

Cancer Institute NSW Competitive Grants Agreement

Between

Cancer Institute NSW
ABN 48 538 442 594

and

Administering Institution
ABN

Version 1.1 | [Date]



This Deed of Agreement is made on the _____ day of _____ 20_____.

Between

Cancer Institute NSW, a statutory corporation constituted by section 4 of the *Cancer Institute (NSW) 2003 Act* of Australian Technology Park, Level 9, 8 Central Avenue, Eveleigh, NSW 2015 (Cancer Institute NSW)

And

Administering Institution [ABN], Administering Institution Physical Address, (Administering Institution).

Whereas

- A. The Cancer Institute NSW has established the competitive grants program to deliver the best cancer results for the people of the State of New South Wales.
- B. The Administering Institution has applied for, and been awarded, the Grant(s) under the competitive grants program.
- C. The Cancer Institute NSW has agreed to provide funding to the Administering Institution and the Administering Institution has agreed to accept funding on the terms and conditions set out herein.

1. Definitions and interpretation

- 1.1 In this Agreement including the Recitals, unless the context otherwise requires:

Administrative costs means any costs associated with the performance of the Grant(s) of an administrative nature including overheads, staffing, levies, administrative support, information technology services, premises, resources and capital purchases.

Agreement means this deed of agreement including the Schedules and Annexures.

Application means the application to the Cancer Institute NSW for funding under the competitive grant program signed by the Administering Institution and referenced at Annexure A.

Chief Financial Officer means the person from time to time with principal responsibility for accounting and financial management within the Administering Institution.

Confidential Information means any information disclosed by the Cancer Institute NSW to the Administering Institution, whether before or after the date of this Agreement, that:

- (a) is by its nature confidential;

- (b) is designated as confidential (including the award of the Grant(s), details of the Grantee and the Administering Institution, unless the Cancer Institute NSW agrees otherwise); or
- (c) the Administering Institution knows or ought to know is confidential, but does not include information which:
 - (d) is or becomes public knowledge other than by breach of this Agreement;
 - (e) is in the lawful possession of the Administering Institution without restriction in relation to disclosure before the date of receipt of the information; or
 - (f) is required to be disclosed pursuant to law, government policy or legal process.

Cancer Institute NSW Purposes means:

- a) Cancer Institute NSW verifying and assessing funding proposals, including and Application;
- b) Cancer Institute NSW monitoring, reporting on, auditing, publicising and evaluating a Grant;
- c) Cancer Institute NSW developing and publishing policies, programs, guidelines and reports; and
- d) any other activity the Cancer Institute NSW undertakes that gives effect to a function of its responsible Minister or of the Cancer Institute NSW under the *Cancer Institute (NSW) Act 2003*, but in all cases excludes commercialisation (being for-profit use) of the Licensed Research Material and the Licensed Incorporated Material by the Cancer Institute NSW (or any of its sub-licensees)

Equipment means any item of property (including animals and bio banks), purchased, leased, hired, financed, created or otherwise brought into existence either wholly or in part with use of the Funds, but excluding real property and Intellectual Property.

Existing Material means, in relation to a Grant, all Material that is in existence prior to the last date for commencement of the Grant specified in the Schedule for that Grant or otherwise created independently of the Grant.

Funds means the funds provided by the Cancer Institute NSW under this Agreement and specified in the Schedule.

Funding Period means the period specified in the Schedule.

Grantee means the person identified as the 'Applicant', 'Chief Investigator', and/or 'Researcher', 'Clinician' in the Application and includes any substitute grantee, investigator, clinician or researcher approved by the Administering Institution pursuant to clause 11.2(a).

Grant(s) means the research project and/or clinical activity identified in the Application. A summary description of each Grant, its associated Application, any

amendments required by the Cancer Institute NSW to apply in respect of the Application or the Grant and the applicable Schedule number relating to that Grant, is set out in Annexure A.

Grants Administration Policy means the 'Cancer Institute NSW Grants Administration Policy' set out or referred to in Annexure B to this Agreement, as amended from time to time.

GST, Input Tax Credit, Supply and **Tax Invoice** have the meanings as given in the GST legislation.

GST legislation means *A New Tax System (Goods and Services Tax) Act 1999*, related legislation and any delegated legislation made pursuant to such legislation, as amended from time to time.

Intellectual Property includes all industrial and intellectual property rights including but not limited to copyright, future copyright, moral rights, patents, trade, business or company names, registered and unregistered trademarks, registered designs, trade secrets, know-how, rights in relation to circuit layouts and all other rights of intellectual property as recognised by the law in force in Australia or elsewhere.

Licensed Incorporated Material means, in relation to a Grant, Existing Material that is incorporated in, supplied with (or as part of), or required to be supplied with (or as part of), the Licensed Research Material for that Grant.

Licensed Research Material means, in relation to a Grant:

- a) the Application;
- b) any summary of the Grant that the Administering Institution is required to provide to the Cancer Institute NSW prior to the commencement of the research project and/or clinical activity the subject of the Grant, which the Cancer Institute NSW may use to provide information to the general public and others about the Grant;
- c) all of the reports, statements, documentation and information described in clauses 7 (Financial reports) and 8 (Progress/final reports).

Last date for commencement means the last date for the commencement of work on the Grant specified in the Schedule.

Material includes all forms of works and subject matter in which Intellectual Property may subsist, created or stored by any means, including (without limitation) documents, equipment, designs, templates, computer programs, software and applications, products, processes, devices, technologies, information and data.

Research Material means any documentation, information or data in whatever form, written, created or otherwise brought in to existence as a result of the Grant(s).

Schedule means in relation to each Grant, the schedule with the number next to the name of that Grant set out in Annexure A attached to this Agreement.

- 1.2 Except where the context otherwise requires:
- (a) a reference to legislation (including subordinate legislation) is a reference to that legislation as amended, consolidated, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) a reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable;
 - (c) a reference to a month is a reference to a period commencing on a day of one of the 12 named months and ending:
 - (i) immediately before the end of the corresponding day of the next named month, or
 - (ii) if there is no such corresponding day, at the end of the next named month,
 - (d) where any time limit pursuant to this Agreement falls on a Saturday, Sunday or Public Holiday in the State of New South Wales then that time limit will be deemed to have expired on the next business day;
 - (e) where the Administering Institution is comprised of more than one person, each obligation of the Administering Institution will bind those persons jointly and severally and will be enforceable against them jointly and severally;
 - (f) clause headings are for convenient reference only and are not intended to affect the interpretation of this Agreement;
 - (g) where any word or phrase has a defined meaning, any other form of that word or phrase has a corresponding meaning;
 - (h) any reference to a person or body includes a partnership and a body corporate or body politic; and
 - (i) words in the singular include the plural and vice versa.
- 1.3 Where there is more than one Grant covered under this Agreement, the terms and conditions of this Agreement apply as if a separate agreement had been entered into in respect of each Grant.
- 1.4 This Agreement may be executed in any number of counterparts. All of such counterparts taken together shall be deemed to constitute one and the same Agreement.

2. Conduct of the grant(s)

- 2.1 The Administering Institution shall be responsible for the conduct of the Grant(s) as detailed in the Application and in accordance with the budget specified in the Application (or otherwise as varied from time to time with the agreement of the Cancer Institute NSW).
- 2.2 The Administering Institution shall ensure that the Grant(s) is/are completed within the Funding Period or such other period as may be agreed to between the parties.
- 2.3 In the conduct of the Grant(s), the Administering Institution shall:
 - (a) endeavour in good faith to achieve the expected aims for the Grant(s) specified in the Application;
 - (b) provide the assistance, facilities and services necessary for the efficient conduct of the Grant(s);
 - (c) meet the normal overhead and operating expenses of the Administering Institution as required to support the Grant(s);
 - (d) ensure that all relevant institutional and regulatory ethical approvals are obtained and maintained if required for the duration of the Grant(s);
 - (e) comply with and ensure that the Grantee:
 - i. complies with the Grants Administration Policy; and
 - ii. complies with the applicable guidelines relating to the Application and/or the Grant that were in place at the time of submission of the Application to the Cancer Institute NSW;
 - (f) comply with all applicable standards, laws and regulations in relation to this Agreement; and
 - (g) hold all other rights, consents and approvals required to perform this Agreement.

3. Funds

- 3.1 The Cancer Institute NSW agrees to pay the Funds to the Administering Institution, in the amount, and in accordance with the timetable set out in the Schedule.
- 3.2 The Administering Institution acknowledges that it is only entitled to the Funds and no more than the Funds.
- 3.3 The Funds are made available for the Grant and are not transferable to any other programs or projects. (For the avoidance of doubt, where this Agreement covers more than one Grant, Funds provided for one Grant is not transferable to another Grant or to be used for another Grant covered under this Agreement).

- 3.4 The Funds are to be expended in the State of New South Wales unless otherwise detailed in the Application.
- 3.5 Payment of the Funds will only commence after the Cancer Institute NSW has received a duly executed copy of this Agreement, an invoice (or a Tax Invoice if a taxable Supply) for the first instalment from the Administering Institution and, if applicable, where the Grantee is not an Australian citizen or permanent resident, certified evidence of the Grantee's residency status and right to remain in Australia for the duration of the Funding Period.
- 3.6 Unless the Administering Institution has obtained the written approval of the Cancer Institute NSW to extend the Last date for commencement, work on the Grant must commence by the Last date for commencement or the Agreement may be terminated under clause 16. The second instalment of the Funds will only be paid following receipt of advice from the Administering Institution that the Grant has commenced.
- 3.7 Payment of any subsequent instalments of the Funds is conditional on the Administering Institution continuing to meet its obligations under this Agreement.
- 3.8 The Administering Institution must promptly inform the Cancer Institute NSW in writing of any delay or suspension or an expectation or anticipation of a delay or suspension of more than six (6) months in the commencement or progress of the Grant(s).

4. GST

- 4.1 Unless otherwise indicated, all consideration for any supply under this Agreement is exclusive of any GST imposed in relation to the Supply.
- 4.2 If,
 - (a) despite any other provision of this Agreement, GST is imposed on any Supply by the Administering Institution to the Cancer Institute NSW under this Agreement; and
 - (b) the Cancer Institute NSW, is or will be entitled to receive an Input Tax Credit in relation to that Supply,the Cancer Institute NSW will pay to the Administering Institution an additional amount equal to the GST imposed on that Supply, at the time and in the manner payment is otherwise payable under this Agreement in relation to that Supply on receipt of a Tax Invoice.
- 4.3 The Administering Institution must be registered under the GST legislation at the time of making any Supply under this Agreement on which GST is imposed.
- 4.4 If the Administering Institution is not registered under the GST legislation as required under the immediately preceding subclause, the Administering Institution will not be entitled to receive any additional amount as provided under this clause and the Cancer

Institute NSW will withhold part of the Funds payable at that time if required under the GST legislation.

- 4.5 If for any reason the Cancer Institute NSW pays to the Administering Institution an amount under this clause which is more than the GST imposed on the Supply, the Administering Institution must repay the excess to the Cancer Institute NSW on demand or the Cancer Institute NSW may set off the excess against any other amounts due to the Administering Institution.

5. Use of funds

- 5.1 The Administering Institution shall not use the Funds for any purpose other than the conduct of the Grant(s) for which the Funds were provided.
- 5.2 The Administering Institution:
- (a) shall deposit all Funds into an interest-bearing bank account controlled solely by the Administering Institution unless it is prohibited from doing so by legislation or Government regulation;
 - (b) ensure that all interest earned on the Funds is applied to the Grant(s) for which the Funds were provided;
 - (c) shall keep proper accounts and records of its receipts and use of the Funds;
 - (d) shall maintain individual ledgers within the bank account for the Grant(s).
- 5.3 The Administering Institution shall not use the Funds for the purposes of expenditure on any Administrative Costs associated with the Grant(s) other than those set out in the budget specified in the Application (or otherwise as varied with the prior written agreement of the Cancer Institute NSW).
- 5.4 The Administering Institution shall:
- (a) ensure that proper accounting controls are exercised over the Grant(s) including the Funds;
 - (b) maintain separate accounting records for all transactions in relation to the Grant(s).
- 5.5 Subject to clause 5.7, the Administering Institution shall only use the Funds during the Funding Period.
- 5.6 Where the Administering Institution has not expended the full amount of the Funds during the Funding Period, the Administering Institution shall, within three (3) months after the end of the Funding Period pay to the Cancer Institute NSW any amount not so expended, unless the Administering Institution had prior to the end of the Funding Period, advised the Cancer Institute NSW of the reasons for the non-expenditure and had obtained written approval from the Cancer Institute NSW for the Funding Period to be extended and the unexpended part of the Funds to be carried forward.

- 5.7 The Administering Institution will liaise with the Grantee(s) in relation to the use of the Funds during the Funding Period.

6. Conditions of employment

- 6.1 Clause 6 applies only to Early Career Development Fellowships, Career Development Fellowships, Research Leader Program and Future Research Leaders Program grants.
- 6.2 All Early Career Development Fellowships, Career Development Fellowships, Research Leader and Future Research Leaders grants are full time awards and as such the Grantee(s) may not:
- (a) hold another position either at the Administering Institution or at another institution. The Administering Institution shall ensure that the successful Grantee(s) has formally resigned from any other position before taking up work on the Grant(s);
 - (b) accept additional appointments or remuneration without the prior written agreement of the Cancer Institute NSW. The Administering Institution will immediately advise the Cancer Institute NSW if it becomes aware that the Grantee(s) has accepted an additional appointment or remuneration.

7. Financial reports

- 7.1 The Administering Institution shall provide the Cancer Institute NSW with annual written financial reports on the Grant(s) by the dates specified in the Schedule. The financial report must include:
- (a) a financial statement specifying the total Funds received and expended by the Administering Institution during the previous financial year or part thereof;
 - (b) any additional information or statements which may be specified from time to time by the Cancer Institute NSW; and
 - (c) a declaration by the Chief Financial Officer or his/her delegate certifying the correctness of the particulars provided in the financial report and including a statement that the Funds were expended solely for the purpose of meeting expenditure on the conduct of the Grant.
- 7.2 If requested, the Administering Institution shall provide the Cancer Institute NSW with an annual audit report on the Grant for each year of the Funding Period certified by an independent qualified accountant.
- 7.3 Within three (3) months after the conclusion of the Funding Period the Administering Institution shall provide the Cancer Institute NSW with a final financial report detailing expenditure on the Grant since the previous financial year end. The financial report must include:

- (a) a financial statement specifying the total Funds received and expended by the Administering Institution during the current financial year or part thereof;
- (b) any additional information or statements which may be specified from time to time by the Cancer Institute NSW; and
- (c) a declaration by the Chief Financial Officer or his/her delegate certifying the correctness of the particulars provided in the financial report and including a statement that the Funds were expended solely for the purpose of meeting expenditure on the conduct of the Grant.

7.4 (a) Audits may be conducted in respect of:

- i. the Administering Institution's compliance with its obligations under this Agreement; and
 - ii. any other matters reasonably determined by the Cancer Institute NSW to be relevant to the Grant or the performance of the Administering Institution's obligations under this Agreement.
- (b) The Administering Institution shall, during the Funding Period and for a period of six (6) years following the expiration or termination of this Agreement, at times agreed to by the parties but within twenty-eight (28) days of a request from the Cancer Institute NSW, permit the Cancer Institute NSW and/or the Internal Audit Bureau of NSW access to the Administering Institution's premises, personnel, data, records, accounts, financial material and other materials relevant to the performance of this Agreement, for the purposes of conducting an audit.

8. Progress/final reports

8.1 The Administering Institution shall provide annual progress reports and a final report on the conduct of the Grant(s) by the dates specified in, the Schedule. Progress reports must include:

- (a) a summary of key outcomes of the Grant achieved to date and where applicable, measured against any relevant performance milestones and targets;
- (b) highlights, major breakthroughs and any difficulties encountered; and
- (c) any additional information specified by the Cancer Institute NSW.

9. Access to information by Cancer Institute NSW

9.1 Without derogating from any other rights under this Agreement, the Administering Institution shall provide the Cancer Institute NSW with such information relating to the Grant(s) as the Cancer Institute NSW shall reasonably request for the purpose of auditing and evaluating the Grant(s), and shall provide access on reasonable terms to all written, electronic and other records (including copies thereof) required to carry out such audit and evaluation.

10. Intellectual property

- 10.1 This clause 10 applies subject to anything to the contrary in the Schedule.
- 10.2 Unless otherwise specified in the Schedule, the Cancer Institute NSW makes no claim over Intellectual Property generated as a result of the Grant(s).
- 10.3 The Administering Institution shall adhere to any Intellectual Property policy approved by the governing body of the Administering Institution that:
- (a) is congruent with the document "National Principles of Intellectual Property Management of Publicly Funded Research" released in September 2001;
 - (b) is congruent with the National Health and Medical Research Council revised policy on dissemination of research findings (effective 1 July 2012); and
 - (c) has, as one of its aims, the maximisation of benefits arising from research.

Licence to the Cancer Institute NSW

- 10.4 The Administering Institution grants to the Cancer Institute NSW, or must procure for the Cancer Institute NSW, a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including the right of sub-license) to use, reproduce, communicate, modify, adapt and perform any other right (including any right comprising copyright), in respect of all Intellectual Property in the Licensed Research Material and the Licensed Incorporated Material for the Cancer Institute NSW Purposes.

Deposit of Research Material

- 10.5 If required by a policy referred to in clause 10.3 dealing with the dissemination of research findings, the Administering Institution must deposit all Research Material, and any related data (including any publication containing Research Material), in an appropriate subject, open access institutional repository (such as the Australian Consortium for Social and Political Research Inc. archive or databases listed under the National Centre for Biotechnology Information), in accordance with the timeframe and other requirements set out in that policy.
- 10.6 Any Research Material has been, or will be, deposited in a repository in accordance with clause 10.5 by the due date for a final report for the Grant(s), must be identified in that final report.

Moral rights

- 10.7 The Administering Institution must hold, or obtain, consents from all authors of Research Material to its use and adaptation by the Cancer Institute NSW in accordance with clause 10.4, without restriction and without any requirement to attribute the Research Material to its authors.

11. Personnel

- 11.1 The Administering Institution shall ensure that the Grantee(s) conducts the Grant(s) in accordance with this Agreement.
- 11.2 Where a Grantee is unable to conduct or continue to conduct the Grant(s), the Administering Institution must promptly inform the Cancer Institute NSW in writing of the same, in which case the Cancer Institute NSW may:
- (a) approve of the substitution of another grantee, investigator, clinician or researcher to act in place of the out-going Grantee;
 - (b) terminate this Agreement under clause 16 or reduce or suspend payment of the Funds; or
 - (c) take other such action as agreed between the parties.

12. Acknowledgement participation & confidentiality

Acknowledgement and Participation

- 12.1 The Administering Institution shall acknowledge receipt of Funds and the Cancer Institute NSW in any public statements about the Grant including any public announcements, advertising material, websites, research reports or other material produced for distribution by, or on behalf of the Administering Institution.
- 12.2 The Administering Institution shall use its best endeavours to ensure that the Grantee indicate his/her status as a recipient of funding support from the Cancer Institute NSW, in all scientific publications, programs of scientific meetings and in any other public forum where any presentation of materials relating to the Grant(s) is made by the Grantee.
- 12.3 Neither party shall use the logo of the other party without that other party's written permission.
- 12.4 The Administering Institution agrees that if requested to do so during the Funding Period, the Administering Institution will participate in, and present at, any annual forum organised by the Cancer Institute NSW or other NSW Government funding body.
- 12.5 The Administering Institution must not and must take all reasonable steps to ensure that the Grantee does not, during the Funding Period and for a period of 12 months following the end of the Funding Period, make any statement or other public comment which is critical of, embarrassing to or is otherwise capable of adversely affecting the reputation of the Cancer Institute NSW or of the State Government of NSW.
- 12.6 If requested to do so by written notice from the Cancer Institute NSW (the "notice"), the Administering Institution must not, and must procure that the Grantee does not, make any public announcement, press release or other public comment or

advertisement of any kind, relating to the Grant (the "media embargo"). The media embargo will apply:

- (a) for the period specified in the notice; or
- (b) if no period or end date is specified in the notice, until such time as the Administering Institution receives written notice from the Cancer Institute NSW specifying that the media embargo no longer applies.

Confidentiality

12.7 The Administering Institution must keep the Confidential Information of the Cancer Institute NSW in confidence and must not disclose any such information to any person without the prior written consent of the Cancer Institute NSW, other than as provided in this Agreement.

12.8 The Administering Institution may disclose Confidential Information of the Cancer Institute NSW to:

- (a) the Grantee;
- (b) the Administering Institution's Personnel, if the disclosure is necessary for the purposes of this Agreement; and
- (c) the Administering Institution's legal and professional advisers, subject to an obligation of confidentiality,

provided that the Administering Institution ensures that the recipient:

- (d) keeps the Confidential Information confidential; and
- (e) does not use this information except for the purposes of this Agreement.

13. Other funding & transfer of a grant(s)

Other funding

13.1 Unless otherwise agreed by the Cancer Institute NSW in writing, no Funds will be provided pursuant to the Grant(s) where the Administering Institution receives funding for the same or a similar activity from another source including without limitation, Commonwealth, State, Territory or local government.

13.2. The Administering Institution agrees to inform the Cancer Institute NSW in writing within 28 days of entering into any arrangement (whether contractual or statutory) under which the Administering Institution is entitled to receive funding from any other source for the same or a similar activity in respect of which the Grant(s) are provided.

Transfer of a Grant(s)

- 13.3 If the Administering Institution wishes to transfer the conduct of the Grant(s) to another institution, the provisions of this clause shall apply.
- 13.4 The Administering Institution must notify the Cancer Institute NSW of the application to transfer the conduct of the Grant(s) to another institution and provide such details of the proposed transfer as the Cancer Institute NSW may reasonably request.
- 13.5 The Cancer Institute NSW reserves the right, in its absolute discretion:
- (a) to terminate this Agreement under clause 16;
 - (b) to suspend or reduce payment of the Funds; and/or
 - (c) to approve the transfer of the conduct of the Grant(s) and impose such conditions on that approval as it sees fit, including:
 - i. the transfer of any unexpended Funds to the new administering institution;
 - ii. to the extent possible, the transfer of any goods or equipment, in excess of \$5,000 purchased utilising the Funds to the new administering institution; and/or
 - iii. the execution of a new agreement in relation to the ongoing conduct of the Grant(s) by the new administering institution.

14. Suspension & reduction of funds

- 14.1 If the Administering Institution wishes to suspend the conduct of the Grant(s), the Administering Institution must consult with the Grantee and must seek the prior written agreement of the Cancer Institute NSW.
- 14.2 The Cancer Institute NSW may, by notice to the Administering Institution, suspend payment of the Funds or any instalments thereof if:
- (a) the Cancer Institute NSW approves a deferment of the Last date for commencement or agrees to Administering Institution's request to suspend the conduct of the Grant; or
 - (b) the Cancer Institute NSW is not satisfied that the Administering Institution is conducting the Grant in accordance with the terms and conditions of this Agreement (including without limitation, clauses 7 and 8 of the Grants Administration Policy).
- 14.3 Any suspension of payment of the Funds will be effective:
- (a) on and from the date specified in the notice; and
 - (b) if payment of the Funds is suspended under clause 14.2(a), for the period specified in the notice; or

- (c) if payment of the Funds is suspended under clause 14.2(b), until such time as the Administering Institution performs its obligations under this Agreement (including without limitation, the Grants Administration Policy) to the satisfaction of the Cancer Institute NSW or the Cancer Institute NSW otherwise elects to terminate this Agreement under clause 16.1.
- 14.4 Without limiting its rights to suspend payment of the Funds, the Cancer Institute NSW may, by notice to the Administering Institution, reduce the amount of Funds to be provided under this Agreement:
- (a) if the Cancer Institute NSW is satisfied that there is a reduction in the scope of the Grant; or
- (b) as a result of any change in government policy or lack of appropriation by the NSW Parliament, funds available for the Grant(s) are to be reduced.
- 14.5 If the Cancer Institute NSW notifies a reduction of the Funds then on and from the date specified in the notice and subject to this Agreement, the Cancer Institute NSW shall pay reduced Funds for the remainder of the Funding Period.
- 14.6 Subject to clauses 14.3 and 14.5, the Cancer Institute NSW shall have no liability:
- (a) to pay any Funds that is outstanding by reason of the suspension of, or reduction in, those Funds under this Agreement; and
- (b) for any loss or costs incurred by the Administering Institution as a consequence of a suspension of, or reduction in, the Funds.

15. Termination for convenience

- 15.1 The Cancer Institute NSW may, at any time terminate this Agreement in whole or in part, by giving not less than three (3) months written notice to the Administering Institution, without the need to give reasons for such termination. Termination pursuant to this clause 15.1 will take effect on the date specified in the notice being a date not less than three (3) months from the date of the notice, or, if no date is specified, three months from the date the notice is issued by the Cancer Institute NSW.
- 15.2 The following shall be deemed to be notices to terminate this Agreement for the purposed of clause 15.1:
- (a) written agreement by the Cancer Institute NSW to suspend the conduct of the Grant(s) in accordance with clause 14.1; and
- (b) a notice pursuant to clauses 14.2 and 14.3,
- unless expressly specified otherwise in the notice.
- 15.3 If this Agreement is terminated for convenience, the Cancer Institute NSW shall:

- (a) pay any Funds payable under this Agreement up to the effective date of termination; and
 - (b) reimburse the Administering Institution all unavoidable costs and expenses incurred by the Administering Institution that is directly attributable to the termination excluding:
 - i. any costs arising pursuant to the termination of an employment contract which exceeds the equivalent of four weeks salary;
 - ii. the amount (if any) in excess of the balance of the Funds payable at the effective date of termination had the Cancer Institute NSW not exercised its right of termination for convenience.
- 15.4 Upon receipt of a notice of termination for convenience, the Administering Institution must take all reasonable steps possible to minimise or mitigate any losses resulting from the termination.
- 15.5 Except as set out in clause 15.3, the Cancer Institute NSW is not liable to pay any other amount in respect of a termination for convenience. The Administering Institution must provide satisfactory written evidence of all costs and expenses claimed under clause 15.3.

16. Termination for cause

- 16.1 The Cancer Institute NSW may by written notice to the Administering Institution immediately terminate this Agreement in whole or in part where any one or more of the following circumstances apply:
- (a) where the Administering Institution has breached any of the terms and conditions of this Agreement and such breach is not remedied within twenty-one (21) days of receipt of a written notice of the breach and requiring the breach to be remedied;
 - (b) the Cancer Institute NSW is reasonably satisfied that the Grant(s) is not being conducted in accordance with the Application or is not meeting its aims as specified in the Application;
 - (c) the Administering Institution fails to notify the Cancer Institute NSW of any delay or suspension of the Grant(s) as required by clause 3.8;
 - (d) the Grantee is unable to conduct or continue to conduct the Grant(s) under clause 11;
 - (e) the Cancer Institute NSW does not approve of any transfer of the Grant(s) under clause 13;
 - (f) a conflict of interest or potential conflict of interest arises which, in the reasonable opinion of the Cancer Institute NSW, cannot be satisfactorily resolved or lessened under clause 22;

- (g) the Administering Institution becomes bankrupt, insolvent or enters into a scheme or arrangement with its creditors or otherwise ceases to exist;
- (h) the Cancer Institute NSW is reasonably satisfied that any statement in the Application is incorrect or incomplete in a way which would have affected the original decision to approve the Funds;
- (i) the Administering Institution is in breach of the provisions of clause 12;
- (j) there are concerns regarding the conduct of the Grantee or the Administering Institution, including without limitation:
 - (i) safety concerns; or
 - (ii) concerns regarding the authenticity of any data or information included in the Application or in any progress report;which concerns are not addressed or capable of being addressed to the reasonable satisfaction of the Cancer Institute NSW.
- (j) Where an independent reviewer's report concludes that the Grant(s) is not being conducted in accordance with the Application or is not meeting its aims as specified in the Application; or
- (k) as a result of any change in government policy or lack of appropriation by the NSW Parliament, Funds for the Grant(s) are to cease.

16.2 Where the Cancer Institute NSW terminates this Agreement under clause 16.1, the Cancer Institute NSW shall not be obliged to pay the Administering Institution any outstanding amount of the Funds.

17. Recovery of funds

- 17.1 The Administering Institute shall, within one (1) month of the effective date of termination of this Agreement (or part of this Agreement) for any reason, refund to the Cancer Institute NSW any part of the Funds that has not been expended at the effective date of termination by the Administering Institution for the purposes of the Grant.
- 17.2 In the event that this agreement is terminated by the Cancer Institute NSW pursuant to clause 16.1 (a), (h), (j) or (k), the Cancer Institute may issue a notice to the Administering Institution seeking reimbursement of the whole or part of the Funds paid under this Agreement ("Reimbursement Notice"). The Administering Institution will, within 20 business days of receipt of a Reimbursement Notice, reimburse the Cancer Institute NSW the amount sought in the Reimbursement Notice.
- 17.3 The Cancer Institute NSW may recover any Funds paid under this Agreement as a debt due to the Cancer Institute NSW where:

- (a) the Cancer Institute NSW is reasonably satisfied that any part of the Funds have been expended or committed otherwise than in accordance with this Agreement; and/or
 - (b) the Administering Institute has failed to pay any amounts required to be repaid under clause 5.6 and/or clause 17.1.
- 17.4 The Cancer Institute NSW may deduct from the amounts otherwise payable to the Administering Institution under this Agreement or any other agreement with the Administering Institution, any amount due to the Cancer Institute NSW by the Administering Institution under this Agreement.

18. Indemnity

- 18.1 The Administering Institution shall indemnify at all times, the Cancer Institute NSW, its officers, employees and agents from and against all action, claims, demands, costs and expenses (including the cost of defending or settling any action, claim or demand) made sustained, brought or prosecuted arising from:
- (a) any infringement or alleged infringement of Intellectual Property rights arising from this Agreement including from any use by the Cancer Institute NSW (including use by its employees, officers, agents and contractors), of the Research Material;
 - (b) a breach of the Administering Institution's obligations under this Agreement; and/or
 - (c) any unlawful, wrongful, wilful or negligent act or omission of the Administering Institution and/or the Grantee(s) in connection with this Agreement.
- 18.2 The Administering Institution's liability to indemnify the Cancer Institute NSW under this Agreement will reduce proportionately to the extent that any negligent or other tortious act or omission of the Cancer Institute NSW contributed to the relevant liability, loss or damage or loss or expense.

19. Insurance

- 19.1 The Administering Institution shall ensure that all appropriate insurances necessary to meet its obligations under this Agreement are maintained at all times including worker's compensation insurance as required by law and public liability insurance. The Administering Institution shall, on request, supply evidence of such insurance to the Cancer Institute NSW.
- 19.2 The Administering Institution may act as its own insurer. In the event the Administering Institution acts as its own insurer, it must demonstrate to the reasonable satisfaction of the Cancer Institute NSW that it is able to adequately cover, to the same extent, the risks that would have been covered by the insurance policies set out in clause 19.1 above.

20. Use of information

- 20.1 The Cancer Institute NSW may use any report or information received from the Administering Institution in the course of any activities within the Cancer Institute NSW's functions for monitoring and evaluation purposes.
- 20.2 The Cancer Institute NSW may provide any information obtained from the Administering Institution relating to this Agreement and the Application:
- (a) as required by law;
 - (b) as required or requested by any judicial, parliamentary, investigatory or government body.
- 20.3 The Cancer Institute NSW may publicise and report on the awarding to, and the use of, the Funds to the Administering Institution including through media releases, general announcements and annual reports.
- 20.4 The Administering Institution will deal with all personal information in accordance with the provisions of the *Privacy and Personal Information Protection Act 1998* (Cth), the *Health Records and Information Privacy Act 2002* (NSW) and other legislation relating to privacy (the "Privacy Legislation"). Personal information will only be disclosed by the Administering Institution with the permission of the individual to whom it relates or where the Privacy Legislation allows disclosure.

21. Negation of employment and agency

- 21.1 The Administering Institution shall not represent itself, and shall ensure that its employees and agents and the Grantee do not represent themselves as being employees or agents of the Cancer Institute NSW. Neither the Administering Institution nor the Grantee(s) shall, by virtue of this Agreement, be an employee or agent of the Cancer Institute NSW.

22. Conflict of interest

- 22.1 The Administering Institution warrants that, at the date of signing this Agreement, no conflict of interest or potential conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement except as otherwise notified in writing to the Cancer Institute NSW. For the purposes of this Agreement, "Conflict of Interest" means any conflict of interest that exists or may arise through the Grantee or any Administering Institution's personnel involved in the Grant engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Administering Institution performing the Grant independently and fairly.
- 22.2 The Administering Institution shall notify the Cancer Institute NSW of any conflict of interest or potential conflict of interest, of which the Administering Institution becomes aware during the Funding Period.

- 22.3 The Administering Institution shall take such reasonable steps as required by the Cancer Institute NSW to resolve or lessen any conflict of interest or potential conflict of interest. If such conflict or potential conflict cannot be resolved or lessened to the reasonable satisfaction of the Cancer Institute NSW, the Cancer Institute NSW may terminate this Agreement under clause 16.

23. Adherence to relevant guidelines

- 23.1 The Administering Institution shall ensure that, in the performance of the Grant(s), it complies with:
- (a) all relevant national and NSW laws relating to good scientific practice and research on human and animal subjects;
 - (b) the guidelines applicable to the Grant(s) and set out or referred to in Annexure C, or as otherwise notified by the Cancer Institute NSW to the Administering Institution from time to time.

24. Equipment

- 24.1 An item of Equipment purchased, acquired or created with the Funds provided for a Grant must:
- (a) be used solely for research activities conducted pursuant to that Grant, unless the Cancer Institute NSW grants its prior written approval for any other use; and
 - (b) upon conclusion of research conducted pursuant to a Grant or upon termination or expiry of this Agreement, be dealt with in accordance with the reasonable directions of the Cancer Institute NSW.
- 24.2 The Administering Institution acknowledges and agrees that any Equipment is intended, where applicable, for use as a State-wide resource and is not intended to be provided or returned to the Cancer Institute NSW on the conclusion of research, termination or expiry of this Agreement.

25. Continuing obligations

- 25.1 The expiration or termination of this Agreement shall not affect such of its provisions as are expressed to operate or have effect thereafter. Without limiting the generality of the foregoing, the provisions of clauses 7.4, 10.1, 14.6, 15, 16.2, 17, 18, 19.1, 20 and 25 survives the termination or expiration of this Agreement.

26. Governing law

- 26.1 This Agreement is governed by the law of the State of New South Wales and the parties submit to the jurisdiction of the courts of that State.

27. Entire agreement

27.1 This Agreement comprises the entire agreement between the parties in relation to its subject matter.

28. Variation

28.1 Subject to clause 28.2, no variation of this Agreement shall be legally binding on either party unless executed by the parties in writing.

28.2 The Cancer Institute NSW may by written notice to the Administering Institution vary any of the details contained in the Schedule from time to time during the term of this Agreement and unless the Administering Institution notifies the Cancer Institute NSW in writing within 10 business days that it does not accept the variation, such variation shall apply and deemed to have been incorporated in the Schedule.

29. Waiver

29.1 If a party does not exercise (or delays in exercising) any of its rights under this Agreement or at law, that failure or delay does not operate as a waiver of those rights.

29.2 A single or partial exercise by a party of any of its rights under this Agreement or at law does not prevent the further exercise of any right.

30. Inconsistencies

30.1 If there are any inconsistencies between the clauses of this Agreement and any of its Schedules or Annexures, the clauses of this Agreement shall prevail.

31. Liaison officer

31.1 The parties shall notify each other of their respective liaison officer for the purposes of this Agreement prior to execution of this Agreement. The Administering Institution's liaison officer shall liaise with the liaison officer for the Cancer Institute NSW as reasonably required by the Cancer Institute NSW.

32. Disputes

32.1 Disputes shall as far as possible be satisfied by agreement between the parties.

32.2 If the dispute is not resolved, then the dispute is to be referred to the Australian Commercial Disputes Centre for mediation or to any other venue agreed between the parties that conduct mediation.

33. Severability and partial termination

- 33.1 If any part of this Agreement is prohibited, void or voidable, illegal or unenforceable, then that part is severed from this Agreement but without affect the continued operation of the remainder of this Agreement
- 33.2 Where there is more than one Grant covered under this Agreement and this Agreement is terminated in part under clause 15.1 or clause 16.1 in relation to one of the Grants, the provisions of this Agreement continue to apply and will remain in full force and effect in relation to any surviving Grant(s).

34. Notices

- 34.1 Any notices to be served by either party on the other shall be forwarded in writing to the address specified for receipt of notices in the Schedule.

SIGNED AS A DEED

On behalf of the **CANCER INSTITUTE NSW**

By

.....
Signature

.....
Name

.....
Date

.....
Witness signature

.....
Witness name

.....
Date

SIGNED AS A DEED

On behalf of **ADMINISTERING INSTITUTION**

By

.....
Signature

.....
Name and position
Who warrants they have the authority to bind
The Administering Institution

.....
Date

.....
Witness signature

.....
Witness name

.....
Date

Annexure A

Grant(s) covered by this Agreement between the Cancer Institute NSW and [*insert name of Administering Institution*]

Grant Application ID #	Grant(s) Type	Grant Application Title	Grantee	Amendments to Application required by the Cancer Institute NSW	Schedule Number
examples					
04/REG/4-02	Research Equipment Grant	Let's control cancer	Prof John Doe	[<i>Insert relevant details of all correspondence, arrangements or agreements between the Cancer Institute NSW and the Administering Institution which amends, alters or changes the terms of the Application. </i>]	1
04/RSA/5-02	Research Scholar Award	Investigate the cause of cancer	Ms Jane Doe		2

Annexure B

[Insert here or incorporate by reference the Cancer Institute NSW Grants Administration
Policy]

Annexure C

[Insert here or incorporate by reference the relevant guidelines applicable to the particular Grant]

Schedule [insert number]

Application No: [AppID]

Total Funds (exclusive of GST): [total]

Funding Period:

[startdate] to [enddate]

Last date for commencement of Grant (clause 3.6):

[6 months of start date or / __/__/__]

Named Grantee:

[NAME]

I confirm that I have been successful in receiving a NHMRC Fellowship: Yes/No

I declare that:

I am an Australian citizen or

I am a permanent resident or

Other (please specify): _____

Note: If a Grantee is not an Australian or permanent resident, the Administering Institution must ensure that the requisite work visa is in place at time of accepting the successful grant and that the Grantee will remain in Australia for the duration of the funding period. The Administering Institution must provide confirmation to the Cancer Institute NSW together with the invoice for the first instalment of the Funds.

Funds to be provided in the following instalments (clause 3):

The first instalment is to be paid within thirty (30) days of the Administering Institution providing the Cancer Institute NSW with an invoice (or a Tax Invoice if a taxable Supply) under clause 4.4 of the Agreement.

The second instalment is to be paid within thirty (30) days of the Administering Institution notifying the Cancer Institute NSW of the commencement of work on the Grant and of receipt by the Cancer Institute NSW of an invoice (or a Tax Invoice if a taxable Supply) from the Administering Institution.

Subsequent instalments will be payable quarterly thereafter within thirty (30) days of receipt by the Cancer Institute NSW of an invoice (or a Tax Invoice if a taxable Supply) from the Administering Institution during the Funding Period.

	July-Sept	Oct-Dec	Jan-March	April-June	Total
2010/11					
2011					
2012					

*** Invoices due quarterly in advance (May; Sept; Dec & March)**

Conditions of Employment (clause 6)

Will the Funds be used for Early Career Development Fellowship, Career Development Fellowship, Clinical Research fellowship, Research Leader Program or a Future Research Leader Program:

Yes / No (delete as appropriate)

Note: If Yes, clause 6 of the Agreement applies.

Financial reports to be submitted as follows (clause 7):

The first financial report for the purposes of clause 7.1 is to be provided by the 15th August following the commencement of payment of the Funds for the previous financial year or part thereof. Subsequent financial reports are to be provided annually thereafter during the Funding Period with a final financial report being provided in accordance with clause 7.3 of the Agreement. Financial reports must be submitted on the form available on the Cancer Institute NSW website.

Progress reports to be submitted as follows (clause 8):

Progress reports must be submitted on the form available on the Cancer Institute NSW website.

The first progress report is to be provided by 31st January following commencement of payment of the Funds for the previous calendar year, or part thereof, with each subsequent progress report during the Funding Period due annually thereafter. A final report on progress is required within three (3) months of the conclusion of the Funding Period. The Administering Institution shall also provide progress reports at such other times as reasonably requested by the Cancer Institute NSW.

Intellectual Property (clause 10):

The Administering Institution must use its best endeavours to exploit the results of the any research conducted with assistance from the Grant (including all Intellectual Property arising from such research and any Research Material) which are capable of being exploited (the "Commercialised Rights").

The Administering Institution agrees and undertakes that:

- (a) the Cancer Institute New South Wales is entitled to royalties arising from the exploitation of the Commercialised Rights;
- (b) in the event that Administering Institution becomes aware that any Commercialised Rights are exploited or are to be exploited, it will notify the Cancer Institute New South

Wales as soon as reasonably practical of the commercialisation or intended commercialisation; and

- (c) the parties shall negotiate, in good faith, the terms on which royalties are to be calculated and paid to the Cancer Institute New South Wales.

Clause 32 (Disputes) of this Agreement shall apply in the event that the Administering Institution and the Cancer Institute New South Wales are unable to reach an agreement in accordance with paragraph (c) above.

Special Conditions:

Notwithstanding clause 6.2(a), the Cancer Institute New South Wales and the Administering Institution agree that the Grantee is not required to resign and may continue to hold their current position with the Administering Institution.

Liaison Officers (clause 30)

Cancer Institute NSW:

Danielle Herbert
Manager, Grants and Research Development
grants@cancerinstitute.org.au
02 8374 5616

[Admin Institution]:

Administering Institution Contact Officer:

[fullname]
[position]
[email]
[phone]

Address for receipt of Notices (clause 33):

Cancer Institute NSW:

Cancer Institute NSW
PO Box 41
Alexandria NSW 1435

[Admin Institution]:

[Postal Address]