

TERMS AND CONDITIONS – 2019 GRANTS

- Recipient: «**Organisation**»
- Chief Investigator: «**Title1**» «**Firstname**» «**Surname**»
- Project Title: «**Title**»
- Project Reference: «**REF**»
- Associate Investigator/s: «**AssociateInv**»
- Grant Amount: \$«**Amount**»
- Grant Funding Period: 1 January 2019 to «**Completion**», unless extended pursuant to clause 2.2 c (ii).

The Recipient has been successful in its application for the abovementioned grant amount (**Grant**), funded by The Channel 7 Children's Research Foundation of South Australia Incorporated (**CRF**).

CRF will pay the Grant to the Recipient by equal quarterly instalments over the term of the funding period, commencing in January 2019, subject to the Recipient's acceptance of the terms and conditions set out below, ethics approval being granted where applicable, and written notice that the project is ready to commence. The final payment instalment will be made on receipt of the grant acquittal reports.

1. OBLIGATIONS OF RECIPIENT

1.1 The Recipient:

- (a) grants to both CRF and Channel 7 the royalty-free right to publicise at any time:
 - (i) the Grant, the title of the Research Project and the names of the Recipient and Researchers engaged on it;
 - (ii) a description of the Research Project, including any discoveries made, and any activities undertaken, in connection with it. However, if the Recipient has reasonable grounds to believe, and has advised CRF in writing, that such publicity will adversely affect the:
 - (A) potential commercial value of the Research Project; or
 - (B) existence or enforceability of any Intellectual Property developed in connection with the Research Project,the nature and extent of such publicity will be modified accordingly;
- (b) will provide any media release which has been prepared by or on its behalf in relation to the Research Project, to the Executive Director of CRF at least 48 hours prior to its release. The Recipient authorises CRF to disclose any such media release to Channel 7, so that Channel 7 has the first option to release the story;
- (c) will use its best endeavours to ensure that Researchers (including by making it a condition of any employment or service contract) forward to CRF any conference abstracts, published papers and other materials arising from the Research Project as they become available during the Grant Funding Period, and for a period of 24 months after the end of the Grant Funding Period;
- (d) will make the Researchers available to appear on media nominated by Channel 7, to describe their research and other activities in relation to the Research Project. However, where the Recipient has reasonable grounds to believe, and has advised CRF in writing, that such appearance will adversely affect the:
 - (i) potential commercial value of the Research Project; or

- (ii) existence or enforceability of the Intellectual Property developed in connection with the Research Project,
the nature and extent of such media appearances will be modified accordingly;
- (e) will acknowledge CRF and its provision of the Grant with sufficient prominence in any public statements, advertising material, research reports, articles or other materials produced by or with the Recipient's consent;
- (f) will conduct the Research Project in accordance with the research plan and statement of activities set out in the Grant application form;
- (g) will use its best endeavours to achieve the expected outcomes of the Research Project set out in the Grant application form;
- (h) will conduct the Research Project in accordance with all applicable laws, regulations, guidelines (including without limitation any applicable *National Health and Medical Research Council* guidelines) and industry codes of conduct;
- (i) will obtain and maintain all required licences, permits, legal and ethical approvals and clearances in relation to the Research Project (including without limitation any required licence under the *Gene Technology Act 2000* (Cth) and any ethics committee approvals – evidence of which is to be provided to CRF);
- (j) will not materially vary the activities undertaken in accordance with the Research Project, without CRF's prior written consent.

1.2 The Recipient warrants that:

- (a) it has the necessary qualifications and experience to undertake the Research Project;
- (b) it will devote its efforts and attention to the performance of the Research Project;
- (c) it will complete the Research Project in a timely and efficient manner, and within the Project Duration;
- (d) information disclosed in any expression of interest, or application form, for the Grant is true and correct and not misleading, whether by the inclusion of information, omission of information, or both;
- (e) the Grant will only be used for purposes and expenses which have been authorised by CRF. Funding will not be used for purposes which include, but are not limited to:
 - (i) capital works or the acquisition of major equipment;
 - (ii) remuneration or other salaries for investigators working on the Research Project;
 - (iii) remuneration for any Board member or committee member of the Recipient;
 - (iv) stipends or other similar payments to postgraduate students working on the Research Project;
 - (v) travel expenses for attendance at conferences or consultation with other experts; or
 - (vi) professional advice on the implications of this Agreement, or the assumption of any obligations under it;
- (f) entry into this Agreement and performance of any of its obligations, will not cause the Recipient to breach any of its obligations to a third party;
- (g) the Research Project has not been funded from any other grant giving body or institution;
- (h) if the Research Project receives funding from any other grant giving body or institution, the Recipient will immediately notify the Executive Director of CRF and funding from CRF for the Research Project will be discontinued and refunded to it under clause 6.2(a); and
- (j) it will not deduct any institutional or administrative levy from the Grant.

2. REPORTING

- 2.1 The Recipient will keep complete and accurate accounts and records (**Records**), separate from any other accounts and records of the Recipient's business, detailing:
- (a) its expenditure of the Grant, in accordance with accepted Australian accounting standards;
 - (b) its receipt of any revenue in relation to the Research Project (including any Commercialisation revenue), in accordance with accepted Australian accounting standards; and

(c) progress on the achievement of any key milestones or activities for the Research Project.

The Recipient will provide copies of such Records upon request by CRF from time to time. CRF is entitled to use any information gleaned from such records, for the purposes of reporting, corporate governance or detection of any breaches of this Agreement.

- 2.2 Within 60 days after the end of the Grant Funding Period (which, subject to any extension granted under clause 2.2(c), ends on 31 December of the relevant Grant Funding Period), the Recipient must provide to CRF:
- (a) a one-page summary, in layman's terms, setting out the key outcomes achieved in relation to the Research Project;
 - (b) a summary of any Intellectual Property in the Research Project Outcomes which the Recipient intends to Commercialise;
 - (c) a completed Grant Acquittal Form, attaching specified information and verifying (amongst other matters) all expenditure of the Grant and accompanied by either:
 - (i) any unexpended portion of the Grant, which remains as at the end of the Grant Funding Period; or
 - (ii) a written application to the Executive Director of CRF, requesting an extension to the Grant Funding Period by no more than twelve (12) months. For the avoidance of doubt, the Executive Director of CRF may grant or refuse the request in his or her absolute discretion.
- 2.3 The Recipient will make itself, and its authorised representatives, available to attend meetings upon CRF's reasonable request, to review the performance and progress of any activities to be undertaken during the Research Project.

3. INTELLECTUAL PROPERTY

- 3.1 Subject to clause 3.4, the Recipient owns all Intellectual Property arising from the conduct of the Research Project.
- 3.2 The Recipient grants to CRF the licence rights (if any) set out in Schedule 1 in relation to any Intellectual Property arising from the Research Project. If no licence rights are set out in Schedule 1, the parties agree that the Recipient will only be required to license the Intellectual Property set out in clause 3.4.
- 3.3 The Recipient will ensure that any individual engaged to work upon, or contribute to the Research Project (**Person**):
- (a) agrees not to enforce any Moral Rights in works that they may develop during the Research Project; and
 - (b) consents to CRF and to the extent necessary, Channel 7:
 - (i) using the works without identifying the Person as their author; and
 - (ii) modifying, altering, adapting or otherwise changing the original form (not the findings) of the works, as CRF and/or Channel 7 deem fit for the purpose of communicating the outcomes of the research to a broad public audience.
- 3.4 For any third party Intellectual Property which is used or incorporated within any Intellectual Property produced by the Recipient (**Third Party Material**), the Recipient must use its best endeavours to:
- (a) ensure that it is entitled to use the Third Party Material, and to grant CRF and Channel 7 rights to use the Third Party Material, by virtue of a licence or other lawful arrangement; and
 - (b) notify CRF of the existence of such Third Party Material, who owns it, the basis on which the Recipient is entitled to use it and the extent to which CRF and Channel 7 are entitled to use it.

- 3.5 The Recipient shall immediately notify CRF if it becomes aware of any suspected, threatened or actual infringement of any Third Party Material, by reason of the rights of use granted to CRF and Channel 7 under this Agreement.
- 3.6 In this Agreement:
- (a) **Intellectual Property** means all intellectual property, including but not limited to:
- (i) patents, copyright, trademarks, registered designs, trade secrets, know-how, circuit layouts, plant variety rights, any right to have confidential information kept confidential, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; and
 - (ii) any application for, and the right to apply for, registration of any of the rights referred to in paragraph (a).
- (b) **Moral Rights** means rights:
- (i) to be attributed as the author of a work;
 - (ii) not to have authorship of a work falsely attributed to someone else; and
 - (iii) not to have work subjected to derogatory treatment, pursuant to the *Copyright Act 1968* (Cth) and laws of any other applicable jurisdictions, providing the same or similar rights.

4. ROYALTIES

- 4.1 The Recipient must pay to CRF the royalties (if any) set out in Schedule 2, in the manner and on the terms set out in that Schedule, on the GST-exclusive revenue received by the Recipient from Commercialisation of any part of the Research Project Outcomes.
- 4.2 If no royalties are specified in Schedule 2, the Recipient will negotiate in good faith with CRF to agree a royalty rate (which rate will be determined by assessment of the respective contributions made by CRF and the Recipient to the research, development and Commercialisation of the Research Project Outcomes). The Recipient will pay the Royalty to CRF in the manner and on terms to be agreed between the parties, on the GST-exclusive revenue the Recipient receives in relation to any Commercialisation of any part of the Research Project Outcomes. If the parties are unable to agree the royalty rate, or the terms on which the royalty will be paid by the Recipient under this clause 4 within sixty (60) days of commencement of the negotiations, the matter will be dealt with by the parties as a dispute in accordance with clause 8.
- 4.3 In this Agreement:
- (a) **Research Project Outcomes** means all outcomes arising from the Research Project, including without limitation all discoveries, inventions, products, processes, documents and materials produced or developed (including any Intellectual Property) by the Recipient during the Research Project;
- (b) **Commercialisation** means to:
- (i) manufacture, sell, hire, or exploit a product or process that uses or incorporates any of the Research Project Outcomes;
 - (ii) provide a service that uses or incorporates any of the Research Project Outcomes; or
 - (iii) grant a licence or sub-licence to a third party to do any of those things.

5. INDEMNITY, RELEASE AND INSURANCE

- 5.1 The Recipient indemnifies CRF and each of its agents, contractors, employees and officers (**those indemnified**) against any liability, loss, claim (including third party claim), damage, expense and cost (on a full indemnity basis and whether incurred by, or awarded against, those indemnified) that they may suffer or incur as a result of, or in connection with:
- (a) any breach of this Agreement by the Recipient;
 - (b) the Research Project;
 - (c) the information disclosed in the expression of interest or application form, for the Grant; or
 - (d) any act or omission (including without limitation, any negligence, fraud or wilful default) of the Recipient, its agents, contractors, employees and officers.
- 5.2 To the maximum extent permitted by law CRF excludes, and the Recipient releases CRF from, any liability, loss, claim (including third party claim), damage, expense or cost which may be suffered or incurred by the Recipient as a result of, or in connection with:
- (a) the Research Project;
 - (b) CRF's assessment and processing of any information disclosed in the expression of interest, or application form, for the Grant; or
 - (c) any act or omission (including without limitation, any negligence) of CRF, its agents, contractors, employees and officers.
- 5.3 The Recipient shall take out and maintain adequate public liability, product liability, professional indemnity, and any other insurance necessary to cover any liability that the Recipient may incur in connection with this Agreement. The Recipient acknowledges and agrees that it remains responsible for assessing and considering the risks and scope of the insurances required by this Agreement.
- 5.4 A copy of all policies and certificates of currency must be submitted to CRF within 30 days of its request. If the Recipient fails to take out and maintain insurance policies in accordance with clause 5.3, CRF may (but is not obliged to):
- (a) take out and maintain any such insurance and deduct or charge the cost of effecting it, to the Recipient; and/or
 - (b) refuse to make any further payments to the Recipient (under this Agreement or any other document) until the insurance policies and certificates of currency are submitted to CRF.
- 5.5 The Recipient's liability under the indemnity in this clause 5.1 will be reduced proportionately to the extent that any negligent act or omission of CRF or its officers, employees, sub-contractors or agents contributed to the relevant loss or liability.

6. TERMINATION

- 6.1 CRF may immediately terminate this Agreement and discontinue the Grant upon written notice to the Recipient if:
- (a) the Recipient breaches any of its obligations in this Agreement, and fails to remedy the breach within 30 days of receiving written notification from CRF requiring it to do so;
 - (b) the Recipient uses any part of the Grant for a purpose other than the Research Project, except with CRF's prior written consent;
 - (c) the Recipient receives funding from a source other than CRF in respect of the same research activities;
 - (d) the Recipient commits a breach of any of its warranties;
 - (e) the Recipient undertakes any acts or omissions which, in the opinion of CRF, bring or may bring it into disrepute, or damage the reputation and good corporate standing of CRF;

- (f) the Recipient has suffered, or in CRF's opinion, is in jeopardy of suffering, an event of bankruptcy, insolvency, liquidation, external administration or receivership;
- (g) where the Recipient is a body corporate, it amends or repeals its Articles of Association, Rules or Constitution so as to materially change its objects or purposes; or
- (h) the Recipient does not commence the project within a reasonable time-frame (9 months from start of grant funding period).

6.2 If CRF terminates the Agreement:

- (a) it may, in its absolute discretion, require the Recipient to refund to CRF any part of the Grant already paid to the Recipient. If CRF exercises that discretion, the refund must be made without set-off, deduction or withholding, within 10 business days of written notice to the Recipient;
- (b) the Recipient must return or destroy (at CRF's option) any confidential information of CRF that is in the Recipient's possession or control, provided that the Recipient may retain 1 copy of CRF's confidential information for audit and corporate governance purposes;
- (c) CRF may in its absolute discretion require the Recipient to immediately cease using any logo or other reference to CRF in connection with the Research Project, and destroy or return to CRF any material bearing such logos or other references; and
- (d) any rights and remedies of the parties accrued prior to termination will not be affected.

7. GOODS AND SERVICES TAX

- 7.1 Where any supply to be made by one party (**GST Supplier**) to another party (**GST Recipient**) under or in connection with this Agreement is subject to GST (other than a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):
- (a) the consideration payable or to be provided for that supply but for the application of this clause 7 (**GST Exclusive Consideration**) shall be increased by, and the GST Recipient shall pay to the GST Supplier, an amount equal to the GST payable by the GST Supplier in respect of that supply; and
 - (b) the GST Recipient must pay that additional amount at the same time and in the same manner as the GST Exclusive Consideration payable or to be provided for that supply.
- 7.2 If any payment to be made to a party under or in connection with this Agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with clause 7.1(a).
- 7.3 Notwithstanding any other provision of this Agreement, the GST Recipient need not make any payment for a taxable supply made by the GST Supplier under or in connection with this Agreement until the GST Supplier has given the GST Recipient a tax invoice in respect of that taxable supply.
- 7.4 A word or expression used in this clause which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in this clause 7.
- 7.5 It is the understanding of the parties that if the Recipient is registered or required to be registered for GST purposes, the Grant will constitute consideration for a taxable supply made by the Recipient. In those circumstances, the amount of the Grant will be increased in accordance with clause 7.1.

8. DISPUTE RESOLUTION

- 8.1 A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute (**Dispute**) arising out of this Agreement unless it has complied with this clause 8.
- 8.2 A party claiming that a Dispute has arisen must notify the other party in writing (**Dispute Notice**).
- 8.3 The parties must each use their best endeavours to resolve the Dispute.
- 8.4 If the parties have not been able to resolve the Dispute within 14 days after the issue of a Dispute Notice, either party may refer the dispute to mediation by the Australian Commercial Disputes Centre (**ACDC**) for resolution in accordance with the Guidelines for Commercial Mediation of the ACDC.
- 8.5 Each party must bear its own costs of resolving a Dispute under this clause 8, and the parties to the Dispute must bear equally the costs of any appointed person and independent premises used for resolving or attempting to resolve the Dispute.
- 8.6 If a party to a Dispute does not comply with any of its obligations pursuant to clauses 8.1 to 8.4, the other party to the Dispute will not be bound by those clauses.
- 8.7 If the Dispute has not been resolved within 45 days from the date of issue of the Dispute Notice (or such other period agreed between the parties), a party that has complied with clauses 8.1 to 8.4 may terminate the dispute resolution process by giving notice to the other party to the Dispute.
- 8.8 The parties acknowledge that the purpose of any exchange of information or documents, or the making of any settlement offer under this clause 8, is an attempt to settle the dispute between the parties. Neither party may use any information or documents obtained through the dispute resolution process for any other purposes.

9. SEVERABILITY

Any clause of this Agreement (or part of it) that is illegal or unenforceable may be severed, and the remaining clauses of this Agreement will remain in full force and effect.

10. SURVIVAL

Any indemnity, obligation of confidentiality or other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.

11. WAIVER

A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

12. ASSIGNMENT AND ENCUMBRANCES

The Recipient must not encumber, transfer or assign, or attempt to encumber, transfer or assign any:

- (a) part of the Grant received from CRF; or
- (b) its rights or obligations under this Agreement, except with the prior written consent of CRF.

13. GOVERNING LAW

This Agreement is governed by the laws of South Australia and the parties submit to the non-exclusive jurisdiction of the courts of South Australia.

14. INTERPRETATION AGAINST PROPONENT

A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it.

15. RELATIONSHIP BETWEEN THE PARTIES

15.1 The parties acknowledge and agree that nothing in this Agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the parties.

15.2 Neither party has the authority to bind the other party in any manner whatsoever, without the written approval of the other party.

16. NOTICES

16.1 A party giving a notice under this Agreement must do so in writing:

- (a) to the address set out in clause 16.3 below, as may be varied from time to time; and
- (b) by hand delivery, post, facsimile or electronic mail to that address.

16.2 A notice given in accordance with clause 16.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by post, 3 days after the date of posting (if posted to an address within Australia) or 7 days after the date of posting (if posted to an address outside of Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages to the correct facsimile address; and
- (d) if sent by electronic mail, when the sender's electronic mail system generates a message confirming successful transmission of the electronic mail to the correct address.

16.3 Notices may be delivered to the following addresses, as varied by written notice from time to time:

To the Recipient, «Organisation» :

[insert details:]

Physical address:

Facsimile:

Email:

To CRF:

Physical address:

171 Days Road, Regency Park, SA 5010

Facsimile:

08 8243 8218

Email:

crf@crf.org.au

17. EXECUTION

Project Title: **«Title»**
Project Reference: **«REF»**
Grant Amount: **\$«Amount»** (excl GST)
Chief Investigator: **«Title1» «Firstname» «Surname»**

Signed by an Authorised Officer of «Organisation» :

Signature:

Position:

Print Name :

Date:

Acknowledged by the Chief Investigator

Signature:

Position:

Print Name :

Date:

Signed by an Authorised Officer of the Channel 7 Children’s Research Foundation of South Australia Incorporated:

Signature:

Position:

Print Name :

Date:

SCHEDULE 1

INTELLECTUAL PROPERTY

(i) In this Schedule:

Intellectual Property Rights means all intellectual property rights, including but not limited to:

- (a) patents, copyright, trademarks, registered designs, trade secrets, know-how, circuit layouts, plant variety rights, any right to have confidential information kept confidential, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; and
- (b) any application for, and the right to apply for, registration or renewal of any of the rights referred to in paragraph (a).

Research Project Outcomes means all outcomes arising from the Research Project, including without limitation all discoveries, inventions, products, processes, documents and materials produced or developed by the Recipient in connection with the Research Project.

(ii) The Recipient grants to CRF, and will procure that any independent contractor, employer or employee of the Recipient who may own Intellectual Property Rights in the Research Project Outcomes grants to CRF, a non-exclusive, royalty-free licence to the Intellectual Property Rights in Research Project Outcomes on the following basis:

(a) Field of licence (i.e. any limitation on the field in which the Intellectual Property Rights can be applied by CRF):

[details to be confirmed]

(b) Term of licence:

[details to be confirmed]

(c) Territory of licence:

[details to be confirmed]

SCHEDULE 2

ROYALTIES

- (i) Royalties will be payable by the Recipient in accordance with this Schedule 2 if the royalty and payment provisions set out below have been completed.
 - (a) The Recipient will pay the following royalty to CRF (**Royalty**):
[To be negotiated in accordance with Clause 4.2 if Research Project Outcomes are commercialised]
 - (b) The Recipient will pay the Royalty to CRF in accordance with the following payment terms:
[To be negotiated in accordance with Clause 4.2 if Research Project Outcomes are commercialised]

