



Agreement

Version 4.10

NBCF Funding Agreement

National Breast Cancer Foundation

«Administering_Institution»

Title of Grant: «Grant_Title»

Grant Code: «Grant_Code»

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Research agreement

This agreement was made onday of, 20.....

Between the parties

NBCF

National Breast Cancer Foundation

ABN 37 144 841 707 of Level 9, 10 Barrack Street, SYDNEY NSW
2000

Administering
Institution

«Administering_Institution»]

ABN «ABN» of «Address»

Background

- 1 NBCF is a leading Australian community-funded organisation raising money for research into the prevention, detection and treatment of breast cancer.
 - 2 The Principal Investigator and the Administering Institution have applied to NBCF for funding under the «Grant_Type» (Scheme) to undertake the Project.
 - 3 NBCF agrees to provide the Administering Institution with the Grant under the Scheme to administer the Project to be undertaken under the day to day direction of the Principal Investigator. The Administering Institution agrees to ensure the Project is undertaken in accordance with the terms of this agreement.
-

The parties agree as follows:

1 Definitions and interpretation

- (a) This agreement includes any schedule.
- (b) The meanings of the terms used in this document are set out in Schedule A.

2 Term

- (a) This agreement commences on the Commencement Date and continues for the Term.
- (b) If the Administering Institution wants to extend the duration of this agreement, the Administering Institution must provide NBCF with a proposal including the extended term proposed, which must be less than 2 years, a budget, a further project or research plan (including milestones and deliverables) and any other information requested by NBCF (**Proposal**), at least 60 Business Days before the end of the Initial Term.
- (c) NBCF has complete discretion whether or not to accept the Proposal. If NBCF accepts the Proposal or some variation on the Proposal, NBCF will notify the Administering Institution of the terms accepted and, following such notice, the Agreement, including the Project, Term and Deliverables, will be varied in accordance with such notice with effect from the end of the Initial Term.

3 Grant Pre-Conditions

- (a) The Administering Institution must provide NBCF with:
 - (1) **(Undertaking by Collaborating Institutions, if any)** a deed of undertaking in the form of Schedule E validly executed by each Collaborating Institution involved in the Project except Overseas Non-Financial CIs (**CI Undertaking**);
 - (2) **(Undertaking by Principal Investigator)** a deed of undertaking in the form of Schedule F validly executed by the Principal Investigator;
 - (3) **(Institutional Approvals)** copies of all relevant Institutional Approvals for the Administering Institution and all Collaborating Institutions involved in the Project;
 - (4) **(Insurance)** evidence to NBCF's reasonable satisfaction that the Administering Institution has, and all Collaborating Institutions involved in the Project have, obtained the insurance referred to in clause 19 of this agreement; and
 - (5) **(Evidence of completion of portion of the Project funded by Additional Funding Body, if any)**, in circumstances where the Project is being jointly funded by each of NBCF and an Additional Funding Body under separate funding agreements, evidence to NBCF's reasonable satisfaction that the Administering Institution has satisfactorily completed any part of the Project preceding this agreement and funded by an Additional Funding Body.(the **Grant Pre-Conditions**).
- (b) NBCF is not obliged to pay the Grant, including any part of the Grant, and clauses 5(a)(2) to 5(a)(7) and 6 to 16 of this agreement do not become binding on the parties and are of no force or effect unless and until:

- (1) the Administering Institution has satisfied the Grant Pre-Conditions; or
 - (2) NBCF has, in accordance with clause 3(d) of this agreement, waived any Grant Pre-Condition that the Administering Institution has not met.
- (c) The Administering Institution must:
- (1) use all reasonable endeavours to ensure that the Grant Pre-Conditions are satisfied as promptly as possible and, in any event, on or before the Cut-Off Date;
 - (2) keep NBCF regularly informed of progress towards satisfaction of the Grant Pre-Conditions; and
 - (3) promptly notify NBCF if the Administering Institution becomes aware that any Grant Pre-Condition has been satisfied or the Administering Institution considers that a Grant Pre-Condition cannot be satisfied.
- (d) The Grant Pre-Conditions are for the benefit of NBCF and may only be waived by NBCF by notice to the Administering Institution.
- (e) The parties agree that if:
- (1) the Grant Pre-Conditions are not satisfied by the Cut-Off Date; or
 - (2) the Grant Pre-Conditions are waived by NBCF in accordance with clause 3(d) of this agreement; or
 - (3) NBCF reasonably considers that any of the Grant Pre-Conditions cannot be satisfied by the Cut-Off Date,
- then:
- (4) if requested by the Administering Institution and subject to clause 3(a)(5), NBCF and the Administering Institution will discuss in good faith whether to extend the Cut-Off Date or re-negotiate the Grant amount and the terms on which NBCF will provide the Grant to the Administering Institution; and
 - (5) NBCF may, by at least 10 Business Days' notice to the Administering Institution, terminate this agreement at any time after the Cut-Off Date.

4 Warranty that no support from the tobacco industry

- (a) The Administering Institution warrants and agrees that at the time of entry into this agreement and throughout the Term, neither the Administering Institution nor any of its Research Personnel is or will be an applicant for, or a recipient of funds from, or an employee or an employer of an entity that is an applicant for or a recipient of funds from:
- (1) the tobacco industry;
 - (2) The Smoking and Health Research Foundation of Australia; or
 - (3) any organisation associated with the tobacco industry or deemed by NBCF, in writing to the Administering Institution, to be associated with the tobacco industry,

regardless of whether the funds are received directly or indirectly, including through a collaborator or where applicable, through a particular faculty or school of the Administering Institution or by any other means, or whether for health related research, projects or services (wherever in the institution or entity such research or projects may be undertaken or services provided or supported).

- (b) NBCF may terminate this agreement immediately by notice to the Administering Institution if the Administering Institution breaches its obligations under clause 4(a).

5 Performance of the Project

- (a) The Administering Institution must:
- (1) **(Ethics)** have in place and comply with ethics approval processes that comply with the *National Statement on Ethical Conduct in Human Research (2007)* as amended from time to time and for Projects involving research on human subjects, ensure that any Research Personnel involved in the Project have access to a Human Research Ethics Committee that is registered with the National Health and Medical Research Council (**NHMRC**) and comply with all directions of such committee;
 - (2) **(Compliance with Agreement)** perform, and require that all of its Research Personnel, and any other personnel or third parties involved in the Project, perform the Project in accordance with this agreement, the Guidelines, the Grant Application and all reasonable directions of NBCF;
 - (3) **(Milestones and Deliverables)** perform each task and deliver any Deliverables to NBCF, in accordance with the Milestones;
 - (4) **(Term)** complete the Project within the Term;
 - (5) **(Expected or actual delay)** promptly notify NBCF in writing of any expected or actual delay or suspension of over 3 months in the progress of the Project, including if the Administering Institution anticipates that it will be unable to deliver any Deliverable in the manner or by the time set out in Schedule C;
 - (6) **(Collaborating Institutions)** enter into a separate agreement with each Collaborating Institution to facilitate the conduct of the Project and performance of this agreement, including in relation to the Intellectual Property use and commercialisation obligations in clause 18, the use of the Grant (except for Overseas Non-Financial CIs), identifying what aspects of the Project will be performed by the Collaborating Institution, and requiring the Collaborating Institution to comply with any obligations imposed on the Collaborating Institutions under this agreement or the CI Undertaking (except that the CI Undertaking is not applicable for Overseas Non-Financial CIs). In the case of an Overseas Non-Financial CI, such agreement must additionally:
 - (a) state that no part of the Grant will be paid to the Overseas Non-Financial CI;
 - (b) require the Overseas Non-Financial CI to comply with either the NHMRC Approved Standards and Guidelines, or other research policies, standards and guidelines that apply in the country in which that Overseas Non-Financial CI and are acceptable to NBCF; and
 - (c) require that the Overseas Non-Financial CI does not cause the Administering Institution to breach its obligations under the Funding Agreement; and
 - (7) **(Other funding for similar research)** notify NBCF at least 7 days prior to the Administering Institution, or any of its Research Personnel involved in the Project, accepting funding from a third party for a project or for research similar to any aspect of the Project or research specified in the Project. For the avoidance of doubt, this clause only applies if the third party funding is for a project which is similar to, but does not duplicate or overlap with

any aspect of the Project. If the proposed project overlaps with, or duplicates, any aspect of the Project, the Administering Institution must comply with clause (b)(3).

- (b) The Administering Institution must:
- (1) **(Laws, standards and approvals)** perform, and ensure that all of its Research Personnel involved in the Project perform the Project:
 - (1). in accordance with all applicable laws, including not engaging in any practice that is contrary to any industrial law or any award or other industrial instrument made under or pursuant to such laws;
 - (2). with due care and skill;
 - (3). to high professional, ethical and industry standards, including best practice standards for the conduct of research and good scientific practice, including all relevant NHMRC guidelines relating to good scientific practice and, where appropriate, research on human and animal subjects, and the guidelines, codes and statements of compliance set out in Part II of Schedule D;
 - (4). in accordance with all relevant notifications, approvals, including any Institutional Approvals;
 - (5). in accordance with the Guidelines, the objectives specified in the Grant Application and the objectives of NBCF and the Scheme, including as set out in the Guidelines and any directions reasonably provided by NBCF to the Administering Institution from time to time;
 - (2) **(Expertise and ability to perform)** ensure that it has the ability, expertise, staff, premises, laboratory equipment, machinery and other resources necessary to conduct the Project and perform its obligations in accordance with this agreement;
 - (3) **(No other funding for research covered by the Project)** not accept, and procure that none of its Research Personnel accepts, funding from a third party for a project or for research that duplicates any aspect of the Project or research specified in the Project;
 - (4) **(Approvals)** obtain and keep current all relevant notifications and approvals, including Institutional Approvals, necessary for the lawful conduct of the Project. Without limiting NBCF's rights and remedies, the Administering Institution must notify NBCF as soon as reasonably possible and, in any event, no later than 20 Business Days after any such notification, approval, including any Institutional Approval, is withdrawn or not renewed; and
 - (5) **(Policies, procedures)** ensure that it has in place, applies and continues to apply in carrying out the Project, policies and procedures for best practice in respect of the:
 - (1). management of public funds, including the conduct of regular independent audits, including as required under clauses 10 and 11 of this agreement;
 - (2). management of Intellectual Property, in accordance with clause 18 of this agreement;
 - (3). conduct of research, including such policies and procedures as are required to comply with this agreement; and
 - (4). confidentiality and security measures, at least to a standard sufficient to comply with clause 27 of this agreement and otherwise prevent unauthorised access to all locations at which any part of the Project will be

carried out, to documents, including laboratory notebooks and other documentation, laptop computers and details of experiments and to protect all information technology, hardware and software associated with any part of the Project.

6 Payment of Grant

- (a) Subject to the Administering Institution complying with this agreement, the Administering Institution may issue a tax invoice to NBCF for payment of the instalment of the Grant, and on the dates, set out in item 1.6 of Schedule C. The Administering Institution must include in the tax invoice the relevant NBCF Grant Code for the Project as notified by NBCF to the Administering Institution.
- (b) Subject to clauses 6(d) and 6(e), on NBCF's receipt of a correctly rendered tax invoice in accordance with clause 6(a), NBCF must pay the applicable instalment of the Grant, set out in item 1.6 of Schedule C, to the Administering Institution within the calendar month following the calendar month in which NBCF received that invoice.
- (c) Except as set out in clause 6(b), NBCF is not obliged to make any payment in connection with the Project. NBCF is not obliged to make any further grant to the Administering Institution or otherwise in connection with the Project. For the avoidance of doubt, the parties agree that the Grant is non-renewable.
- (d) NBCF may, at its discretion, defer, reduce or not make a payment of any part of the Grant:
 - (1) if it forms the reasonable opinion following discussion with the Administering Institution that the full payment of the Grant is not required to complete the Project;
 - (2) until the Administering Institution performs or complies with its obligations under this agreement, or any Collaborating Institution performs or complies with its obligations pursuant to the undertaking referred to in clause 3(a)(1), including financial reporting requirements as set out under clauses 10 and 11, that are required to be completed up to the date when the applicable instalment of the Grant is due to be paid, to NBCF's reasonable satisfaction.
- (e) The Administering Institution acknowledges and agrees that:
 - (1) payment of the Grant to the Administering Institution under this clause 6 satisfies in full NBCF's obligations to the Principal Investigator as the, or one of the, applicants for the Grant from NBCF; and
 - (2) NBCF is reliant on community-funding, and investment of community-funding, to provide grant money to fund research into and projects in connection with the prevention, detection and treatment of breast cancer, including the Project, and to manage its research funding program.

7 Use of Grant Moneys

- (a) The Administering Institution acknowledges and agrees that:
 - (1) it must only use and permit Research Personnel involved in the Project to use the Grant for the purpose of performing the Project

- and direct costs associated with the Project and for no other purpose, project or research;
- (2) it must meet the normal overhead and operating expenses of the Administering Institution as required to support the Project and must not use any part of the Grant to cover any overhead costs, Excluded Employment Costs or other expenses of the Research Personnel or the Administering Institution; and
 - (3) for the avoidance of doubt, NBCF is not responsible for any salary, employee on-costs or other entitlements or conditions of service in relation to any Research Personnel, except as explicitly included as part of the approved budget specified in the Grant Application. The Administering Institution must pay and otherwise take responsibility for any Excluded Employment Costs and other entitlements or conditions of service payable or due to its Research Personnel.
- (b) The Administering Institution acknowledges and agrees that it is solely responsible for administration of the Grant, including distribution of the Grant to the Research Personnel and all Collaborating Institutions involved in the Project, and accepts full financial responsibility for the Grant.

8 Refund of unused Grant to NBCF

- (a) If the Agreement is terminated before the Project is complete, or the Project is completed without the expenditure of the entire Grant, the Administering Institution must:
- (1) notify NBCF of the amount of any surplus funds within 20 Business Days of termination or completion of the Project; and
 - (2) return all remaining funds to NBCF within a further 20 Business Days of providing notice to NBCF under clause 8(a)(1).
- (b) NBCF may, in its absolute discretion, negotiate with the Administering Institution in relation to the use of any of the surplus funds referred to in clause 8(a), by the Administering Institution, in relation to further breast cancer research or projects by the Administering Institution.

9 Personnel and Collaborating Institutions

9.1 Principal Investigator

- (a) The Administering Institution warrants and must ensure that the Principal Investigator:
- (1) is an Australian citizen or has resident status and resides in Australia throughout the period in which the Project is being undertaken;
 - (2) is actively and currently engaged in research in Australia;
 - (3) has the skills, knowledge, and resources necessary to manage the Project; and
 - (4) actively manages the Project in accordance with this agreement, the Guidelines and the Grant Application;
 - (5) is employed, or engaged in relation to the Project, by either the Administering Institution or a Collaborating Institution and will remain so employed or engaged during the course of the Project; and

- (6) complies with the undertaking referred to in clause 3(a)(2) given by the Principal Investigator.
- (b) The Administering Institution must, at NBCF's request, provide NBCF with evidence of the Principal Investigator's skills, knowledge, and resources referred to in clause 9.1(a)(3), including details of its previous management of grant funds in the context of projects similar to the Project. The Administering Institution must provide such evidence within a reasonable time frame following NBCF request.
- (c) The Administering Institution acknowledges and agrees that:
 - (1) the Grant is for the conduct of the Project by the Principal Investigator and the Research Personnel;
 - (2) if the Principal Investigator moves to another administering institution, or intends to move to another administering institution, the Principal Investigator may request that NBCF transfer the Grant to that alternative administering institution; and
 - (3) NBCF may, in its absolute discretion, and following the process set out in clause 9.2(a), transfer the Grant to the alternative administering institution requested by the Principal Investigator.
- (d) The Administering Institution must not remove the Principal Investigator from the Project without NBCF's prior written consent, which may be withheld at NBCF's absolute discretion.
- (e) The Administering Institution agrees to ensure the Principal Investigator and any Co-Investigator who is a member of the Administering Institution's Research Personnel will:
 - (1) if requested by NBCF, join a peer review committee hosted by NBCF in relation to research funding and participate in assessing and scoring applications for NBCF funding grants and other activities from time to time, as reasonably requested by the peer review committee and NBCF; and
 - (2) provide presentations, tours and host meetings with NBCF donors as reasonably requested by NBCF from time to time.

9.2 Transfer of Grant

- (a) Following receipt by NBCF of a request from the Principal Investigator, as described in clause 9.1(c)(2), NBCF will discuss the request with both the Principal Investigator and the Administering Institution before determining, in its absolute discretion, whether to transfer the Grant to the alternative administering institution requested by the Principal Investigator (**New Administering Institution**).
- (b) NBCF must notify the Administering Institution of its decision whether or not to allow the transfer of the Grant.
- (c) On receipt by the Administering Institution of notice from NBCF that the Grant is to be transferred to the New Administering Institution:
 - (1) the Administering Institution must, on request by NBCF, promptly take all steps NBCF requests to novate this agreement to the New Administering Institution as set out in the notice. The Administering Institution consents to such assignment or novation and must take all steps necessary to confirm or effect such assignment or novation, including, where requested by NBCF, entering into a novation agreement or deed; or
 - (2) NBCF may terminate this agreement on 20 Business Days' notice.
- (d) The Administering Institution:
 - (1) must provide NBCF with any reports requested in connection with the novation or termination referred to in clause 9.2(c), including a report containing an acquittal of the Grant amount paid to the

- Administering Institution and any amount not expended, on the terms of this agreement, as at the date of novation or termination;
- (2) hereby consents to the disclosure of this agreement to the New Administering Institution as part of this transfer process.

9.3 Research Personnel

The Administering Institution must:

- (a) use all reasonable efforts to ensure that any Research Personnel involved in the Project are available to conduct the Project during the Term; and
- (b) promptly notify NBCF if any Research Personnel involved in the Project becomes unavailable to conduct the Project during the Term and must use all reasonable efforts to replace that person with a suitable candidate with the expertise required to undertake tasks and complete the Project approved in writing by NBCF within 20 Business Days of such notification.

9.4 Replacement of Research Personnel / Collaborating Institution

- (a) If NBCF has reasonable grounds to believe that any person (**Identified Person**) who is involved in the conduct of the Project is not performing their part of the Project or is harming or negatively impacting the conduct of the Project, NBCF may notify the Administering Institution and the parties must discuss in good faith the changes needed to address NBCF's concerns.
- (b) If, after 20 Business Days from the Administering Institution's receipt of the notice in clause 9.4(a), NBCF gives a further notice to the Administering Institution that its concerns with the Identified Person have not been resolved to its reasonable satisfaction, the Administering Institution must take immediate steps to remove that person from the Project and provide an alternate person acceptable to NBCF in a way which minimises interruption to the Project.
- (c) NBCF may notify the Administering Institution requiring that any Collaborating Institution involved in the Project be removed from the Project if such Collaborating Institution breaches the Collaborating Institution requirements under this agreement or the CI Undertaking, and such breach is not capable of remedy, or that Collaborating Institution does not remedy such breach within 60 Business Days of receipt of notice from the Administering Institution or NBCF requiring such breach to be remedied. If NBCF gives such notice, the Administering Institution must remove the relevant Collaborating Institution from the Project.
- (d) If a Collaborating Institution is removed from the Project or a CI Undertaking is terminated in whole or in part the Administering Institution acknowledges and agrees that from the date of such removal or termination (**Relevant Date**) the Administering Institution is responsible and liable, including under the indemnity in clause 20 of this Agreement, for that part of the Project for which that Collaborating Institution was responsible or liable up to and including the Relevant Date.
- (e) If, after the Relevant Date the responsibilities of the Collaborating Institution referred to in clause 9.4(d) are transferred to a new Collaborating Institution or Collaborating Institutions, the Administering Institution must promptly:
- (1) notify NBCF of that change;
- (2) execute any further documents required by NBCF from time to time to amend this Agreement to reflect that change; and
- (3) provide NBCF with executed CI Undertakings for each additional Collaborating Institution (except where a new Collaborating Institution is an Overseas Non-Financial CI).
- (f) If, after the Relevant Date, the responsibilities of the Collaborating Institution referred to in clause 9.4(d) are transferred to other existing Collaborating

Institutions or the Administering Institution, the Administering Institution must promptly:

- (1) notify NBCF of that change; and
- (2) execute any further documents required by NBCF from time to time to amend this Agreement to reflect that change.

9.5 Responsibility for Research Personnel

- (a) Each of the Administering Institution, Research Personnel and all Collaborating Institutions involved in the Project are independent contractors, and nothing in this agreement will operate to create an employment or agency relationship between:
 - (1) NBCF and the Administering Institution;
 - (2) NBCF and any Collaborating Institutions; or
 - (3) NBCF and any Research Personnel.
- (b) Except as expressly provided in clause 6, NBCF is not obliged to make any payments in respect of any services provided by the Administering Institution or Research Personnel in connection with the Project. Without limitation, NBCF is not responsible to the Administering Institution, any Collaborating Institution or to any Research Personnel for remuneration, annual leave, sick leave, long service leave, public holidays, redundancy payments, superannuation, employment-related taxes or any other similar benefits and payments under any law or industrial instrument.

10 Accounts and Records

- (a) In conducting the Project, the Administering Institution must keep and maintain complete, accurate and proper accounts and records, including financial accounts and records, in relation to:
 - (1) the use of the Grant;
 - (2) the conduct of the Project; and
 - (3) all Intellectual Property created in the course of or in connection with the Project and any Background IP used in the Project.
- (b) The financial accounts and records must be sufficient:
 - (1) to enable NBCF to identify all expenditure of the Grant;
 - (2) for the preparation of financial statements in accordance with Australian Accounting Standards; and
 - (3) for the audit of those accounts and records in accordance with Australian Auditing Standards and generally accepted auditing practice.
- (c) The Administering Institution must provide copies of such accounts and records to NBCF, or NBCF's auditors, at NBCF's request.

11 Reporting

- (a) The Administering Institution must in good faith prepare and provide to NBCF the following reports:
 - (1) **Progress Reports**, being:

- (1). annual progress reports detailing the progress of the Project in the 12 month period or part thereof preceding the annual progress report each year of the Project;
- (2). a final report on the date set out in item 1.8 of Schedule C (or such other date as NBCF notifies the Administering Institution from time to time); and
- (3). a follow up report on the date set out in item 1.8 of Schedule C (or such other date as NBCF notifies the Administering Institution from time to time),

in each case containing accurate and complete information on:

- (4). conduct of the Project;
 - (5). progress in achieving the objectives of the Project as described in Schedule C to this agreement, including progress in achieving the Milestones, any delays or anticipated delays and their projected impact on the Project;
 - (6). any technical problems encountered by the Administering Institution or any Research Personnel involved in the Project in relation to the Project and progress in resolving those problems;
 - (7). the status of the Grant Pre-Conditions set out in clause 3 including the status of all relevant Institutional Approvals; and
 - (8). any other matters reasonably requested by NBCF;
- (2) **Annual Financial Report**, prepared in accordance with Australian Accounting Standards or such other standards as NBCF approves in writing from time to time and containing accurate and complete information relating to the period from the Commencement Date to the date the initial Annual Financial Report is required, as set out in item 1.8 of Schedule C, and on each further date set out in item 1.8 of Schedule C (or for such other period as NBCF notifies the Administering Institution from time to time) including:
- (1). a financial statement in a form to be stipulated by NBCF, specifying the total amount of the Grant received by the Administering Institution and expended by the Administering Institution or any Collaborating Institutions;
 - (2). certification by the Chief Financial Officer of the Administering Institution or their delegate that the Grant was expended in accordance with this agreement; and
 - (3). the amount of funding received by the Administering Institution, any Collaborating Institutions or any Research Personnel from third parties in relation to the Project, where such funding is specified as part of the approved budget specified in the Grant Application;
- (3) **Audited Financial Statement**, prepared by an independent auditor in compliance with Australian Auditing Standards or such other standards as NBCF approves in writing from time to time and generally accepted auditing practices and containing accurate and complete information, for the entire period up to and including the earlier of the end of the Term and the completion of the Project and provided to NBCF on the date set out in item 1.8 of Schedule C, including:
- (1). a detailed statement of receipts and expenditure in respect of the Grant received by the Administering Institution and expended by the Administering Institution and any Collaborating Institution for the Project;

- (2). a definitive statement as to whether the financial accounts are complete and accurate; and
 - (3). a statement of the balance of the Administering Institution's bank account/ ledger relating to the Project; and
 - (4) **Any other report**, and any of the reports set out above at any other time, as reasonably requested by NBCF,
- (the **Reports**).
- (b) The Administering Institution must provide the Reports to NBCF:
 - (1) both electronically and in hard copy;
 - (2) in the NBCF report templates (available from the NBCF website); and
 - (3) on or before the dates set out in item 1.8 of Schedule C,
 - (4) or in such other form, by such other form of delivery or on such other dates as NBCF notifies the Administering Institution from time to time.
- (c) If, pursuant to clauses 11(a)(2) and 11(a)(3), NBCF accepts an Audited Financial Report or Audited Financial Statement from the Administering Institution which is audited by an independent internal, rather than independent external, auditor, the Administering Institution must, on request by NBCF, and at the Administering Institution's expense, have such reports verified to NBCF's reasonable satisfaction by an independent and external auditor.
- (d) The Administering Institution warrants and represents that all reports provided under this clause 11 and audited by an independent internal auditor of the Administering Institution were prepared in accordance with all applicable accounting standards, including the International Standards for the Professional Practice of Internal Auditing.

12 Failure to submit Reports or satisfactory Reports

Without limiting NBCF's rights or remedies under this agreement, if NBCF rejects a Report, which it may do in its reasonable discretion, NBCF:

- (a) will provide reasons for the rejection of the Report;
- (b) will invite the Administering Institution to resubmit the Report, within a time frame reasonably specified by NBCF, taking into consideration any comments provided by NBCF (**Replacement Report**); and
- (c) may suspend payment of the Grant until NBCF receives a Replacement Report and indicates to the Administering Institution that such Report is acceptable to NBCF.

13 Meetings

The Administering Institution must attend, and must procure that, on request by NBCF, any Research Personnel involved in the Project and specified by NBCF attend any meeting reasonably requested by NBCF from time to time.

14 Access

- (a) (**Progress of Project**) Upon reasonable request by NBCF

- (1) during the Term; and
- (2) for 2 years from the earlier of the end of the Term or the completion of the Project,

the Administering Institution must grant NBCF and NBCF's representatives access to the Premises for the purposes of assessing the progress of the Project.

- (b) **(Promotion)** With the Administering Institution's consent, which must not be unreasonably withheld, NBCF's representatives and third parties, including NBCF's donors and supporters, may access the Premises for NBCF's promotional and fund raising purposes. The Administering Institution agrees that it will not arrange private visits for NBCF's donors and supporters without NBCF's prior knowledge and consent, and that an NBCF representative may participate in any access visit arranged for an NBCF donor or supporter.
- (c) The Administering Institution undertakes to use all reasonable efforts to ensure Research Personnel support donor relations where a donor or corporate sponsor of NBCF may wish to align their donation to the specific project of this agreement, by providing presentations, tours or hosting meetings as required by NBCF.

15 Non-solicitation of NBCF donors and supporters

- (a) The Administering Institution acknowledges and agrees that NBCF expends time and resources in selecting appropriate projects to fund, including to build its reputation with donors as a charitable foundation that selects world class research to fund to work towards a goal of zero deaths from breast cancer by 2030.
- (b) The Administering Institution agrees not to, and to ensure that the Research Personnel do not, solicit additional or further funding directly from any NBCF Donor. This clause 15(b) does not apply in respect of any NBCF Donor with whom the Administering Institution has a pre-existing relationship before that NBCF Donor is introduced to the Administering Institution by NBCF.
- (c) The Administering Institution must:
 - (1) notify NBCF as soon as practicable if the Administering Institution or any Research Personnel involved in the Project are approached by a NBCF Donor with any additional funding opportunities in relation to breast cancer research; and
 - (2) decline, and ensure that the Research Personnel declines, to receive such funding from such NBCF Donor unless it is provided through NBCF.
- (d) The Administering Institution agrees to use its best endeavours to ensure that neither it nor any Research Personnel involved in the Project engages in any conduct or makes any statement which brings the good name and reputation of NBCF into disrepute, including:
 - (1) making disparaging comments about NBCF's funding commitments to the Project being limited to the Grant, or NBCF's decision not to provide additional funds to the Project;
 - (2) making disparaging comments about NBCF's decisions to fund (or not fund) other projects, including projects conducted by the Administering Institution or Research Personnel; and
 - (3) making any other disparaging or inaccurate comments or remarks regarding NBCF funding decisions or sources of funding.
- (e) NBCF may terminate this agreement immediately by notice to the Administering Institution if the Administering Institution breaches its obligations under this clause 15 and at its absolute discretion may require

that the Administering Institution refund to NBCF all amounts of the Grant already paid to the Administering Institution that have not been expended, or, subject to clause 22(b), not reasonably and irrevocably committed to expend, in performance of the Project as at the date of termination of this agreement.

16 Changes to Project

- (a) Subject to this clause 16, the Administering Institution must not change, amend or modify the Project without NBCF's prior written consent.
- (b) Each of NBCF and the Administering Institution may, at any time, request a change to the Project (**Change**). The Administering Institution must not make a request for a Change to NBCF unless the Administering Institution has first consulted in good faith with any Collaborating Institutions about such Change.
- (c) If the Administering Institution requests a Change, it must provide to NBCF information reasonably necessary to assess the request for Change, including:
 - (1) the reasons behind the request;
 - (2) evidence that the Administering Institution has consulted with any Collaborating Institutions about such Change;
 - (3) the anticipated impact on the Project, including whether any additional or lesser time or resources will reasonably be required to implement the Change, and any proposed new completion date;
 - (4) any increase or decrease in the Grant reasonably required to implement the Change; and
 - (5) any details of the Change or implications of the Change as NBCF reasonably requests;
- (d) **(Change Request Notice)**. The Administering Institution may only propose an increase in the Grant in a Change Request Notice to the extent it is reasonably necessary to cover the cost of additional resources required to implement the Change. For the avoidance of doubt, the parties must continue to perform their respective obligations in relation to the Project, as they existed prior to the Change being proposed, up until any such Change is accepted.
- (e) No Change can take effect until NBCF agrees in writing to the Change. If NBCF does not agree to implement a Change, the parties must continue to perform their respective obligations in relation to the Project without such Change.

17 Host Institution

- (a) **(Obligations)** The Administering Institution must procure that the Host Institution must:
 - (1) ensure that it maintains and adequately supports the Infrastructure during the Term and uses best efforts to support and maintain the Infrastructure after the Term;
 - (2) comply with the access and governance provisions established for the Infrastructure from time to time, including as set out in the Grant Application or developed during the Project;
 - (3) ensure that users of the Infrastructure obtain and keep current whilst using the Infrastructure or results or material obtained through use of the Infrastructure, all relevant notifications and

approvals, including ethics approval processes that comply with the *National Statement on Ethical Conduct in Human Research* (2007) as amended from time to time;

- (4) ensure that it has in place, applies and continues to apply in policies and procedures for best practice in respect of the Infrastructure;
 - (5) handle and protect all Personal Information collected or used in connection with the Infrastructure in accordance with the *Privacy Act 1998* (Cth) or such other statute as applies in the circumstances, if any, and any other applicable laws relating to privacy (**Privacy Act**) and will only disclose or use such Personal Information with the permission of the individual to whom it relates or where the Privacy Act or other laws otherwise allows such disclosure or use;
 - (6) acknowledges NBCF as a major funder of the Infrastructure in all communications and publications to the public or third parties that result from the use of the Infrastructure or refer to the Infrastructure;
 - (7) uses best efforts to ensure that users of the Infrastructure from time to time, including after the Term, are made aware that NBCF was a major funder of the Infrastructure and acknowledge NBCF as a major funder of the Infrastructure in all communications and publications to the public or third parties that result from the use of the Infrastructure or refer to the Infrastructure
- (b) (**Acknowledgment**) The Administering Institution acknowledges and agrees that NBCF is under no obligation to support the Infrastructure, whether through the provision of a further grant or otherwise, after the Term.

18 Intellectual Property

- (a) The parties agree that as between the Administering Institution and NBCF, the Administering Institution owns the Project IP. The Administering Institution must ensure that the Administering Institution has the rights necessary to, and in each case permit each other party to the Project, to:

use the Background IP and the Project IP for the purpose of conducting the Project; on the terms of this agreement.
- (b) (**Commercialisation**) The Administering Institution must procure prior to any commercialisation of the Project IP all assignments of, or licences for, the Project IP necessary to ensure that any Project IP can be commercialised on the terms of this agreement, including for any Project IP created or developed by any Research Personnel or External Investigator.
- (c) If the Project IP includes Intellectual Property which the Administering Institution believes has the potential for commercial exploitation, or which a third party wishes to commercially exploit (the Commercial IP), the Administering Institution must, within 20 Business Days of the Administering Institution becoming aware of the Commercial IP, notify NBCF of that Commercial IP and the proposed commercial exploitation of that Commercial IP, including any details the Administering Institution has of projected costs and projected sales in relation to that commercial exploitation.
- (d) The Administering Institution must notify NBCF before it (or any Research Personnel or licensee) take any steps towards agreeing a commercial arrangement, or commercialising the Commercial IP, and keep NBCF informed on a regular basis of the progress of this commercial exploitation by the Administering Institution or any Research Personnel, no less frequently than every 6 months, including providing advance notice of any planned launch of a product or process in connection with the commercialising of Commercial IP..

- (e) In relation to any such commercialisation, the Administering Institution must:
 - (1) ensure that the Commercial IP is commercialised for the public benefit and is made accessible to the public at a reasonable cost, including by ensuring that access to the Commercial IP is affordable by public health institutions and not for profit health organisations for general use.
 - (2) as between NBCF on one side and each of the parties that own the Commercial IP on the other, pay all Commercialisation Costs; and
 - (3) pay 10% of all Net Revenue received by the Administering Institution, to NBCF until such time as NBCF has received an amount equal to 5 times the amount of the Grant.
- (f) On request by NBCF the Administering Institution must negotiate with NBCF in good faith for a period up to 3 months in relation to the Administering Institution, and any relevant Commercialisation Entity, entering into an agreement, and ensures that it has all rights necessary to enter into such an agreement, with NBCF containing the terms of the relevant Commercialisation Model and such other terms as NBCF reasonably requires.
- (g) The Administering Institution must use all reasonable endeavours to:
 - (1) protect, and procure that any Commercialisation Entity protects, any Commercial IP, including by obtaining and maintaining registered rights in relation to the Commercial IP and ensuring that Commercial IP is not disclosed in a manner that would prevent registered rights from being obtained in relation to that Commercial IP including, where the Administering Institution is a university, by academic publication including such Commercial IP. The Administering Institution must otherwise maintain the confidentiality of the Commercial IP;
 - (2) ensure, and procure that any Commercialisation Entity ensures, any Commercial IP is able to be exploited without infringing any third party rights; and
 - (3) commercialise, and procure that any Commercialisation Entity commercialises, any Commercial IP, including in a manner consistent with the objectives of the Scheme, including as set out in the Guidelines and the Grant Application.
- (h) The Administering Institution must obtain consents from all relevant Research Personnel in relation to any uses of the Reports by NBCF, or its successors, permitted users and assigns and any other use of the Project IP, Reports (or any other Deliverables) necessary to ensure that the Project IP can be commercialised on the terms of this agreement and which, but for such consents, might otherwise infringe an author's moral rights.
- (i) The Administering Institution acknowledges and agrees that, as a publicly funded body, NBCF funds the Project with the intention that Commercial IP will be developed and made accessible to the public, and for the benefit of public health, at a reasonable cost and not in a manner which is unduly restrictive or prevents further research and development towards the treatment of, or a cure for, breast cancer;

19 Insurance

- (a) The Administering Institution must effect and maintain, at the Administering Institution's sole cost and expense, during the Term and, subject to sub-clause 19(e), for 6 years following the Term, valid and enforceable insurance. This insurance must provide adequate and appropriate cover against the risk of legal liability to any person arising in connection with this agreement, the performance of the Project or the subject matter of the

Project, including, as appropriate, public liability, worker's compensation and professional indemnity insurance, and any other insurance required, including by law, to be effected and maintained in connection with the Agreement, the performance of the Project or the subject matter of the Project.

- (b) The Administering Institution must ensure that any insurance required under clause 19(a):
 - (1) is placed with a reputable insurer authorised to conduct insurance business in Australia by the Australian Prudential Regulation Authority, which has a financial strength rating of A- or better by Standard & Poor's or the equivalent index in relation to other rating agencies; and
 - (2) is placed with minimum limits of \$20,000,000 per event, occurrence or claim as appropriate.
- (c) The Administering Institution may, with NBCF's prior written approval which must not be unreasonably withheld, obtain equivalent protection, including liability protection, as a substitute for the insurance protection required to be obtained by the Administering Institution under clause 19(a). Subject to NBCF's approval of such protection, the obligations on the Administering Institution set out in this clause 19 apply to that equivalent protection as if it were insurance, including as to enforceability, adequacy and currency.
- (d) Without limiting the Administering Institution's obligations under this clause 19 to maintain adequate insurance for a specified time period, in the event of the expiry or proposed amendment or cancellation of any of the insurance policies required under this clause 19 by either the Administering Institution or the relevant insurer, the Administering Institution must provide notice of such cancellation to NBCF as soon as reasonably practicable, but not less than 30 days prior to the expiry, cancellation or amendment date.
- (e) The Administering Institution may comply with its obligation to maintain the required insurances for a period of 6 years after the Term either by obtaining occurrence-based insurance for the Term or obtaining appropriate run-off insurance which covers a period of 6 years after the Term. If insurance effected and maintained during the Term is not renewed on an annual basis, the Administering Institution shall reinstate the limit of such insurance if it is exhausted.
- (f) On request by NBCF from time to time, the Administering Institution must provide to NBCF evidence of the currency of the insurance policies or such equivalent protection referred to in clause 19(a) including, as requested, an original certificate of currency for the policies of insurance referred to in clause 19(a) and receipts for the premium last paid.
- (g) If the Administering Institution fails to comply with any of its obligations under this clause 19, the Administering Institution acknowledges and agrees that NBCF may itself effect and maintain such insurances and may recover from the Administering Institution the amount of any premiums paid to so.

20 Indemnity

- (a) The Administering Institution indemnifies NBCF against all damage, expense, loss or liability suffered or incurred by NBCF, its officers, employees and agents in connection with:
 - (1) any breach or negligence by the Administering Institution or any of its Research Personnel or any External Investigator, in connection with this agreement, any undertaking referred to in this agreement, or the Project, including a failure by the Administering Institution to ensure that any of its Research Personnel comply with this agreement or perform the Project; and

- (2) any third party claim relating to the Project or any part of the Project, including its conduct or outcome or that use by the Administering Institution or any of its Research Personnel or any External Investigator of any Background IP or Project IP or the conduct of the Project, or any part of the Project, infringes a third party's rights, including any Intellectual Property rights, right of confidentiality or moral rights.
- (b) The Administering Institution's liability to indemnify NBCF under clause 20(a) will reduce proportionally to the extent that any damage, expense, loss or liability suffered or incurred by NBCF, its officers, employees and agents was caused by a breach of this agreement, or negligence in connection with this agreement or the Project, by NBCF its officers, employees or agents.

21 Termination

- (a) NBCF may terminate this agreement on 10 Business Days' notice to the Administering Institution if:
 - (1) the Administering Institution breaches this agreement and such breach is incapable of remedy or is not remedied by the Administering Institution within 20 Business Days of receipt of notice requiring the breach to be remedied;
 - (2) an Insolvency Event occurs in respect of the Administering Institution;
 - (3) in the reasonable opinion of NBCF, the Project is not being carried out with competence, diligence and scientific honesty and in accordance with any relevant directions of Human Research Ethics Committees, Institutional Approvals or any other requirement under clause 5 of this agreement;
 - (4) the Administering Institution is in breach of clause 4, NBCF reasonably believes that the integrity of the Project is threatened by influence from tobacco interests, or in NBCF's reasonable opinion the reputation of the Administering Institution is in disrepute or the actions of the Administering Institution are such that the Administering Institution's reputation is likely to be brought into disrepute; or
 - (5) any relevant notification, approval, or Institutional Approval required under clause 3(a)(3) is cancelled or withdrawn or not renewed at any time during the Project and, where it is possible to do so, is not renewed or replaced within 20 Business Days of its withdrawal or non-renewal.
- (b) NBCF may terminate this agreement on 40 Business Days' notice to the Administering Institution if NBCF reasonably considers that:
 - (1) there has been any inefficiency or misconduct (including scientific misconduct or fraud, or failure to conduct the research or project in accordance with the principles outlined in Schedule D – Part II – Statements of Compliance) by any Research Personnel involved in the Project; or
 - (2) the Project is no longer viable and the parties are unable to agree on any variation to the Project to make it viable. NBCF must consult with the Administering Institution before determining whether to terminate the Agreement pursuant to this clause 21(b)(2).
- (c) NBCF may terminate this agreement without cause on 6 months' notice to the Administering Institution.
- (d) The Administering Institution may terminate this agreement on 10 Business Days' notice to NBCF if:

- (1) NBCF breaches this agreement and such breach is incapable of remedy or is not remedied within 20 Business Days of receipt of notice requiring the breach to be remedied; or
- (2) an Insolvency Event occurs in respect of NBCF.

22 Consequences of termination

- (a) On termination or expiry of this agreement, the Administering Institution must:
 - (1) within 10 Business Days after the date of:
 - (1). termination of the Agreement, refund to NBCF any amounts of the Grant already paid to the Administering Institution, and not expended, or, subject to clause 22(b), not reasonably and irrevocably committed to expend, in performance of the Project and on the terms of this agreement, by the Administering Institution or any Collaborating Institution as at the date of termination of this agreement;
 - (2). expiry of the Agreement, refund to NBCF any amounts of the Grant already paid to the Administering Institution, and not expended in performance of the Project and on the terms of this agreement, by the Administering Institution or any Collaborating Institution as at the date of expiry of this agreement;
 - (2) immediately provide NBCF with all Deliverables produced as at the date of termination or expiry, including any partially completed Deliverables; and
 - (3) promptly provide to NBCF, and in any event within 60 Business Days after the date of termination or expiry of this agreement, the Final Report and the Audited Financial Statement in accordance with clause 11.
- (b) For the purposes of clause 22(a)(1), the following payments or costs in connection with the provision of a notice period or any other payment (including in respect of those matters referred to in clause 9.5(b)) relating to the termination of employment or engagement of a Research Personnel will not be considered to be reasonably committed to expend and accordingly must not be deducted in determining the amount to be refunded to NBCF:
 - (1) in respect of Research Personnel employed or engaged on a casual basis, any payment or cost;
 - (2) in respect of Research Personnel employed or engaged on a permanent, fixed term or maximum term basis, any payment or cost where that Research Personnel has been involved in fraud, wilful misconduct, negligence, criminal conduct, or breach of their employment contract; and
 - (3) in respect of Research Personnel employed or engaged on a permanent, fixed term or maximum term basis (where the Research Personnel has not been involved in fraud, wilful misconduct, negligence, criminal conduct, or breach of their employment contract), any payment or cost in excess of the relevant Research Personnel's base salary over one month unless NBCF and the Administering Institution consider, following consultation between them, that such payment or cost is reasonable to deduct, and the Administering Institution must ensure that any payment or cost is kept to a minimum.
- (c) Termination or expiry of this agreement does not affect any rights or remedies which have accrued as at termination or expiry.

- (d) Without limiting those clauses which by their nature survive termination or expiry, clauses 1, 8, 10, 11, 14, 15, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 29, 30 and 31 survive termination or expiry of this agreement.

23 Goods and Services Tax

- (a) Any reference in this clause to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply made under or in connection with this agreement does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause.
- (c) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with this agreement, the consideration to be provided under this agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (d) The recipient must pay the additional amount payable under clause 23(c) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided so long as the Supplier has issued a tax invoice to the recipient.

24 Acknowledgement of NBCF support

- (a) The Administering Institution must:
 - (1) acknowledge NBCF and any Additional Funding Body as a funding source on all publications related to the Project, and in any presentation in connection with the Project or the subject matter of the Project, in a clear, unambiguous and readily-identifiable way:
 - (1). using NBCF's preferred statement of acknowledgement: **"This research / Project / Infrastructure was supported by a grant from the National Breast Cancer Foundation, Australia"**; or
 - (2). in such other form as NBCF reasonably requests or approves from time to time prior to publication or the presentation,
 - (3). and otherwise in accordance with NBCF's reasonable directions. For the avoidance of doubt, this clause 24(a) applies to publications, including any publication resulting from the research or project the subject of the Project, oral and poster conference presentations containing or referring to that research or project and institutional reports, or releases of details of such research or project to the media, in any form; and
 - (2) participate in media or other publicity events in connection with the Project as reasonably requested by NBCF during the Term and for a period of 1 year following the Term or such other period as agreed in writing by NBCF and the Administering Institution from time to time;
- (b) The Administering Institution agrees that:
 - (1) all communications to the media or the public in respect of the Project or this agreement, other than in academic publications,

must be made through or with the prior written consent of NBCF;
and

- (2) they will contact NBCF prior to making any media release or statement in relation to NBCF, the Project or this agreement.

For the avoidance of doubt, the exclusion of academic publications from the restriction on communications to the media or the public does not cover use of that material in any other context.

- (c) The Administering Institution agrees, and must procure that all Research Personnel involved in the Project agree, to comply with any reasonable request from NBCF for assistance in promoting awareness of, and raising funds for, breast cancer research or other breast cancer related projects during the Term and for a period of 1 year following the Term or such other period as agreed in writing by NBCF and the Administering Institution from time to time. Such requests may include:
 - (1) participation in NBCF functions;
 - (2) assistance in identifying opportunities for publicity and collaboration;
 - (3) contributing to fundraising activities by NBCF, including the hosting of a Pink Ribbon Breakfast;
 - (4) assisting NBCF to promote the research or the Project including by, subject to clause 26, providing NBCF with additional information regarding research progress and achievements for use by the media, the general public, NBCF's supporters and corporate partners as appropriate;
 - (5) contributing to the promotion of the mission, priorities and principles of NBCF.
- (d) The Administering Institution agrees that, subject to clause 27, the Project title, name, and any other details relevant to qualifications or expertise, of any Research Personnel involved in the Project may, at the absolute discretion of NBCF and without notice to or consultation with the Administering Institution, be included:
 - (1) in any Annual Report produced by NBCF and NBCF's funding partners in respect of the Project, if any;
 - (2) on the NBCF website; or
 - (3) on any other NBCF promotional or information material.

25 Trade marks and branding

- (a) The Administering Institution must obtain, and must procure that all Research Personnel obtain, NBCF's prior consent before using any of NBCF's trade marks or logos, including on presentations or on documents relating to the Project or the research the subject of the Project. Any use of NBCF's trade marks or logos by the Administering Institution or Research Personnel must only be in a form consented to by NBCF and otherwise in accordance with the NBCF style guide and trade mark guidelines as notified to the Administering Institution or Research Personnel from time to time, or as otherwise reasonably requested by NBCF.
- (b) NBCF must obtain, the Administering Institution's prior consent before using any of the Administering Institution's trade marks or logos, including on presentations or on documents relating to the Project. Any use of the Administering Institution's trade marks or logos by NBCF must only be in a form consented to by the Administering Institution and otherwise in accordance with the Administering Institution's style guide and trade mark guidelines as notified to NBCF from time to time, or as otherwise reasonably requested by the Administering Institution

26 Privacy

- (a) The Administering Institution must handle and protect, and must procure that its Research Personnel handle and protect, all Personal Information collected or used in connection with the Project in accordance with the Privacy Act and will only disclose or use such Personal Information with the permission of the individual to whom it relates or where the Privacy Act or other laws otherwise allows such disclosure or use.
- (b) The Administering Institution warrants that each individual named in the Grant Application has consented to the information supplied by them as part of the Grant Application being disclosed or used for any purpose connected with:
- (1) assessing the Grant Application;
 - (2) the making and administration of the Scheme; or
 - (3) the conduct of the Project,
- or as otherwise permitted by the Privacy Act, and such disclosure may include disclosure to members of the NBCF Research Advisory Committee, independent assessors requested to provide advice by NBCF, and employees and agents of NBCF, including employees and agents located outside of Australia.

27 Confidentiality

- (a) Each recipient of Confidential Information (the **Recipient**) must:
- (1) hold the disclosing party's (the **Discloser's**) Confidential Information in strict confidence and not disclose, or permit the disclosure of, the Discloser's Confidential Information except as permitted by this agreement or with the prior written consent of the Discloser;
 - (2) keep the Discloser's Confidential Information secure and protected from any use, disclosure or access which is inconsistent with this agreement;
 - (3) promptly notify the Discloser if it suspects, or becomes aware of, any loss of, or any unauthorised use, storage, copying or disclosure of, the Discloser's Confidential Information;
 - (4) only use the Discloser's Confidential Information for the purpose of the Project or as otherwise required under this agreement.
- (b) The Administering Institution may only disclose NBCF's Confidential Information to Research Personnel to the extent necessary for the conduct of the Project and provided such Research Personnel are bound by the same terms as this clause 27. The Administering Institution must ensure that all such Research Personnel comply with such terms.
- (c) The Administering Institution acknowledges and agrees that NBCF may disclose the Reports to any Additional Funding Body providing funding for the Project, any New Administering Institution, each Collaborating Institution from time to time and any other research or education institution involved in or connected with the Project. Unless NBCF is required to disclose such Reports on a non-confidential basis, for example under a funding agreement with the Commonwealth or as part of its regulatory or reporting obligations, NBCF will use reasonable efforts to ensure that such Reports are disclosed on a confidential basis to such entities.
- (d) Subject to clause 27(e), a Recipient may disclose so much of the Discloser's Confidential Information as the Recipient is:

- (1) legally required to disclose by any applicable law or legally binding court order; or
 - (2) required to disclose to enforce or carry out its obligations under this agreement.
- (e) Before making disclosure under clause 27(d), a Recipient must:
- (1) give the other party reasonable written notice of the full circumstances of the required disclosure and the Confidential Information that it proposes to disclose;
 - (2) consult with the other party as to the form of the disclosure; and
 - (3) use reasonable efforts to require the disclosure is made on a confidential basis.
- (f) Clauses 27(a) to 27(e) do not apply to Confidential Information:
- (1) from the time it is in the public domain, other than as a result of a breach of this agreement or any undertaking required to be entered into by Research Personnel under clause 27(b);
 - (2) that the Recipient can show by documentary evidence was already in the lawful possession of the Recipient at the time of disclosure by the Discloser to the Recipient; or
 - (3) from the time it is received by the Recipient from a person (other than the Discloser or any employee, officer, agent, contractor or adviser of the Discloser) legally entitled to possess that information and provide it to the Recipient.
- (g) The Recipient must, within 20 Business Days or earlier of any request by the Discloser, return to the Discloser, or destroy, delete and erase, as the Discloser directs, all materials and copies that are or contain the Discloser's Confidential Information, whether they are held by the Recipient or, in the case of the Administering Institution, any of its Research Personnel.
- (h) The return, destruction, deletion, erasure or retention of the Discloser's Confidential Information in accordance with clauses 27(g) does not relieve the Recipient from any of its other obligations under this agreement.
- (i) The Administering Institution consents to NBCF:
- (1) identifying the Administering Institution and Principal Investigator; and
 - (2) disclosing a lay description of the Project synopsis set out in the Grant Application,
- to NBCF supporters for fundraising purposes including updates to existing supporters.

28 Dispute Resolution

- (a) If a party considers that a dispute has arisen in respect of, or out of, this agreement or the Project (the **Dispute**), that party may give notice to the other parties specifying the nature of the dispute.
- (b) Once a party gives notice of a Dispute, the parties must use reasonable endeavours and negotiate in good faith to resolve the Dispute.
- (c) If the parties have not resolved the Dispute within 10 Business Days after notice is given in accordance with clause 28(b), any of the parties may refer the dispute to their Chief Executive Officers, Deputy Vice Chancellor (Research) or equivalent position of the party (**Officer**). For the avoidance of doubt, where a party is an individual any references to that party's Officer in this clause 28 should be read as references to that party.

- (d) Any decision of the Officers in relation to the Dispute will be final and binding as between the parties.
- (e) If the Officers do not resolve the Dispute within 10 Business Days of it being referred to the Officers, the parties agree that the Dispute may be referred to mediation.
- (f) The mediator may be appointed either by agreement between the parties, or failing such agreement within 5 Business Days of expiry of the period set out in clause 28(e), by the chair of the Resolution Institute.
- (g) Each of NBCF and the Administering Institution agree that:
 - (1) each party will bear their respective costs in connection with the mediation save that the mediator's fee, fees for mediation rooms and costs of shared equipment, facilities and services for mediation will be shared equally between the parties;
 - (2) the venue for the mediation will be agreed between the parties, or failing such agreement, will be determined by the mediator.
 - (3) each party may be legally represented if they so wish.
 - (4) the mediation will be conducted without prejudice and the mediation and any documents and information used at or in relation to the mediation will constitute Confidential Information for the purpose of this agreement.
- (h) If within 60 Business Days of the Dispute being referred to the Officers of each party under clause 28(c), the dispute has not been resolved or the parties have not agreed to:
 - (1) the dispute resolution technique or procedures to be adopted to resolve the dispute;
 - (2) the timetable for all steps in those procedures; and
 - (3) the selection and compensation of any independent person required for such dispute resolution technique or procedure,
 then either party may commence court proceedings to resolve the dispute. A party may not otherwise commence proceedings, except where a party is seeking urgent interlocutory relief.

29 Notices

- (a) A notice or other communication to a party under this agreement (**Notice**) must be:
 - (1) in writing and in English and signed by or on behalf of the sending party; and
 - (2) addressed to that party in accordance with the details nominated in Schedule B (or any alternative details nominated to the sending party by Notice).
- (b) A Notice must be given by one of the methods set out in the table below.
- (c) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By pre-paid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting
By fax to the nominated fax number	At the time indicated by the sending party's transmission equipment as the time that the fax was sent in its entirety. However, if the recipient party informs the sending party within 4 hours after that time that the fax transmission was illegible or incomplete, then the Notice will not be regarded as given or received. When calculating this 4 hour period, only time within a business hours period is to be included.
By email to the nominated email address	When the email (including any attachment) comes to the attention of the recipient party or a person acting on its behalf.

30 General

- (a) This agreement is governed by the law in force in New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.
- (c) If any provision of this agreement is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (d) Clause 30(c) does not apply where enforcement of the provision of this agreement in accordance with clause 30(c) would materially affect the nature or effect of the parties' obligations under this agreement.
- (e) No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 30(e) are set out below.

Term	Meaning
conduct	includes delay in the exercise of a right.
right	any right arising under or in connection with this agreement and includes the right to rely on this

Term	Meaning
	clause.
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.
(f)	A variation of any term of this agreement must be in writing and signed by the parties.
(g)	The Administering Institution may not assign any of its rights, or sub-contract any of its obligations, arising out of or under this agreement without NBCF's prior written consent.
(h)	NBCF may assign or novate this agreement, or any of its rights or obligations under this agreement, to a third party on the same terms as this agreement. The Administering Institution consents to such assignment or novation and must take all steps necessary to confirm or effect such assignment or novation, including, where requested by NBCF, entering into a novation agreement or deed.
(i)	Except as expressly provided in this agreement, each party must bear all costs and expenses incurred by it in performing the Project and any of its obligations under this agreement.
(j)	Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this agreement and the transactions contemplated by it.
(k)	This agreement states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.
(l)	Neither party has relied on any statement by the other party not expressly included in this agreement.
(m)	This agreement may be executed in any number of counterparts.
(n)	Each party enters into this agreement as an independent contractor. This agreement does not create any other relationship, such as an employment, partnership, agency, trust or joint venture relationship.
(o)	Nothing in this agreement gives a party authority to bind any other party in any way.
(p)	Nothing in this agreement imposes any fiduciary duties on a party in relation to any other party.
(q)	Unless expressly required by the terms of this agreement, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this agreement.
(r)	A party may impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this agreement (without, unless otherwise provided in this agreement, any requirement to act reasonably). Any conditions must be complied with by the party relying on the consent, approval or waiver.
(s)	The Administering Institution must pay any stamp duty, including any penalty, in respect of this agreement and indemnifies NBCF in respect of such amounts.

31 Interpretation

- (a) Specifying anything in this agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.
- (b) Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.
- (c) This agreement includes any schedule.
- (d) In this agreement:
 - (1) Headings and bold type are for convenience only and do not affect the interpretation of this agreement.
 - (2) The singular includes the plural and the plural includes the singular.
 - (3) Words of any gender include all genders.
 - (4) Other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning.
 - (5) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
 - (6) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement.
 - (7) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
 - (8) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
 - (9) A reference to a party to a document includes that party's successors and permitted assignees.
 - (10) A promise on the part of 2 or more persons binds them jointly and severally.
 - (11) A reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
 - (12) No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision.
 - (13) A reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not which ceases to exist; or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

Schedule A

Definitions

Term	Meaning
Additional Funding Body	any entity, other than NBCF, providing funding for the Project, as set out in item 1.10 of Schedule C.
AEC	has the meaning given in Schedule D.
Annual Financial Report	has the meaning given in clause 11(a)(2).
Associate Investigators	are as set out in the Grant Application.
Audited Financial Statement	has the meaning given in clause 11(a)(3).
Australian Accounting Standards	means the standards of that name maintained by Australian Accounting Standards Board created by s 226 of the <i>Australian Securities and Investments Commission Act 2001</i> .
Australian Auditing Standards	means the standards of that name maintained by Australian Accounting Standards Board created by s 227A of the <i>Australian Securities and Investments Commission Act 2001</i> .
Background IP	the Intellectual Property created or developed by a party or any Research Personnel or any External Investigator prior to the date of this agreement or other than in connection with the Project, but not including: <ol style="list-style-type: none">1 the Project IP; or2 the Commercial IP.
Business Day	a day on which banks are open for business in Sydney and the capital city in the state or territory in which the Administering Institution is primarily located (as set out in Schedule B), excluding a Saturday, Sunday or public holiday in those cities.
Change	has the meaning given in clause 16(b).
Change Request Notice	has the meaning given in clause 16(c).
CI Undertaking	has the meaning given in clause 3(a)(1).

Term	Meaning
Collaborating Institutions	are the entities set out on in item 1.7 of Schedule C.
Commencement Date	as set out in item 1.2 of Schedule C.
Commercial IP	has the meaning given in clause 18(b).
Commercialisation Costs	<p>all costs and disbursements incurred in connection with the commercialisation of the Commercial IP, including:</p> <ol style="list-style-type: none"> 1 application, registration and renewal fees relating to the Commercial IP, and all invoiced patent attorney and external legal costs associated with application, registration and renewal of registrations relating to the Commercial IP; 2 royalties actually paid to third parties in order to develop, make and sell any licensed product or service incorporating Commercial IP; and 3 any other external costs that have been incurred with NBCF's consent, <p>but for the avoidance of doubt does not include any costs incurred in salary or other allowances for staff of the Administering Institution or any Commercialisation Entity, or the costs of operating the Administering Institution, or any Commercialisation Entity.</p>
Commercialisation Entity	any entity set up, controlled by or acting for the Administering Institution or its nominee in order to commercialise the Commercial IP.
Commercialisation Model	has the meaning given in clause 18(e).
Confidential Information	<p>all information which:</p> <ol style="list-style-type: none"> 1 is by its nature confidential; or 2 a disclosing party designates as confidential, <p>and which is disclosed (whether orally, in writing or in any other form) by one party to the other party, or which a party otherwise acquires in relation to the other party in connection with the Project including, without limitation:</p> <ol style="list-style-type: none"> 1 business records, financial information, or information otherwise relating to a party or their business or activities; 2 planning or marketing procedures, techniques or information, including information relating to sales figures, the identity of customers, suppliers and/or agents; 3 any records or accounts kept by either party in respect of the Project; 4 the Grant Application, the Reports and other Deliverables, the Institutional Approvals, this agreement and the terms of this agreement; and 5 the Background IP and the Project IP.

Term	Meaning
Co-Investigator	a co-investigator as set out in the Grant Application.
Cut-Off Date	The date set out on in item 1.3 of Schedule C, or any later date agreed by the parties pursuant to clause 3(e)(4).
Deliverables	anything the Administering Institution must deliver to NBCF under this agreement or the Grant Application (whether or not listed in a schedule to this agreement), including the Reports and the deliverables listed in item 1.4 of Schedule C.
Excluded Employment Costs	with the exception of a Research Personnel's base salary and minimum statutory entitlement to superannuation (being 9.5% as at the date of this agreement), all employment related costs and expenses including but not limited to overhead costs, payroll tax, leave entitlements, other salary on-costs, termination payments, overtime or penalty rates, leave loading, incentives such as bonuses, workers compensation insurance, long service leave allowances and any other employment allowances or entitlements.
External Investigator	any Associate Investigator who is not an officer, employee, agent, contractor or consultant of the Administering Institution or any Collaborating Institution or, where the Administering Institution or any Collaborating Institution is an educational institution, a student, academic staff, supervisor, examiner or investigator of the Administering Institution or any Collaborating Institution.
Grant	the funding under the Scheme, as set out in item 1.6 of Schedule C, provided by NBCF to the Administering Institution to administer the Project on the terms of this agreement.
Grant Application	the grant application by the Administering Institution, the Principal Investigator and any Collaborating Institution, as approved by NBCF and set out in Attachment 1, as amended from time to time by the agreement of the parties.
Grant Pre-Conditions	has the meaning given in clause 3(a).
Guidelines	the guidelines for NBCF grants or awards referred to in this agreement and located on its website as updated from time to time.
Host Institution	the institution which will host the Infrastructure developed under the Project, if any, as set out in item 1.11 of Schedule C.
HREC	has the meaning given in Schedule D.
Identified Person	has the meaning given in clause 9.4(a).
Infrastructure	has the meaning provided in the Grant Application for a National Infrastructure Grant.

Term	Meaning
Initial Term	the period set out in item 1.2 of Schedule C.
Institutional	the approvals set out in Schedule D.
Insolvency Event	<p>the occurrence of any one or more of the following events:</p> <ol style="list-style-type: none"> 1 an order is made that a party be wound up, or that a provisional liquidator or receiver or receiver and manager be appointed and such order is not revoked within 5 Business Days; 2 a liquidator or provisional liquidator is appointed, or an administrator or a controller is appointed to a substantial proportion of a party's assets and such appointment is not revoked within 5 Business Days; 3 a party enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors or engages in a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors other than as part of a solvent reconstruction; 4 a party is insolvent or bankrupt as disclosed in its accounts or otherwise, states that it is insolvent or bankrupt or it is presumed to be insolvent or bankrupt under an applicable law; or 5 anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.
Intellectual Property	means all current and future intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trade marks, designs, patents, inventions, plant breeder's rights, copyright and analogous rights, circuit layouts, confidential information, trade secrets, know-how and other intellectual property rights as defined in Article 2 of the convention establishing the World Intellectual Property Organisation of 14 July 1967 as amended from time to time, and any right to apply for registration of, or any application for, such rights.
Milestones	as set out in item 1.5 of Schedule C.
NBCF Donor	an NBCF donor or supporter, or a person who has donated or supported NBCF, who is introduced to the Administering Institution as part of an NBCF promotional or fundraising activity.
Net Revenue	<p>the Administering Institution's share of revenue received from commercialising the Commercial IP, including from the sale of a product, services, process or technology which uses or incorporates the Commercial IP (whether sold by the Administering Institution or its Commercialisation Entity or any third party), including signing fees, royalties and licence fees, including on sub-licences, dividends, proceeds of sale of shares in a Commercialisation Entity set up to Commercialise the Commercial IP, less:</p> <ol style="list-style-type: none"> 1 the Commercialisation Costs; 2 discounts, rebates and allowances; 3 distribution costs, including packaging, delivery and insurance costs; 4 taxes, duties, imposts and other like government charges

Term	Meaning
	<p>incorporated in the gross invoice price of any product, process, service or technology incorporating the Commercial IP; and</p> <p>5 amounts refunded or credited,</p> <p>solely in respect of sales of any product, process, service or technology incorporating the Commercial IP.</p>
New Administering Institution	has the meaning given in clause 9.2(a).
NHMRC	has the meaning given in clause 5(a)(1).
NHMRC Approved Standards and Guidelines	<p>those standards and guidelines listed on the NHMRC website as may be introduced, amended or replaced from time to time by NHMRC, and include without limitation:</p> <ol style="list-style-type: none"> 1 Australian Code for the Responsible Conduct of Research; 2 Australian code for the care and use of animals for scientific purposes; 3 National Statement on Ethical Conduct in Human Research; 4 Guidelines approved under Section 95A of the <i>Privacy Act 1988</i>; 5 Guidelines under Section 95 of the <i>Privacy Act 1988</i>; 6 National Principles of Intellectual Property Management for Publically Funded Research; 7 Policy on the Care and Use of Non-Human Primates for Scientific Purposes; 8 Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research; and 9 Ethical Guidelines on the use of Assisted Reproductive Technology in Clinical Practice and Research.
Overseas Non-Financial CI	<p>a Collaborating Institution that:</p> <ol style="list-style-type: none"> 1 is not incorporated or established in Australia; 2 will perform its part of the Project solely in a country other than Australia; and 3 will not receive any part of the Grant.
Personal Information	means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
Premises	any premises owned or occupied by the Administering Institution, or over which the Administering Institution has control or right of access, in which the Project is being conducted or material related to the Project is being stored.
Principal Investigator	the principal investigator set out in the Grant Application.

Term	Meaning
Privacy Act	has the meaning given in clause 17(a)(5).
Progress Reports	has the meaning given in clause 11(a)(1).
Project	as set out in item 1.1 and, if applicable, item 1.9 of Schedule C and the Grant Application.
Project IP	any Intellectual Property developed or created in the course of or in connection with the Project.
Proposal	has the meaning given in clause 2(b).
Relevant Date	has the meaning given in clause 9.4(d).
Replacement Report	has the meaning given in clause 12(b).
Reports	has the meaning given in clause 11(a).
Research Personnel	all officers, employees, agents, contractors and consultants of the Administering Institution and any Collaborating Institution who are involved in the Project from time to time, and, where the Administering Institution or any Collaborating Institution, is an educational institution, also includes students, academic staff, supervisors, examiners and investigators involved in the Project from time to time. For the avoidance of doubt, Research Personnel include the Principal Investigator, any Co-Investigator and any Associate Investigators involved in the Project from time to time.
Scheme	the grant scheme under which the Grant was applied for, as set out in recital 2 of the Background section of this agreement.
Term	the period set out in item 1.2 of Schedule C and any further period notified by NBCF to the Administering Institution pursuant to clause 2(c), unless terminated earlier in accordance with this agreement.

Schedule B

Notice details

National Breast Cancer Foundation

Address	Level 9, 10 Barrack Street, SYDNEY NSW 2000
Attention	Grants Administrator
Phone	02 8098 4800
Fax	02 8098 4801
Email	research@nbcf.org.au

«Administering_Institution»

Address	«Address»
Attention	«Admin__Attention_»
Phone	«Admin__Phone»
Fax	«Admin__Fax»
Email	«Admin__Email»
Alternative Email	«Admin__Alternative_Email»

Project

1.1 Project

(Clause 5)

«Grant_Title»

«Lay_Description»

1.2 Initial Term and Commencement Date

(Clause 2)

Initial Term: «Term» years from the Commencement Date.

Commencement Date: «Start_Date»

1.3 Cut-Off Date

(Clause 2(c))

«CutOff_Date»

1.4 Deliverables

(Clause 5)

Deliverable	Timing for delivery
Refer to Attachment 1 Grant Application.	Refer to Attachment 1 Grant Application.

1.5 Milestones

(Clause 5)

Refer to Attachment 1 Grant Application.

1.6 Grant payment schedule

(Clause 6)

Year	Timing	Amount (GST excl)
«M_1st_instal»	Within 30 days of execution of Agreement.	«M_1st_Yr_1_1st_instal»
«M_2nd_instal»	«M_2nd_Payment_Schedule»	«M_2nd_Yr_1_2nd_instal»

«M_3rd_instal»	Within 30 days of receipt of Year 1 Annual Progress Report and Year 1 Annual Financial Report (due «Yr_1_Report_due»).	«M_3rd_Yr_2_1st_instal»
«M_4th_instal»	«M_4th_Payment_Schedule»	«M_4th_Yr_2_2nd_instal»
«M_5th_instal»	Within 30 days of receipt of Year 2 Annual Progress Report and Year 2 Annual Financial Report (due «Yr_2_Report_due»).	«M_5th_Yr_3_1st_instal»
«M_6th_instal»	«M_6th_Payment_Schedule»	«M_6th_Yr_3_2nd_instal»
«M_7th_instal»	Within 30 days of receipt of Year 3 Annual Progress Report and Year 3 Annual Financial Report (due «Yr_3_Report_due»).	«M_7th_Yr_4_1st_instal»
«M_8th_instal»	«M_8th_Payment_Schedule»	«M_8th_Yr_4_2nd_instal_FINAL»
TOTAL		«Total_Budget»

1.7 Collaborating Institutions (where applicable):

Collaborating Institution (full name of legal entity, including suffixes and ABN if applicable)

Person / position authorised to sign deed of undertaking for Collaborating Institution

[insert Collaborating Institution]
ABN [insert ABN]

[insert Person name] /
[insert position]

[insert address]

1.8 Reporting schedule

(Clause 11)

Report	When required	Due date
Progress Reports		
Annual Progress Reports	Annually	First report due: «Yr_1_Report_due» Second report due: «Yr_2_Report_due» Third report due: «Yr_3_Report_due»
Final Progress Report	No later than 3 months after the end of the Term or the completion of the Project, whichever is earlier	«FinalAudit_Report»
Follow-up Report	24 months after the end of the Term or the completion of the Project, whichever is earlier	«FollowUp_Report»
Annual Financial Report		
Annual Financial Report	Annually (or upon written notice given by NBCF)	First report due: «Yr_1_Report_due» Second report due: «Yr_2_Report_due» Third report due: «Yr_3_Report_due»
Audited Financial Statement		
Audited Financial Statement	No later than 3 months after the end of the Term or the completion of the Project, whichever is earlier	«FinalAudit_Report»

1.9 Project components by Institution (where applicable):

As outlined in Attachment 1 Grant Application.

1.10 Additional Funding Bodies (where applicable):

«Entity_Type».

1.11 Host Institution (where applicable):

The institution which will host and maintain the Infrastructure under a NBCF Infrastructure Grant.

Host Institution and location (full name of legal entity, including suffixes and ABN if applicable)

«Administering_Institution»

«Address»

Institutional approvals

Part I – Clearance requirements:

The Administering Institution must meet the following clearance requirements and obtain and maintain as required, the necessary approvals for the duration of the Projects:

1 Research involving humans

All research involving humans must be conducted in accordance with the requirements of the *National Statement on Ethical Conduct in Human Research (2007)* and associated guidelines, as amended from time to time.

Approval must be obtained from a Human Research Ethics Committee (**HREC**) that is registered with the NHMRC before commencement of the Project, and must be maintained for the duration of the Project and reobtained if required for the duration of the Project. The Administering Institution is responsible for ensuring that all project activities have Human Research Ethics Committee approval. Each of the Administering Institution and the HREC are responsible for monitoring the conduct of the Project and ensuring that ethical approval is obtained for amendments to the Project.

Despite the preceding paragraph, the Administering Institution is not obliged to reobtain or maintain HREC approval if the HREC determines that the human research portion of the Project is complete and that such approvals are no longer required.

2 Animal experimentation

Experiments involving the use of animals must be conducted, and experimental animals must be housed, maintained and controlled, in accordance with the current *Australian code of practice for the care and use of animals for scientific purposes*, the *Guidelines to promote the wellbeing of animals used for scientific purposes*, and any additional policy statements adopted by the NHMRC.

Approval must be obtained from the relevant Animal Ethics Committee (**AEC**) before commencement of the Project, and must be maintained for the duration of the Project and reobtained if required for the duration of the Project. Each of the Administering Institution and the AEC are responsible for monitoring the conduct of the Project and ensuring that ethical approval is obtained for amendments to the Project.

Despite the preceding paragraph, the Administering Institution is not obliged to reobtain or maintain AEC approval if the AEC determines that the animal research portion of the Project is complete and that such approvals are no longer required.

3 Use of radioactive substances, ionising radiation, recombinant DNA, biohazardous material, potent teratogens or carcinogens

Clearance for Projects which involve any of the above must be obtained from the appropriate Institutional Bio-safety Committee and/or, where relevant, the appropriate Ethics Committee.

If a Project involves the use of ionising radiation, the Institution must ensure that any personnel performing procedures involving ionising radiation are appropriately trained and hold a relevant current licence from the appropriate State or Territory authority, and that all relevant State or Territory legislation is complied with. The Administering Institution must retain all such licences and must provide them to the Commonwealth if required to do so.

Despite the preceding paragraph, the Administering Institution is not obliged to reobtain or maintain licenses if the appropriate authority determines that the relevant portion of the Project is complete and that such licenses are no longer required.

4 Administration to humans of drugs, chemical agents or vaccines

Any Project involving the above will be subject to prior clearance by the relevant Human Research Ethics Committee.

5 Import of Experimental Organisms

The Administering Institution must ensure that, before experimental organisms are imported into Australia for the purposes of a Project, the Administering Institution obtains authorisation for the importation from the appropriate Commonwealth and State authorities.

6 Storage of Biological Materials

Any biological material accumulated during the course of a Project must be transferred to an Australian body with statutory responsibility for control of such material. If no such body is available to take control of the biological material then the Institution must dispose of the material in accordance with the Institution's established safeguards.

7 Genetic Manipulation

All work involving recombinant nucleic acids must conform to the requirements set out in the *Gene Technology Act 2000* (Cth) as amended from time to time.

If a Project involves the preparation and/or use of recombinant nucleic acids constructed *in vitro* from sources that do not ordinarily recombine genetic information, the Administering Institution must obtain approval in writing from the Administering Institution's Biosafety Committee. If a Project involves or concerns the use of recombinant DNA techniques on animals or humans then, before the proposed research commences, the Administering Institution must ensure that the research has been approved by the relevant Ethics or Biosafety Committee of the Administering Institution. The Administering Institution must retain all certificates of approval relating to the Project and will provide such evidence to the Commonwealth if required to do so.

Part II – Statements of Compliance

The Administering Institution must ensure that research under the Project is conducted in accordance with the principles outlined in the following guidelines, codes and statements (and any replacement versions):

- (a) *National Statement on Ethical Conduct in Human Research* (NHMRC, 2007)
- (b) *Australian Code for the Responsible Conduct of Research* (NHMRC, Australian Research Council, and Universities Australia, 2007)
- (c) *Australian code of practice for the care and use of animals for scientific purposes* (NHMRC, 2004)
- (d) *Values and Ethics - Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research* (NHMRC, 2003)
- (e) *Ethical guidelines on the use of assisted reproductive technology in clinical practice and research* (NHMRC, 2007)
- (f) *Guidelines for Genetic Registers and Associated Genetic Material* (NHMRC, 1999)
- (g) Guidelines issued under section 95 of the *Privacy Act 1988* (Cth)
- (h) Guidelines approved under section 95A of the *Privacy Act 1988* (Cth)

Schedule E

Undertaking by Collaborating Institution

This Deed Poll is made on theday of, 20..... by [insert Collaborating Institution] [insert ABN if the Collaborating Institution is based in Australia] (the **Collaborating Institution**) of [insert Collaborating Institution address].

In Favour of: [insert Administering Institution] ABN [insert ABN] or any other administering institution to whom the Agreement is validly novated (the **Administering Institution**) and the National Breast Cancer Foundation ABN 37 144 841 707 (**NBCF**).

RECITALS

- 1 The Collaborating Institution has been named as a Collaborating Institution in a National Breast Cancer Foundation [insert NBCF scheme] Application (the **Grant Application**).
- 2 This Grant Application resulted in an agreement between NBCF and the Administering Institution (the **Agreement**), which is annexed to this undertaking.
- 3 Under this Undertaking, the Collaborating Institution undertakes to comply with the Agreement on the terms of this undertaking.

UNDERTAKING REGARDING THE AGREEMENT AND THE GRANT APPLICATION:

- (a) **(Compliance with Agreement)** The Collaborating Institution undertakes to comply with the obligations on the Administering Institution, including in relation to the Project, as set out in the Agreement, the Guidelines and the Grant Application, to the extent they relate to those parts of the Project in which the Collaborating Institution is involved, as if those obligations were directly imposed on the Collaborating Institution, including, obligations in respect of:
 - (1) performing and ensuring its Research Personnel perform the Project in accordance with the Agreement, the Guidelines and Grant Application;
 - (2) maintaining adequate insurance policies and providing certificates as evidence of such policies to the Administering Institution on request;
 - (3) complying with NBCF's or the Administering Institution's directions on expenditure, commitment and repayment of funds;
 - (4) complying with NBCF's or the Administering Institution's directions in relation to its Research Personnel;
 - (5) ensuring that the Collaborating Institution has the rights necessary to, and in each case permit the Administering Institution to, use any Background IP of the Collaborating Institution or any of its Research Personnel necessary to conduct the Project, or Project IP developed or created by the Collaborating Institution or its Research Personnel in the course of or in connection with the Project;
 - (6) if the Commercial IP, or a portion of the Commercial IP, is owned or held by the Collaborating Institution or its Research Personnel, ensuring that the Collaborating Institution or those Research Personnel provides all necessary rights and consents to the Administering Institution to fulfil its obligations to NBCF in relation to the Commercial IP under the Agreement;

- (7) obtaining prior to commencing the Project at its site and keeping current during the Term any notifications, approvals or Institutional Approvals needed by the Collaborating Institution to carry out the Project, including as required by the Agreement;
- (8) preparing and submitting reports to the Administering Institution, including details of the Collaborating Institution's commercialisation activities (including commercialisation by third parties) and attending required meetings;
- (9) keeping any Confidential Information confidential, and not disclosing or using such Confidential Information other than on the terms of the Agreement. The Collaborating Institution consents to the disclosure of this Undertaking to any New Administering Institution;
- (10) acknowledging NBCF's support in respect of the Project and complying with NBCF's reasonable requests to promote awareness of and raising funds for breast cancer research and breast cancer related projects;
- (11) maintaining full, clear and accurate records and accounts in respect of the Grant, the Project and any Project IP, Commercial IP and Background IP which is used or developed by the Collaborating Institution in the Project;
- (12) keeping the Administering Institution advised of any legal proceedings or commercial, technical or financial capacities that may have an adverse effect on the ability of the Collaborating Institution to perform its obligations under the Agreement;
- (13) complying with anti-tobacco policies of NBCF;
- (14) providing access to materials and premises;
- (15) complying with acknowledgement and publication guidelines;
- (16) complying with the dispute resolution procedures set out in the Agreement
- (17) provision of indemnities, as set out below;
- (18) protecting personal information
- (19) if the Collaborating Institution is also the Host Institution, complying with the obligations on the Host Institution, and in relation to the Infrastructure from time to time, as set out in the Agreement, the Guidelines and the Grant Application,

and any other activity required to enable the Administering Institution to meet its obligations under the Agreement. For the avoidance of doubt, and without limiting the Collaborating Institution's obligations pursuant to this undertaking, the Collaborating Institution must comply with the following provisions of the Agreement as if in those provisions the words "Administering Institution" was replaced with "Collaborating Institution": 4, 5, 6(e), 7, 8, 9, 10, 13, 14, 15, 16, 17 (if the Collaborating Institution is a Host Institution), 18, 19, 20, 24, 25, 26, 27 and 28.

- (b) **(Reports)** If the Collaborating Institution receives any part of the Grant, the Collaborating Institution undertakes to in good faith to prepare and provide to NBCF an Annual Financial Report, prepared in accordance with Australian Accounting Standards or such other standards as NBCF approves in writing from time to time and containing accurate and complete information relating to the period from the Commencement Date to the date the initial Annual Financial Report is required, as set out in item 1.8 of Schedule C of the Agreement, and on each further date set out in item 1.8 of Schedule C of the Agreement (or for such other period as NBCF notifies the Collaborating Institution from time to time) including:

- (1) a financial statement in a form to be stipulated by NBCF, specifying the total amount of the Grant received by the Collaborating Institution and expended by the Collaborating Institution;
 - (2) certification by the Chief Financial Officer of the Collaborating Institution or their delegate that the Grant was expended in accordance with the Agreement; and
 - (3) the amount of funding received by the Collaborating Institutions or any Research Personnel from third parties in relation to the Project, where such funding is specified as part of the approved budget specified in the Grant Application.
- (c) If the Collaborating Institution receives any part of the Grant, the Collaborating Institution undertakes to provide to NBCF on the date set out in item 1.8 of Schedule C of the Agreement an Audited Financial Statement prepared by an independent auditor in compliance with Australian Auditing Standards or such other standards as NBCF approves in writing from time to time and generally accepted auditing practices and containing accurate and complete information, for the entire period up to and including the earlier of the end of the Term and the completion of the Project, including:
- (1) a detailed statement of receipts and expenditure in respect of the Grant received by the Collaborating Institution and expended by the Collaborating Institution for the Project;
 - (2) a definitive statement as to whether the financial accounts are complete and accurate; and
 - (3) a statement of the balance of the Collaborating Institution's bank account/ ledger relating to the Project.
- (d) **[Note to NBCF: to consider whether appropriate to include this clause where the Collaborating Institution is based overseas.] (Co-Investigators and Research Personnel)** The Collaborating Institution undertakes to ensure each Co-Investigator who is a member of the Collaborating Institution's Research Personnel will:
- (1) if requested by NBCF, join a peer review committee hosted by NBCF in relation to research funding and participate in assessing and scoring applications for NBCF funding grants and other activities from time to time, as reasonably requested by the peer review committee and NBCF; and
 - (2) provide presentations, tours and host meetings with NBCF donors as reasonably requested by NBCF from time to time.
- (e) **(Warranties)** The Collaborating Institution warrants and undertakes that at the time of entry into this deed poll and throughout the Term, it is not an applicant and will not be an applicant for, or a recipient of funds from, or an employee or an employer of an entity that is an applicant for or a recipient of funds from:
- (1) the tobacco industry;
 - (2) The Smoking and Health Research Foundation of Australia; or
 - (3) any organisation associated with the tobacco industry or deemed by NBCF, in writing to the Collaborating Institution, to be associated with the tobacco industry,
- regardless of whether the funds are received directly or indirectly, including through a collaborator or where applicable, through a particular faculty or school of the Collaborating Institution or by any other means, or whether for health related research, projects or services (wherever in the institution or entity such research or projects may be undertaken or services provided or supported).
- (f) **(Indemnity)** The Collaborating Institution indemnifies each of NBCF and the Administering Institution against all damage, expense, loss or liability

suffered or incurred by NBCF or the Administering Institution or any of their respective officers, employees or agents in connection with:

- (1) any breach or negligence by the Collaborating Institution or any of its Research Personnel in connection with this undertaking, the Project or the Agreement including a failure by the Collaborating Institution to ensure that each of its Research Personnel comply with this undertaking or perform the Project; and
 - (2) any third party claim relating to the Project or any part of the Project, including its conduct by the Collaborating Institution or its Research Personnel or outcome or that use by the Collaborating Institution or its Research Personnel of any Background IP or Project IP or the conduct of the Project or any part of the Project by the Collaborating Institution or its Research Personnel infringes a third party's rights including any right of confidentiality or moral rights.
- (g) The Collaborating Institution's liability to indemnify:
- (1) NBCF will reduce proportionally to the extent any damage, expense, loss or liability suffered or incurred by NBCF, its officers, employees or agents was caused by a breach of the Agreement, or negligence in connection with the Agreement or the Project, by NBCF, its officers, employees or agents;
 - (2) the Administering Institution will reduce proportionally to the extent any damage, expense, loss or liability suffered or incurred by the Administering Institution, its offers, employees or agents was caused by a breach of the Agreement, or negligence in connection with the Agreement or the Project, by the Administering Institution, its offers, employees or agents.
- (h) The rights of each of NBCF and the Administering Institution to be indemnified is in addition to, and not exclusive of, any other right, power or remedy provide by law.
- (i) **(Undertaking not to sue)** The Collaborating Institution undertakes not to claim, sue or take any action against NBCF in respect of the payment of the Grant in accordance with the terms of the Agreement.
- (j) **(Expiry)** subject to paragraph (l), the obligations in this Undertaking terminate automatically on termination or expiry of the Agreement.
- (k) The following obligations in this Undertaking are not terminated on termination or expiry of the Agreement and remain in effect:
- (1) paragraph (a)(2) in respect of insurance which by its nature must be maintained in order to cover liability incurred up to the date of termination or which is required to cover liability in respect of the Collaborating Institutions continuing obligations under this Undertaking;
 - (2) paragraph (a)(5), in respect of Project IP developed or created by the Collaborating Institution or any of its Research Personnel up until the date of termination under paragraph (j);
 - (3) paragraph (a)(6), in respect of Commercial IP which is comprised in whole or in part of Project IP developed or created by the Collaborating Institution or any of its Research Personnel up until the date of termination under paragraph (j);
 - (4) paragraphs (a)(9) in respect of confidential information and (a)(18) in respect of personal information;
 - (5) paragraphs (a)(17), (f), (g) and (h) in respect of the indemnity provided by the Collaborating Institution;
 - (6) where the Collaborating Institution is also a Host Institution, paragraph (a)(19); and
 - (7) the undertaking not to sue in paragraph (i).

- (l) **(Consequences of termination)** In respect of the provisions of this Undertaking which are terminated pursuant to paragraph (j), for a period of six years from termination the Collaborating Institution remains liable to the Administering Institution and NBCF for those obligations which fell due for performance before the date of termination and those obligations which fall due for performance after the date of termination solely in respect of anything done before the date of termination.

To the extent such liability arises from the Undertaking, the Collaborating Institution remains liable to each of the Administering Institution and NBCF for a period of 6 years running from the date on which each cause of action arising from a terminated obligation first accrues to either NBCF or the Administering Institution or to a person through whom NBCF or the Administering Institution claims.

- (m) **(Defined terms)** Unless their context indicates otherwise, all defined terms in this Undertaking have the meaning given to them under the Agreement.

Executed as a Deed Poll on the date set out at the commencement of this Deed Poll.

Signed, sealed and delivered by
[insert Collaborating Institution]
by its authorised representative

sign here ▶ _____
Authorised representative

print name _____

print title _____

Date _____

In the presence of

sign here ▶ _____
Witness

print name _____

Date _____

OR

OPTION 2 (to be used where the Collaborating Institution is an Australian Corporations Act corporation)

Signed, sealed and delivered by
[Collaborating Institution]
by

sign here ► _____
Company Secretary / Director

print name _____

Date _____

sign here ► _____
Director

print name _____

Date _____

Undertaking by Principal Investigator

This Deed Poll is made on the.....day of, 20..... by «CIA1» (the **Principal Investigator**) of «CIAs_Address».

In Favour of: National Breast Cancer Foundation ABN 37 144 841 707 (**NBCF**).

RECITALS

- 1 The Principal Investigator has been named in a National Breast Cancer Foundation «Grant_Type» Application (the **Grant Application**).
- 2 This Grant Application resulted in an agreement between NBCF and the Administering Institution (the **Agreement**), which is annexed to this undertaking.

UNDERTAKING REGARDING THE AGREEMENT AND THE GRANT APPLICATION:

(a) **(Compliance with Agreement)** The Principal Investigator undertakes to comply with the obligations on the Administering Institution, including in relation to the Project, as set out in the Agreement, the Guidelines and the Grant Application, as if those obligations were directly imposed on the Principal Investigator, in respect of:

- (1) performance of the Project, for those parts that the Principal Investigator is expected to perform, as required by the Administering Institution or NBCF, in accordance with clause 5 of the Agreement;
- (2) preparing and submitting Reports and attending meetings, in accordance with clauses 11 and 13 of the Agreement;
- (3) keeping any Confidential Information confidential, in accordance with clause 27 of the Agreement;
- (4) acknowledging NBCF's support in respect of the Project and complying with NBCF's reasonable requests to promote awareness of and raising funds for breast cancer research and breast cancer related projects, and complying with acknowledgement and publication guidelines, in accordance with clause 24 of the Agreement; and
- (5) maintaining full, clear and accurate records in respect of the Grant and the Project, as required by the Administering Institution or NBCF, and any Project IP, Commercial IP and Background IP which is used or developed by the Principal Investigator in the Project,

and any other activity required to enable the Administering Institution to meet its obligations under the Agreement.

(b) **(Project IP)** The Principal Investigator must, to the extent that it holds any right, title or interest in any Background IP or Project IP, take all steps necessary to ensure that the Administering Institution has the rights necessary, and in each case permit each other party to the Project, to:

- (1) use the Background IP and the Project IP for the purpose of conducting the Project; and
- (2) commercialise any Commercial IP,

as set out in clause 18 of the Agreement including, where necessary, assigning or licensing its right, title and interest in any such Background IP or Project IP to the Administering Institution.

- (c) **(Warranties)** The Principal Investigator warrants and undertakes that at the time of entry into this deed poll and throughout the Term, he or she is not an applicant and will not be an applicant for, or a recipient of funds from, or an employee or an employer of an entity that is in applicant for or a recipient of funds from:
- (1) the tobacco industry;
 - (2) The Smoking and Health Research Foundation of Australia; or
 - (3) any organisation associated with the tobacco industry or deemed by NBCF, in writing to the Researcher, to be associated with the tobacco industry,
- regardless of whether the funds are received directly or indirectly, including through a collaborator or where applicable, through a particular faculty or school of the Administering Institution or by any other means, or whether for health related **research**, projects or services (wherever in the institution or entity such research or projects may be undertaken or services provided or supported).
- (d) **(Undertaking not to sue)** The Principal Investigator undertakes not to claim, sue or take any action against NBCF in respect of the payment of the Grant in accordance with the terms of the Agreement.
- (e) **(Peer review committee)** The Principal Investigator undertakes to join a peer review committee hosted by NBCF in relation to research funding and participate in assessing and scoring applications for NBCF funding grants and other activities from time to time, as reasonably requested by either or both of the peer review committee or NBCF.
- (g) **(Consent to disclosure)** The Principal Investigator consents to NBCF:
- (1) identifying the Principal Investigator and Administering Institution; and
 - (2) disclosing a lay description of the Project synopsis set out in the Grant Application,
- to NBCF supporters for fundraising purposes including updates to existing supporters.
- (h) **(Undertaking not to solicit NBCF donors)** The Principal Investigator acknowledges that NBCF's representatives and third parties, including NBCF's donors and supporters, may, from time to time, access the Premises for NBCF's promotional and fundraising purposes. The Principal Investigator undertakes not to solicit funding from NBCF donors and supporters directly and to promptly notify NBCF if he or she is approached by an NBCF donor or supporter directly with additional funding.
- (i) **(Supporting donor relations)** The Principal Investigator acknowledges that NBCF's donors and supporters may wish to align their donation to the specific project of this agreement. The Principal Investigator undertakes to support donor relations of this type by providing presentations, tours or hosting meetings as required by NBCF.
- (j) **(Personal information)** The Principal Investigator acknowledges that their personal information may be used and disclosed by NBCF and its service providers, subcontractors, agents and employees for any purpose related to the Project and that some of these service providers and agents may be located overseas, including in the United Kingdom.
- (k) **(Defined terms)** Unless their context indicates otherwise, all defined terms in this Undertaking have the meaning given to them under either the Agreement or the Grant Application.

Executed as a Deed Poll on the date set out at the commencement of this Deed Poll.

Signed, sealed and delivered by
«CIA»

sign here ▶ _____
Principal Investigator

print name _____

Date _____
In the presence of

sign here ▶ _____
Witness

print name _____

Date _____

Grant Application

Executed as an agreement

Signed for
National Breast Cancer Foundation
by its authorised representatives

sign here ▶ _____
Authorised representative 1

print name _____

print title _____

In the presence of

sign here ▶ _____
Witness

print name _____

sign here ▶ _____
Authorised representative 2

print name _____

print title _____

In the presence of

sign here ▶ _____
Witness

print name _____

Signed for
«Administering_Institution»
by its authorised representative

sign here ▶ _____
Authorised representative

print name _____

print title _____

Date _____

In the presence of

sign here ▶ _____
Witness

print name _____

Date _____

OR

OPTION 2 (to be used where the Administering Institution is an Australian Corporations Act corporation)

Signed by

«Administering_Institution»

by

sign here ► _____
Company Secretary / Director

print name _____

Date _____

sign here ► _____
Director

print name _____

Date _____