTIES AGREE as follow:

1. INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears:

“**Agreement**” means this document as amended from time to time and includes the schedule, annexures and attachments;

“**Agreement Period**” means the period described in clause 2.2;

“**Approved Auditor**” means a person who is:

- (a) registered as a company auditor under the *Corporations Act 2001* or an appropriately qualified member of the Institute of Chartered Accountants

in Australia; or of CPA Australia or the National Institute of Accountants;
and

- (b) not a principal, member, shareholder, office holder or employee of the Research Provider or related body corporate of the Research Provider;

“Asset” means an item of tangible property purchased or leased wholly or in part with the use of the funds, with a value at the time of acquisition of \$5,000 or more, inclusive of GST, but does not include Project Material;

“Auditor General” means the office established under the *Auditor-General Act 1977* and includes any other entity that may, from time to time, perform the functions of that office;

“Australian Accounting Standards” means the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001*;

“Australian Auditing Standards” means the standards set by the Auditor-General under section 24 of the *Auditor General Act 1997* and generally accepted audit practices to the extent they are not inconsistent with such standards;

“Budget” means the budget for the Research Services, as set out in Annexure C and any amendments to that budget;

“Business Day” means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place;

“Commonwealth Confidential Information” means any information;

- (a) designated as such in Item C; or
- (b) which the Parliament notifies the Research Provider as being such information from time to time;

“Commonwealth Material” means any Material:

- (a) identified as such in Item C;
- (b) notified by the Participant as being such from time to time;
- (c) provided by the Commonwealth to the Research Provider for the purposes of this Agreement; or
- (d) copied or derived at any time from the Material referred to in paragraph (c), except Research Material;

“Completion Date” means the date that is the number of days specified in Item H after;

- (a) the Participant has accepted the Final Report; and
- (b) the Participant and the Commonwealth have accepted all Research Services and deliverables required under this Agreement;

“Confidential Information” means information that:

- (a) is by its nature confidential;
- (b) is designated by the Participant or the Research Provider as being confidential; or
- (c) the Participant or the Research Provider knows or ought to know is confidential, and includes Commonwealth Confidential Information, but does not include Excluded Information;

“Conflict” means any conflict of interests, duties, or interest and duty, or risk of a conflict of any of these kinds, or apparent conflict of any of these kinds, arising through the Research Provider Personnel engaged on the Project engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Research Provider Personnel in performing the Project fairly and independently, or may reasonably be perceived as conflicting with or restricting the Research Provider Personnel in that performance.

“Date of this Agreement” means the date written on the execution page of this Agreement or, if no date or more than one date is written there, then the date on which this Agreement is signed by the last Party to do so;

“Department” includes any department or agency of the Commonwealth which is from time to time responsible for the administration of the Project Agreement;

“Depreciated” means the amount representing the same reduced value of an Asset as calculated for income tax purposes under, and in accordance with, the *Income Tax Assessment Act 1997*;

“Discloser” means a party providing Confidential Information;

“Excluded Information” means information that:

- (a) is or becomes public knowledge, other than by breach of this Agreement or by any other unlawful means;
- (b) is in the possession of the Research Provider without restriction in relation to disclosure before the date of receipt from the Participant or the Commonwealth; or
- (c) has been independently developed or acquired by the Research Provider, other than by breach of this Agreement or by any other unlawful means;

“**Existing Material**” means all Material in existence prior to the commencement of this Agreement that is:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of,

the Research Material, including the Material identified as Existing Material in Item E. For the purposes of paragraph (c) of this definition, Material is required to be supplied with, or as part of, the Research Material if:

- (i) that Material is identified as Existing Material in Item E; or
- (ii) the Research Material cannot be used without also using that Material (as contemplated by the Research Objectives); or
- (iii) due to the use of that Material in the preparation of the Research Material, a person’s Intellectual Property rights or Moral Rights would be infringed by the use of the Research Material by the Participant (as contemplated by the Research Objectives) or the Commonwealth (as contemplated by the Research Objectives) without the consent of that person.

“**Final Report**” means the report to be provided to the Participant in accordance with clause 11.4;

“**Funds**” means the funds which the Participant makes available to the Research Provider under this Agreement as set out in Item B;

“**Government Agency**” means:

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation;
- (b) a body established by the Governor-General or by a Minister of State of the Commonwealth, including departments; or
- (c) an incorporated company over which the Commonwealth exercises control;

“**GST**” has the meaning it has in the GST Act;

“**GST Act**” means *A new Tax System (Goods and Services Tax) Act 1999* (Cwlth);

A person is “**Insolvent**” if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act 2001*); or

- (b) it has had a controller (as defined in the *Corporations Act 2001*) appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a receiver or manager appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other Party to this Agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the *Corporations Act 2001*) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in Section 459C(2)(b) or section 585 of the *Corporations Act 2001* (or it makes a statement from which another Party to this Agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of (a) to (g) happens in connection with that person under the law of any jurisdiction;

“Intellectual Property” means all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered or unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

“Intellectual Property Register” means a register of Intellectual Property created or used by the Research Provider in the performance of the Research Services in the form set out in Annexure B;

“Intellectual Property Undertaking” means a deed poll executed by the Research Provider for the purposes of clause 15.1 in the form set out in Annexure A;

“Interest” means interest calculated daily at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basic points, payable on the last day of each month. Unpaid Interest bears interest at the same rate;

“Interim Report” means a report of the Participant’s progress in carrying out the Research Services to be provided to the Participant in accordance with clause 11.3;

“IP Register” means an Intellectual Property register in the form set out in Annexure B;

“Law” means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time anywhere in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law as applicable from time to time;

“Material” includes documents, equipment, records, software (including source code and object code), goods, images, information and data stored by any means including all copies and extracts of the same;

“Milestones” means the milestones and performance indicators (if any) specified in Item A;

“Moral Rights” includes the following rights of an author of copyright material:

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

“Participant Material” means any Material:

- (a) provided by the Participant to the Research Provider for the purposes of this Agreement other than Commonwealth Material; or
- (b) copied or derived at any time from the Material referred to in paragraph (a) except Research Material;

“Participant’s Representative” means the person or position-holder designated as such in Item F;

“Party” means a party to the Agreement;

“Performance Requirements” means the performance requirements (if any) specified in Item A;

“Personal Information” means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

“Personnel” means the officers, employees and agents of an entity;

“Privacy Commissioner” means the office established under the *Privacy Act 1988* and includes any other person that may, from time to time, perform the functions of that office;

“Project” means the project and related activities described in Item A in connection with which the Research Services are required by the Participant;

“Project Agreement” means the agreement between the Commonwealth and the Participant under which the Participant may receive funding from the Commonwealth to participate in the Project;

“Recipient” means a person who receives Confidential Information;

“Report” means Material provided to the Participant in accordance with clause 11 including any Interim Reports and the Final Report;

“Research Material” means all Material:

- (a) brought into existence for the purposes of this Agreement;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied from the Material referred to in paragraphs (a) or (b) or in respect of which a substantial part has been copied from such Material,

including the Research Material described in Item A, but excluding the Existing Material;

“Research Objectives” means the Participant’s objectives and required outcomes for the Research Services described in Item A which are the agreed results the Research Provider must achieve;

“Research Provider Personnel” means the officers, employees, agents or subcontractors of the Research Provider or its subcontractors and includes those individuals (if any) engaged by the Research Provider or its subcontractors on a voluntary basis;

“Research Services” means the services described in Item A (including the provision of Assets and other specified deliverables);

“Specified Personnel” means the personnel specified in Item I as personnel required to perform all or part of the Research Services;

“Term” means the term of this Agreement, as described in clause 2.2;

“Timeframe” means the timetable for delivery and completion of the Research Services as set out in Item A; and

“Unspent” at a particular date means Funds that have not been spent or Committed by the Research Provider.

1.2 In this Agreement, unless the contrary intention appears:

- (a) words in the singular include the plural and words in the plural include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;

- (d) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - (e) all references to dollars are to Australian dollars;
 - (f) where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning;
 - (g) an uncertainty or ambiguity in the meaning of a provision of this Agreement will not be interpreted against a party just because that party prepared the provision;
 - (h) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended from time to time;
 - (i) reference to any document (including this Agreement) includes any variation or replacement of it; and
 - (j) reference to “clauses” are to clauses in this Agreement, references to ‘Items’ are to Items in the Schedule to this Agreement and references to ‘Schedule’ are to the Schedule to this Agreement.
- 1.3 If there is any conflict or inconsistency between:
- (a) the terms and conditions contained in the clauses of this Agreement and any part of the Schedule, then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency;
 - (b) the terms and conditions contained in the clauses of this Agreement and any part of the annexures (if any), then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency; and
 - (c) any part of the Schedule and any part of the annexures (if any), then the Schedule will prevail to the extent of the conflict or inconsistency.
- 1.4 The laws of the Australian Capital Territory apply to this Agreement. The Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of any dispute under this Agreement.
- 1.5 This Agreement records the entire agreement between the Parties in relation to its subject matter.
- 1.6 Subject to clause 19 or otherwise as expressly provided in this Agreement, no variation of this Agreement is binding unless agreed in writing between the Parties.
- 1.7 Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.

- 1.8 A waiver of any provision of or right granted under this Agreement must be in writing by the party having the benefit of the provision of the right.
- 1.9 No waiver of a term or condition of this Agreement will operate as a waiver of another breach of the same or of any other term or condition contained in this Agreement.
- 1.10 If a Party does not exercise, or delays in exercising, any of its rights under this Agreement or at Law, that failure or delay does not operate as a waiver of those rights.
- 1.11 A single or partial exercise by a Party of any of its rights under this Agreement or at Law does not prevent the further exercise of any right.

2. AGREEMENT PERIOD

- 2.1 This Agreement (other than this clause 2) does not come into effect unless and until the Participant has received from the Commonwealth written confirmation that:
 - (a) the terms of the Agreement are satisfactory to the Commonwealth;
 - (b) the Commonwealth has received, and is satisfied with, the Intellectual Property Undertaking duly executed by the Research Provider; and
 - (c) the Research Provider has delivered Moral Rights Consents to the Participant in a form approved by the Participant for each of the Specified Personnel duly signed by each of those personnel and the Participant notifies the Research Participant in writing that each of the Moral Rights Consents are satisfactory.

The condition in clause 2.1(c) is for the entire benefit of the Participant and the Participant may at its discretion waive the condition in part or in whole, but only by notice in writing to the Research Provider.

In the event that these conditions are not satisfied by [5.00 pm] on [insert date], then the Participant may, subject to the Commonwealth's consent, terminate this Agreement by notice in writing to the Research Provider.

- 2.2 The Agreement commences on the date that the last of the conditions referred to in clause 2.1 are satisfied or waived (where permitted under this Agreement), and, unless terminated earlier, expires on the Completion Date.

3. RESEARCH SERVICES

- 3.1 The Research Provider must provide the Research Services:
- (a) in accordance with the Research Objectives, Performance Requirements and Milestones set out in Item A;
 - (b) according to the Budget, within the Timeframe and according to the terms and conditions set out in this Agreement;
 - (c) in accordance with applicable Law;
 - (d) in accordance with applicable industry standards;
 - (e) with due care, diligence and skill;
 - (f) to a high professional standard, and in a timely manner; and
 - (g) in accordance with all lawful and reasonable directions by the Participant, provided that the Participant's directions are not inconsistent with the terms of this Agreement.

4. PAYMENT OF FUNDS

Payment of Funds by Instalments

- 4.1 The Participant will pay the Funds to the Research Provider, subject to the Participant actually receiving those Funds from the Commonwealth, by instalments in accordance with the payment provisions in Item B if:
- (a) the appropriation of funds for the Funds has been made by the Commonwealth and provided to the Participant pursuant to the Project Agreement;
 - (b) the Research Provider is performing the Research Services to which the payment relates, in accordance with this Agreement;
 - (c) the Research Provider is achieving, to the reasonable satisfaction of the Participant and the Commonwealth, the Milestones and Performance Requirements relevant to the payment;
 - (d) the Research Provider gives the Participant a tax invoice in a form acceptable to the Participant for the relevant instalments; and
 - (e) the Participant is lawfully authorised and permitted by the Commonwealth to apply the funds in payment of the rendered tax invoice at the date of payment.

- 4.2 Despite anything else in this Agreement, the Participant’s obligation to pay any of the funds ends immediately on the date the Project Agreement is terminated or ends for any reason. The Research Provider acknowledges and agrees that the Funds are to be provided to the Participant by the Commonwealth and the Research Provider will only have recourse to those Funds actually received by the Participant from the Commonwealth on account of the Research Services.

Right to Suspend Payment

- 4.3 The Participant may suspend payment of the Funds or any instalment of it:
- (a) if the Research Provider has not:
 - (i) achieved the Performance Requirements that were due to be achieved before the date of payment, until those Performance Requirements are achieved; or
 - (ii) completed or delivered a Report that is due to be completed or delivered before the date for payment, until that Report is completed or delivered (as applicable);
 - (b) if the Research Provider has not otherwise provided the Research Services in accordance with this Agreement to the reasonable satisfaction of the Participant and the Commonwealth, until the Research Provider remedies its performance;
 - (c) if the Research Provider is in breach of this Agreement, until the breach is rectified;
 - (d) if the Participant does not receive the Funds from the Commonwealth for any reason; or
 - (e) the Participant is lawfully instructed by the Commonwealth to cease payment of funds for any reason.

Use of Funds

- 4.4 The Research Provider acknowledges that the Funds are held by the Research Provider on its own account and not for and on behalf of the Participant. Despite that, the Research Provider must:
- (a) use the Funds in accordance with this Agreement and must not use the Funds for any other purpose; and
 - (b) keep complete and proper accounts and records of its transactions and affairs in relation to the Funds, in accordance with this Agreement and as required by Law and must ensure that all payments out of the Funds are correctly made and properly authorised and that adequate control is maintained over the incurring of liabilities. The Research Provider must retain all accounts and records for at least seven years after the end of the Term.

Funds Not Spent

- 4.5 If at the end of the Term, or on earlier termination of this Agreement, there are any Unspent Funds, the Research Provider must repay that money to the Participant in accordance with clause 20.

5. TAXES, DUTIES AND GOVERNMENT CHARGES

- 5.1 Subject to this clause, all taxes, duties and government charges ('Taxes') imposed or levied in Australia or overseas in connection with this Agreement must be paid by the Research Provider, or as the Research Provider might arrange.
- 5.2 Without limiting clause 5.1, the Research Provider must pay GST on the goods, services and other supplies made under this Agreement ('the supplies') to the extent that they are taxable supplies within the meaning of the GST Act.
- 5.3 In relation to any GST payable under clause 5.2, the Research Provider must issue the Participant with a tax invoice in accordance with the GST Act.
- 5.4 The Research Provider warrants it is registered in accordance with the GST Act and agrees to remain registered during the Term.

6. NOT IN USE

7. ASSIGNMENT AND SUBCONTRACTING

- 7.1 The Research Provider may not assign or otherwise deal with its rights under this Agreement or allow any interest in them to arise or be varied in each case, without the prior written consent of both the Participant and the Commonwealth.
- 7.2 The Participant may assign or otherwise deal with its rights under this Agreement or allow any interest in them to arise or be varied with the consent of the Commonwealth.
- 7.3 The Research Provider agrees that:
- (a) it will not subcontract the performance or any part of the Research Services without the prior approval in writing of the Participant and the Commonwealth; and
 - (b) the subcontracts for any subcontractors approved under clause 7.3(a) must be approved by the Participant and the Commonwealth in writing prior to the Research Provider entering the subcontract.

- 7.4 The Commonwealth and the Participant may each impose any terms and conditions it considers appropriate when giving its approval for a subcontractor under clause 7.3(a) or for a subcontract under clause 7.3(b).

8. SPECIFIED PERSONNEL AND OTHER PERSONNEL

- 8.1 The Research Provider agrees that the Specified Personnel will perform activities in relation to the Research Services in accordance with this Agreement.
- 8.2 Where Specified Personnel are unable to perform the activities, the Research Provider agrees to notify the Participant immediately.
- 8.3 The Participant may, at its absolute discretion, request the Research Provider to remove personnel (including Specified Personnel) from activities in relation to the Research Services. The Participant must act in good faith when exercising this discretion.
- 8.4 Where clauses 8.2 or 8.3 apply, the Participant may request the Research Provider to provide replacement personnel acceptable to the Participant at no additional cost and at the earliest opportunity.
- 8.5 If the Research Provider does not comply with any request made under clause 8.4 and the Participant is satisfied on reasonable grounds that the failure to provide satisfactory replacement personnel:
- (a) has rendered, or will render, the Research Provider unable to perform its obligations under this Agreement; or
 - (b) has caused, or will cause, the Participant to breach its obligations under the Project Agreement,
- the Participant may terminate this Agreement in accordance with the provisions of clause 19.1(a).

9. RESPONSIBILITY OF RESEARCH PROVIDER

- 9.1 The Research Provider agrees to be fully responsible for the performance of the Research Services and for ensuring compliance with the requirements of this Agreement, and will not be relieved of that responsibility because of any:
- (a) involvement by the Participant or the Commonwealth in the performance of the Research Services;
 - (b) payment made to the Research Provider on account of the Research Services;
 - (c) subcontracting of the Research Services; or
 - (d) acceptance by the Participant of replacement personnel.

10. MANAGEMENT OF FUNDS AND BANK ACCOUNT

- 10.1 The Research Provider must maintain a bank account controlled solely by the Research Provider to hold the Funds, and immediately deposit all Funds received into that account.
- 10.2 The Research Provider must use an appropriate accounting coding system to identify Funds deposited in a nominated bank account for each component of the Project described in Item B of the Schedule.
- 10.3 The Research Provider must use and deal with any interest earned on the Funds as if that money earned were part of the Funds.
- 10.4 The Research Provider must not commit any Funds beyond the expiry of the Term.

11. PERFORMANCE MONITORING

- 11.1 The Research Provider must keep comprehensive written records of the conduct of the Research Services including, without limitation, performance against the Research Objectives, the creation of Research Material and the creation or acquisition of Assets.
- 11.2 The Research Provider must keep financial records relating to the Research Services so as to enable:
 - (a) all income and expenditure related to the Research Services to be identified in the Research Provider's accounts;
 - (b) the preparation of financial statements in accordance with Australian Accounting Standards; and
 - (c) the audit of these records in accordance with Australian Auditing Standards.

Interim Reports

- 11.3 In accordance with the timetable set out in Item G, the Research Provider must provide to the Participant's Representative written Interim Reports which must include but are not limited to:
 - (a) a description of actual performance against the Research Objectives;
 - (b) information on whether the Research Objectives and Timeframe are being achieved and if not, why not;
 - (c) a version of the Research Material produced to the date of the Interim Report, if requested by the Participant;

- (d) a certified complete copy of the Assets register;
- (e) a certified complete copy of the Intellectual Property Register; and
- (f) any other requirements set out in Item G.

Final Report

11.4 Within the period specified in Item G after expiry of the Timeframe or any earlier termination of this Agreement, the Research Provider must provide to the Participant's Representative a written Final Report which must include but is not limited to:

- (a) a comprehensive report on actual performance against the Timeframe and the Research Objectives, and whether the Research Objectives were achieved and, if not, why not;
- (b) if specified in Item G, a complete copy of the Research Material and all Commonwealth Material and Participant Material (as per clause 15)
- (c) a certified complete copy of the Assets register (as per clauses 17.2(f) and (g)); and
- (d) a certified complete copy of the Intellectual Property register; and
- (e) an audited detailed statement of receipts and expenditure in respect of the Funds carried out by an Approved Auditor in compliance with the Australian Auditing Standards which must include a definitive statement as to whether the financial accounts are complete and accurate;
- (f) a certificate provided by a person authorised by the Research Provider to execute documents and legally bind it by their execution, confirming that:
 - (i) the Funds received were spent for the purpose of the Project and in accordance with this Agreement and that the Research Provider has complied with this Agreement; and
 - (ii) salaries and allowances paid to persons involved in the Project are in accordance with any applicable award or agreement in force under any relevant Law with respect to industrial or workplace relations; and
- (g) any other requirements set out in Item G.

12. DISCLOSURE

12.1 The Research Provider warrants and undertakes that:

- (a) it has disclosed in writing to the Participant and the Commonwealth prior to the Date of this Agreement:
 - (i) any litigation, arbitration, mediation, conciliation or proceedings whatsoever including any investigations (**‘Proceedings’**), that are taking place, pending or threatened, against the Research Provider, or
 - (ii) matters relating to the commercial, technical or financial capacity of the Research Provider or of any Research Provider Personnel proposed to be engaged or currently engaged in respect of this Agreement including the existence of any breach or default or any alleged breach or default of any agreement, order or award binding upon the Research Provider or any such Research Provider Personnel

being Proceedings or matters that could have a materially adverse effect on the Research Provider’s ability to perform any of its obligations under this Agreement;

- (b) it will promptly notify and fully disclose to the Commonwealth and the Participant in writing any event or occurrence actual or threatened including matters of the kind described in clause 12.1(a)(i) and (ii) arising during the Agreement Period which could have a materially adverse effect on its ability to perform any of its obligations under the Agreement; and
- (c) to the extent that it is not inconsistent with any Law, it will use reasonable endeavours to promptly notify the Commonwealth and the Participant if any act or omission or change of circumstance of the Research Provider has or is likely to have an adverse effect on the proper management of Commonwealth resources or damage the reputation of the Commonwealth or the Participant in the community (but in any event if the Research Provider becomes aware, or should reasonably be presumed to have become aware) that an act, omission or change of circumstances will have the effect or likely effect referred to in this clause 12.1(c), the Research Provider must notify the Commonwealth and the Participant in accordance with this clause 12.1(c) within 10 Business Days of the date on which the Research Provider becomes so aware (or should reasonably be presumed to have become so aware).

13. LIAISON

- 13.1 The Research Provider must meet or liaise with and report to the Participant's Representative at the times set out in Item G or otherwise as reasonably required by the Participant's Representative for the purposes of this Agreement.
- 13.2 Upon receipt of written notice, the Research Provider must within the timeframe stipulated in the notice, or within a reasonable timeframe if no timeframe is stipulated in the notice, provide any information in relation to the Research Services requested by the Participant for the purposes of this Agreement, including monitoring and evaluation.

14. ACCESS TO PREMISES AND MATERIALS

- 14.1 The Research Provider must give the Auditor-General, the Privacy Commissioner, the Ombudsman, the Commonwealth, the Participant and their respective Personnel (referred to in clause 14 collectively as 'permitted person') access to premises at which records and Materials associated with this Agreement are stored or Research Services are carried out.
- 14.2 The Research Provider must give permitted persons access in order to be able to inspect and copy Materials, in the Research Provider's possession or control, for the purposes associated with this Agreement or any review of performance under this Agreement. The Research Provider must also give permitted persons access to any Assets, wherever they may be located, and reasonable access to the Research Provider's officers and employees for the same purpose.
- 14.3 The rights referred to in clause 14.1 are wherever practicable, subject to:
- (a) the provision of reasonable prior notice to the Research Provider (except where the relevant permitted person believes that there is an actual or apprehended breach of the Law);
 - (b) access being sought during reasonable times (except where the relevant permitted person believes that there is an actual or apprehended breach of the Law); and
 - (c) compliance by the relevant permitted person with the Research Provider's reasonable security procedures.
- 14.4 The Research Provider agrees to provide all assistance reasonably requested by the Commonwealth or the Participant in respect of any inquiry into or concerning the Research Services or this Agreement.
- 14.5 The Research Provider must ensure that any subcontract entered into for the purposes of this Agreement contains an equivalent clause allowing permitted persons to have access as specified in this clause 14.

- 14.6 Nothing in this Agreement limits or restricts in any way any duly authorised function, power, right or entitlement of the Auditor-General, the Privacy Commissioner or the Ombudsman, or their respective delegates. The rights of the Commonwealth under this Agreement are in addition to any other duly authorised power, right or entitlement of the Auditor-General, the Privacy Commissioner or the Ombudsman, or their respective Personnel and delegates.
- 14.7 This clause 14 survives the expiration or earlier termination of this Agreement for a period of seven years.

15. RESEARCH MATERIAL AND INTELLECTUAL PROPERTY

15.1 The Parties agree that:

- (a) any Intellectual Property rights and title to, or in relation to, the Research Material will vest, upon creation, in the Commonwealth and
- (b) the ownership of any Intellectual Property in Existing Material is not affected by this Agreement. However, the Research Provider grants to the Participant and the Commonwealth, or (in respect of Existing Material not owned by the Research Provider) must arrange for the grant to the Participant and the Commonwealth, or a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right to sub-licence) to use, copy, modify, adapt, publish, broadcast, communicate, commercialise and exploit the Existing Material (and any adaptations) in conjunction with the other Research Material, (**‘Intellectual Property Principles’**).

The Research Provider acknowledges that the Commonwealth requires the Intellectual Property rights (in accordance with the Intellectual Property Principles) so that it may use the Research Material for any purpose, including future programs or initiatives and activities outside the scope of the Project or the activities contemplated by the Project Agreement.

The Research Provider agrees to execute and comply at all times with the Intellectual Property Undertaking so as to give effect to the Intellectual Property Principles.

- 15.2 Under the Project Agreement, the Commonwealth has granted the Participant a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right of sub-licence) to:
- (a) use, copy, publish, broadcast and communicate the Research Material;
 - (b) use the Research Material for their non-commercial educational, research and development activities; and

- (c) modify and adapt the Research Material, but excluding the rights to commercialise or exploit the Research Material or to sublicense such rights, (**‘Participants Licence’**). The Participant grants the Research Provider a licence in the same terms as the Participant’s Licence, except that the Research Provider’s licence carries no right of sub-licence.
- 15.3 The Research Provider warrants for the benefit of the Participant and the Commonwealth that neither the Research Provider’s nor the Research Provider Personnel’s performance of this Agreement (including the provision of the Research Material) will infringe the Intellectual Property rights or Moral Rights of any person in the course of performing this Agreement.
- 15.4 For this clause, the ‘Specified Acts’ relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the Participant or the Commonwealth:
- (a) subject to clause 15.4A, using, reproducing, adapting, modifying, publishing, broadcasting, communicating, commercialising or exploiting all or any part of the Research Material;
 - (b) supplementing the Research Material with any other Material; and
 - (c) using the Research Material in a different context to that originally envisaged;
- but does not include false attribution of authorship.
- 15.4A The Participant and the Research Provider may, subject to the approval of the Commonwealth, agree in writing that the right of attribution of authorship is reserved in respect of certain deliverables forming part of the Research Material (**“Reserved Material”**). In relation to Reserved Material only, the ‘Specified Acts’ referred to in clause 15.4(a) may be performed by or on behalf of the Participant or the Commonwealth:
- (a) where the Reserved Material (or any part of it) is authored by Specified Personnel, only with attribution of authorship; or
 - (b) in any other case, with or without attribution of authorship.
- 15.4B For the purposes of clause 15.4A, when providing Research Material to the Participant, the Research Provider must identify in writing (for the benefit of the Participant and the Commonwealth):
- (a) those parts of the Research Material that are Reserved Material (if any); and
 - (b) those parts of the Reserved Material that have been drafted or prepared by Specified Personnel.

- The Research Provider acknowledges that the Participant and the Commonwealth may rely upon the identification of authorship provided under this clause 15.4B as conclusive evidence of that fact.
- 15.5 The Research Provider warrants for the benefit of the Participant and the Commonwealth that:
- (a) the author of any Research Material has given a written consent to the infringement of their Moral Rights (including to the Specified Acts), whether occurring before or after the consent is given, which extends directly or indirectly to the performance of the Specified Acts by the Participant or the Commonwealth or any person to whom the Participant or the Commonwealth has provided the Research Material (directly or indirectly); and
 - (b) it will use best endeavours (as demonstrated to the Participant in accordance with clause 15.5A) to obtain from the author of any Existing Material a written consent to the infringement of their Moral Rights (including to the Specified Acts), whether occurring before or after the consent is given, which extends directly or indirectly for the Participant's and the Commonwealth's benefit in relation to the use of the Existing Material by the Participant, the Commonwealth or any person to whom the Participant or the Commonwealth (as applicable) has provided the Existing Material (directly or indirectly).
- 15.5A In relation to any and all consents the Research Provider has not obtained under clause 15.5(b), the Research Provider must demonstrate to the Participant's reasonable satisfaction that it has used its best endeavours to obtain such consents.
- 15.5B The Research Provider must, when providing Research Material to the Participant, identify in writing what (if any) parts of the Research Material have been drafted by persons who have not given the written consent referred to in clause 15.5(b).
- 15.6 The Research Provider must, upon request, provide to the Participant or the Commonwealth a copy of any or all consents referred to in clause 15.5.
- 15.7 Intellectual Property rights and title to, or in relation to:
- (a) Commonwealth Material remain vested at all times in the Commonwealth; and
 - (b) Participant Material remain vested at all times in the Participant.
- 15.8 The Participant grants to the Research Provider a royalty-free and licence fee-free, world-wide, non-exclusive licence to use, copy, adapt, publish, communicate, broadcast and modify:
- (a) the Commonwealth Material, to the same extent that the Participant is authorised to use the Commonwealth Material; and

(b) the Participant Material,

in each case for the sole purpose of performing the Research Services. The Research Provider must ensure that all Commonwealth Material is used strictly in accordance with any conditions or restrictions specified by the Participant or the Commonwealth and that all Participant Material is used strictly in accordance with any conditions or restrictions specified by the Participant.

15.9 As part of the Final Report if specified in Item G, or on the earlier termination of this Agreement, the Participant must deliver a complete copy of the Research Material and all of the Commonwealth Material to the Participant, or deal with it as otherwise directed by the Participant.

15.10 This clause 15 survives expiration or earlier termination of this Agreement.

15.11 The Research Provider must maintain for the term of the Agreement IP Registers in the form set out in Annexure B. The IP Registers must accurately record all Intellectual Property rights and related interests in Existing Material and Research Material in respect of this Agreement and, separately, in each stage of the Research Services, as specified in Item A (if the Research Services consist of more than one stage). The Research Provider shall, upon request, make the IP Registers available for inspection by the Participant and the Commonwealth and, in addition to its obligations under clause 11, shall deliver up to the Participant, as part of the Research Material, a completed IP Register for:

(a) a stage of the Research Services, as soon as practicable after the completion of that stage of the Research Services or upon the earlier termination of this Agreement; and

(b) any other Intellectual Property rights and related interests arising from the Research Services, as soon as practicable after the conclusion of the Agreement Period.

15.12 The Research Provider undertakes for the benefit of the Commonwealth not to, and to ensure that the Research Provider Personnel do not, undertake any activity in respect of any of the Research Material which may adversely affect the ability of the Commonwealth to obtain a patent in any jurisdiction in the world unless it is required to undertake that activity to comply with this Agreement. The Research Provider must comply with any direction from the Participant to stop publicising and publishing Research Material, as specified in the direction.

15.13 The Research Provider must notify the Participant as soon as possible if the Research Provider identifies that any of the Research Material may be eligible for patent protection anywhere in the world, and must comply with any reasonable directions of the Participant for securing or enforcing the Participant's or the Commonwealth's rights and interests in that Research Material.

15.14 (a) If the Research Provider Personnel wish to engage in any activity which may involve commercialisation or exploitation of the Research Material, or sublicensing of such rights, the Research Provider must request, in

writing, the Participant to consider the request, or may arrange for the Research Provider Personnel to make such a request, in writing, directly to the Participant.

- (b) The Participant must consider whether to recommend or not recommend the proposal submitted by the Research Provider under clause 15.14(a). The Participant must submit that recommendation together with the proposal to the Commonwealth for decision by the Commonwealth.
 - (c) The parties acknowledge that:
 - (i) in accordance with the Intellectual Property Principles, the Commonwealth will hold the sole title to the Intellectual Property in the Research Material; and
 - (ii) the Participant's Licence does not include the right to commercialise or exploit the Research Material or to sublicense such rights, with the result that the Participant cannot lawfully grant a licence of such rights to the Research Provider without the consent of the Commonwealth (which, under the Project Agreement, the Commonwealth may give or withhold in its absolute discretion).
- 15.15 The Research Provider indemnifies the Participant against all loss, liability and expense (including as a result of any indemnity given by the Participant to the Commonwealth) arising out of or in connection with a claim by a third party that the Research Provider's performance of this Agreement (including the provision of the Research Material), or the Participant's or Commonwealth's or their respective employees', agents' or contactors', use or exploitation of Research Material, infringes their Intellectual Property or Moral Rights.
- 15.16 The Research Provider indemnifies the Participant against any compensation, remuneration or other amount payable by the Participant to the Commonwealth, (including as a result of any indemnity given by the Participant to the Commonwealth) in connection with a payment by the Commonwealth to a third party for the use or exploitation of Research Material, or exercise of any Intellectual Property rights of a third party, by the Commonwealth (or any person authorised by the Commonwealth) in circumstances where that use, exploitation or exercise is permitted under legislation without infringing the third party's Intellectual Property rights, and against all loss, liability and expense arising out of or in connection with a claim for payment of any such compensation, remuneration or other amount.
- 15.17 In this clause 15, 'use' in relation to the Research Material, includes to use, copy, modify, adapt, publish, broadcast, communicate, commercialise and exploit the Research Material, or any adaptation of that Research Material.
- 15.18 The Research Provider must do all things necessary to ensure that the Commonwealth (and the Participant, as applicable) obtains all Intellectual Property rights contemplated by this clause 15, including by procuring that all

subcontractors execute any document the Commonwealth (or the Participant, as applicable) reasonably requires to ensure the Commonwealth (or the Participant, as applicable) obtains the Intellectual Property rights contemplated by this clause 15.

16. ACKNOWLEDGEMENT AND PUBLICATIONS

- 16.1 The Research Provider must acknowledge, and must ensure that its subcontractors' acknowledge, that the Research Services have been provided as a result of financial and other support from the Commonwealth:
- (a) in all publications, promotional and advertising materials, public announcements and activities by it or on its behalf in relation to the Research Services or the Project or any products, processes or inventions developed as a result of the Research Services; and
 - (b) in the form set out in Item J or, if not set out in Item J, then in a form approved by the Participant (at the direction of the Commonwealth) prior to its use.
- 16.2 Where the Research Services involve the production of any publication, the Research Provider must, on completion of the Research Services, provide the Participant with the number of copies of the publication set out in Item A.
- 16.3 This clause 16 survives the expiration or earlier termination of this Agreement for a period of seven years.

17. ASSETS

- 17.1 During the Agreement Period the Research Provider must use Assets only in accordance with the requirements for performance of the Research Services.
- 17.2 The Research Provider must:
- (a) not encumber or dispose of any Asset, or deal with or use any Asset other than in accordance with this clause, without the prior written approval of the Participant and the Commonwealth;
 - (b) hold all Assets securely and safeguard them against theft, loss, damage or unauthorised use;
 - (c) maintain all Assets in good working order;
 - (d) maintain all appropriate insurances in respect of any Assets;

- (e) be fully responsible for, and bear all risks arising in relation to, the use or disposal of any Asset;
 - (f) maintain a register of all Assets recording the date of purchase or lease, the purchase or lease price, Asset description including serial number, Asset location, the Depreciated value of the Asset and (where relevant) details of Asset disposal including the sale price; and
 - (g) as and when required under this Agreement or otherwise requested by the Participant, provide copies of the register of Assets to the Participant.
- 17.3 The Research Provider must obtain prior agreement in writing from the Participant and the Commonwealth before selling or otherwise disposing of an Asset during the Agreement Period. If, at the time of the sale or disposal, the Asset has not been fully Depreciated the Research Provider undertakes for the benefit of the Commonwealth, at the option of the Participant (as directed by the Commonwealth):
- (a) pay to the Commonwealth within 28 days of the date of the sale or disposal, an amount equal to the proportion of the value of the Asset following Depreciation that is equivalent to the proportion of the purchase price of the Asset that the Participant has agreed to pay for under this Agreement; or
 - (b) pay to the Commonwealth within 28 days of the date of the sale or disposal, the proceeds of the sale or disposal, less an amount equal to the sum of the Research Provider's proportionate contribution to the purchase price of the Asset and the Research Provider's reasonable costs of sale or disposal of the Asset; or
 - (c) use the amount specified in (a) or (b) above for a purpose approved in writing by the Participant (as directed by the Commonwealth).
- 17.4 If, at the date of the Final Report, an Asset has not been fully Depreciated the Research Provider undertakes for the benefit of the Commonwealth, at the option of the Participant (as directed by the Commonwealth):
- (a) pay to the Commonwealth within 28 days after expiry or earlier termination of this Agreement, an amount equal to the proportion of the value of the Asset following Depreciation that is equivalent to the proportion of the purchase price of the Asset that the Participant has agreed to pay for under this Agreement; or
 - (b) sell the Asset for the best price reasonably obtainable and pay to the Commonwealth within 28 days of the date of sale the proceeds of sale, less an amount equal to the sum of the Research Provider's proportionate contribution to the purchase price of the Asset and the Research Provider's reasonable costs of disposal of the Asset; or

- (c) use the Asset on such terms and conditions as may be approved in writing by the Participant and the Commonwealth.
- 17.5 If the Research Provider fails to make payment as required by either clause 17.3 or 17.4, the Research Provider undertakes for the benefit of the Commonwealth to:
- (a) pay the Commonwealth Interest on the relevant amount from the date it was due, for the period it remains unpaid; and
 - (b) the relevant amount, and Interest owed under this clause will be recoverable by the Participant (acting on the directions of the Commonwealth) as a debt due to the Participant by the Research Provider.
- 17.6 This clause 17 survives the expiration or earlier termination of this Agreement.

18. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

- 18.1 The Research Provider is not by virtue of this Agreement, or for any purpose, an employee, partner or agent of the Participant or the Commonwealth, or invested with any power or authority to bind or represent the Participant or the Commonwealth.
- 18.2 The Research Provider must not represent itself, and must use its best endeavours to ensure that the Research Provider Personnel do not represent themselves, as being an officer, employee, partner or agent of the Participant or the Commonwealth, or as otherwise able to bind or represent the Participant or the Commonwealth.

19. SUSPENSION AND TERMINATION

- 19.1 If:
- (a) the Participant is satisfied on reasonable grounds that the terms and conditions of this Agreement have not been complied with by the Research Provider; or
 - (b) the Participant is satisfied on reasonable grounds that the Research Provider is unable or unwilling to satisfy the terms of this Agreement; or
 - (c) the Participant, by notice in writing, requests the Research Provider to take action to meet a timeframe or perform an activity in accordance with this Agreement and, after 14 days from the date of the notice (or such longer

period as is specified in the notice), the Research Provider has failed to take such action; or

- (d) the Participant is satisfied on reasonable grounds that any statement made by the Research Provider is incorrect or incomplete in a way which would have materially and adversely affected the original decision to select the Research Provider to perform the Research Services; or
- (e) the Participant is not satisfied on reasonable grounds that the purposes and activities of the Research Provider remain compatible with
 - (i) the Research Objectives; or
 - (ii) the objectives and outcomes of the Project Agreement; or
- (f) the Participant is satisfied on reasonable grounds that a Report given by the Research Provider is not complete or accurate; or
- (g) the Research Provider:
 - (i) becomes bankrupt or Insolvent or is wound-up; or
 - (ii) suffers any execution against its assets having an adverse effect (in the reasonable opinion of the Participant) on its ability to perform the Agreement; or
- (h) the Project Agreement is terminated for any reason,

the Participant may, by written notice to the Research Provider, terminate this Agreement.

19.2 If this Agreement is terminated in accordance with clause 19.1 for reasons other than a breach of the Research Provider's obligations under this Agreement, the Participant will only be liable for payment due for work performed up to the date of termination and any reasonable costs (excluding, without limitation, loss of prospective income or profits) unavoidably incurred by the Research Provider, which are directly attributable to the termination. The Participant will not be liable to pay any amount in excess of the amount of Funds remaining unpaid at the date of termination, and in respect of such Funds the Research Provider shall only have recourse to the funds held by the Participant from the Commonwealth that the Participant is lawfully authorised to apply in payment of such Funds under the Project Agreement.

19.3 Except as provided in this clause, the Participant will not come under any liability to the Research Provider for termination of this Agreement in accordance with clause 19.1.

20. REPAYMENT OF FUNDS

20.1 If:

- (a) on the expiry or any earlier termination of this Agreement, any Funds
 - (i) remain unspent; or
 - (ii) cannot, by reconciliation between the accounts and records maintained by the Research Provider (as reported to the Participant by the Research Provider in any of the financial statements referred to in clause 11) and the Budget, be shown to the reasonable satisfaction of the Participant to have been spent or Committed in accordance with this Agreement; or
- (b) at any time the Participant or the Commonwealth forms an opinion based on reasonable grounds that any Funds have been used, spent or Committed by the Research Provider other than in accordance with this Agreement,

the Participant, acting for the Commonwealth, may by written notice require the Research Provider to repay that part of the Funds, and the Research Provider must repay to the Commonwealth the amount set out in the notice, within 28 days of the date of the notice.

20.2 If the Research Provider fails to repay the Funds in accordance with a notice issued under clause 20.1:

- (a) the Research Provider must pay to the Participant Interest (or as the Participant directs) on the amount set out in the notice from the date it was due, for the period it remains unpaid; and
- (b) the amount set out in the notice, and Interest owed under this clause will be recoverable by the Participant as a debt due to the Participant by the Research Provider.

20.3 The Research Provider acknowledges that Interest payable under clause 20.2(a) represents a reasonable pre-estimate of the loss incurred by the Participant as a result of its corresponding liability to pay interest to the Commonwealth under the Project Agreement.

20.4 This clause 20 survives the expiration or earlier termination of this Agreement.

21. INDEMNITY

21.1 The Research Provider indemnifies the Participant, its officers, employees and agents ('those indemnified') from and against all liabilities arising under an indemnity given by the Participant to the Commonwealth under the Project Agreement, to the extent the liability has arisen in connection with a negligent or

- fraudulent act or omission of the Research Provider or a breach of this Agreement or unlawful act of the Research Provider.
- 21.2 The Research Provider's liability to indemnify the Participant under clause 21.1 will be reduced proportionally to the extent that any unlawful or negligent act or omission of the Participant or its officers, employees or agents contributed to the loss or damage.
- 21.3 The right of the Participant to be indemnified under this clause 21 is in addition to, and not exclusive of, any other right, power or remedy provided by Law.
- 21.4 This clause 21 survives the expiration or earlier termination of this Agreement.

22. INSURANCE

- 22.1 The Research Provider warrants that it has taken out or will take out, and will maintain for the period specified in clause 22.2 or 22.3 as applicable, all appropriate types and amounts of insurance to cover the Research Provider's obligations under this Agreement, including those which survive its expiration or earlier termination, which insurance must include but is not limited to the types and corresponding amounts of insurance specified in Item K.
- 22.2 If the Research Provider takes out a 'claims made policy', which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Research Provider must maintain the policy during the term of this Agreement and a policy in like terms for 7 years after the expiry or earlier termination of this Agreement.
- 22.3 If the Research Provider takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Research Provider must maintain the policy during the term of this Agreement.
- 22.4 The Research Provider must, on request, promptly provide to the Participant any relevant insurance policies and certificates of currency for inspection.
- 22.5 This clause 22 survives the expiration or earlier termination of this Agreement.

23. CONFIDENTIALITY

- 23.1 No Confidential Information may be disclosed by the Recipient to anyone except:
- (a) the Recipient's Personnel requiring the information for the purposes of this Agreement; or

- (b) with the consent of the Discloser (but in disclosing Confidential Information in those circumstances the Recipient must comply with any conditions to which that consent is expressed to be subject); or
 - (c) if the Recipient:
 - (i) being the Participant, is requested or required to do so by the Commonwealth; or
 - (ii) is required to do so by Law or by a stock exchange; or
 - (d) to obtain legal, financial or other technical or expert advice in connection with this Agreement; or
 - (e) if the Recipient is required to do so in connection with legal proceedings relating to this Agreement.
- 23.2 A Party disclosing Confidential Information under any of clauses 23.1(a), 23.1(b) or 23.1(d) must tell the Recipient that the information is Confidential Information, and in the case of a disclosure:
- (a) under clause 23.1(a) or 23.1(b) must use all reasonable endeavours to ensure that those receiving the information do not disclose it except as permitted by clause 23.1; or
 - (b) under clause 23.1(c)(ii) or 23.1(e) must give the other Party reasonable notice of the required disclosure.
- 23.3 A Party who has received Confidential Information in connection with this Agreement must not use it except for the purpose of exercising its rights or performing its obligations under this Agreement.
- 23.4 A Party who:
- (a) has received Confidential Information in connection with this Agreement; and
 - (b) is required by the other party to do so,
- must immediately deliver up all documents or other Materials containing or referring to that information which are in that party's possession, power or control or in the possession, power or control of others to whom that party has disclosed (whether according to, or in breach of, clause 23.1) the Confidential Information.
- 23.5 Without limiting clause 16, the Research Provider may not make press or other announcements or releases relating to this Agreement or the transactions contemplated by it without the consent of the Participant, unless the announcement or release is required to be made by the Research Provider:
- (a) by Law; or

- (b) by the rules of a stock exchange.

23.6 Notwithstanding clauses 23.1 to 23.5, the Research Provider agrees that:

- (a) the Commonwealth Confidential Material remains the property of the Commonwealth;
- (b) it may not disclose any Commonwealth Confidential Material without the consent of the Commonwealth, unless required to do so by Law; and
- (c) the Commonwealth or the Participant (if so requested by the Commonwealth) may at any time by notice in writing to the Research Provider require the Research Provider to give, and to arrange for the Research Provider Personnel engaged in the performance of the Research Services to give written undertakings, in a form required by the Commonwealth, relating to the non-disclosure of Commonwealth Confidential Information.

23.7 The Research Provider acknowledges that its Confidential Information may be provided to the Commonwealth pursuant to clause 23.1(c)(i). The Commonwealth gives no undertaking to treat the Research Provider's Confidential Information, or this Agreement, as confidential. The Research Provider acknowledges that the Commonwealth may disclose information relevant to this Agreement, or the Agreement itself, to any person:

- (a) to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency;
- (b) if required in connection with legal proceedings;
- (c) for public accountability reasons, including disclosure on request to other Government Agencies, and a request for information by Parliament or a Parliamentary Committee or a Commonwealth Minister; or
- (d) for any other requirement of the Commonwealth.

23.8 The obligations contained in this clause are in addition to those set out in clause 24 and will survive the expiration or earlier termination of this Agreement.

24. PROTECTION OF PERSONAL INFORMATION

24.1 This clause applies only where the Participant deals with Personal Information when, and for the purpose of, performing the Research Services under this Agreement.

24.2 In this clause 24, the terms 'agency', 'approved privacy code' (APC), 'contracted service provider', 'Information Privacy Principles' (IPPs), 'National Privacy Principles' (NPPs), 'health service' and 'health information', have the same

meaning as they have in section 6 of the *Privacy Act 1988* ('the Privacy Act') and 'subcontract' and other grammatical forms of that word have the meaning given in section 95B(4) of the Privacy Act.

24.3 The Research Provider acknowledges that it may be treated as a contracted service provider and agrees in respect of performing the Research Services under this Agreement:

- (a) to use or disclose Personal Information obtained during the course of performing the Research Services under this Agreement, only for the purposes of this Agreement;
- (b) not to do any act or engage in any practice which if done or engaged in by an agency, would be a breach of an IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency;
- (d) to notify individuals whose Personal Information the Research Provider holds, that complaints about acts or practices of the Participant may be investigated by the Privacy Commissioner who has power to award compensation against the Research Provider in appropriate circumstances;
- (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing) of the Privacy Act, an NPP) (particularly NPPs 7 to 10) or an APC where that section, NPP or PC is applicable to the Research Provider, unless:
 - (i) in the case of section 16F, the use or disclosure is necessary, directly or indirectly, for the performance of the Research Services under this Agreement; or
 - (ii) in the case of an NPP or an APC, the activity or practice is authorised by this Agreement and engaged in for the purpose of performing the Research Services under this Agreement, and the activity or practice is inconsistent with the NPP or APC;
- (f) to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this Agreement (if any) that are inconsistent with an NPP or an APC binding on a party to this Agreement);
- (g) to immediately notify the Participant in writing if the Research Provider becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 24, whether by the Research Provider or any subcontractor;
- (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause 24; and

- (i) to ensure that any officers, employees or agents of the Research Provider who are required to deal with Personal Information for the purposes of this Agreement are made aware of the obligations of the Research Provider set out in this clause 24.
- 24.4 The Research Provider agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement imposes on the subcontractor the same obligations as the Research Provider has under this clause 24, including the requirement in relation to subcontracts.
- 24.5 The Participant may at any time by notice in writing to the Research Provider require the Research Provider to give, and to arrange for the Research Provider Personnel engaged in the performance of the Project to give, undertakings in writing, in a form required by the Participant (and approved by the Commonwealth), relating to the non-disclosure of Personal Information.
- 24.6 If the Research Provider receives a request under clause 24.5, it agrees to promptly arrange for all such undertakings to be given.
- 24.7 The Research Provider agrees to indemnify the Participant in respect of any loss, liability or expense suffered or incurred by the Participant (including as a result of an indemnity given by the Participant to the Commonwealth) which arises directly or indirectly from a breach of any of the obligations of the Research Provider under this clause 24, or a subcontractor under the subcontract provisions referred to in clause 24.4.
- 24.8 The Research Provider's obligations under this clause 24 are in addition to, and do not restrict, any obligations it may have under the Privacy Act or any privacy codes or privacy principles contained in, authorised by or registered under any Law including any such privacy codes or principles that would apply to the Research Provider but for the application of this clause 24.
- 24.9 Notwithstanding any other provision in this clause 24, where the Research Provider provides a health service to an individual it will:
 - (a) comply with the NPPs in relation to the use and disclosure of health information about the individual; and
 - (b) transfer health information to another health service provider when directed to do so by the Participant.
- 24.10 This clause 24 survives expiration or earlier termination of this Agreement.

25. CONFLICT OF INTEREST

- 25.1 The Research Provider warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no Conflict exists or is

- likely to arise in the performance of obligations under this Agreement by the Research Provider Personnel engaged on the Project.
- 25.2 If during the Agreement Period, a Conflict arises, or appears likely to arise, in respect of the Research Provider Personnel engaged on the Project, the Research Provider must:
- (a) immediately notify the Participant in writing of the Conflict, making a full disclosure of all relevant information relating to the Conflict and setting out the steps the Research Provider proposes to take to resolve or otherwise deal with the Conflict; and
 - (b) take such steps as have been proposed by the Research Provider, or at the discretion of the Participant, take such steps as the Participant may reasonably require to resolve or otherwise deal with the Conflict.
- 25.3 If the Research Provider fails to notify the Participant under this clause 25, or is unable or unwilling to resolve or deal with the conflict as required, the Participant may terminate this Agreement in accordance with either clause 19.1(a), (b) or (d).
- 25.4 The Research Provider agrees that it will use its best endeavours to ensure that any Research Provider Personnel engaged on the Project do not engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict the Research Provider Personnel in performing the Research Services fairly and independently.

26. COMPLIANCE WITH LAW AND POLICIES

- 26.1 The Research Provider must, in carrying out this Agreement, comply with:
- (a) the provisions of any relevant statutes, regulations, by-laws, and requirements of any Commonwealth, State, Territory or local authority, including without limitation, those listed in Item L and the *Crimes Act 1914*, *Criminal Code Act 1995*, *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984*, *Disability Discrimination Act 1992*, *Equal Opportunity for Women in the Workplace Act 1999*, *Age Discrimination Act 2004*, *Ombudsman Act 1976* and *Auditor-General Act 1997*; and
 - (b) any policies notified to the Research Provider in writing, or listed in Item L.
- 26.2 The Research Provider acknowledges that under section 137.1 of the schedule to the *Criminal Code Act 1995*, giving false or misleading information to the Commonwealth is a serious offence.
- 26.3 Without limiting the effect of clause 18, the Research Provider must comply with, and require Research Provider Personnel engaged in the performance of the

Research Services to comply with the behaviours set out in the Code of Conduct in section 13 of the *Public Service Act 1999* as if the Research Provider and those Research Provider Personnel were APS employees as defined in that Act.

27. DISPUTE RESOLUTION

27.1 Subject to clause 27.3, the Parties agree not to commence any legal proceedings in respect of any dispute arising under this Agreement which has not been resolved by informal discussion, until the procedure provided by this clause has been followed.

27.2 The Parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:

- (a) the Party claiming that there is a dispute will send the other a written notice setting out the nature of the dispute;
- (b) the Parties will try to resolve the dispute through direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution;
- (c) the Parties have 10 Business Days from the date of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
- (d) if, after the procedures set out in clauses 27.2(a) to (c) have been followed:
 - (i) there is no resolution of the dispute;
 - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
 - (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 Business Days,then:
 - (e) either Party may commence legal proceedings in respect of the subject matter of the dispute; and
 - (f) the Participant may engage someone else to do what the Research Provider had been contracted to do under this Agreement.

27.3 Nothing in this clause 27 prevents:

- (a) either Party from commencing legal proceedings for urgent interlocutory relief;
- (b) the Participant from enforcing any right conferred upon it by this Agreement, including its rights to conduct an audit under clause 14 or to terminate this Agreement under clause 19.

27.4 This clause 27 does not apply to:

- (a) a dispute in connection with the termination of this Agreement, including the validity or the termination; or
- (b) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of Law by the Research Provider.

27.5 Subject to clause 27.2(f) despite the existence of a dispute, both Parties must (unless requested in writing by the other Party not to do so) continue to perform their respective obligations under this Agreement.

28. RESEARCH PROVIDER WARRANTIES

28.1 The Research Provider represents and warrants to the Participant that:

- (a) if it is a body corporate, it is duly incorporated in accordance with the Laws of its place of incorporation, validly exists under those Laws and has the capacity to sue or be sued in its own name and to own its property and conduct its business as it is being conducted;
- (b) it has full power and authority to enter into, perform and observe its obligations under this Agreement;
- (c) the execution, delivery and performance of this Agreement has been duly and validly authorised by the Research Provider;
- (d) this Agreement constitutes valid and legally binding obligations on it and is enforceable against it by the Participant in accordance with its terms;
- (e) each authorisation from, and filing and registration with, a Government Agency necessary to enable it to unconditionally execute and deliver and comply with its obligations under this Agreement and carry on its principal business or activity has been obtained, effected and complied with;
- (f) the unconditional execution and delivery of, and compliance with its obligations by it under this Agreement do not;

- (i) contravene any Law to which it or any of its property is subject or any order or directive from a Government Agency binding on it or any of its property;
 - (ii) contravene its constituent documents;
 - (iii) contravene any agreement or instrument to which it is a party;
 - (iv) contravene any obligation of it to any other person; or
 - (v) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery;
- (g) no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending or to the knowledge of any of its officers after due inquiry, are threatened which, if adversely decided, could have a materially adverse effect on its ability to perform its obligations under this Agreement;
- (h) unless otherwise disclosed in this Agreement, it is not entering into this Agreement as trustee of any trust or settlement;
- (i) it has not made any false declaration in respect of any current or past dealings with the Commonwealth or any Government Agency, including in any tender or application process or in any agreement;
- (j) it has had no significant deficiency in the performance or any substantive requirement or obligation under any prior agreement with the Commonwealth or any Government Agency which would have a materially adverse effect its ability to perform this Agreement;
- (k) it has, and will continue to have and to use, the skills, qualifications and experience, including Research Provider Personnel, to perform the Research Services in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with this Agreement;
- (l) it has and will continue to have skilled, qualified and experienced Research Provider Personnel who are capable of performing the Research Services in accordance with this Agreement;
- (m) it has fully informed itself of all aspects of the work required to be performed in connection with the Research Services;
- (n) it has and will continue to have the necessary resources to perform the Research Services and will use those resources to perform the Research Services; and
- (o) it is not bankrupt or Insolvent.

- 28.2 The interpretation of any statement contained in any representation or warranty will not be restricted by reference to or interference from any other statement contained in any other representation or warranty.
- 28.3 The Research Provider acknowledges that the Participant in entering into this Agreement is relying on:
- (a) the warranties and representations contained in this Agreement; and
 - (b) the information or representations provided by the Research Provider in any proposal given by the Research Provider to undertake the Research Services.
- 28.4 Each representation and warranty survives the expiration or earlier termination of this Agreement.

29. NOTICES

- 29.1 A Party giving notice under this Agreement must do so in writing, including by facsimile, that is:
- (a) directed to the Party's address specified in Item M marked for the attention of the Party's representative specified in Item M; and
 - (b) hand delivered or sent by pre-paid post or facsimile to that address.
- 29.2 A notice given in accordance with clause 29.1 is received:
- (a) if hand delivered, on delivery;
 - (b) if sent by pre-paid post, on the third Business Day after the date of posting;
 - (c) if sent by facsimile, at the time the sender receives notification that the notice has been transmitted satisfactorily.

SCHEDULE

ITEM A – RESEARCH SERVICES

Background:

Under the Fourth Community Pharmacy Agreement (Fourth Agreement) the Professional Programs and Services Advisory Committee (PPSAC) has been established to provide advice to the Minister for Health and Ageing on the funding of, and management responsibilities for programs and projects under the Professional Programs and Services funded by the Fourth Agreement.

Pharmacy research and development is one of the priorities identified in the Fourth Agreement between the Commonwealth and The Pharmacy Guild of Australia. Funding of up to \$19 million has been allocated for the Research and Development Program over the life of the Agreement. Following a recommendation from PPSAC, the Minister has assigned the management of the Research and Development Program to The Pharmacy Guild of Australia.

The aim of the Research and Development Program is to identify priority research areas in community pharmacy service provision and then to fund projects with the greatest potential to deliver services with positive health outcomes for consumers and economic impacts for the health system in general.

The Research and Development Steering Committee has been established to provide:

- advice and recommendations to the PPSAC on the development, implementation and ongoing management of the Fourth Community Pharmacy Agreement Research and Development Grants Program; and
- advice to The Pharmacy Guild of Australia, as manager of the Research and Development Program.

Program Objectives:

- enhance capacity of community pharmacy and community pharmacists to contribute to maintaining and improving the health of Australians;
- develop and inform best practice professional and management standards and processes for delivery of cost effective services;
- enhance and develop the role of the community pharmacist as a member of the primary health care team; and
- develop and support skilled research expertise that focuses on community pharmacy in the primary health care team.

Project Details:

The Research Provider must undertake a project titled: “[insert project name]” in accordance with the approved Investigator Initiator Grant Application and Response to Letter of Conditional Offer at Annexure E..

Project Objectives:

Outline of the Project and its purpose.

Include full description of the Research Services, including key deliverables, Performance Requirements, timetable (including Milestones) and Research Objectives.

ITEM B – FUNDS

The maximum amount of Funds to be paid by the Participant to the Research Provider is \$[insert funds] (GST exclusive), payable in the following instalments:

DATE	DELIVERABLE	Funds (GST exclusive) \$	GST \$	Funds (GST inclusive) \$
2007/2008				
	Executed IP Deed, Acceptance of IP Register, Moral Rights Consents and Ethics approval			
	First Interim Report which demonstrates that sufficient progress is being made in the conduct of the Project			
2008/2009				
	Second Interim Report which demonstrates that sufficient progress is being made in the conduct of the Project			
2008/2009				
	Acceptance of Final Report and Audited Financial Statement			
TOTAL				

Payment of Invoices

The due date for payment is 60 days after receipt of a correctly rendered invoice by the Participant. A correctly rendered invoice is one that:

- (a) identifies the name of the Project;
- (b) sets of the name of the Participant Liaison Officer;
- (c) contains a claim for the amount of Funds properly required; and
- (d) is a tax invoice.

ITEM C – COMMONWEALTH MATERIAL AND COMMONWEALTH CONFIDENTIAL INFORMATION

Specify any Material contributed by the Commonwealth for the purposes of this Agreement and any Confidential Information of the Commonwealth to which the Research Provider is likely to have direct access in performing the Research Services.

ITEM D – PARTICIPANT MATERIAL AND PARTICIPANT CONFIDENTIAL INFORMATION

Specify any Material contributed by the Participant for the purposes of this Agreement and any Confidential Information of the Participant to which the Research Provider is likely to have direct access in performing the Research Services and which needs to be specifically identified.

ITEM E – EXISTING MATERIAL

Specify any Existing Material of the Research Provider to be used in the course of performing the Research Services (the Research Provider retains the Intellectual Property rights in such material).

ITEM F – PARTY REPRESENTATIVES

Liaison Officer for the Research Organisation shall be the person occupying the position of:

[insert address]

The current occupant is:

[insert name]

Email:

Telephone:

Facsimile:

The Liaison Officer for the Pharmacy Guild of Australia shall be the person occupying the position of:

Manager
 Research and Development Program
 The Pharmacy Guild of Australia
 PO Box 7036
 CANBERRA BUSINESS CENTRE ACT 2610

The current occupant is:

Ms Erica Vowles
 Email: erica.vowles@guild.org.au
 Telephone: 02 6270 1888
 Facsimile: 02 6270 1800.

ITEM G – REPORTING AND LIAISON

DATE	DELIVERABLES	TEMPLATE
2007/2008		
	Commencement of Project: 1. Moral Rights Consent 2. IP Deed executed 3. IP Register 4. Ethics Approval 5. Project Work Plan	1. Refer Annexure C 2. Refer Annexure A 3. Refer Annexure B
	First Interim Report: 1. Interim Report 2. Interim Financial Report 3. Updated IP Register 4. Moral Rights Consent for any new contributing authors 5. Assets Register	1. Refer Attachment A 2. Refer Attachment B 3. Refer Annexure B 4. Refer Annexure C
2008/2009		
	Second Interim Report: 1. Interim Report 2. Interim Financial Report 3. Updated IP Register 4. Moral Rights Consent for any new contributing authors 5. Assets Register	1. Refer Attachment A 2. Refer Attachment B 3. Refer Annexure B 4. Refer Annexure C
	Final Reporting: 1. Draft Final Report	1. Refer Attachment C

DATE	DELIVERABLES	TEMPLATE
	<p>Project Completion:</p> <ol style="list-style-type: none"> 1. Final Report 2. Complete IP Register 3. Complete Moral Rights Consent deeds for all authors (R&D Project Material and Existing Material) 4. A full list of publications and presentations to date 5. Audited Financial Report 6. Complete Asset Register 	<ol style="list-style-type: none"> 1. Refer Attachment C 2. Refer Annexure B 3. Refer Annexure C

The Research Provider must provide to the Participant:

- (a) one electronic copy and one hard copy of any Project Material if and as requested by the Participant;
- (b) reports and documents are required to be submitted to the Participant in accordance with this Agreement electronically in a format compatible with Microsoft Word, and in hard copy; and
- (c) three hard copies of the Final Report.

The Research Provider must ensure that the Final Report is provided to the Participant in a format that is suitable and ready for immediate electronic and/or professional publication.

Finalising the Project:

All draft reports will be independently reviewed. The review will assess the report as a stand alone document and will also review the report against agreed outcomes and methodology presented on Application. Researchers will be forwarded the review and allowed a right of reply and amendment.

The Advisory Panel will review the final report (including the independent review and response to review) before recommending acceptance of the report. Final grant payments will be conditional on the acceptance of the final report by the Advisory Panel and if appropriate the PPSAC R&D Steering Committee. The final report must be submitted within the timelines agreed to in the Research Services Subcontract.

In accepting the final report, the Pharmacy Guild of Australia or Commonwealth does not endorse the findings or recommendations and reserves the right to publish or disseminate the report. The final report will be made publicly available on the Pharmacy Guild of Australia’s website.

ITEM H – COMPLETION DATE

Specify the end date for the agreement (which should ordinarily coincide with or precede the end date of the Project Agreement).

ITEM I – SPECIFIED PERSONNEL

Specify any personnel of the Research Provider who the Participant requires to be personally involved in the performance of the Research Services.

ITEM J – PUBLICITY

Any reports produced under R and D Project Funding Agreements, in whole or in part, and any reports produced by the Research Provider for the Project must bear the following acknowledgement:

This Report was produced with the financial assistance of the Australian Government Department of Health and Ageing. The financial assistance provided must not be taken as endorsement of the contents of this report.

Any Project Material which is developed by the Research Provider for the purposes of the communication strategy about the Project must bear the following acknowledgement:

This program is funded by the Australian Government Department of Health and Ageing as part of the Fourth Community Pharmacy Agreement through the Fourth Community Pharmacy Agreement Grants Program managed by the Pharmacy Guild of Australia

Amendments to the acknowledgement for Research Material, Reports or Publicity must be in a form approved by the Participant (at the direction of the Commonwealth) prior to its use.

Researcher Providers are encouraged to present the findings of their research. The Program wants to ensure the widest possible dissemination of the research supported by their grants, in the most effective manner and at the earliest opportunity.

It is a condition of approval that Research Providers will advise the Pharmacy Guild of Australia of all instances where the Research Provider has produced papers, made presentations or any other form of public communication of their research work. The advice to the Pharmacy Guild of Australia must be made prior to the advance or date of publications.

With regards to media:

- (a) The support of the Program is to be mentioned in all media releases
- (b) Copies of all media releases are to be sent to the Pharmacy Guild of Australia at the time of release.
- (c) A representative of the Pharmacy Guild of Australia should be invited to any media conference at which the results of the project are to be released.

ITEM K – INSURANCE

The Research Provider must hold all appropriate types of insurance including, but not limited to:

- (a) professional indemnity insurance to a minimum value of \$10 million per claim;
- (b) public liability insurance to a minimum value of \$10 million per claim;
- (c) workers compensation insurance to the value set by the relevant legislation; and
- (d) insurance over any Asset acquired pursuant to this Agreement for its full replacement value.

ITEM L – LAWS AND POLICIES

The Research Provider must comply with relevant laws and policies for the conduct of this Project, including but not limited to, the Privacy Act (1998) (Cth)

ITEM M – NOTICES

See Item F

ANNEXURE A – FORM OF INTELLECTUAL PROPERTY UNDERTAKING

INTELLECTUAL PROPERTY UNDERTAKING

This deed poll is made by

The [Research Provider] (ABN [insert ABN]) (**‘Research Provider’**)

on [insert date]

in favour of the Commonwealth of Australia as represented by the Department of Health and Ageing (ABN 83 605 426 759) (**‘Commonwealth’**).

Background

- A The Research Provider has entered into, or intends to enter into, a services subcontract with The Pharmacy Guild of Australia (ABN 84 519 666 143) (**‘Participant’**) on or about the date of this deed poll under which the Research Provider agrees to provide certain services for the ultimate benefit of the Commonwealth in connection with the Research and Development Program under the Fourth Community Pharmacy Agreement (**‘Subcontract’**).
- B. The terms of the Subcontract include that the Commonwealth is to attain ownership of all Intellectual Property in the Research Material produced by the Research Provider under the Subcontract.
- C. The Research Provider also acknowledges and agrees that the Commonwealth, as the intended owner of the Intellectual Property in the Research Material and the ultimate beneficiary of the Research Services, should have the benefit of the Research Provider’s covenants in relation to Intellectual Property and Moral Rights.
- D. The Research Provider acknowledges having received valuable consideration from the Commonwealth.

1. Definitions

- 1.1 Subject to clause 1.3, in this deed poll, defined terms have the meaning given to them in the Subcontract, including terms defined in clause 15 of the Subcontract, except where the relevant terms is separately defined in this deed poll.
- 1.2 Subject to clause 1.3, clauses 1.2, 1.5, 1.7, 1.8, 1.9, 1.10, and 1.11 of the Subcontract applies in this deed poll as if set out in full.
- 1.3 A variation or purported variation to a defined term or clause of the Subcontract will only apply in respect to this deed poll if that variation has been approved in writing by the Commonwealth.

2. Assignment of Intellectual Property

- 2.1 The Research Provider hereby assigns all its Intellectual Property rights and title to, or in relation to, the Research Material (excluding the Existing Material) to the Commonwealth. This assignment will be effected on the creation of such Intellectual Property rights (including a present assignment of future copyright) without the need for further consideration.

3. Licence of Existing Material

- 3.1 The Commonwealth will not acquire ownership of or title to any Existing Material. However, the Research Provider grants to the Commonwealth, or (in respect of Existing Material not owned by the Research Provider) undertakes to arrange for the grant to the Commonwealth, of a perpetual, irrevocable, royalty-free and licence fee-free, world-wide, non-exclusive licence (including a right to sub licence) to use, copy, modify, adapt, publish, broadcast, communicate, commercialise and exploit the Existing Material (and any adaptation) in conjunction with the other Research Material.

4. Moral Rights

- 4.1 In this clause 4, ‘Specified Acts’ relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the Commonwealth:

- (a) subject to clause 4.2, using, reproducing, adapting, modifying, publishing, broadcasting, communicating, commercialising or exploiting all or any part of the Research Material;
- (b) supplementing the Research Material with any other Material; and
- (c) using the Research Material in a different context to that originally envisaged,

but does not include false attribution of authorship.

- 4.2 The Participant and the Research Provider may, subject to the approval of the Commonwealth, agree in writing that the right of attribution of authorship is reserved in respect of certain deliverables forming part of the Research Material (**‘Reserved Material’**). In relation to Reserved Material only, the ‘Specified Acts’ referred to in clause 4.1(a) may be performed by or on behalf of the Commonwealth:

- (a) where the Reserved Material (or any part of it) is authored by Specified Personnel, only with attribution of authorship; or
- (b) in any other case, with or without attribution of authorship.

- 4.3 For the purposes of clause 4.2, in delivering any Research Material, the Research Provider undertakes to identify in writing (for the benefit of the Commonwealth):
- (a) those parts of the Research Material that are Reserved Material (if any); and
 - (b) those parts of the Reserved Material that have been drafted or prepared by Specified Personnel.

The Research Provider acknowledges that the Commonwealth may rely upon the identification of authorship provided by the Research Provider under this clause 4.3 as conclusive evidence of that fact.

- 4.4 The Research Provider warrants that:
- (a) the author of any Research Material has given a written consent to the infringement of their Moral Rights (including to the Specified Acts), whether occurring before or after the consent is given, which extends directly or indirectly to the performance of the Specified Acts by the Participant or the Commonwealth or any person to whom the Participant or the Commonwealth has provided the Research Material (directly or indirectly); and
 - (b) it will use its best endeavours (as demonstrated in accordance with clause 4.5) to obtain from the author of any Existing Material a written consent to the infringement of their Moral Rights (including to the Specified Acts), whether occurring before or after the consent is given, which extends directly or indirectly for the Commonwealth's benefit in relation to the use of the Existing Material by the Commonwealth or any person to whom the Commonwealth has provided the Existing Material (directly or indirectly).
- 4.5 In relation to any and all consents the Research Provider has not obtained under clause 4.4(b), the Research Provider undertakes to demonstrate to the Commonwealth's reasonable satisfaction that it has used its best endeavours to obtain such consents.

4.6 The Research Provider undertakes, when delivering Research Material, to identify in writing what (if any) parts of the Research Material have been drafted by persons who have not given the written consent referred to in clause 4.4(b).

4.7 The Research Provider undertakes, upon request, to provide to the Participant or the Commonwealth a copy of any or all consents referred to in clause 4.4.

5. Warranty and Indemnity

5.1 The Research Provider warrants that the provision of the Research Material and its use by the Commonwealth as contemplated by the Research Objectives ('**Use of Material**') will not infringe the Intellectual Property right or Moral Rights of any person.

- 5.2 The Research Provider indemnifies the Commonwealth, its officers, employees and agents ('those indemnified') from and against all loss, liability, actions, claims, demands, costs and expenses (including the costs of defending or settling any action, claim or demand) made, sustained, brought or prosecuted against those indemnified in any manner arising from any actual, apprehended or threatened claim that the Research Material or the Commonwealth's Use of Material infringes the Intellectual Property rights of a third party.
- 5.3 The Research Provider indemnifies the Commonwealth against, and must pay the Commonwealth all compensation, remuneration or other amounts payable by the Commonwealth to a third party for the use or exploitation of Research Material, or exercise of any Intellectual Property rights of a third party, by the Commonwealth (or any person authorised by the Commonwealth) in circumstances where that use, exploitation or exercise is permitted under legislation without infringing the third party's Intellectual Property rights, and against all loss, liability and expense arising out of or in connection with a claim for payment of any such compensation, remuneration or other amount.

6. IP Registers

- 6.1 The Research Provider acknowledges that it is required under the Subcontract to maintain the IP Registers and undertakes to comply with those requirements. The Research Provider undertakes, upon request, to make the IP Registers available for inspection by the Commonwealth.

7. Patents

- 7.1 The Research Provider undertakes not to, and to ensure that the Research Provider Personnel do not, undertake any activity in respect of any of the Research Material which may adversely affect the ability of the Commonwealth to obtain a patent in any jurisdiction in the world unless it is required to undertake that activity to comply with the Subcontract.
- 7.2 Without limiting its obligations under this deed poll, the Research Provider undertakes to the Commonwealth that it will comply with its obligations under clause 15 of the Subcontract (including to act in accordance with the directions of the Participant where specified in clauses 15.13 and 15.14). In doing so, the Research Provider acknowledges that the Participant in giving those directions must act in accordance with the Commonwealth's directions under the Project Agreement.

8. Further Assurances

- 8.1 The Research Provider undertakes to use reasonable endeavours to do anything reasonably requested by the Commonwealth and not inconsistent with this deed poll for the purposes of enabling the Commonwealth to have the full benefit of this deed poll (such as executing any further documents, including documents necessary to register any Intellectual Property rights) if so required.

9. Deed Poll Irrevocable

9.1 This deed poll is given for valuable consideration and may not be revoked in whole or part by the Research Provider without the prior written consent of the Commonwealth.

EXECUTED as a deed poll.

SIGNED for and on behalf of the)	
[insert research provider])	
[ABN])	
_____)	
<i>Date</i>)	
by:)	
_____)	
<i>Printed name of signatory</i>)	_____
)	<i>Signature</i>
_____)	
<i>Position of signatory</i>)	
)	
in the presence of:)	
_____)	
<i>Printed name of witness</i>)	_____
)	<i>Signature of witness</i>

TABLE 2: IP IN PROJECT MATERIAL

IP reference number ⁱ	Description of IP ⁱⁱ	Pre-existing IP used in development and whether the new IP can be separately owned	Developer of IP	Owner of IP (if known)	Restrictions on use of IP, if any	Is IP registered? If 'yes', provide details ⁱⁱⁱ	Date of creation or acquisition ^{iv}	Date of entry into this IP Register	Details of release of IP ^v
<i>Example:</i> <i>[Ref No – eg DE 1]</i>	<i>Modifications to software program [name] containing copyright [explain purpose/function and details of modifications]</i>	<i>See ref PE 1</i>	<i>[Name]</i>	<i>Commonwealth owns modification</i>	<i>Nil</i>	<i>No</i>	<i>Created 04/04/07</i>	<i>05/04/07</i>	<i>04/08/07</i>

NOTES

- i. A system of numbering or other referencing may need to be devised, depending upon the number of entries to be recorded. This is useful for cross-referencing pre-existing IP with developed IP.
- ii. This must include the form of IP (eg a trade mark) and what the IP subsists in (eg a software program, a report etc)
- iii. Details of registration to be recorded include but are not limited to the form of IP (eg a trade mark), jurisdiction (eg Australia), date of registration and date of expiry.
- iv. It is acceptable to include a range of dates if there is no one identifiable date – eg 1-4/08/07.
- v. This column is used to record any licensing, publication, release or dissemination of works in which Project IP exists – eg publication of a report in a journal; provision of IP to a contractor.

ANNEXURE C – MORAL RIGHTS CONSENT

CONSENT OF [authors name] TO THE UNDERTAKING OF SPECIFIED ACTS IN RESPECT OF ARTISITC WORKS IN WHICH [he/she] HAS MORAL RIGHTS

**TO: The Commonwealth of Australia as Represented by the Department of Health and Ageing ABN 83 605 426 759 (“The Commonwealth”)
The Pharmacy Guild of Australia ABN 84 519 669 (“the Guild”)
[Research Provider] ABN [insert ABN]
All Relevant Persons**

1. I understand that the Guild has entered into the Funding Agreement with the Commonwealth. The Guild has, under the Funding Agreement, subcontracted the performance of some of its obligations to the [Research Provider] on the terms and conditions set out in the Subcontract. The Commonwealth is to have all title to the Intellectual Property in the Research Material arising under the Subcontract as a result of the performance by the [Research Provider] of its obligations therein. The Commonwealth grants to the Guild certain licences to use the Research Material and the Guild has sublicensed those rights to the [Research Provider] under the Subcontract.
2. The [Research Provider] has asked me to author Material that will constitute part of the Research Material (“**Relevant IP**”). I am accorded Moral Rights under the Act in respect of the Relevant IP.
3. My Moral Rights include:
 - (a) a right of attribution of authorship;
 - (b) a right not to have authorship falsely attributed; and
 - (c) a right of integrity of authorship.
4. I understand that:
 - (a) if anyone infringes my Moral Rights in the Relevant IP, I will have against that person the rights and remedies set out in the Act;
 - (b) I may consent in writing and in accordance with sections 195AW and 195AWA of the Act to a person undertaking any act, or omitting to do something, which would otherwise infringe my Moral Rights. The effect of such consent is that such person will not infringe my Moral Rights if the act or omission undertaken by them, which would otherwise infringe my Moral Rights, is within the scope of my written consent;
 - (c) any consent referred to in clause 4(b) above will not be valid to the extent that it is given under duress;

- (d) the Commonwealth will be the owner of all Relevant IP & Material and I will have Moral Rights in respect of the IP; and
 - (e) it is essential for each Relevant Person that I consent to the Relevant Persons being able to undertake the Specified Acts in respect of the Relevant IP in accordance with sections 195AW and 195AWA, so that the Relevant Persons will not be taken to have infringed my Moral Rights in the Relevant IP. I further understand that the [Research Provider] has decided to ask me to author Material that will form part of the Research Material on the basis that I will give my consent described in this paragraph
5. I now, of my own free will and without duress, hereby consent to each Relevant Person undertaking the Specified Acts by each of the Relevant Persons in respect of the Relevant IP and any part of the Research Material I author. I confirm that this consent constitutes a consent within the meaning of sections 195 AW and 195AWA of the Act and with the effect that no relevant Person shall infringe my rights in the Relevant IP by undertaking Specified Acts. This consent is irrevocable.
 6. I confirm that I fully understand the nature and effect of this consent and have been advised by The [Research Provider] to take legal advice in respect of this document.
 7. I covenant with each Relevant Person that I will be sole author of the Relevant IP produced by me in connection with the performance of the Subcontract.
 8. In this consent:

“**Act**” means the *Copyright Act 1968* (Cwlth);

“**Funding Agreement**” means the agreement between the Commonwealth of Australia as represented by the Department of Health and Ageing and the Guild dated 25 June 2007 in respect of the Fourth Community Pharmacy Agreement Research and Development Program

“**Intellectual Property**” includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

“**Material**” includes documents, equipment, records, software (including source code and object code), goods, images, information and data stored by any means including all copies and extracts of the same;

“**Moral Rights**” has the meaning ascribed to that term in section 189 of the Act;

“Relevant Persons” means each of:

- (a) the Commonwealth;
- (b) the Guild;
- (c) any licensee of the Commonwealth or permitted licensee of the Guild;
- (d) any person to whom the Commonwealth or the Guild has supplied the Research Material of the Relevant IP; or
- (e) any contractor, employee or agent of the Commonwealth and/or the Guild;

“Research Material” means all Material:

- (a) brought into existence for the purpose of or under the Subcontract of Funding Agreement;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or
- (c) copied from the Material referred to in paragraphs (a) or (b) or in respect of which a substantial part has been copied from the Material referred to in paragraphs (a) or (b)

“Specified Acts” means any of the following classes or types of acts or omissions by or on behalf of each Relevant Person:

- (a) using, reproducing, adapting, modifying, publishing, broadcasting, communicating, commercialising or exploiting all or part of the Relevant IP or Research Material, with or without attribution of authorship;
- (b) supplementing the Relevant IP and the Research Material with any other Material; and
- (c) using the Relevant IP and Research Material in a different context to that originally envisaged,

but does not include false attribution of authorship.

“Subcontract” means the Subcontract between the Guild and the [Research Provider] dated

“Works” has the meaning given to that term in section 189 of the Act.

All other defined terms not expressly defined in this document have the meaning attributed to them in the Subcontract.

Signed as a Deed Poll on:

SIGNED for and on behalf of)
[research provider])
[ABN])

_____)
Date)
by:)

_____)
Printed name of signatory)

_____)
Signature)

_____)
Position of signatory)

in the presence of:)

_____)
Printed name of witness)

_____)
Signature of witness)

ANNEXURE D – BUDGET

Details¹	2007 - 2008	2008 - 2009	2009-2010	Total
Advertising/Promotion				
Audit ²				
Consultant/contractual fees <i>(including technical expertise, data analysis costs, evaluation, etc)</i>				
Consumables				
Equipment				
Equipment expenditure for items above \$10,000				
Payments to participants				
Photocopying/ Printing				
Staff/personnel <i>(including on-costs)</i> <i>HEO Grade 6 Step 1 (FTE)</i> <i>HEO Grade 5 Step 1 (Casual)</i>				
Telephone/fax/postage				
Travel				
Other costs <i>Tool development testing</i>				
TOTAL EXPENSES excluding GST				
GST				
TOTAL EXPENSES including GST				

NOTES

1. Any budget line item variances over 10% overspend must be explained in detail and will be subject to approval.
2. It is a requirement of the Funding Agreement that an audit be undertaken by an approved auditor and must be provided. An approved auditor is a person who is:
 - (a) registered as a company auditor under the Corporations Act 2001 or a member of the Institute of Chartered Accountants in Australia, or of CPA Australia or the national Institute of Accountants; and
 - (b) not a principal, member, shareholder, office holder or employee of the participant of the Funding Agreement.

**ANNEXURE E – INVESTIGATOR INITIATOR GRANT APPLICATION AND
RESPONSE TO CONDITIONAL LETTER OF OFFER**

Insert Grant Application and responses

ATTACHMENT A – INTERIM REPORT TEMPLATE

Interim Report Form

Grant Information

Identification Number: _____ Amount Awarded: \$ _____

Project Title: _____

Starting Date: _____ Scheduled Completion Date: _____

Name of Institution: _____

Research and Development Category Area: *(Please tick)*

Continuity of Care	<input type="checkbox"/>	Primary Care Services	<input type="checkbox"/>
Workforce Development and Capacity Building	<input type="checkbox"/>	Chronic Disease Management	<input type="checkbox"/>

Contact Person: _____

Abstract Outlining Progress

In a format understandable to the general public and suitable for publicity purposes, summarise the progress to date including achievements, significance in terms of potential benefits and expected future outcomes. (250 words). NOTE: This is not to be a “cut and paste” from a previous document.

Contact details of the person to be contacted about this project for publicity purposes

Name: _____ Email: _____

Tracking Against Work plan

Please provide details of progress against each of the tasks identified in the work plan. The preferred format is an updated work plan (attach separate file if in Microsoft Excel, Microsoft Project or similar).

Principal Investigator Information

For each principal investigator please complete the table below.

TITLE	NAME	RESEARCH AREA	% OF TIME SPENT ON THIS PROJECT	OTHER GRANTS

Changes to Project from that in the Deed of Agreement

In dot point format, advise if there are any changes that have occurred during the last reporting period, highlighting any that are retrospective without prior approval. Briefly explain why the change is/was necessary. (200 word max on each)

Were there any changes to the research team? YES / NO

Date: _____

If YES, please provide brief details.

Were there any changes to the objectives? YES / NO

If YES, please provide brief details.

Were there any changes to the milestones, timeline, start date and/or finish dates? YES / NO

If YES, please provide brief details.

Was ethical clearance required for the changes? YES / NO

If YES, please provide brief details.

Approval from project gained	YES / NO	Date: _____
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Recruitment Targets

Did this project involve recruitment of participants? YES / NO

If YES, please complete the table below indication progress.

Category		Control Group	Intervention Group
No. of patients	Projected		
	Actual		
No. of pharmacies	Projected		
	Actual		
No. of pharmacists	Projected		
	Actual		
No. of _____ <i>Please specify</i>	Projected		
	Actual		

Did this project involve a survey? YES / NO

If YES, please complete the table below.

Survey type	No. Distributed	Projected No. of Responses	Actual No. of Responses
Consumer Survey			
Pharmacy Survey			
Pharmacist Survey			
_____ Survey <i>Please specify</i>			

Explain any discrepancies between the projected and actual numbers reported, and describe plans to address these discrepancies (*attach additional document if necessary*)

--

Collaboration

How did your project make use of collaboration?

COLLABORATOR	INSTITUTION/ORGANISATION	COLLABORATION TYPE	NEW/INTENDED

Dissemination

Have you undertaken activities to promote the awareness of the project? YES / NO

If YES, provide identify activities and provide details of where, when and with whom.

Has this project attracted media attention? YES / NO

If YES, provide brief details in including media outlet and date. (please attach copies)

Additional comments

Are there any other comments (no more than 250 words) that you would like to make with regard to this project that might be useful to the management of this funding program?

Certification

I certify that the information contained in this interim report represents a true account to the research award.

Principal Investigator

Signature

Date

(Higher Authority to complete this section)

I endorse the certification provided by the Principal Investigator.

Name: _____

Position: _____

Telephone: _____ Email: _____

Signature

Date

Initial point of contact for any matters arising from this report.

Name: _____

Telephone: _____

Email: _____

ATTACHMENT B – FINANCIAL REPORT TEMPLATE

Fourth Agreement Research and Development Program Interim Financial Statement

Grant Information

Identification Number: _____ Amount Awarded: \$ _____

Project Title: _____

Starting Date: _____ Scheduled Completion Date: _____

Name of Institution: _____

Reporting Period from _____ to _____

Details	Total Budget	{insert relevant annual budget date} Budget	{insert relevant annual budget date} Actual	Variance
Income from grant payments	\$		\$	%
Interest	\$		\$	%
TOTAL INCOME	\$		\$	%
LESS EXPENDITURE	\$		\$	%
Advertising/Promotion	\$		\$	%
Audit	\$		\$	%
Consultant/contractual fees <i>(including technical expertise, data analysis costs, evaluation, etc)</i>	\$		\$	%
Consumables	\$		\$	%
Equipment	\$		\$	%
Equipment expenditure for items above \$10,000	\$		\$	%
Payments to participants	\$		\$	%
Photocopying/Printing	\$		\$	%
Staff/personnel <i>including on-costs</i>	\$		\$	%
Telephone/fax/postage	\$		\$	%
Travel	\$		\$	%
Other costs <i>(please provide details)</i>	\$		\$	%
TOTAL EXPENSES	\$		\$	%
Surplus income over expenditure	\$		\$	%

Notes

1. The Income and Expenditure are GST exclusive.
2. Please note that any variances over 10% as an overspend must be explained in detail. Statement showing unjustified variances will not be accepted.

Co-Funding

Does the project require approval of Co-Funding YES / NO
Has Co- Funding been approved YES / NO
What is the amount of the Co-Funding \$ _____

Explanation of Variance/s

Please provide reason for variance and action taken to address the budget variance for each budget line item that involves a variance of 10%. (If a budget reallocation is requested please attach a revised budget for consideration.)

Principal Investigator’s Certificate

I certify that all funds expended have been used in accordance with the purposes for which the funds were provided, that the institution has complied with the terms of the Funding Agreement.

Name: _____

Position: _____

Signature: _____ Date: _____

Chief Financial Officer’s Certificate

I certify that all funds expended have been used in accordance with the purposes for which the funds were provided, that the institution has complied with the terms of the Funding Agreement, and that the accounts and records on which this statement has been prepared were properly maintained in accordance with Australian Accounting Standards.

Name: _____

Position: _____

Signature: _____ Date: _____

ATTACHMENT C – FINAL REPORT TEMPLATE

To finalise the project you will need to provide:

- An intellectual property register;
- An audited financial statement
- One page summarising key findings;
- A three page executive summary/summary report
- A 25 page stand alone report;
- The final report; and
- A Full list of publications and presentations to date

Further details and template to be provided

