

Funding Agreement

Dated

Parties

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

and

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

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Recitals

- A. The Foundation requires the Research to be rendered.
- B. The Institution has the expertise and resources to perform the Research.
- C. The Institution has represented to the Foundation that the Research Personnel have the qualifications and the ability to independently render the Research in a professional and competent manner.
- D. The Institution has agreed to render, and the Foundation has agreed to fund, the Research in accordance with the terms of this Agreement.

Operative clauses

1. Definitions and interpretation

1.1 Definitions

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

Agreement means this document, including any schedule or annexure to it.

Authorised Person means:

- (a) in respect of the Foundation;
 - (i) a director, officer, employee, contractor or consultant of the HCF Group;
 - (ii) an adviser to the HCF Group; and
 - (iii) an officer or employee of an adviser to the HCF Group; and
- (b) in respect of the Institution, the Researcher Personnel.

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

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

Commercial IPR has the meaning given to that term in **clause 6.2(b)(i)(A)**.

Commercialise or **Commercialisation** means to:

- (a) generate revenue, including licence fees or royalties, from;
- (b) obtain any other payment, or benefit for the assignment, transfer or licence of any interest in,

Intellectual Property Rights, the exercise of any such right, or anything made by exercising any such right.

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

Confidential Information of a Party means, whether or not in material form:

- (a) the existence of this Agreement;
- (b) all information with respect to that Party or a Related Body Corporate of that Party disclosed (orally, in writing, by electronic or magnetic media, by visual observation or by other means) by that Party to the other Party including past, current and prospective financial data; customer, vendor or shareholder lists of data; business or marketing plans, projects or competitive strategies; technical or strategic information; economic or commercially sensitive information; trade secrets; drawings, specifications, software or business information; information about a Party's employees or members and any other non-public material or

information relating to the business activities, communications, ventures or operations of that Party or its Related Bodies Corporate;

- (c) in respect of the Foundation, all other information of a confidential or proprietary nature directly or indirectly disclosed by or on behalf of the HCF Group to the Institution or the Research Personnel; and
- (d) any note, calculation, conclusion, summary, record, or other material based on, or derived or produced partly or wholly from, or incorporating any of, the information referred to in paragraphs (b) and (c).

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

Dispute has the meaning given to that term in **clause 18.1(a)**.

Dispute Notice has the meaning given to that term in **clause 18.1(b)**.

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

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

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

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

GST Act has the meaning given to that term in **clause 15.1**.

HCF Group means the Foundation, The Hospitals Contribution Fund of Australia Limited ABN 68 000 026 746 and any of its Related Bodies Corporates (as that term is defined in the Corporations Act).

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

- (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$10,000 upon any of the Institution's property and is not satisfied, set aside or withdrawn within seven days of its issue;
- (b) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Institution which is not satisfied within 7 days;
- (c) the Institution suspends payment of its debts;
- (d) the Institution becomes an externally-administered body corporate under the Corporations Act;
- (e) steps are taken by any person towards making the Institution an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days);
- (f) a controller (as defined in section 9 of the Corporations Act) is appointed in respect of any of the property of the Institution or any steps are taken for the appointment

of a controller (but not where the steps taken are reversed or abandoned within 14 days);

- (g) the Institution is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act;
- (h) a resolution is passed for the reduction of capital of the Institution or notice of intention to propose such a resolution is given, without the prior written consent of the Foundation;
- (i) the Institution no longer exists as a legal entity or authority pursuant to its incorporating or establishing statute; or
- (j) an event happens analogous to an event specified in (a) to (i) above to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the laws of Australia applied.

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

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

These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights, but excluding Moral Rights.

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

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

Modern Slavery Laws means any law, statute and regulation which prohibits exploitation of a worker, human trafficking, slavery, servitude, forced labour, debt bondage or deceptive recruiting for labour or services, or similar types of conduct, and applicable or otherwise in force in the jurisdiction in which the Foundation or the Institution is registered or conducts business or in which activities relevant to the Agreement are to be performed.

Moral Rights means:

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

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

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

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

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

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

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

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

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

Related Body Corporate has meaning given to it by sections 9 and 50 of the Corporations Act.

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

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

Research IPR means any and all Intellectual Property Rights in the Research, excluding any Intellectual Property Rights in the Foundation Material.

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

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

1.2 Interpretation

Unless expressed to the contrary:

- (a) words importing:
 - (i) the singular include the plural and vice versa;
 - (ii) any gender include the other gender;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:

- (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and permitted assigns;
 - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a right includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) provisions or terms of this Agreement or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
 - (vii) time is to local time in Sydney, New South Wales;
 - (viii) "\$" or "dollars" is a reference to the lawful currency of Australia;
 - (ix) this Agreement or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the Parties;
 - (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission; and
 - (xi) anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (d) mentioning anything after **include, includes** or **including** does not limit what else might be included; and
- (e) where time is to be reckoned by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this Agreement.

2. Engagement of Institution

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

3. Performance of Research

- (a) The Institution:

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

4. Institution's obligations

- (a) The Institution must ensure that the Research is performed:
 - (i) in accordance with this Agreement;
 - (ii) with all due skill and care and to the best of its knowledge and expertise and to the satisfaction of the Foundation; and
 - (iii) in compliance with all applicable laws.
- (b) The Institution must ensure that the Research Personnel:
 - (i) act in accordance with this Agreement;
 - (ii) are suitably competent and qualified to perform the Research;
 - (iii) provide the Research in a professional and responsible manner;
 - (iv) act with all due care and skill and to the best of their knowledge and expertise in performing the Research;
 - (v) act in accordance with any directions given by any person nominated by the Foundation from time to time;
 - (vi) act in compliance with all applicable laws;
 - (vii) act in compliance with all policies of the Foundation as current from time to time and as notified to the Institution; and
 - (viii) subject to the Foundation providing reasonable notice, are made available to the Foundation at such times as reasonably requested by the Foundation and at no cost to the Foundation to provide professional input into reviewing or assessing research applications made to the Foundation which are within the area of expertise for such Research Personnel.

- (c) The Institution must not, and must ensure the Research Personnel do not:
 - (i) assume or create or attempt to assume or create, directly or indirectly, any obligation of or in the name of the Foundation; or
 - (ii) intentionally do anything while performing the Research that is or may be harmful to the reputation of the Foundation.
- (d) The Institution will be liable to the Foundation for the acts, omissions, defaults and negligence of the Research Personnel as if they were the acts, omissions, defaults or negligence of the Institution.
- (e) The Institution must ensure all Progress Reports are provided by the relevant Progress Report Due Date set out in **Schedule 2** or such other date determined by the Foundation (**Due Date**).
- (f) The Institution must maintain, and make available to the Foundation upon request, complete and accurate:
 - (i) accounting records to substantiate the use of the Fees, within generally accepted accounting principles; and
 - (ii) records of the Research undertaken and the Foundation's progress against its objectives in **Schedule 2**.
- (g) The Institution must, when requested by the Foundation, provide all information, explanations and advice which the Foundation requires in relation to the Institution's engagement and the performance of the Research.
- (h) The Institution agrees that the Research Title, Institution name and names of Research Personnel may, at the discretion of the Foundation and without notice or consultation with the Institution, be included in the Foundation Year in Review, on the Foundation website; or any other Foundation promotional or information material.

5. Confidential Information and Announcements

5.1 Keep Confidential Information Confidential

Each Party must, at its expense:

- (a) keep Confidential Information of the other Party confidential, by exercising a degree of care not less than the care used by that Party to protect its own Confidential Information;
- (b) establish and maintain effective security measures to safeguard Confidential Information of the other Party from access or use not authorised by this Agreement;
- (c) keep Confidential Information of the other Party under its control; and
- (d) ensure that any Authorised Person of it to whom Confidential Information of the other Party is disclosed does each of those things.

5.2 Exceptions

The obligations of confidentiality under this Agreement do not extend to information that (whether before or after the date of this Agreement):

- (a) is rightfully known to, or in the possession or control of, a Party or an Authorised Person of that Party and not subject to an obligation of confidentiality on the Party or that Authorised Person;
- (b) is public knowledge (except because of a breach of this agreement or the obligations of confidentiality under this agreement); or
- (c) each Party or an Authorised Person is required by law to disclose provided that the Party complies with **clause 5.3**.

5.3 Disclosure by law

Each Party must:

- (a) ensure that neither itself nor any Authorised Person of it takes any action as a result of which it may be required to make a disclosure under **clause 5.2(c)**;
- (b) inform the other Party in writing of any disclosure that is so required before the disclosure is made so that the other Party can take such actions to seek to protect its Confidential Information as it deems appropriate;
- (c) consult with the other Party and endeavour to agree the content of any announcement that the other Party is required to make; and
- (d) take reasonable steps to restrict distribution of the Confidential Information so disclosed.

5.4 Use of Confidential Information

Each Party may only use Confidential Information of the other Party for the purposes of this Agreement and must ensure that any Authorised Person of it to whom Confidential Information of the other Party is disclosed does not use Confidential Information for another purpose.

5.5 Disclosure of Confidential Information

Each Party must:

- (a) may only disclose Confidential Information of the other Party to an Authorised Person of it who has a need to know for the purposes of this Agreement (but only if and to the extent the Authorised Person has a need to know); and
- (b) must advise each such Authorised Person of their obligations with respect to the Confidential Information of the other Party pursuant to this Agreement.

5.6 **Unauthorised use, copying or disclosure of Confidential Information**

Each Party must:

- (a) immediately give the other Party notice if it becomes aware of any suspected or actual unauthorised use, copying or disclosure of Confidential Information of the other Party;
- (b) immediately take all steps to prevent or stop the suspected or actual unauthorised use, copying or disclosure of Confidential Information of the other Party; and
- (c) ensure that any Authorised Person of it to whom Confidential Information of the other Party is disclosed does each of those things.

5.7 **Enforcement of this agreement**

Each Party must:

- (a) comply with any direction issued by the other Party regarding enforcement of this agreement or the obligations of confidentiality under this Agreement (including starting, conducting and settling enforcement proceedings);
- (b) provide assistance reasonably requested by the other Party in relation to any proceedings the other Party may take against any person for unauthorised use, copying or disclosure of Confidential Information of the other Party; and
- (c) ensure that any Authorised Person of it to whom Confidential Information of the other Party is disclosed does each of those things.

5.8 **Acknowledgement**

Each Party acknowledges for itself, and any Authorised Person of it to whom Confidential Information of the other Party is disclosed, that:

- (a) it is aware that any breach of this Agreement will result in the other Party suffering damage; and
- (b) in the event of a suspected or actual breach of this Agreement or any obligation of confidentiality under this Agreement, the other Party is entitled, in addition to all other remedies available at law, to seek and obtain injunctive relief without having to prove the inadequacy of other remedies at law.

5.9 **Delivery**

The Institution must as soon as reasonably practicable, and without undue delay, deliver (in the case of material in physical form) or permanently delete (in the case of material in electronic form) all Confidential Information of the Foundation in its possession or control:

- (a) on the expiry of the Term or termination of this Agreement; or
- (b) at any time upon the written request of the Foundation (acting reasonably).

The obligations under this clause 5.9 (Delivery) do not apply to routine backups made in the ordinary course of the Institution's business, provided that no attempt is made to recover or

otherwise access such Confidential Information after the expiry or termination of this Agreement, or following a request by the Foundation, as applicable.

5.10 Announcements & Publication

- (a) Subject to clause 5.11, the Institution may publish the results of the Research in academic journals and present the Research at academic or professional conferences or seminars, without the prior consent of the Foundation, provided that:
 - (i) any such publication or presentation is substantively academic in nature; and
 - (ii) where the Research includes or is based on the Foundation's Confidential Information, data, or Intellectual Property, the Institution must provide the Foundation with a reasonable opportunity to review the relevant manuscript or materials prior to submission or presentation, for the limited purpose of identifying and ensuring the protection and appropriate use of the Confidential Information, data, or Intellectual Property of the Foundation.
- (b) The Institution must not make any media release, public announcement, marketing communication or other non-academic external communication relating to the Research, or that refers to or identifies the Foundation, without the Foundation's prior written consent.
- (c) The Institution must take all reasonable steps to acknowledge, into perpetuity (including after the expiry or termination of this Agreement), the funding provided by the Foundation under this Agreement by incorporating into all communications about the Research words to the effect of 'supported by the HCF Research Foundation' or such other words as may be agreed with the Foundation in writing from time to time.

5.11 Disclosure of Research Results Prior to Publication

- (a) Without limiting the other provisions of this **clause 5**, the Institution and Research Personnel must not disclose any results of the Research to, or otherwise directly disclose the nature of the Research to, any third party including any health insurance provider (including any person whom the Institution or Research Personnel ought reasonably be aware is likely to disclose the results to a health insurance provider) except:
 - (i) with the prior written consent of the Foundation (which may be withheld in its absolute discretion); or
 - (ii) once those results of the Research have been published or otherwise entered the public domain in accordance with **clause 5.10**.

6. Intellectual Property Rights, Moral Rights, and Commercialisation

6.1 Intellectual Property Rights

- (a) The Foundation owns or licences all Intellectual Property Rights in the Foundation Material. Nothing in this Agreement assigns or transfers any ownership, rights, title or interest in the Foundation Material to the Institution or Research Personnel. The Foundation grants to the Institution for the Term a non-exclusive, non-

transferrable, royalty free license to use the Foundation Material in Australia solely for the purpose of providing the Research in accordance with this Agreement and such licence terminates on termination or expiry of this Agreement. Upon termination or expiry of this Agreement the Institution must, at its own cost, return all Foundation Material to the Foundation.

- (b) The Institution owns or licences all Research IPR. The Institution irrevocably grants to the HCF Group an unconditional, worldwide, perpetual, royalty free licence (including the right to sub-licence) to use, including exploit, on its own terms, all Research IPR.
- (c) The Institution must during the Term have an intellectual property policy in place which is reviewed at least every two years and covers among other things the ownership and availability of Intellectual Property Rights generated as a result of the Research including:
 - (i) registration of ownership of such rights with IP Australia where applicable; and
 - (ii) protecting such rights through licensing and accessibility arrangements.

6.2 Commercialisation of Research IPR

- (a) The Institution may only Commercialise or facilitate the Commercialisation of the Research IPR, if and when it complies with this **clause 6.2**.
- (b) As soon as practicable before the Institution proposes to Commercialise the Research IPR, or as soon as practicable after it becomes aware of a rational proposal or opportunity to Commercialise the Research IPR, whichever is the earlier, it must:
 - (i) provide the Foundation with a written notice that:
 - (A) identifies the Research IPR that will potentially be Commercialised (**Commercial IPR**);
 - (B) describes how it is proposed that the Commercial IPR will be Commercialised in sufficient detail for the Foundation to assess the viability of that proposed Commercialisation;
 - (ii) either as part of the notice in **clause 6.2(b)(i)**, or if such information is not known at that time, in writing as to whether or not the Institution intends to Commercialise this Commercial IPR, either itself or through an arrangement with another entity, and if the latter, the identity of that entity; and
 - (iii) provide the Foundation with all other information it reasonably requests at any time in respect of the relevant Commercial IPR, and the potential Commercialisation, as soon as practicable after that request is made by the Foundation.
- (c) If the Institution intends to Commercialise the Commercial IPR, then:
 - (i) within **30** days of giving the notice in **clause 6.2(b)(i)** above it will provide the Foundation with a business plan for the Commercialisation of the

Commercial IPR to the reasonable satisfaction of the Foundation, which must include the proposed capital costs; and

- (ii) within 30 days of receiving the notice in **clause 6.2(c)(i)** above, or any information requested under **clause 6.2(b)(iii)**, whichever is the later, the Foundation will notify the Institution in writing as to which of the following options will, in its sole discretion, apply in relation to the Commercialisation of the Commercial IPR:
 - (A) the Foundation will pay a proportion (e.g. 10%) of the capital costs, such proportion to be determined by the Foundation in its sole discretion, and the Foundation will receive the same proportion (e.g. 10%) of net revenue per annum from the Commercialisation of the Commercial IPR in perpetuity; or
 - (B) the Foundation will not contribute to the costs of Commercialising the Commercial IPR, and will receive 5% of the net revenue per annum from the Commercialisation of the Commercial IPR until such time as the Foundation receives an amount equal to 5 times the amount of the Fees; or
 - (C) if it is proposed by either Party that an entity other than the Institution will be created for the purpose of Commercialising the Commercial IPR, the Foundation (or its nominated member(s) of the HCF Group) will invest in that entity in an amount and in a manner to be determined in its sole discretion, and the Foundation or its nominee(s) will be given equity in that entity in a proportion commensurate with that investment as determined by the Foundation acting reasonably,and the parties will be bound by that option, but will negotiate in good faith and use reasonable endeavours to document in more detail the terms of that agreement.
- (d) If the Institution notifies the Foundation pursuant **clause 6.2(b)(ii)** that it does not intend to Commercialise the Commercial IPR, or does not provide the notice in **clause 6.2(b)(ii)** within a reasonable time, then the Foundation has the right, but not the obligation, to Commercialise the Commercial IPR, and the Institution will do all things necessary or desirable to give effect to such Commercialisation, including if so directed by the Foundation, assigning any or all such Commercial IPR to the Foundation, or another entity nominated by the Foundation.
- (e) Unless otherwise agreed by the Foundation, the Institution will not Commercialise the Commercial IPR in a manner, or do anything else in relation to the Commercial IPR, that is inconsistent with the Foundation receiving the benefit referred to in an option notified pursuant to **clause 6.2(c)**, or **clause 6.2(d)** as the case may be.

6.3 Moral Rights

- (a) The parties acknowledge that the Research Personnel may have Moral Rights in copyright works comprising the Research. The Institution warrants that its Research Personnel have and will, to the fullest extent permitted by the laws of any applicable jurisdiction, voluntarily, irremovably and unconditionally:

- (i) consent to any acts or omissions by the HCF Group, its licensees, successors and assigns which would otherwise infringe the Moral Rights of the Research Personnel; and
- (ii) waive all and any Moral Rights the Research Personnel is entitled to overseas,

in respect of the copyright works comprising the Research, sufficient to ensure the Foundation's unimpeded use of the Research under **clause 6.1(b)**.

7. Privacy

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

- any HCF PI other than in providing the Research, is required or authorised by or under law;
- (B) any accidental or unauthorised access to any HCF PI, or any other disclosure or use of HCF PI not for the purpose of providing the Research;
 - (C) any loss of any HCF PI;
 - (D) any breaches of its security and/or network, whether or not the breach involves any HCF PI; and
 - (E) any breach of this **clause 7**;
- (iii) if any of the events specified in **clause 7(a)(ii)** occur, or either Party has reason to believe that any of those events have occurred, comply with all the Foundation's policies and procedures that apply to that event, or any reasonable directions given by the Foundation;
 - (iv) provide assistance to the Foundation in a timely manner to enable the Foundation to investigate any alleged or suspected privacy breach or complaint in respect of that information;
 - (v) promptly disclose or give access to HCF PI received from the Foundation to third parties if instructed to do so in writing by the Foundation and provided that any access is during business hours;
 - (vi) maintain a privacy policy as required by the Privacy Act and consider any amendments to that policy reasonably requested by the Foundation within 21 days of receiving a written request from the Foundation to do so;
 - (vii) actively monitor and if requested by the Foundation in writing, permit the Foundation or its authorized auditor to audit compliance with the privacy policy referred to above, provided that the Institution is not required to provide any level of access to any premises, materials, systems or personnel:
 - (A) outside business hours; or
 - (B) for purposes exceeding what is reasonably required for audit purposes; and
 - (viii) comply generally with the Privacy Act and any other statute, regulation or law in Australia or elsewhere which relates to the protection of HCF PI and which the Institution must observe.

8. Insurance

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

9. Warranties

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

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

10. Indemnity

10.1 Indemnity

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

- (a) the performance or lack of performance by the Institution or the Research Personnel of the Research;
- (b) any breach of this Agreement by the Institution;
- (c) death or personal injury or damage to property caused by an act or omission of the Institution or the Research Personnel; or
- (d) the Research infringing any Intellectual Property Rights or Moral Rights of any third party,

except to the extent that the Loss is attributable to the act or omission of the Foundation.

10.2 Limitation of liability

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

11. Funding

11.1 Invoice

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

- (a) a tax invoice which complies with the GST Act (**Invoice**) and sets out:
 - (i) the project ID as notified in writing to the Institution by the Foundation on or about the Commencement Date;
 - (ii) the Invoice number; and
 - (iii) the Phase for which the Invoice has been raised and the amount payable by the Foundation; and
- (b) a copy of the completed Progress Report for that Phase.

11.2 Payment

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

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

11.3 Recovery of Fees

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

- (a) the Foundation is not reasonably satisfied has been expended in accordance with this Agreement;
- (b) is unexpended at the completion of a Phase or the expiration or termination of this Agreement; or
- (c) the Foundation deems appropriate for a failure by the Institution to meet the objectives set out in **Schedule 2**; or
- (d) at any time during the Term a third party either funds the Research or agrees to fund the Research.

12. Modern Slavery

- (a) The Institution must ensure that:
 - (i) in performing its obligations in connection with this Agreement, the Institution must and will ensure that the Research Personnel must:
 - (A) not engage in any conduct or omission which may contravene any Modern Slavery Laws; and
 - (B) comply with any Foundation policy relating to modern slavery; and

- (ii) it does all things required or necessary to mitigate or reduce modern slavery risks in its operations and supply chains and stay in compliance with all applicable Modern Slavery Laws.
- (b) The Institution represents and warrants to the Foundation that it conducts its business in a manner that is consistent with Modern Slavery Laws.
- (c) The Institution must provide information and documents reasonably requested by the Foundation in relation to how it is mitigating or reducing modern slavery risks in its operations and supply chains and staying in compliance with all applicable Modern Slavery Laws.
- (d) If the Institution is in breach of this **clause 12**, the Foundation may notify the Institution of the breach and require within 20 Business Days that it undertake remedial action to rectify the breach, ensure its compliance with Modern Slavery Laws and minimise the risk of modern slavery within the Institution's supply and value chains.
- (e) If the Institution fails to undertake the remedial action as required in **clause 12(d)**, the Foundation may terminate this Agreement with immediate effect by giving written notice to the Institution and **clause 13.2** applies.

13. Termination

13.1 Termination

- (a) The Foundation may terminate this Agreement immediately by giving written notice to the Institution if:
 - (i) the Foundation is not reasonably satisfied that the Institution is making appropriate progress against its objectives set out in **Schedule 2**;
 - (ii) the Institution breaches any obligation under this Agreement and does not remedy that breach within 30 days of receipt of a written notice from the Foundation specifying the breach and requiring the breach to be remedied;
 - (iii) the Institution suffers an Insolvency Event; or
 - (iv) the employment of the Principal Investigator is terminated by the Institution or the Principal Investigator resigns from his or her employment with the Institution.
- (b) The Foundation may at any time without cause terminate this Agreement by giving to the Institution not less than three months' prior written notice.
- (c) The Institution may at any time without cause terminate this Agreement by giving to the Foundation not less than three months' prior written notice.

13.2 After termination

- (a) Termination of this Agreement is without prejudice to the rights of each Party against the other accrued up until the date of termination.
- (b) If this Agreement expires or if it terminated under **clause 13.1**, within 15 Business Days after the date of expiry or termination:

- (i) the Institution must return all property of the Foundation (including any Foundation Confidential Information in accordance with **clause 5**) and must ensure that the Research Personnel do the same; and
- (ii) the Foundation must pay the Institution all amounts it owes the Institution for Research performed up to, and including, the date of expiry or termination provided that it is in receipt of the necessary Invoices and relevant Progress Reports required to be provided by the Institution.

14. Nature of relationship

14.1 Independent provider

The Institution acknowledges that:

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

14.2 Employment related expenses and indemnity

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

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

15. GST

15.1 Definitions

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

15.2 GST gross up

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

15.3 Reimbursements (net down)

If a payment to a Party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that Party, then the payment will be reduced by the amount of any input tax credit to which that Party, or the representative member of the GST group that Party is a member of (as the case may be), is entitled for that loss, cost or expense.

15.4 Adjustments

If an adjustment event occurs in relation to a taxable supply made under or in connection with this Agreement then:

- (a) if the adjustment event gives rise to an increase in the GST payable by the supplier in relation to the supply, a payment equal to that increase will be made by the recipient to the supplier;
- (b) if the adjustment event gives rise to a decrease in the GST payable by the supplier in relation to the supply, a payment equal to that decrease will be made by the supplier to the recipient;
- (c) the supplier must issue an adjustment note to the recipient within 7 days of the adjustment event occurring or otherwise as soon as it becomes aware of the adjustment event; and
- (d) any payment under **clauses 15.4(a) or 15.4(b)** must be paid to the supplier or recipient (as the case may be) within 15 days of the adjustment note being issued by the supplier.

16. Taxes

Subject to **clause 15**, the Institution must pay all taxes and levies and maintain all registrations, licences and insurances required by law in connection with this Agreement and the performance of the Research, including income tax instalments, payroll tax instalments and superannuation guarantee levy contributions.

17. Force Majeure

17.1 Meaning of Force Majeure

In this **clause 17 "Force Majeure"** means any flood, storm or other natural disaster, fire, labour dispute, war, riot or terrorism, act of God or any other unlawful act against public order or authority or any other circumstance beyond the Institution's reasonable control.

17.2 Suspension of obligations

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

17.3 Liability for delay

The Institution will not be liable for any delay or failure to perform its obligations under this Agreement if the delay or failure to perform is caused by a Force Majeure and not due in any way to its own negligence.

17.4 Termination

If a delay or failure caused by a Force Majeure continues for more than 30 Business Days, either Party may terminate this Agreement with immediate effect and **clause 13.2** applies.

18. Dispute Resolution

18.1 Resolving Disputes

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

18.2 Refer to Mediation

If the Dispute remains unresolved after the procedures in **clause 18.1** have been completed, the Parties agree to use their best endeavours to settle the Dispute by mediation administered by a mediator accredited by the Resolution Institute (unless each Party agrees otherwise) on the following basis:

- (a) the Parties must use their best endeavours to agree on the appointment of a mediator within 5 Business Days, failing which the Parties agree to the President of the Law Society of New South Wales appointing the mediator;

- (b) the Resolution Institute Mediation Rules apply to any mediation, except where they conflict with this **clause 18**;
- (c) the costs of the mediation and the mediator will be split equally between the Parties to the Dispute;
- (d) the Parties must conduct the mediation as expeditiously as possible;
- (e) the mediation will be held in Sydney in accordance with the laws governing this Agreement; and
- (f) the mediation will be non-binding.

19. Notices

19.1 General

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

19.2 Method of service

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

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

19.3 Particulars of service

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

The Foundation:

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

Email: hcf_foundation@hcf.com.au

Telephone: 0409 589 727

Attention: Head of HCF Research Foundation

The Institution:

Address: [insert]

Email: [insert]

Telephone: [insert]

Attention: [insert]

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

19.4 Service

If a communication is given by:

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

unless, for communication under **clauses 19.4(a), 19.4(b) or 19.4(c), clause 19.5** applies.

19.5 Service after hours

If a communication to a Party is received by it:

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

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

20. Miscellaneous

20.1 Legal costs

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

20.2 Amendment

- (a) Any amendment or variation to the operative clauses of this Agreement is only effective if it is in writing and signed by the Parties.
- (b) Any amendment or variation to the Schedules in this Agreement may be made in writing, including by email, provided the Parties expressly acknowledge and agree that the change is an amendment or variation.

20.3 Waiver and exercise of rights

- (a) A Party does not waive a right, power or remedy if it fails to exercise or delays exercising the right, power or remedy.
- (b) A single or partial exercise or waiver of a right, power or remedy does not prevent another or further exercise of that right, power or remedy.

- (c) A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

20.4 Rights cumulative

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

20.5 Approvals and consent

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

20.6 Further assurance

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

20.7 Assignment

- (a) The Institution must not assign or transfer any right or obligation arising under or in connection with this Agreement, including any of its Research IPR, without the prior written consent of the Foundation. The Foundation will not unreasonably withhold consent to an assignment by the Institution of its Research IPR if:
 - (i) the Institution gives prior written notification to any assignee of the existence and the terms of the licence granted to the Foundation in **clause 6.1(b)**; and
 - (ii) the assignee acquires the Research IPR (or part thereof) subject to the licence granted to the Foundation in **clause 6.1(b)** and, if required by Foundation, takes a novation of the licence granted in that clause from the Institution on terms reasonably acceptable to the Foundation.
- (b) The Foundation may assign or transfer part or all of its rights or obligations arising out of this Agreement, including the licence granted to it in **clause 6.1(b)**, with immediate effect by giving notice to the Institution.

20.8 Severability

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

20.9 Counterparts

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

20.10 Entire understanding

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

20.11 Set off

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

20.12 Survival

Clauses 4(f), 5, 6, 7, 8, 10, 11.3, 12, 13, 14.2, 18, 19 and 20 and all clauses required to give effect to these clauses survive the termination or expiry of this Agreement.

20.13 Governing law

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

20.14 Electronic signatures

The parties acknowledge that electronic signatures may be used by either Party to execute this Agreement.

Signing page

Executed as an agreement

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

←	←
_____ Signature of director	_____ Signature of director/company secretary
_____ Print name	_____ Print name

Executed by **[Insert Institution Name]**
ACN **[Insert ACN]** by its duly authorised representative who warrants that they are duly authorised to sign this document and legally bind the Institution to the terms of this Agreement:

←
_____ Signature of authorised representative
_____ Print name of authorised representative
_____ Print title of authorised representative

Schedule 1

Term	Commencement Date [the date of this Agreement <i>OR</i> insert date] Expiry Date [insert date]
Principal Investigator	The Principal Investigator is [insert name and position of Principal Investigator] or such other person agreed by the Parties from time to time.
Research	The Institution will: - perform services with the aim of [insert aim from the Application Form]; [insert other information as relevant to the methodology, measures and performance indicators]; - deliver to the Foundation Progress Reports as outlined in Schedule 2; and such other services as the Foundation may request from time to time.
Fees	The fees for the Research are \$[insert amount] and are payable in installments in accordance with Schedule 2 .
Insurances	The Institution must obtain the following Insurances: - public liability insurance with a minimum value of \$10 million for any one event; - professional indemnity insurance with a minimum value of \$5 million for each claim and in the aggregate with at least one automatic reinstatement; - workers compensation insurance as required by law (which covers both statutory law and common law damages); and - such other insurances requested by the Foundation from time to time.

Schedule 2

Payment Schedule

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

Annexure 1 – Research Application Form

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