



FUNDING AGREEMENT  
BETWEEN  
CANCER COUNCIL VICTORIA  
AND

(**[insert name of Administering Organisation]**)

Principal  
Clinical Lead:

Funding Period:

Project Title:

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## CANCER TRIALS MANAGEMENT SCHEME COMPETITIVE GRANT FUNDING AGREEMENT

**BETWEEN**      **CANCER COUNCIL VICTORIA** ACN 608 530 972 and  
ABN 61 426 486 715 of 615 St Kilda Road, Melbourne Victoria 3004  
(‘**Cancer Council Victoria**’)

**AND**            [insert name] ACN [insert] and ABN [insert] of [insert address]  
(**Administering Organisation**)

### RECITALS

- A. Cancer Council Victoria is a not for profit organisation that seeks to reduce the impact of all cancers on all Victorians, with the objective of undertaking innovative work in cancer research, support, prevention and advocacy.
- B. As part of that objective, Cancer Council Victoria provides a grant through the Cancer Trials Management Scheme Competitive Grants Program to improve equity of access to clinical trials.
- C. The Principal Clinical Lead and the Administering Organisation have applied to Cancer Council Victoria for Funding under the Cancer Trials Management Scheme Competitive Grants Program to carry out the Project.
- D. Cancer Council Victoria has agreed to provide the Funding to the Administering Organisation for the Project to be carried out under the direction of the Principal Clinical Lead, in accordance with the terms and conditions set out in this Agreement.

### AGREEMENT

#### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

‘**Agreement**’ means this agreement and the schedules to this agreement.

‘**Aims**’ means the Project aims set out in Schedule 1.

‘**Application**’ means the application submitted to Cancer Council Victoria for Funding under the Cancer Trials Management Scheme Competitive Grants Program to support the Project as set out in Schedule 2.

‘**Background Intellectual Property**’ means any Intellectual Property Rights which pre-exist the Project or is independently developed outside the Project that is owned or controlled by a Party and which that Party chooses at its sole discretion to make available for the purpose of carrying out the Project.

‘**Business Day**’ means a day on which banks (as defined in the *Banking Act 1959* (Cth)) are open for general banking business in Victoria, excluding Saturdays and Sundays.

**'Cancer Trials Management Scheme Competitive Grants Program'** has the meaning given in the Recitals.

**'CEO'** means Chief Executive Officer or person of equivalent position of a Party to this Agreement.

**'Commencement Date'** means the date shown in Schedule 1.

**'Commercialise'** or **'Commercialisation'**, in relation to the Project Intellectual Property, means to exercise any of the rights given to the owner of that intellectual property, including:

- (a) the right to manufacture, sell, hire or otherwise exploit the Project Intellectual Property;
- (b) to provide a service incorporating all or part of the Project Intellectual Property; or
- (c) to reproduce or apply the Project Intellectual Property for commercial purposes or to licence any third party to do any of those things.

**'Confidential Information'** means all information and materials of a confidential nature, in any form, which comes into a Party's possession about the other Party, the Project or the results of the Project pursuant to, or as a result of, or in performance of this Agreement, excluding information which:

- (a) at the time of its first disclosure or observation under this Agreement was in the public domain;
- (b) after disclosure or observation under this Agreement, comes into the public domain otherwise than by disclosure in breach of this Agreement;
- (c) is received by either Party from a third party who has the right to provide the information;
- (d) was already in the receiving Party's possession or knowledge without restriction prior to its disclosure or observation; or
- (e) the disclosing Party is required by Law to disclose.

**'End Date'** means the date shown in Schedule 1.

**'Ethical Standards'** includes the following ethical standards as published by the National Health and Medical Research Council:

- (a) the Australian Code for the Responsible Conduct of Research (2018) (as updated from time to time);
- (b) the National Statement on Ethical Conduct in Research Involving Humans 2007 (as updated from time to time);
- (c) the Australian Code of Practice for Care and Use of Animals for Scientific Purposes (2013) (as updated from time to time); and
- (d) an ongoing commitment to the three 'R's' in relation to research using animals; the replacement of animals with other methods; the reduction of the

number of animals used in research and the refinement of techniques used to reduce the impact on animals.

**'Force Majeure Event'** has the meaning given to that term in clause 24.1.

**'Funding'** means the total amount to be contributed by Cancer Council Victoria to the Administering Organisation for the Project as detailed in Schedule 1 pursuant to this Agreement.

**'GST Act'** has the meaning given in clause 9.1.

**'Health Information'** has the same meaning as its definition in the Privacy Laws.

**'Intellectual Property Rights'** means all rights conferred under statute, common law, or equity in and in relation to trade marks, business names, trade names, logos and get-up, copyright, creations or inventions (including patent rights), plant varieties, circuit layouts, know-how, trade secrets, rights in circuit layouts, rights in confidential information, URLs, designs and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields (whether registered or not) and including all applications and rights to apply for any of the same.

**'Laws'** means any act, regulation, rule, ordinance, proclamation, by-law or similar statutory instrument, whether of the Commonwealth, State, local or other duly constituted authority in any way affecting or applicable to this Agreement.

**'Milestones'** means the agreed milestones set out in this Agreement.

**'Notice'** has the meaning given to that term in clause 23.

**'Participants'** means:

- (a) the Administering Organisation;
- (b) the Participating Institutions;
- (c) the Principal Clinical Lead; and
- (d) the Project Personnel.

**'Participating Institution'** means the institutions listed in Schedule 1.

**'Party'** means a party to this Agreement.

**'Personal Information'** has the same meaning as its definition in the Privacy Laws and where applicable, includes Health Information.

**'Physical Property'** means all property purchased with funds provided by Cancer Council Victoria under this Agreement, including laboratory equipment, materials and animals.

**'Pre-Conditions'** has the meaning given in clause 2.3.

**'Principal Clinical Lead'** means the Project lead listed in Schedule 1.

**'Privacy Laws'** means:

- (a) *Privacy Act 1988* (Cth);

- (b) *Health Records Act 2001* (Vic); and
- (c) *Privacy and Data Protection Act 2014* (Vic).

**'Project'** means the activities undertaken in accordance with method detailed in Schedule 2.

**'Project Intellectual Property'** means any intellectual property developed by a Party, the Parties or third parties in the course of carrying out the Project.

**'Recipient Created Tax Invoice'** has the meaning given to that term in the GST Act.

**'Relevant Approvals'** means approvals for research involving humans; animal experimentation; use of radioactive substances, ionising radiation, recombinant DNA, biohazardous materials, potent teratogens or carcinogen; administration to humans of drugs, chemicals, agents or vaccines; import of experimental organisms, storage of biological materials or genetic manipulation.

**'Term'** has the meaning given in clause 2.1.

**'Trigger Date'** has the meaning given in clause 18.2.

1.2 In this Agreement, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to a clause, paragraph or schedule is a reference to a clause or paragraph of or schedule to this Agreement and a reference to this Agreement includes any schedules;
- (e) a reference to a document or Agreement, including this Agreement, includes a reference to that document or Agreement as novated, altered or replaced from time to time;
- (f) a reference to a specific time for the performance of an obligation is a reference to that time in the State, Territory or other place where that obligation is to be performed;
- (g) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (h) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (i) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable;

- (j) in the interpretation of this Agreement, no rule of construction applies to the disadvantage of the party preparing the Agreement on the basis that it prepared or put forward this Agreement to any part of it;
- (k) a reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent and visible form; and
- (l) the word 'includes' in any form is not a word of limitation.

## **2. TERM OF AGREEMENT**

- 2.1 Subject to this clause 2, this Agreement commences on the Commencement Date and continues until the End Date, unless terminated earlier in accordance with this Agreement (**Term**).
- 2.2 Cancer Council Victoria may (but is not obliged to) extend the End Date by notice in writing to the Administering Organisation to a later date determined by Cancer Council Victoria in consultation with the Administering Organisation.
- 2.3 The Administering Organisation must provide to Cancer Council Victoria:
  - (a) within 5 Business Days after the Commencement Date, evidence to Cancer Council Victoria's satisfaction that the Administering Organisation and all Participating Institutions have obtained the insurances referred to in clause 12.3; and
  - (b) within 3 months after the Commencement Date, a validly executed declaration from the Administering Organisation in the form set out in Schedule 3 confirming that all necessary approvals for the Project have been obtained where necessary,(the **Pre-Conditions**).
- 2.4 Cancer Council Victoria is not required to pay any part of the Funding until the Pre-Conditions have been satisfied or otherwise waived by Cancer Council Victoria, in its absolute discretion, by written notice to the Administering Organisation.
- 2.5 If the Administering Organisation has failed to satisfy each of the Pre-Conditions (unless otherwise waived by Cancer Council Victoria in accordance with clause 2.4), within 3 months after the Commencement Date, then Cancer Council Victoria may, in its absolute discretion, terminate this Agreement by written notice to the Administering Organisation.
- 2.6 Without limiting clause 20, if Cancer Council Victoria terminates this Agreement in accordance with clause 2.5, the Participants are not entitled to claim any compensation for any costs, loss or liability arising from the termination and the Administering Organisation indemnifies Cancer Council Victoria for any such compensation that Cancer Council Victoria pays.

## **3. FUNDING AND CONDITIONS**

- 3.1 Cancer Council Victoria agrees to provide Funding to the Administering Organisation in accordance with Schedule 1 provided that Cancer Council Victoria is satisfied at the time the payment is to be made that:

- (a) the Project satisfies the Aims;
  - (b) the Administering Organisation has complied with and continues to comply with the terms and conditions of this Agreement; and
  - (c) the Administering Organisation has procured that the Principal Clinical Lead, other Project Personnel and the Participating Institutions comply with the terms and conditions of this Agreement.
- 3.2 The Funding must only be used in accordance with Schedule 1 for the purposes of the Project.
- 3.3 In return for the Funding, the Administering Organisation must ensure that it:
- (a) accepts full responsibility for the administration of the Funding;
  - (b) carries out the Project, or ensures that the Project is carried out, in a timely and competent manner and according to the method (including the Aims and Milestones) set out in the Application;
  - (c) supports and supervises the Project and ensure it is carried out in accordance with the research plan as set out in further detail in Schedule 1 and the Application;
  - (d) performs the Project using high professional standards and diligence;
  - (e) conducts the Project in accordance with Ethical Standards and with due care and skill;
  - (f) obtains and complies with all clearances and Relevant Approvals necessary for the conduct of the Project, including the approvals set out in Schedule 3;
  - (g) performs and ensures all Project Personnel and the Participating Institutions perform the Project in accordance with all applicable Laws and industry standards, including Ethical Standards;
  - (h) completes the Project within the Term or within any longer period set out in the Application (although the Administering Organisation acknowledges that it will not be entitled to any additional Funding from Cancer Council Victoria even if the Project continues beyond the Term);
  - (i) demonstrates, to the satisfaction of Cancer Council Victoria and in such form as Cancer Council Victoria requires, that the Principal Clinical Lead has made adequate progress during the Term;
  - (j) deposits all sums comprising or otherwise relating to the Project into a bank account controlled solely by the Administering Organisation and maintains a separate ledger or cost centre within its account which only receives Project payments and only pays expenditures under this Agreement;
  - (k) satisfies all reporting requirements set out in clause 14;
  - (l) ensures that all parties involved in conducting the Project comply with:
    - (i) the terms of this Agreement to the extent that the terms relate to the Project; and



- (ii) all Laws, Relevant Approvals and Ethical Standards for conducting the Project;
- (m) does not, and must ensure that the Principal Clinical Lead does not, accept any research grants (in addition to that offered pursuant to this Agreement) or new funding for the Project without the consent of Cancer Council Victoria;
- (n) ensures all Milestones are met and the Project is completed by the End Date;
- (o) behaves in a cooperative, consultative and transparent manner and notifies and consults with Cancer Council Victoria when it becomes aware that it or the Principal Clinical Lead intend to or have:
  - (i) withdrawn from or ceased to undertake the Project;
  - (ii) accepted other funding for the Project;
  - (iii) deferred the conduct of the Project;
  - (iv) failed to continue the Project after any period of deferment granted by Cancer Council Victoria;
  - (v) otherwise breached a term of this Agreement; or
- (p) sought a novation of this Agreement to the new employer of the Principal Clinical Lead.

3.4 The Administering Organisation must:

- (a) promptly notify Cancer Council Victoria in writing of any actual or expected delays in the performance of the Project; and
- (b) where it is reasonably practicable to do so given the nature and cause of the delay, within 30 days of giving Cancer Council Victoria written notice under clause 3.4(a), submit to Cancer Council Victoria a written plan setting out the mechanisms to be adopted by all Participants, at no cost to Cancer Council Victoria, to accelerate the conduct of the Project.

3.5 The Administering Organisation must promptly notify Cancer Council Victoria if any Participant receives funding from a third party for the Project or any research or project that is substantially similar to the Project.

#### **4. NO FUNDING BY THE TOBACCO INDUSTRY**

4.1 If, at any stage during the term of this Agreement, the Administering Organisation becomes aware that any Participant is applying for, or receiving, funding or other assistance or benefit from the tobacco industry or any of its agencies or subsidiaries, the Administering Organisation must immediately notify Cancer Council Victoria.

4.2 If Cancer Council Victoria receives notification under clause 4.1 or otherwise becomes aware of any Participant applying for, or receiving, funding or other assistance or benefit from the tobacco industry or any of its agencies or subsidiaries, Cancer Council Victoria reserves the right to withdraw all Funding

under this Agreement without further notice and to terminate this Agreement in accordance with clause 19.2.

## 5. ARRANGEMENTS WITH PARTICIPATING INSTITUTIONS

- 5.1 Subject to clause 5.2, the Administering Organisation must enter into an agreement with each Participating Institution (**Participating Institution Agreement**) that requires the Participating Institution to act in a manner that is consistent with, and enables the Administering Organisation to perform all of its obligations under, this Agreement.
- 5.2 Without limiting clause 5.1 and the Administering Organisation's obligations under this Agreement, each Participating Institution Agreement must:
- (a) outline the part or parts of the Project to be undertaken by the Principal Clinical Lead or other Project Personnel at the Participating Institution;
  - (b) indicate who at the Participating Institution will be responsible for compliance with Ethical Standards as the Project is conducted;
  - (c) require the Participating Institution to repay any Funding paid by the Administering Organisation to the Participating Institution on demand when the Administering Organisation is obliged to repay such money to Cancer Council Victoria;
  - (d) specify responsibility for reports to be delivered by the Administering Organisation under this Agreement;
  - (e) set out the Intellectual Property Rights ownership, licensing and Commercialisation arrangements between the Administering Organisation, Participating Institution and relevant Project Personnel that will enable the Administering Organisation to comply with clause 8;
  - (f) require the Participating Institution to obtain moral rights consents from its Project Personnel to enable the Administering Organisation to give the warranty in clause 8.2(g);
  - (g) require the Participating Institution to ensure that it and its Project Personnel comply with the publicity, trade marks and branding requirements in clauses 16 and 21;
  - (h) require the Participating Institution and its relevant Project Personnel (including the Principal Clinical Lead) to provide support to Cancer Council Victoria of the kind described in clause 17;
  - (i) include indemnities and insurance of the kind included in or required under this Agreement; and
  - (j) require that the Participating Institution and the Principal Clinical Lead does not receive funding or other assistance or benefit from the tobacco industry or any of its agencies or subsidiaries.
- 5.3 The Administering Organisation must provide Cancer Council Victoria with copies of any Participating Institution Agreement or the written documentation referred to in clause 5.7, within 10 Business Days of such request from Cancer Council Victoria.

- 5.4 The Administering Organisation must immediately notify Cancer Council Victoria if there is an actual or perceived breach of a Participating Institution Agreement by any party and must take such reasonable steps as Cancer Council Victoria requires to seek to overcome such breach.
- 5.5 The Administering Organisation must not terminate a Participating Institution Agreement without the prior written approval of Cancer Council Victoria.
- 5.6 The entering into one or more Participating Institution Agreements will not relieve the Administering Organisation of any responsibility to Cancer Council Victoria for the performance of this Agreement (including the Project, reporting and the acquittal of funds) and will not limit Cancer Council Victoria's rights under this Agreement (including under the indemnity in clause 12.2).
- 5.7 Where there is no third party Participating Institution then:
- (a) clauses 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 do not apply; and
  - (b) any reference to the Participating Institution in this Agreement is taken to mean the Administering Organisation.

## **6. PERSONNEL**

- 6.1 The Administering Organisation warrants that the Principal Clinical Lead is engaged by the Administering Organisation.
- 6.2 The Administering Organisation agrees that it is solely responsible for meeting all costs related to the engagement of employees whose salaries are supported by the Funding, including superannuation, leave, termination payments and any other associated costs.
- 6.3 If, for any reason during the Term, the Principal Clinical Lead ceases their engagement with the Administering Organisation or is otherwise unable to continue to conduct the Project, the Administering Organisation will immediately notify Cancer Council Victoria in writing. If this occurs, Cancer Council Victoria reserves the right to carry out any or all of the following:
- (a) terminate this Agreement;
  - (b) transfer the Agreement to another administering organisation in Victoria on such terms as Cancer Council Victoria sees fit; or
  - (c) propose a variation to the Agreement to enable the Project to continue in Victoria, including the appointment of a replacement Principal Clinical Lead approved by Cancer Council Victoria.

## **7. OWNERSHIP OF PHYSICAL PROPERTY**

- 7.1 Subject to clause 7.2, ownership of all Physical Property shall be vested in the Administering Organisation.
- 7.2 If Cancer Council Victoria terminates this Agreement prior to the End Date, ownership of all Physical Property will immediately vest in Cancer Council Victoria and the Administering Organisation must provide the Physical Property to Cancer Council Victoria (or otherwise deal with it as directed by Cancer Council Victoria)

immediately upon being given notice by Cancer Council Victoria requiring the Administering Organisation to do so.

- 7.3 If Cancer Council Victoria transfers the Project to another institution prior to the End Date under clause 6.3(b), the Administering Organisation must transfer ownership of the Physical Property to that other institution immediately upon being given notice by Cancer Council Victoria requiring that transfer. Cancer Council Victoria may give such notice to the Administering Organisation no later than three months after termination of this Agreement under clause 6.3(b).

## **8. INTELLECTUAL PROPERTY RIGHTS**

### **8.1 Background Intellectual Property**

- (a) The Parties agree that the ownership of Background Intellectual Property is not affected by this Agreement and that all Background Intellectual Property remains the property of the Party that makes it available for the purposes of carrying out the Project.
- (b) The Administering Organisation grants to (or must procure for) Cancer Council Victoria a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including the right to sub-licence) to use, reproduce, communicate, modify, and adapt the Intellectual Property Rights in any Background Intellectual Property provided by a Participant to Cancer Council Victoria for the purposes of this Agreement.

### **8.2 Project Intellectual Property**

- (a) The Administering Organisation grants to Cancer Council Victoria a non-exclusive, irrevocable, world-wide, perpetual, royalty-free licence (including a right to sub-licence) to enable Cancer Council Victoria to use, reproduce, adapt and communicate to the public the Project Intellectual Property for its internal operations only, including for the purposes of making public announcements, producing promotional materials and press releases and responding to media inquiries in relation to this Agreement. For the avoidance of doubt, the licence does not include the right to Commercialise the Project Intellectual Property and is subject to the confidentiality obligations set out in this Agreement.
- (b) If:
  - (i) the Project Intellectual Property is not Commercialised in a manner that ensures fair and reasonable access by the Victorian public to the Project Intellectual Property as Cancer Council Victoria, acting reasonably, deems appropriate, including the price or terms of supply of the Project Intellectual Property are fair and reasonable; and
  - (ii) the Administering Organisation does not provide Cancer Council Victoria with an explanation, satisfactory in all respect to Cancer Council Victoria, for the Administering Organisation not Commercialising the Project Intellectual Property in a manner consistent with clause 8.2(b)(i) within 30 Business Days of being requested in writing by Cancer Council Victoria to do so,

then at the expiry of the 30 Business Day period, the Administering Organisation must procure for Cancer Council Victoria a non-exclusive, irrevocable, world-wide, perpetual, royalty-free licence (including a right to sub-licence) to Commercialise the Project Intellectual Property.

- (c) Within 30 Business Days of a request from Cancer Council Victoria, the Administering Organisation must deliver a fully executed licence as required under either clauses 8.2(a) or 8.2(b).
- (d) On request by Cancer Council Victoria, the Administering Organisation agrees to provide copies of all Project Intellectual Property licensed under this Agreement in a format that allows Cancer Council Victoria to exercise fully all of its rights under this Agreement.
- (e) The Parties acknowledge that any obligations on the Administering Organisation under the Administering Organisation's Rules to deposit in the library a copy of the Project Outcomes. Subject to clause 10, nothing in this Agreement will create any obligations contrary to that obligation.
- (f) The Administering Organisation warrants to Cancer Council Victoria that it is entitled to grant the licences of Intellectual Property Rights under clauses 8.2(a) and 8.2(b).
- (g) The Administering Organisation warrants that it has obtained, or will have obtained within a reasonable time of granting the licences in clauses 8.2(a) and 8.2(b) (**Licences**), all the rights and consents necessary for the grant of the Licences, including in relation to moral rights.

### 8.3 Protection of Intellectual Property Rights

- (a) The Administering Organisation must notify Cancer Council Victoria in writing of the details of any Intellectual Property Rights generated from the Project Intellectual Property as soon as practicable after their creation.
- (b) Registration, protection and enforcement of Intellectual Property Rights in the Project Intellectual Property is the responsibility of the Administering Organisation.
- (c) If, during or after the Term, the Administering Organisation decides not to proceed with registration or continuation of protection of any Project Intellectual Property, it must:
  - (i) notify Cancer Council Victoria in writing of the Administering Organisation's decision at least sixty days before the earlier of any date of publication or any critical date for the continuation of protection of any registrable Intellectual Property Rights in the Project Intellectual Property; and
  - (ii) upon receipt of a request in writing from Cancer Council Victoria, must assign the Intellectual Property Rights in the Research IP to Cancer Council Victoria, free of charge or of any royalty obligation.
- (d) If Cancer Council Victoria takes an assignment of Intellectual Property Rights under clause 8.3(c), the Administering Organisation must cooperate fully with Cancer Council Victoria with respect to the assignment, including delay of publication where that is required to enable Cancer Council Victoria to apply

for registration of any registrable Intellectual Property Rights in the Project Intellectual Property.

#### 8.4 Commercialisation of Project Intellectual Property

- (a) The Administering Organisation is responsible for the Commercialisation of any Project Intellectual Property.
- (b) In the event that the Administering Organisation believes that any Project Intellectual Property created, discovered or developed as a consequence of the Cancer Trials Management Scheme Competitive Grant Program is capable of being subject to exploitation and Commercialisation, the Administering Organisation must:
  - (i) promptly advise Cancer Council Victoria; and
  - (ii) Cancer Council Victoria and the Administering Organisation will then enter into good faith negotiations on the consideration (if any) that the Administering Organisation should pay to Cancer Council Victoria upon Commercialisation of the Project Intellectual Property.
- (c) In negotiating any such consideration payable by the Administering Organisation, the Parties will recognise the contribution of each Party to the creation of the Project Intellectual Property, including third party interests, financial contributions (from all sources) and in-kind contributions (from all sources, including to pre-existing Intellectual Property Rights owned by a Party or by a Project Intellectual Property, and expertise, materials, equipment, infrastructure and/or labour provided by a party or a third party) to the creation of the Project Intellectual Property.
- (d) The amount of consideration to be provided to Cancer Council Victoria under clause 8.4(b) must be agreed to in writing between the Parties at least 3 months prior to the first commercial sale of any products or processes incorporating the Project Intellectual Property, or at such other time as the Parties agree to in writing.
- (e) If the amount referred to in clause 8.4(d) is not agreed to between the Parties, then it shall be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators and Mediators Australia Mediation Rules.

### 9. GST

9.1 In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as their definition in that Act.

9.2 All consideration payable under this Agreement in relation to any supply is exclusive of GST. If GST is payable in respect of any supply made by the Administering Organisation to Cancer Council Victoria under this Agreement:

- (a) Cancer Council Victoria can issue to the Administering Organisation a Recipient Created Tax Invoice in respect of the supply; and
- (b) the Administering Organisation agrees not to issue a tax invoice in respect of the supply.

9.3 Both parties acknowledge that they are registered for GST as at the date of this Agreement and will notify each other if either ceases to be registered.

## **10. CONFIDENTIALITY**

10.1 Each Party (which includes the Principal Clinical Lead and any other individual involved in the Project) must keep all Confidential Information absolutely confidential and each Party warrants to the other that it will not communicate, publish or release, or permit the communication, publication or release of any Confidential Information except:

- (a) as is reasonably necessary for the Parties to perform their obligations under this Agreement;
- (b) as required by Law or this Agreement; or
- (c) as is permitted under this Agreement or otherwise agreed in writing by the Parties.

10.2 Nothing in this clause 10 prohibits Cancer Council Victoria from disclosing:

- (a) the names of the Administering Organisation, the Principal Clinical Lead and the Participating Institutions, the amount of the Funding and an overview of the Project purpose to any person at any time;
- (b) some or all or any report submitted by or on behalf of a Participant to Cancer Council Victoria for the purposes of clause 14 to any person at any time; and
- (c) any scientific reports or financial information submitted by or on behalf of a Participant to Cancer Council Victoria under this Agreement to members of Cancer Council Victoria committees at any time.

10.3 Where a Party discloses Confidential Information of the other party to a third person under clause 10.1(a), the disclosing party must notify the receiving person that the information is Confidential Information.

## **11. PRIVACY**

11.1 The Administering Organisation agrees that it is bound, and will comply with:

- (a) Privacy Law; and
- (b) any direction, guideline, determination or recommendation made by the Victorian Privacy Commissioner or the Victorian Health Services Commissioner.

11.2 The Administering Organisation must ensure that any person to whom it may delegate the performance of any of the Project, including the Participants and all Project Personnel, agrees in writing to comply with and does comply with the requirements set out in this clause 11, which are deemed to apply to every such person.

11.3 In the event that Cancer Council Victoria discloses Personal Information to the Administering Organisation for any purpose, the Administering Organisation must take all reasonable steps to safeguard the Personal Information from misuse, interference, loss, unauthorised access, modification and disclosure, and must

maintain and observe appropriate data security policies having regard to these obligations.

- 11.4 The Administering Organisation will provide at Cancer Council Victoria's written request all reasonable assistance that Cancer Council Victoria may require to respond to an access or correction request or a complaint about a breach or apprehended breach of the Privacy Laws.
- 11.5 If the Administering Organisation learns of any actual or suspected breach of the Privacy Laws it shall promptly notify Cancer Council Victoria and provide Cancer Council Victoria with all reasonable assistance that it may request to investigate and resolve the breach.

## **12. WARRANTIES, INDEMNITIES AND INSURANCE**

### **12.1 Warranties**

The Administering Organisation represents and warrants to Cancer Council Victoria that:

- (a) it has lawful authority to execute this Agreement and to perform its obligations under this Agreement;
- (b) all information provided to Cancer Council Victoria in the Application or otherwise in connection with this Agreement is true and correct in every respect;
- (c) it will at all times act in a lawful manner in the conduct of the Project;
- (d) it is not, and neither of the Participating Institutions or Project Personnel are or will become, party to any contract, arrangement or understanding the performance or satisfaction of which would, or might be perceived to be, in conflict with the obligations or duties of the Administering Organisation to Cancer Council Victoria under this Agreement; and
- (e) the Project and Project Intellectual Property will not infringe the rights (including the Intellectual Property Rights) of any third party.

### **12.2 Indemnity**

The Administering Organisation indemnifies and must keep Cancer Council Victoria indemnified against any loss, damage, claim, action or expense (including legal expenses on a full indemnity basis) suffered by Cancer Council Victoria or its officers, employees or agents as a direct or indirect result of any of the following:

- (a) the breach by the Administering Organisation or any other Participants of this Agreement, including any failure to carry out the Project in accordance with this Agreement;
- (b) the failure by the Administering Organisation or any other Participants to comply with any Privacy Laws;
- (c) any warranty given by the Administering Organisation under this Agreement being incorrect, misleading or breached in any way; or



- (d) any wilful or negligent act or failure to act by the Administering Organisation or any other Participants,

except to the extent caused by a breach of this Agreement by Cancer Council Victoria.

### 12.3 Insurance

Unless Cancer Council Victoria otherwise agrees, the Administering Organisation must (and must ensure that all Participating Institutions) for so long as any obligations remain in connection with this Agreement:

- (a) effect and maintain workers compensation insurance as required by law, and third party risk insurance policies to cover all the obligations of the Administering Organisation under this Agreement, including those which survive the expiration or termination of this Agreement, for amounts reasonably required by Cancer Council Victoria;
- (b) effect and maintain public liability insurance to cover its performance of the Project and the insured amount shall not be less than the amount set out in Schedule 1;
- (c) effect and maintain professional indemnity insurance for at least six years after the end of this Agreement to cover the performance of the Project and the insured amount shall not be less than the amount set out in Schedule 1; and
- (d) upon request, provide proof of insurance acceptable to Cancer Council Victoria.

## 13. RELATIONSHIP OF THE PARTIES

13.1 The Administering Organisation shall have no authority, right or power whatsoever to contract on behalf of Cancer Council Victoria, to bind Cancer Council Victoria in any way in relation to third parties or to assume or create any obligation or responsibility, whether expressed or implied, on behalf of Cancer Council Victoria, save as specifically authorised by Cancer Council Victoria from time to time.

13.2 No joint venture and no relationship of partnership, principal and agent, employer and employee or trustee and beneficiary is constituted by anything in the Agreement.

## 14. REPORTING REQUIREMENTS

14.1 The Administering Organisation must provide any reports described in Schedule 1 to Cancer Council Victoria by the relevant date specified in Schedule 1.

14.2 Without limiting clause 14.1, the Administering Organisation must procure that the Principal Clinical Lead provides to Cancer Council Victoria the following reports for the term of the Agreement:

- (a) an interim report describing the progress of the Project towards the Milestones, in a format provided by Cancer Council Victoria at 6 months, 18 months and 30 months after the Commencement Date, if required;

- (b) an annual report describing the progress of the Project against Milestones, in a format provided by Cancer Council Victoria and a financial statement of the previous year, in a format provided by Cancer Council Victoria; and
  - (c) a final report detailing the outputs and any publications arising from the Project as described in Schedule 2, in a format provided by Cancer Council Victoria. This report may be made publicly available on a website controlled by Cancer Council Victoria.
- 14.3 The Administering Organisation agrees to provide a financial acquittal within 30 days of the End Date of all income and expenditure in respect of the Funding received for the Project. Cancer Council Victoria reserves the right to require, by written notice to the Administering Organisation, repayment of any:
- (a) unspent Funding that exists at the End Date; or
  - (b) any Funding that Cancer Council Victoria determines has not been expended on the Project or otherwise in accordance with this Agreement.
- 14.4 Funding claimed by Cancer Council Victoria in writing pursuant to clause 14.3 will be a debt immediately due and payable by the Administering Organisation to Cancer Council Victoria.
- 14.5 The Administering Organisation agrees to provide such other information as is reasonably requested by Cancer Council Victoria during the Term.
- 14.6 If the Administering Organisation fails to submit reports by the required date, Cancer Council Victoria may withhold any further payment of Funding until the reports are provided. Cancer Council Victoria may also exercise any of its rights under clause 19.
- 14.7 Failure to submit reports by the required date may render any applications received in the next application round under the Cancer Trials Management Scheme Competitive Grants Program that include the Principal Clinical lead ineligible for funding.

## **15. MEETINGS AND ACCESS**

- 15.1 The Administering Organisation must attend, and must procure that the other Participants nominated by Cancer Council Victoria attend, any meeting reasonably requested by Cancer Council Victoria from time to time.
- 15.2 During the Term and for 2 years following the end of the Term, the Administering Organisation must allow, and must ensure that the Participating Institutions and the Principal Clinical Lead allow, Cancer Council Victoria and its nominees to access the premises where the Project is or was carried out to assess the performance of the Project.

## **16. PUBLICATIONS AND PUBLICITY**

- 16.1 The Project will be given the name set out in Schedule 1.
- 16.2 Cancer Council Victoria must be given the opportunity to participate in all media releases relating to the Project, which must be in a form satisfactory to Cancer Council Victoria.

- 16.3 Any publications resulting from the Project must, in the form satisfactory to Cancer Council Victoria, acknowledge and state prominently that the study was supported by the Cancer Trials Management Scheme Competitive Grants Program administered by Cancer Council Victoria.
- 16.4 Any conference presentations, including both oral and poster presentations, or presentations at any internal or external event including but not limited to a workshop, symposium or training event, must acknowledge and state prominently in the form satisfactory to Cancer Council Victoria that the Project was supported by the Cancer Trials Management Scheme Competitive Grants Program administered by Cancer Council Victoria. Cancer Council Victoria requires that all such presentations be listed in the annual reports given under this Agreement.
- 16.5 When releasing results derived from the Project to the media, Cancer Council Victoria's support must be acknowledged in the form satisfactory to Cancer Council Victoria. Cancer Council Victoria must be given the opportunity to participate in all media releases relating to the Project.
- 16.6 The authors of the reports are solely responsible for the veracity of the published data.

## **17. SUPPORT FOR CANCER COUNCIL VICTORIA**

- 17.1 The Administering Organisation must procure that the Principal Clinical Lead supports Cancer Council Victoria in any way reasonably required by Cancer Council Victoria including by:
- (a) assisting in identification of publicity opportunities;
  - (b) contributing to the fundraising activities of Cancer Council Victoria; and
  - (c) contributing to the publicity of the mission, priorities and principles of Cancer Council Victoria including providing speakers, venues and technical assistance.

## **18. DISPUTE RESOLUTION**

- 18.1 If any Party to this Agreement believes:
- (a) that the other Party has breached this Agreement;
  - (b) that it may not be able to fulfil any or all of its obligations under this Agreement; or
  - (c) there is any other dispute arising from or in connection with this Agreement,
- that Party may notify the other party in writing and each party must follow the dispute resolution process in clauses 18.2 to 18.4.
- 18.2 Within 14 days of the first Business Day following the giving of notice under clause 18.1, (**Trigger Date**) the Parties must arrange to discuss the matters set out in that notice.
- 18.3 If discussion fails to resolve the dispute, either Party may, within 28 days of the Trigger Date, escalate the dispute to their respective CEOs who will convene a

meeting, no later than 42 days from the Trigger Date, with a view to resolving the dispute.

- 18.4 If the dispute remains unresolved following the meeting referred to in clause 18.3, Cancer Council Victoria may, in its absolute discretion, determine resolution of the matter.

## **19. TERMINATION**

19.1 Without limiting clause 19.3 if:

- (a) a Party to this Agreement is in breach of its obligations under this Agreement; and
- (b) after receiving notice in writing of that breach, the breach is not remedied within 28 days (or if the breach is remedied, but it is repeated at any time after receiving the notice),

the Party that issued the notice in clause 19.1(b) may immediately terminate this Agreement by notice in writing.

19.2 If the Administering Organisation, any Participating Institution or the Principal Clinical Lead applies for, or receives, funding or other assistance or benefit from the tobacco industry or any of its agencies or subsidiaries Cancer Council Victoria may immediately terminate this Agreement by notice to the Administering Organisation.

19.3 Without limiting any other right of Cancer Council Victoria to terminate this Agreement, Cancer Council Victoria may immediately terminate this Agreement by notice in writing to the Administering Organisation if:

- (a) in the reasonable opinion of Cancer Council Victoria, a Participant fails to comply with the Ethical Standards;
- (b) in the reasonable opinion of Cancer Council Victoria, a Participant fails to satisfy a requirement of the Project which includes, but is not limited to, satisfying the Aims;
- (c) any ethics approval for the Project is revoked; or
- (d) the Funding is withdrawn or is no longer available to Cancer Council Victoria.

## **20. CONSEQUENCES OF TERMINATION**

20.1 On termination of this Agreement for any reason, the Administering Organisation must:

- (a) within 10 Business Days after the date of termination of the Agreement, refund to Cancer Council Victoria any amounts of the Funding already paid to the Administering Organisation and not expended or not reasonably and irrevocably committed to expend, in performance of the Project as at the date of termination of this Agreement;
- (b) immediately deliver to Cancer Council Victoria all books, documents, papers, materials and other property relating to the business or affairs of Cancer Council Victoria (in any form whatsoever) which may then be in its

possession or under its power or control including those relating to the Confidential Information and the Personal Information;

- (c) immediately provide to Cancer Council Victoria or transfer to another administering organisation as directed by Cancer Council Victoria, all work relating to the Project (including Physical Property) produced as at the date of termination or expiry, including any partially completed work relating to the Project; and
- (d) promptly provide to Cancer Council Victoria, and in any event within 60 days after the date of termination or expiry of this Agreement, a final report and an audited financial statement, at the Administering Organisation's cost, in the form required by Cancer Council Victoria.

20.2 Subject to clause 20.3, Cancer Council Victoria will not require the repayment of Funding under clause 20.1(a) where Cancer Council Victoria is satisfied that the Administering Organisation is required to make payments or incurs costs in connection with the termination of the employment of Project Personnel, where the Project Personnel were employed on a permanent, fixed term basis and cannot be deployed to other tasks provided that reasonable evidence is supplied to enable Cancer Council Victoria to satisfy itself that such payments or costs are reasonable in the relevant circumstances.

20.3 Any deductions permitted from the Funding under clause 20.2 will not exceed one month of the relevant Project Personnel's base salary. The Administering Organisation will also not be entitled to a deduction under clause 20.2 for Project Personnel termination costs or entitlements where the Project Personnel have been involved in fraud, wilful misconduct, negligence or criminal conduct, or have breached their terms of employment and in no event will Cancer Council Victoria be required to pay more than the total amount of the Funding to the Administering Organisation.

20.4 Notwithstanding any provision of this Agreement, the Administering Organisation is not entitled to any compensation whatsoever including loss of prospective profits or loss of any benefits that would have been conferred on the Administering Organisation but for the termination of the Agreement.

20.5 The Parties acknowledge that upon the date of termination of the Agreement, no further Funding will be paid to the Administering Organisation (unless otherwise agreed between the Parties).

20.6 Termination or expiry of this Agreement does not affect any rights or remedies which have accrued as at termination or expiry.

## **21. TRADE MARKS AND BRANDING**

21.1 The Administering Organisation must obtain Cancer Council Victoria's written consent prior to using any of Cancer Council Victoria's trade marks or logos, including on presentations or on documents relating to the Project. Any use of Cancer Council Victoria's trade marks or logos by the Administering Organisation or Project Personnel must only be in a form consented to by Cancer Council Victoria and otherwise in accordance with the current Cancer Council Victoria style guide and trade mark guidelines.

## 22. SURVIVAL

Clauses 2.6, 7, 8, 10, 11, 12, 14, 15, 16, 17, 18, 20, 21, this clause 2222 and clauses 23 and 25 will survive expiration or early termination.

## 23. NOTICE

23.1 A party giving notice or notifying under this Agreement must do so in writing:

- (a) directed to the other party's address specified in Schedule 1, as varied by any notice; and
- (b) hand delivered or sent by prepaid post, email or facsimile to that address.

23.2 A notice given in accordance with clause 23.1 is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, five days after the date of posting;
- (c) if sent by facsimile, when the answer back or message confirmation is received; or
- (d) if sent by email, 24 hours after the email was sent unless the sender receives notification that the transmission failed,

in each case if before 5.00 pm on a Business Day, otherwise at 9.00 am on the next Business Day.

## 24. FORCE MAJEURE

24.1 Should the occurrence of an extraordinary event or circumstance beyond the control of the parties, such as war, strike, riot, crime, act of God (e.g. flooding, earthquake, volcano) (**Force Majeure Event**) prevent one or both parties from fulfilling their obligations under the Agreement, both parties will be freed from liability or obligation while prevented from performance by the Force Majeure Event.

24.2 The existence of a Force Majeure Event will not excuse negligence or other malfeasance of a party, as where non-performance is caused by the usual and natural consequences of external forces.

## 25. GENERAL PROVISIONS

25.1 The failure of a Party at any time to require performance of any obligation under this Agreement is not a waiver of that Party's right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
- (b) at any other time to require performance of that or any other obligation under this Agreement.

25.2 This Agreement is governed by the law applicable in the State of Victoria and each party submits to the non-exclusive jurisdiction of the courts of Victoria.

- 25.3 A Party must not assign, delegate or sub-contract this Agreement or any right or obligation under this Agreement unless that Party obtains the prior written consent of the other Party.
- 25.4 All or part of any provision of this Agreement that is illegal or unenforceable may be severed from the Agreement and the remaining provisions of this Agreement will continue in force.
- 25.5 This Agreement may be altered only in writing signed by each Party.
- 25.6 This Agreement may be executed in counterparts, all of which taken together constitute one document.
- 25.7 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement.
- 25.8 This Agreement constitutes the entire Agreement between the Parties as to its subject matter and supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

# Signing page

**SIGNED** for and on behalf of  
Cancer Council Victoria by an authorised  
officer:

)  
)  
)

.....  
Signature of authorised officer

.....  
Name of officer (print)

.....  
Office held

Date: .....

**SIGNED** for and on behalf of  
**(Administering Organisation)** by an  
authorised officer:

)  
)  
)

.....  
Signature of authorised officer

.....  
Name of officer (print)

.....  
Office held

Date: .....



## Schedule 1

### Details

1. **Project title:**
2. **Principal Clinical Lead:**
3. **Participating Institution(s):**
4. **Funding**

	2021	2022	2023	Total
Amount				
GST				
Total				

Funding will be paid every six months each year in April, and October

5. **Commencement Date:** Date of execution of this Agreement
6. **End Date:** 40 months from Commencement Date
7. **Reporting**

Interim report: On or before 6 months, 18 months and 30 months after the Commencement Date if required

Annual report: On or before 30 April each year, for progress up to and including 31 March of the same year

Final report: On or before the End Date

8. **Aims**
9. **Milestones**

#### 12 months after project commencement

##### Milestone 1

Description:

Context (or  
baseline):

Project increase:

### Milestone 2

Description:

Context (or  
baseline):

Project increase:

### Milestone 3

Description:

Context (or  
baseline):

Project increase:

## **24 months after project commencement**

### Milestone 1

Description:

Context (or  
baseline):

Project increase:

### Milestone 2

Description:

Context (or  
baseline):

Project increase:

### Milestone 3

Description:

Context (or  
baseline):

Project increase:

### **Final report due at project conclusion (36 months after Commencement Date)**

Description:

Context (or  
baseline):

Anticipated  
outcome:

Description:

Context (or  
baseline):

Anticipated  
outcome:

## **10. Milestone implications**

Continued Funding of the Project during the Term is conditional upon

- (i) progress against the Milestones to the satisfaction of Cancer Council Victoria;
- (ii) the approval by Cancer Council Victoria of the next phase of the project or such revisions as may be requested;
- (iii) the availability to Cancer Council Victoria of Funding to support the Project.

## **11. Insurance**

Public liability: \$20 million per occurrence

Professional indemnity insurance: \$10 million per occurrence

12. **Contact details for Notices**

**Cancer Council Victoria**

Attention:

Address:

Phone number:

Email:

**Administering Organisation**

Attention:

Address:

Phone number:

Email:

## Schedule 2

### Cancer Trials Management Scheme Competitive Grant Round APPLICATION

***Attachments:***

Full application

## Schedule 3

### ETHICS AND OTHER APPROVALS

Under the Agreement between the Cancer Council Victoria and the Institution in respect of Cancer Council Victoria Cancer Trials Management Scheme Competitive Grants Program, the Institution must meet clearance requirements and obtain and maintain, as required, the necessary approvals for the duration of the Project.

The attached proforma must be used when advising Cancer Council Victoria that the Project proposal has been assessed and/or reviewed and approved by a Human Research Ethics Committee, an Animal Research Ethics Committee, an Institutional Biosafety Committee or the Office of the Gene Technology Regulator.

This form is to be returned to:

**Cancer Council Victoria**

Attention: [insert]

Address: [insert]

Phone number: [insert]

Email: [insert]

**CANCER COUNCIL VICTORIA**

**Ethics and Other Approvals**

I, ....., on behalf of  
(full name of officer authorised to sign on behalf of the Administering Organisation)

.....  
(name of Administering Organisation)

(please choose one)

advise that the project entitled [insert Project Title] in the name of [insert Principal Clinical Lead] has been assessed to not require ethical review.

Signature of authorised officer: .....

Position: ..... Date: ...../...../.....

**OR**

advise that the project entitled [insert Project Title] in the name of [insert Principal Clinical Lead] has been reviewed and approved by:

**Animal Research Ethics Committee Approval**

.....  
(full name of animal ethics committee and the institution to which the ethics committee reports)

on ...../...../.....  
(date of meeting at which proposal was approved)

Ethics Committee approval number: .....

**Human Research Ethics Committee Approval**

.....  
(full name of human research ethics committee and the institution to which the ethics committee reports)

on ...../...../.....  
(date of meeting at which proposal was approved)

Ethics Committee approval number: .....

**Office of the Gene Technology Regulator Approval**

OGTR approval ID: ..... Approval date: .....

**Institutional Biosafety Committee Approval**

IBC approval ID: ..... Approval date: .....

The Committee/s have considered the relevant requirements outlined in:

- the *National Statement on Ethical Conduct in Human Research 2007*;
- the *Australian Code of Practice for the Care and Use of Animals for Scientific Purposes* (for research proposals involving animals),
- the *Gene Technology Act 2000* and the *OGTR Guidelines for the Accreditation of an Organisation*
- the *National Occupational Health and Safety Commission* guidelines, *National Code of Practice for the Preparation of Material Safety Data Sheets*

Signature of authorised officer: .....

Position: ..... Date: ...../...../.....