

# **FINANCIAL INCENTIVE AGREEMENT**

**ACCELERATE PARTNERSHIPS**

**BETWEEN**

**STATE OF QUEENSLAND**

through the  
Department of Science, Information Technology,  
Innovation and the Arts  
(ABN 41 841 375 926)

**AND**

**<RECIPIENT ORGANISATION>**

**(ABN XX XXX XXX XXX)**

**PROJECT: <PROJECT NAME>**

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**THIS AGREEMENT IS MADE**

**BETWEEN:**        **STATE OF QUEENSLAND** through the Department of Science, Information  
Technology, Innovation and the Arts (Innovation and Science Development)  
**(ABN 41 841 375 926)**

(‘the Department’)

**AND:**            **<RECIPIENT ORGANISATION> (ABN XX XXX XXX XXX)**

(‘the Recipient’)

**BACKGROUND:**

- A.    The Department administers the Accelerate Partnerships program (the Program) which aims to assist Queensland research organisations to undertake practical and applied science and research projects in collaboration with national/international research organisations and/or private, public or community sector end-users.
- B.    The Recipient has applied for Financial Assistance for the Project under the Program.
- C.    The Department has agreed to provide the Financial Assistance to the Recipient for the Project on the terms of this Agreement.

## AGREED TERMS:

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears:

**'Agreement'** means this document and any schedules or attachments to it;

**'Any Law'** means any law operating in the State of Queensland including:

- (a) common law;
- (b) the law of equity; or
- (c) any State or Federal statutory instrument;

**'Approved Security Provider'** has the same meaning as in the *Financial and Performance Management Standard 2009 (Qld)* as enacted by the *Financial Accountability Act 2009 (Qld)*;

**'Authorised Officer'** means the person specified as the point of contact for the Recipient in Item 8 of Schedule 1 or as otherwise notified to the Department by the Recipient from time to time in writing;

**'Background Intellectual Property'** means Intellectual Property owned or controlled by the Recipient and the Participants as at the Start Date that is used for, in connection with, or otherwise contributed to the Project;

**'Book of Account'** means:

- (a) any account, register or financial statement prepared by the Recipient for the Project;  
and
- (b) any source document used in the preparation of accounts or financial statements for the Project;

**'Business Day'** means a day that is not a Saturday, Sunday or public holiday in the place of business of the Parties;

**'Claim'** includes any claim, action, suit, proceeding, demand, liability, obligation for any cost, loss, injury, damage or expense of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, direct, indirect or consequential, whether at law, in equity, under statute or otherwise;

**'Collaborative Agreement'** means the agreement between the Recipient and the Major Participants described in Clause 7.2 of this Agreement;

**'Collaborative Date'** means the date the Collaborative Agreement is executed;

**‘Confidential Information’** means all information not in the public domain (including data, know how, trade secrets and commercial-in-confidence information) which is communicated from one Party to the other on the expressed or implied understanding that the information is:

- (a) confidential; or
- (b) restricted to being used and/or disclosed for a particular purpose;

**‘Contract Performance Guarantee’** means an undertaking by an Approved Security Provider to pay the amount of money specified in Item 6 of Schedule 1 which is:

- (a) irrevocable and unconditional;
- (b) payable, in whole or in part, immediately on demand;
- (c) payable without reference to another person;
- (d) not conditional on another right or obligation contained in another document;
- (e) not conditional on the Department proving that a demand has been made under this Agreement;
- (f) unlimited as to time; and
- (g) otherwise satisfactory to the Department;

**‘Contributions’** means those cash and non-cash/in-kind contributions made, or to be made to the Project by the Recipient and each of the Participants in accordance with the Contribution Table;

**‘Contribution Table’** means the table attached as Schedule 4 to this Agreement;

**‘Corporations Act’** means the *Corporations Act 2001* (Cwlth);

**‘Dispute’** means any dispute, controversy or difference between the Parties as to:

- (a) the construction of this Agreement;
- (b) the rights or obligations of a Party under this Agreement; or
- (c) any other matter arising out of or relating to this Agreement including any question regarding the existence, validity or termination of this Agreement;

**‘Eligible Project Costs’** means those costs:

- (a) identified as such in the Program Guidelines; or
- (b) approved as part of the Proposal;

**‘End Date’** means the date on which this Agreement will end, as specified in Item 4 of

Schedule 1;

**‘Final Report’** means a report presented in a format notified by the Department to the Recipient in writing from time to time, which includes the material specified in Item 2 of Schedule 6;

**‘Financial Assistance’** means the total amount of funding approved by the Department for the Project as specified in Item 5 of Schedule 1;

**‘Force Majeure Event’** means an unforeseeable event beyond the control of an affected Party which occurs without fault or negligence of the affected Party including:

- (a) acts of God;
- (b) war, riot, insurrection, vandalism or sabotage;
- (c) strike, lockout, ban, limitation of work or other industrial disturbance; and
- (d) law, rule or regulation of any government or governmental agency and executive or administrative order or act of general or particular application;

**‘Formal Public Statement’** means any formal statement or address by the Recipient or on the Recipient’s behalf in relation to the Project which is intended for the public domain, including:

- (a) media releases about the Project;
- (b) discussions about the Project with television or newspaper journalists;
- (c) presentations at conferences about the Project;
- (d) promotional and advertising material; and
- (e) any recording or publication resulting from the Project (including, without limitation, reprints) which is intended to be distributed into the public domain;

**‘Funds’** means the Financial Assistance received by the Recipient under this Agreement;

**‘Group Entity’** means any related body corporate or associate (as those terms are defined in the Corporations Act) of the Recipient;

**‘GST’** means any tax imposed by or through the GST Legislation;

**‘GST Amount’** means the amount of GST that is payable for any taxable supply under this Agreement (to be calculated at the applicable rate of GST at the time of the taxable supply);

**‘GST Legislation’** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related tax imposition Act (whether imposing tax as a duty of customs excise or otherwise)

and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such Acts;

**‘Intellectual Property’** – means any:

- (a) invention or discovery;
- (b) manner, method or process of manufacture;
- (c) drawing or design;
- (d) improvement;
- (e) patent, application for a patent, or right to apply for a patent;
- (f) right of secrecy or confidentiality in respect of any information or document;
- (g) common law or registered trademark; and
- (h) copyright or other rights in the nature of copyright subsisting in any works including reports, software and circuit layouts;

**‘Major Participant’** means a Participant required to enter into a Collaborative Agreement with the Recipient in accordance with the Program Guidelines as set out in Item 10 of Schedule 1;

**‘Milestone Claim’** means the information and material required by Schedule 5;

**‘Milestone Date’** means the date by which the Milestone Deliverable must be achieved, as set out in Schedule 3;

**‘Milestone Deliverable’** means the performance criteria set out in Schedule 3 which must be achieved before the corresponding instalment of Financial Assistance will be paid;

**‘Participant’** means a participant identified in Item 9 of Schedule 1;

**‘Party’** means a party to this Agreement;

**‘Payment Claim’** means a claim for payment including the information and material set out in Schedule 5;

**‘Payment Date’** means the date attached to each Milestone Deliverable, as set out in Schedule 3;

**‘Program’** means the Accelerate Partnerships program;

**‘Program Guidelines’** means the program guidelines attached as Schedule 8;

**‘Progress Report’** means a report presented in the format contained in Schedule 9, as amended and notified by the Department to the Recipient in writing from time to time, and



otherwise which includes the material specified in Item 1 of Schedule 6;

**‘Project’** means the project described in Items 1 and 2 of Schedule 1;

**‘Project Commencement Date’** means the date specified in Item 3 of Schedule 1;

**‘Project Intellectual Property’** means the Intellectual Property created or developed by the Recipient and/or the Participants during the course of, or as an outcome of the Project;

**‘Proposal’** means the application submitted by the Recipient to the Department that formed the basis of the approval for the provision of Financial Assistance for the Project attached as Schedule 7 (or as otherwise agreed to by the Department in accordance with clauses 4 or 6);

**‘Record’** means any agreement, report, Book of Account, transaction record and operating record relating to the Project; including all information and material necessary to prepare a Report or Payment Claim;

**‘Report’** means a Progress Report, a Final Report or an Update Report as referred to in Schedule 6;

**‘Reporting Period’** means the period to be covered in the relevant Report as set out in Schedule 3;

**‘Research Program’** means the project plan including the project deliverables and due dates set out in Schedule 2;

**‘Special Condition’** means any special condition forming part of this Agreement as set out in Item 12 of Schedule 1;

**‘Specified Personnel’** means those person identified as such in Item 11 of Schedule 1;

**‘Start Date’** means the date this Agreement is signed by the last Party to sign this Agreement;

**‘Substantial Interest’** is a holding of not less than 30 percent of the issued share capital of the Recipient, or a holding of shares in the Recipient which entitles the holder to no less than 30 percent of the voting power of all shares represented at any meeting of members of the Recipient;

**‘Tax Invoice’** means the same as that term is defined in the GST Legislation;

**‘Term’** means the term of this Agreement as defined in Clause 3;

**‘Unlawful’** means any act or omission (including wilful misconduct) which is not authorised justified or excused by Any Law; and

**‘Update Report’** means a report presented in a format notified by the Department to the

Recipient in writing from time to time, which includes the material specified in Item 3 of Schedule 6.

**1.2 In this Agreement:**

- (a) a reference to an individual or person includes a corporation or other legal entity or, where a person is nominated, the individual occupying that position;
- (b) words importing a gender include any other gender;
- (c) words in the singular include the plural and vice versa;
- (d) headings have been inserted for ease of reference only and are not intended to affect the meaning of this Agreement;
- (e) in the case of any inconsistency between a Schedule and a clause in this Agreement, the clause will prevail to the extent of any inconsistency;
- (f) defined terms include other parts of speech and grammatical forms of the defined word or phrase;
- (g) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (h) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (i) a reference to the Department and any government department or entity or other authority, association and body, whether statutory or otherwise ('Government Entity') will, in the event of any such Government Entity will, in the event of any such Government Entity ceasing to exist or being reconstituted, renamed or replaced or the powers or functions of the Government Entity being transferred to any other department, entity, authority, association or body, be deemed to refer respectively to the Government Entity established, constituted or succeeding, or as nearly as may be, to the powers or functions of the Government Entity;
- (j) unless stated otherwise, a reference to a schedule is referring to a schedule to this Agreement; and
- (k) the Parties must, in fulfilling their obligations and exercising their powers under this Agreement, act reasonably and in good faith and in a timely manner.

**2. SPECIAL CONDITIONS**

**2.1 The Parties agree to be bound by the Special Conditions (if any) set out in Item 12 of**

Schedule 1.

### **3. TERM**

3.1 This Agreement starts on the Start Date and ends on the End Date.

### **4. PROVISION OF FINANCIAL ASSISTANCE**

#### **Instalments of Assistance**

4.1 Subject to the Recipient's compliance with terms of this Agreement, the Department shall pay the Financial Assistance to the Recipient for the Project at the times and in the amounts set out in Schedule 3, subject to:

- (a) Clause 4.2;
- (b) the completion of the relevant research task set out in Schedule 2 and referable to the relevant Milestone Deliverables set out in Schedule 3; and
- (c) within a reasonable time of receiving a valid Payment Claim and the applicable Report in accordance with Clause 5.

#### **Effect of breach on payment of instalments**

4.2 If the Recipient breaches any of the terms of this Agreement, the Department may do any or all of the following:

- (a) not pay the Recipient any Financial Assistance until the breach is remedied to the satisfaction of the Department;
- (b) by notice in writing to the Recipient, require the Recipient to repay:
  - (i) any Funds that are unspent;
  - (ii) any Funds that have been spent otherwise than in accordance with the terms of this Agreement; and
  - (iii) the amount of the Funds which exceeds the total cash Contributions that have been made by the Recipient and the Participants to the Project as at the date of the notice;
- (c) vary the amount of Financial Assistance for the Project, or the amount of the Financial Assistance instalments; and
- (d) terminate the Agreement in accordance with Clause 18 if the provisions of that clause have been satisfied.

4.3 The Department's obligation to pay an instalment of the Financial Assistance is subject to all

information contained in the Proposal and all Reports being complete, accurate and not misleading, and all Reports being completed to the satisfaction of the Department. The Department regards inaccurate and misleading information as including, but not being limited to, claiming fictitious track records, inflating funds obtained from other sources and false claims in any publication or other Record, for example describing a paper as being “in press or accepted” even if it has only been submitted.

**Payment is not an admission**

**4.4 Any payment to the Recipient by the Department:**

- (a) will not constitute an admission or acceptance by the Department that the Recipient has complied with its obligations with this Agreement; and
  - (b) will not release the Recipient from its obligations under this Agreement,
- and the Department reserves its rights in this regard.

**No further obligation**

**4.5** The Recipient acknowledges that the Department is under no obligation to provide additional funding for the Project other than strictly in accordance with this Agreement, unless the Department in its absolute discretion determines otherwise.

**5. PAYMENT CLAIMS AND REPORTS**

**5.1** The Recipient must give the Department, a Payment Claim for each Milestone Deliverable in Schedule 3 (for which a Financial Assistance instalment is payable under Clause 3) no later than the Milestone Date.

**5.2 The Recipient must give to the Department:**

- (a) a Progress Report:
  - (i) for each Milestone Deliverable in Schedule 3, which requires a Progress Report to be submitted, no later than the relevant Milestone Date;
  - (ii) at any other time during the Term of the Agreement, within 20 Business Days of a written request from the Department for a Progress Report; and
- (b) a Final Report on or before the relevant Milestone Date specified in Schedule 3.

**5.3** At any time after the End Date until the second anniversary from the End Date, the Department may request (in writing) that the Recipient provide an Update Report. The Department can only exercise its right to make a request for an Update Report under this clause once during the period referred to in this clause.

- 5.4 The Recipient shall provide an Update Report within 40 Business Days of receiving the written request made in accordance with Clause 5.3.
- 5.5 If the Department is not satisfied with a submitted Report, the Department may require the Recipient to provide further information about any matter relating to the Report or to update and resubmit the Report, within 20 business days of receiving the Department's request.
- 5.6 If the Department requests further information from the Recipient about any matter relating to a Payment Claim, the Recipient must provide that information within 20 Business Days of receiving the Department's request.
- 5.7 The Recipient is not required to disclose personal information about an individual to the Department when such disclosure will amount to a breach of any applicable privacy legislation.

## **6. GST**

- 6.1 The Financial Assistance payable under this Agreement is exclusive of GST.
- 6.2 The Department will pay to the Recipient, the GST Amount in addition to the Financial Assistance, subject to the Recipient submitting to the Department a valid Tax Invoice in respect of the supply made by the Recipient under this Agreement.
- 6.3 If, for any reason, including without limitation:
- (a) any amendment to the GST Legislation;
  - (b) the issue of a ruling or advice by the Commissioner of Taxation;
  - (c) a refund to the Department or to the Recipient in respect of a supply made under this Agreement; or
  - (d) a decision of any tribunal or court,
- the amount of GST paid by the Department differs from the amount of GST paid or payable by the Recipient to the Commissioner of Taxation, then the Recipient must issue an appropriate GST adjustment note and any difference must be paid by or to the Department as the case may be.
- 6.4 The Parties agree to exchange such information as is necessary to enable each Party to accurately assess its rights and obligations under this clause.

## **7. RECIPIENT'S OBLIGATIONS**

## **Conduct of Project**

### **7.1 The Recipient must:**

- (a) conduct the Project substantially in accordance with the Research Program (the timing and output of the project deliverables) and the Proposal, or as otherwise approved by the Department in writing;
- (b) provide the information required pursuant to Schedule 3 and Schedule 5 for each Milestone Claim;
- (c) exercise due care and skill in carrying out the Project;
- (d) take all reasonable steps to minimise delay in completing the Project;
- (e) ensure that the Project remains eligible according to the eligibility criteria in the Program Guidelines throughout the Term of the Agreement;
- (f) ensure that the Recipient and each Participant provides the Contributions to the Project in accordance with the Contribution Table, unless otherwise agreed to by the Department in writing;
- (g) ensure that the cash Contributions made by the Recipient and the Participants to the Project throughout the Term of the Agreement satisfy the funding principles in the Program Guidelines;
- (h) spend the Funds and ensure that the cash and in-kind Contributions of the Recipient and each of the Participants are applied:
  - (i) only on Eligible Project Costs incurred on or after the Project Commencement Date; and
  - (ii) substantially in accordance with the budget in the Proposal, unless otherwise agreed to by the Department in writing.

## **Collaborative Agreement**

### **7.2 The Recipient must execute and maintain a Collaborative Agreement with the Major Participants, whereby the Major Participants shall be obliged to provide their respective Contributions to the Project. The Collaborative Agreement shall include provisions that:**

- (a) prescribe the role and Contributions of the Major Participants to the Project (including the amount, type and timing of their Contributions);
- (b) describe the arrangements applying to the conduct, outcome or results generated by the Project in relation to Intellectual Property rights, so as to cover (as a minimum):

- (i) the ownership and use of Background Intellectual Property in the Project; and
- (ii) the ownership, use of and commercialisation of any Project Intellectual Property;
- (c) are consistent with the details contained in the Proposal, Research Program and the Contribution Table, unless otherwise approved by the Department in writing; and
- (d) do not impede or prevent the Recipient from complying with any of its obligations under this Agreement.

7.3 The Recipient must ensure that the Intellectual Property provisions in the Collaborative Agreement are broadly consistent with the objectives of the Program.

7.4 The Recipient must not breach, amend or terminate a Collaborative Agreement so as to materially and adversely affect the Project, without the prior written consent of the Department.

#### **Specified Personnel**

7.5 The Recipient must ensure that it employs or otherwise procures the Specified Personnel to carry out the Project throughout the Term.

7.6 The Recipient may replace the Specified Personnel during the Term without the approval of the Department, provided that the Recipient:

- (a) ensures that any such replacement personnel have the time commitment, qualifications and competency to carry out the Project;
- (b) ensures that any such replacement personnel have similar expertise and ability to those of the Specified Personnel they are to replace; and
- (c) notifies the Department in writing within 14 days of the name and qualifications of the person(s) replacing the Specified Personnel.

#### **Obligation to notify**

7.7 The Recipient must notify the Department within 10 Business Days of becoming aware of any of the following developments:

- (a) a material breach by the Recipient of any provision of this Agreement;
- (b) a change of or cessation of work by a Specified Personnel;
- (c) the Recipient being approved to receive financial assistance for the Project from another Commonwealth, State or Territory government source or agency, including the amount of the funding and the name of the program under which it was provided; or

- (d) any other change which will materially affect the outcome of the Project or the Recipient's continuing eligibility under the Program Guidelines.

## **8. CONTRACT PERFORMANCE GUARANTEE**

- 8.1 This Clause 8 applies only if Item 6 of Schedule 1 is completed.
- 8.2 The Recipient must provide a Contract Performance Guarantee in favour of the Department before any Financial Assistance under this Agreement is paid.
- 8.3 The Department is not obliged to provide any Financial Assistance to the Recipient until the Recipient has provided the Contract Performance Guarantee in accordance with Clause 8.2.
- 8.4 The Department may retain the Contract Performance Guarantee until the later of:
  - (a) the End Date; and
  - (b) the completion of all the obligations of the Recipient in relation to the Project under this Agreement.
- 8.5 Notwithstanding Clause 8.4, the Department may, at its absolute discretion, return a Contract Performance Guarantee to the Recipient at an earlier date if the Department:
  - (a) receives written notice from the Recipient asking for the return of the Contract Performance Guarantee; and
  - (b) the Department is completely satisfied that the Project has been completed and that the Recipient has fulfilled its obligations under this Agreement.
- 8.6 If a Contract Performance Guarantee provided under this Agreement is given by a person who ceases to be an Approved Security Provider, the Recipient must provide the Department with a replacement Contract Performance Guarantee within 10 Business Days of that person ceasing to be an Approved Security Provider.
- 8.7 The Department may rely on a Contract Performance Guarantee provided by the Recipient for the Agreement to recover any amounts owing by the Recipient to the Department under this Agreement.

## **9. RECORDS**

- 9.1 The Recipient must keep and maintain complete and accurate Records for the Project including, without limitation:
  - (a) records that allow the audit of all Project costs (including Eligible Project Costs) incurred by the Recipient;
  - (b) records that show any funding made available to the Project (including the source,



amount and timing of such funds);

- (c) records that track the Project activities, progress of the Project and all steps undertaken by the Recipient for the purposes of meeting its obligations under this Agreement; and
- (d) any other records relating to the Project which are reasonably required by the Department from time to time.

9.2 The Recipient must provide any Record to the Department within 20 Business Days of being requested to do so.

9.3 The Recipient must, if requested to do so by the Department and at its own expense:

- (a) have its Books of Account audited at the end of the Recipient's financial year; and
- (b) provide a copy of its audited Books of Account to the Department within 80 Business Days of the Recipient's end of financial year.

9.4 The Recipient must allow the Department, its employees, agents and contractors, access to the Recipient's premises at a mutually agreeable time (but not later than 20 Business Days after receiving written notice from the Department that such access is required) to enable the Department and its employees, agents and contractors to:

- (a) inspect and copy any Records;
- (b) discuss with the Recipient, any matter pertaining to the Project and/or the Recipient's compliance with its obligations under this Agreement.

9.5 The Recipient's obligations under clauses 9 and 10 are subject to any agreement between the Recipient and a Participant which restricts access and can be justified to the satisfaction of the Department on the grounds of commercial sensitivity (including Intellectual Property considerations).

## **10. CONFIDENTIAL INFORMATION**

10.1 Subject to Clause 10.2, where Confidential Information is disclosed from one Party to another under this Agreement, the Party receiving the Confidential Information must not (except when authorised by Any Law or the other Party):

- (a) disclose Confidential Information coming to their knowledge through this Agreement;
- (b) use or disclose any Confidential Information provided under this Agreement other than for the purpose for which it is originally disclosed; or

- (c) use any Confidential Information in a direct or indirect way, or in a manner inconsistent with this Agreement so as to cause loss, injury or damage to the other Party.

10.2 The Recipient agrees that the Department may publicly disclose:

- (a) the name of the Recipient;
- (b) details of the Project, subject to:
  - (i) such disclosure not infringing or interfering with the rights of the Recipient and the Participants in regard to the Background Intellectual Property and the Project Intellectual Property ; and
  - (ii) other commercial sensitivities and Intellectual Property considerations which are to be determined in consultation with the Recipient prior to such disclosure;
- (c) details of the Financial Assistance provided under this Agreement; or
- (d) any information which is required to be disclosed under Any Law.

10.3 The Department is not in default of Clause 10.1 if the Confidential Information:

- (a) is disclosed by the responsible Minister administering the Department from time to time;
- (b) is disclosed by the Department, in response to a request by a House or Committee of the Parliament of the State; or
- (c) is shared by the Department within the Department or with another agency, where this serves the State's legitimate interests.

## **11. CORPORATE EXISTENCE**

11.1 If the Recipient is a company which is not listed on the Australian Stock Exchange, the Recipient must obtain the written consent of the Department prior to any person holding a Substantial Interest in the Recipient (or holding company of the Recipient) ceasing to hold a Substantial Interest in the Recipient. The Department has an absolute discretion on whether to consent under this clause.

11.2 If the Recipient is a company which is listed on the Australian Stock Exchange, the Recipient must immediately notify the Department when it becomes aware of any actual or proposed change in control of the Recipient (or holding company of the Recipient) to which chapter 6 of the Corporations Act applies.

## **12. ACKNOWLEDGEMENT OF ASSISTANCE**

12.1 The Recipient must, in making any Formal Public Statement about the Project (whether during the Term of this Agreement or after its expiry) include an acknowledgement of the Program and the Financial Assistance received from the Department.

12.2 The Recipient must notify the Department prior to finalising the following types of Formal Public Statement:

- (a) media statement about the Project; or
- (b) discussions about the Project with television or newspaper journalists.

The Department at its discretion may elect to participate in the Formal Public Statement opportunity.

12.3 The Recipient will not represent, claim or hold out in any way that the Department is a party to the delivery of the Project, other than as a financial contributor.

## **13. ETHICAL PRACTICES**

13.1 The Recipient, in undertaking the Project, must ensure, where relevant, that it:

- (a) complies with the National Health and Medical Research Council guidelines;
- (b) complies with all applicable ethical Codes (including the Code of Ethical Practice for Biotechnology in Queensland if the Project involves biotechnology);
- (c) clears the activities it undertakes in connection with the Project with all relevant ethical committees prescribed by the Recipient's research rules;
- (d) does not undertake any activity with any party that the Recipient becomes aware of that does not comply with Clause 13; and
- (e) whenever reasonably required by the Department, promptly furnish to the Department a written certification of compliance with the requirements of this clause.

## **14. DISCLAIMER, RELEASE AND INDEMNITY**

14.1 The Recipient carries out the Project entirely at its own risk. To the full extent permitted by Any Law, the Department disclaims any and all liability for any Claim brought against, made upon or incurred by the Recipient in carrying out the Project, unless that Claim arose as the result of any breach, fault, negligent or Unlawful act or omission by the Department, its employees, officers or agents.

14.2 To the full extent permitted by Any Law, the Recipient releases and indemnifies the

Department, its employees, officers and agents from and against any Claim which may be brought against, made upon or incurred by the Department, whether by the Recipient or a third party, which arises directly or indirectly as a result of:

- (a) any breach of this Agreement by the Recipient;
- (b) any negligent or Unlawful act or omission by the Recipient, a Group Entity or a Participant in relation to the Recipient's, a Group Entity's or Participant's performance of the Project;
- (c) the Recipient's performance of this Agreement or any other agreement relating to this Project; or
- (d) any infringement (or alleged infringement) of Intellectual Property rights by the Recipient, its Group Entity or Participants in the course of, or incidental to, performing the Project,

except to the extent that any breach, fault, negligent or Unlawful act or omission by the Department, its employees, officers and agents has directly caused or contributed to the Claim.

14.3 For the purpose of this Clause 14, a reference to the Department or the Recipient includes that Party's employees, officers and agents.

## **15. INSURANCE**

15.1 The Recipient must effect and maintain the insurances identified in Item 7 of Schedule 1 of this Agreement throughout the Term of this Agreement.

15.2 The Recipient must give copies of the certificates of currency for the insurance policies required by Clause 15.1 to the Department:

- (a) before commencing any work in relation to the Project or in any event, within 20 Business Days of the Start Date;
- (b) within 20 Business Days of the anniversary of the Start Date; or
- (c) otherwise within 20 Business Days of a written request by the Department to do so.

## **16. DELAY**

16.1 If the Recipient becomes aware that:

- (a) it will not be able to achieve a project deliverable in the Research Program by its corresponding due date; or
- (b) the progress of the Project will be substantially delayed,

for reasons other than Force Majeure, the Recipient must provide the Department with a written notice within 5 Business Days of becoming so aware.

16.2 The written notice provided by the Recipient must describe the reasons for the delay.

16.3 Within 20 Business Days of becoming aware that a project deliverable in the Research Program will not be met or that there will be a substantial delay to the Project, the Recipient must notify the Department of the impact of the delay on the progress of the Project, the actions (if any) it has taken or intends to take to address the cause of the delay and, if applicable, the projected date by which the project deliverable will be achieved.

16.4 Nothing in this Clause 16 shall affect the right of the Department to terminate this Agreement if the Recipient fails to conduct the Project substantially in accordance with the Research Program (the timing and output of the project deliverables) and the Proposal, or as otherwise approved by the Department in writing.

## **17. FORCE MAJEURE**

17.1 If a Party is prevented from or delayed in performing their obligations (other than to pay money) because of a Force Majeure Event, the affected Party must:

- (a) notify the other Party as soon as possible after the Force Majeure Event occurs; and
- (b) do all things necessary to mitigate and/or remove the effects of the Force Majeure Event.

17.2 Notice of a Force Majeure Event must include:

- (a) the full particulars of the Force Majeure Event;
- (b) the effect of the Force Majeure Event on the affected Party's performance of their obligations;
- (c) the anticipated period for which the Force Majeure Event will continue; and
- (d) the action the affected Party intends to take (if any) to mitigate or remove the effect of the Force Majeure Event.

17.3 Subject to clauses 17.1 and 17.2 the obligations of both Parties under this Agreement are suspended until such time as a Force Majeure Event ends.

17.4 Either Party may terminate this Agreement if the affected Party is prevented from or delayed in performing their obligations because of a Force Majeure Event for at least 20 Business Days.

## **18. TERMINATION**

18.1 The Department may immediately terminate this Agreement by notice in writing if:

- (a) the Recipient commits a material breach of this Agreement and:
  - (i) the breach is not capable of being cured; or
  - (ii) the breach is capable of being cured, but the Recipient fails to remedy the breach within 10 Business Days after receiving a notice to remedy the breach from the Department specifying the breach; or
- (b) the Recipient:
  - (i) enters into any arrangement or composition with its creditors generally, or has a controller, receiver, receiver and manager or administrator appointed;
  - (ii) goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purposes of reconstruction;
  - (iii) has execution levied on any of its assets and the execution is not satisfied within 20 Business Days;
  - (iv) is otherwise (in the Department's reasonable opinion) unable to pay its debts when they fall due; or
  - (v) withdraws from or refuses to continue with the Project, without sufficient justification (in the opinion of the Department acting reasonably).

18.2 A material breach under Clause 18.1 of this Agreement includes a breach of any of the Recipient's obligations under clauses 7, 8, 9, 10, 11 13, 15 or a Special Condition.

18.3 The Recipient may terminate this Agreement by notice in writing to the Department:

- (a) at any time before the first Milestone Date, where no Financial Assistance has been paid or is payable on or before the termination; or
- (b) upon the Department committing a material breach of this Agreement and:
  - (i) the breach is not capable of being cured; or
  - (ii) the breach is capable of being cured, but the Department fails to remedy the breach within 20 Business Days after receiving a notice to remedy the breach from the Recipient specifying the breach.

18.4 The Department is not required to pay any Financial Assistance to the Recipient if this Agreement is terminated under Clause 18.3 (a).

18.5 The Department may at any time, by reasonable written notice, terminate this Agreement for convenience, including for a machinery of government change.

## **19. RIGHTS ON TERMINATION**

- 19.1 Termination of this Agreement will not affect any Claim or action either Party may have against the other by reason of any antecedent breach of this Agreement and will not relieve either Party of any obligation under this Agreement which is expressed to continue after termination.
- 19.2 If this Agreement is terminated by the Department under clause 18.5, the Recipient will be entitled to reasonable costs (if any) that have been or will be incurred by the Recipient as a direct result of the termination of the Agreement and which the Recipient cannot recoup or avoid and which would not otherwise have been incurred by the Recipient if the Agreement had continued until its expiry. The Parties agree to negotiate the amount of the reasonable costs in good faith, and in the event that the Parties cannot reach agreement, the Department may determine the reasonable costs in its absolute discretion.
- 19.3 For the avoidance of doubt, the amount payable by the Department pursuant to clause 19 in addition to the Funds paid, will not exceed the maximum Funds payable pursuant to this Agreement.

## **20. ACQUITTAL OF FUNDS**

- 20.1 At any time within 6 months from the End Date or the date of termination of this Agreement (as applicable), other than termination by consent under Clause 18.5, the Department may require the Recipient (by notice in writing) to repay:
- (a) any Funds that at the End Date or date of termination (as applicable) are unspent;
  - (b) any Funds that have been spent otherwise than in accordance with the terms of this Agreement;
  - (c) the amount by which the Funds exceeds the total cash Contributions made by the Recipient and the Participants to the Project at the date of the notice; and
  - (d) where the Agreement is terminated pursuant to clause 18.1(b)(v), any Funds paid up to the date of termination.
- 20.2 Any amount payable under clauses 4.2(b) or 20.1 is a debt due to the Department (without further proof of the debt being necessary), payable within 20 Business Days of the notice given under the relevant clause.

## **21. SURVIVAL OF CLAUSES**

- 21.1 The following clauses will survive termination or expiration of this Agreement:
- (a) Clause 5.3 (Update Report);

- (b) Clause 8 (Contract Performance Guarantee);
- (c) Clause 9 (Records);
- (d) Clause 10 (Confidential Information);
- (e) Clause 12 (Acknowledgement of Assistance);
- (f) Clause 14 (Disclaimer, Release & Indemnity);
- (g) Clause 15 (Insurance);
- (h) Clause 19 (Rights on Termination);
- (i) Clause 20 (Acquittal of Funds); and
- (j) Clause 26 (Intellectual Property).

## **22. DISPUTE RESOLUTION**

22.1 Subject to Clause 22.3, the Parties agree not to commence any legal proceedings in respect of any Dispute arising under this Agreement, which cannot be resolved by informal discussion, until the procedure provided by this Clause 22 has been used.

22.2 The Parties agree that any Dispute arising during the Term of this Agreement is dealt with as follows:

- (a) the Party claiming that there is a Dispute will send the other Party a written notice stating that:
  - (i) it is a notice under this Clause 22.2(a) and
  - (ii) specifying in reasonable detail:
    - (A) the nature of the Dispute; and
    - (B) the matters on which the parties are unable to agree at the date of the notice of the Dispute;
- (b) the Parties will try to resolve the Dispute through direct negotiation by persons whom they have given the authority to resolve the Dispute and must use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions;
- (c) if the Dispute is not resolved within 10 Business Days from the date of the notice in Clause 22.2(a), the Dispute must be referred to mediation in accordance with the following provisions:
  - (i) the Parties must agree upon and jointly appoint a mediator within a further 5 Business Days. The mediator will be an independent person agreed between



the Parties. If the Parties do not agree as to the mediator to be appointed within that time, either Party must procure the president or other senior office bearer for the time being of the Australian Commercial Disputes Centre Limited (Queensland) to nominate a person to act as mediator. Any costs incurred by the mediator in conducting the mediation are to be met equally by the Parties.

- (ii) mediation between the Parties must occur within 15 Business Days from the date the mediator is appointed and the Parties must co-operate with the mediator in an effort to resolve the dispute.
- (iii) if the Dispute is resolved, the Parties must execute terms of settlement;
- (iv) if the Dispute is not resolved within 15 Business Days of commencement of the mediation or within any extended time agreed to by the Parties in writing, the mediation must cease and either Party may commence legal proceedings.

22.3 This Clause 22 does not apply if:

- (a) either Party commences legal proceedings for urgent interlocutory relief; or
- (b) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by the Recipient or Participants.

22.4 Despite the existence of a Dispute, the Recipient must (unless requested in writing by the Department not to do so) continue to perform its obligations under this Agreement.

## **23. AGREEMENT MANAGEMENT**

23.1 The Parties nominate the persons identified in Item 8 of Schedule 1 as the contact officers for the day to day management of this Agreement.

23.2 A Party may change its contact officer for the Agreement by notice to the other Party.

## **24. NOTICES**

24.1 Any notice or other communication to be given under this Agreement must be in writing and may be delivered by hand, or sent by pre-paid post, facsimile or e-mail transmission to the respective addresses set out in Item 8 of Schedule 1 or any substitute address a Party may notify to the other for the purposes of this clause.

24.2 Notices will be deemed to have been given:

- (a) if mailed – 2 Business Days after posting;
- (b) if delivered – on the date of delivery;
- (c) if faxed – on the sender's fax machine noting an apparently successful transmission;

or

(d) if emailed – on the date that receipt of the email is acknowledged by the recipient, except that a notice that is delivered, faxed or emailed after 5:00 pm on any day, will be deemed to be received on the next Business Day.

## 25. VARIATION AND PRECEDENCE OF DOCUMENTS

25.1 This Agreement may only be varied by agreement in writing signed by both Parties.

25.2 If any part of this Agreement conflicts with any other part, that part higher in the following list shall take precedence:

- (a) the Special Conditions in Item 12 of Schedule 1;
- (b) the terms and conditions contained in the clauses of the Agreement;
- (c) the Schedules; and
- (d) the Proposal.

## 26. INTELLECTUAL PROPERTY

26.1 Except as specified in this Agreement, nothing in this Agreement affects a Party's Intellectual Property rights existing as at the Start Date.

26.2 All rights in and to the Project Intellectual Property shall vest in the Recipient. The Department hereby expressly disclaims any legal or equitable interest in the Project Intellectual Property.

## 27. GENERAL PROVISIONS

27.1 **Entire Agreement** - The terms of the agreement between the Parties are those set out in this Agreement, and no written or oral agreement, arrangement or understanding made or entered into prior to the Start Date will in any way be read or incorporated into this Agreement.

27.2 **No Assignment** – The Recipient may not assign the Agreement or any of the benefits or obligations under the Agreement without the prior written consent of the Department.

27.3 **Subcontracting** – The Recipient may not subcontract any part of its obligations under this Agreement without the prior written consent of the Department.

27.4 **Relationship** – The Parties agree that no employment relationship, agency or partnership exists between the Department and the Recipient.

27.5 **Jurisdiction** – This Agreement is governed by the law of the State of Queensland and the

Parties agree to submit to the jurisdiction of the courts of the State of Queensland.

- 27.6 **Waiver** – No right under this Agreement will be deemed to be waived except by notice in writing agreed by the waiving Party. A failure by a Party to enforce at any time any provision of this Agreement will not constitute a waiver of the Party's rights in respect of the provision.
- 27.7 **Compliance with laws** – The Recipient and all Participants must comply with all relevant laws that may be applicable to its activities.
- 27.8 **Costs** - The Parties will pay their own costs (including legal costs), expenses and disbursements of and incidental to the preparation, execution and stamping of this Agreement.
- 27.9 **Time** - Any act, matter or thing required under this Agreement to be done on a day which is not a Business Day must be done on the next succeeding Business Day.

## SCHEDULE 1 – PROJECT DETAILS

<b>1.</b>	<b>Project title:</b> (clause 1.1)	
<b>2.</b>	<b>Project Description:</b> (clause 1.1)	
<b>3.</b>	<b>Project Commencement Date:</b>	<i>(will usually be the Collaborative Date)</i>
<b>4.</b>	<b>End Date:</b> (clause 1.1)	The earlier of:  (a) three months after the Final Report Milestone Date; or  (b) three calendar months after the date of submission of the Final Report by the Recipient.
<b>5.</b>	<b>Amount of Financial Assistance (exclusive of GST):</b> (clause 1.1)	\$
<b>6.</b>	<b>Contract Performance Guarantee:</b> (clauses 1.1 and 8)	<i>(usually N/A for universities)</i>
<b>7.</b>	<b>Insurance cover:</b> (clause 15)	<ul style="list-style-type: none"> <li>Public liability insurance for the amount of \$10,000,000, in respect of each claim.</li> <li>Workers' compensation insurance for the Recipient's employees in accordance with the <i>Workers' Compensation and Rehabilitation Act 2004 (Qld)</i>.</li> <li>General insurance in respect of all property (in which the Recipient has an insurable interest) for the full reinstatement value, that is used in connection with the Project, including all buildings, fixtures and fittings and contents contained thereon or therein, against all loss and damage caused by or resulting from accident, fire, theft, malicious damage or storms and any other</li> </ul>

		<p>insurable risk which property of a similar nature is commonly insured against.</p> <ul style="list-style-type: none"> <li>Professional indemnity insurance for the amount of \$10,000,000, in respect of each claim, covering the Recipient and its employees.</li> </ul>
<b>8.</b>	<p><b>Contact Officers:</b> (clause 23.1)</p>	<p><b>For the Department:</b></p> <p>Stephen Lamb</p> <p>Director</p> <p>Contract and Investment Management</p> <p>Department of Science, Information Technology, Innovation and the Arts (Innovation and Science Development)</p> <p>Level 10, 111 George Street</p> <p>GPO BOX 5078, Brisbane QLD 4000</p> <p>Telephone: (07) 3224 4726</p> <p><a href="mailto:stephen.lamb@innovation.dsitia.qld.gov.au">stephen.lamb@innovation.dsitia.qld.gov.au</a></p> <p><b>For the Recipient:</b></p>
<b>9.</b>	<p><b>Participants:</b> (clause 1.1)</p>	
<b>10.</b>	<p><b>Major Participants:</b> (clauses 1.1 &amp; 7.3)</p>	
<b>11.</b>	<p><b>Specified Personnel:</b> (clause 7.6)</p>	
<b>12.</b>	<p><b>Special Conditions:</b> (clause 2)</p>	

## SCHEDULE 2 – RESEARCH PROGRAM

<b>Research Milestone 1</b>		<b>Commencement date:</b> Collaborative Date <b>Completion date:</b> 6 months (less one day) from the Collaborative Date
Description of Activities		
<b>Research Milestone 2</b>		<b>Commencement date:</b> 6 months from the Collaborative Date <b>Completion date:</b> 12 months (less one day) from the Collaborative Date
Description of Activities		
<b>Research Milestone 3</b>		<b>Commencement date:</b> 12 months from the Collaborative Date <b>Completion date:</b> 18 months (less one day) from the Collaborative Date
Description of Activities		
<b>Research Milestone 4</b>		<b>Commencement date:</b> 18 months from the Collaborative Date <b>Completion date:</b> 24 months (less one day) from the Collaborative Date
Description of Activities		

## SCHEDULE 3 – MILESTONES

NO	MILESTONE DELIVERABLE *	REPORTING PERIOD	MILESTONE DATE	INSTALMENT AMOUNT (EXC GST)	GST AMOUNT	INSTALMENT AMOUNT (INC GST)
1	Submission of executed Collaborative Agreement	n/a	3 months from the Start Date	\$	\$	\$
2	Submission of <i>Progress Report</i> on <i>Research Milestone 1</i>	6 month period from the Collaborative Date	7 calendar months from the Collaborative Date	\$0	\$0	\$0
3	Submission of <i>Progress Report</i> on <i>Research Milestone 2</i>	6 month period from the end of the previous Progress Report	13 calendar months from the Collaborative Date			
4	Submission of <i>Progress Report</i> on <i>Research Milestone 3</i>	6 month period from the end of the previous Progress Report	19 calendar months from the Collaborative Date	\$0	\$0	\$0
5	Submission of <i>Progress Report</i> on <i>Research Milestone 4</i>	6 month period from the end of the previous Progress Report	25 calendar months from the Collaborative Date	\$	\$	\$

*\*The Department is not required pay an instalment of Financial Assistance to the Recipient if the Project is not being progressed substantially in accordance with the Research Program or if the Recipient is otherwise in breach of the Agreement.*

## SCHEDULE 4 – CONTRIBUTION TABLE

<div>Contributions</div> <div>Year</div>	DSITIA		Recipient		Partner 1		Partner 2		Partner 3		Partner 4		TOTAL	
	Cash	In-kind	Cash	In-kind	Cash	In-kind	Cash	In-kind	Cash	In-kind	Cash	In-kind	Cash	In-kind
Year 1 Total														
Year 2 Total														
PROJECT TOTAL														



**SCHEDULE 5 - INFORMATION AND MATERIAL REQUIRED FOR CLAIMS**

- S5.1 A valid Tax Invoice from the Recipient for the amount of that Financial Assistance being claimed (plus GST).
- S5.2 A brief report signed by the Authorised Officer setting out:
- (a) the Milestone Deliverable number;
  - (b) a description of the Milestone Deliverable;
  - (c) the total expenditure by the Recipient on the Project claimed as Eligible Project Costs to date;
  - (d) the amount of any unspent Funds;
  - (e) the reason why the unspent Funds have not been spent;
  - (f) a prediction of when the Recipient expects that the unspent Funds will be spent; and
  - (g) any adverse matter which may materially affect the Project or the Recipient.
- S5.3 Evidence of expenditure on the Project in the form of an official financial statement showing expenditure claimed by the Recipient as Eligible Project Costs.
- S5.4 Details and evidence of the amount and type of financial contribution made by the Recipient and each of the Participants to the Project.
- S5.5 A declaration signed by the Authorised Officer testifying as to the truth and veracity of the information submitted in support of the claim.
- S5.6 Any other information and material reasonably requested by the Department relating to the Project.

## **SCHEDULE 6 – INFORMATION AND MATERIAL FOR REPORTS**

### **Item 1 – Progress Reports**

S6.1 A Progress Report must be in the format contained in Schedule 9 (or as amended from time to time by the Department upon the Recipient receiving written notice of such amendment), including any other information and material reasonably requested by the Department and notified to the Recipient in writing from time to time.

### **Item 2 – Final Report**

S6.2 The Final Report must include:

- (a) a report signed by the Authorised Officer setting out:
  - (i) an outline of the work on the Project from the Start Date to the date of completion of the Final Report;
  - (ii) a summary of the key achievements of the Project;
  - (iii) an outline of how the Project has contributed to the Recipient's future development; facilitated the collaboration between partners on the Project; and benefited Queensland;
- (b) the total expenditure by the Recipient on Eligible Project Costs;
- (c) the amount of any unspent Funds;
- (d) details and evidence of the amount and type of financial contribution made by the Recipient and each of the Participants to the Project; and
- (e) any other information and material reasonably requested by the Department.

### **Item 3 – Update Report**

S6.3 An Update Report shall include any information pertaining to the Project that is reasonably requested by the Department.

S6.4 The Recipient is only required to provide information which:

- (a) is readily available to the Recipient;
- (b) can be obtained using the Recipient's reasonable endeavours; and
- (c) is not subject to obligations of confidentiality owed to any third parties.

**SCHEDULE 7 – PROPOSAL**

**(AS ATTACHED)**

**SCHEDULE 8 – PROGRAM GUIDELINES**

**(AS ATTACHED)**

**SCHEDULE 9 – PROGRESS REPORT**

**(AS ATTACHED)**

**EXECUTED AS A DEED** by the Parties on the dates set out below.

**SIGNED** for and on behalf of **State of Queensland** )  
through the Department of Science, Information ).....  
Technology, Innovation and the Arts Development and ) (signature)  
Innovation (ABN 41 841 375 926) by:

)  
.....(insert name) )  
)  
.....(insert position) )

A duly authorised person, in the presence of: ) ...../...../.....  
(date)

.....  
(signature of witness)

**SIGNED** for and on behalf of **<RECIPIENT** )  
**ORGANISATION>** (ABN: XX XXX XXX XXX) by: ).....  
) (signature )

)  
.....(insert name) )  
)  
.....(insert position) )

A duly authorised person, in the presence of: ) ...../...../.....  
(date)

.....  
(signature of witness)