

ACCELERATE FELLOWSHIPS
FINANCIAL INCENTIVE TERMS AND CONDITIONS
(version 2014)

These Terms and Conditions form part of the Agreement made

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

AND: **THE FELLOW** named in the Application (“the Fellow”);

AND: **THE SPONSOR** named in the Application (“the Sponsor”).

BACKGROUND:

- A. The Queensland Government has established the Accelerate Fellowships to provide funding for outstanding early and mid career researchers to undertake innovative research in a Queensland university, research institute or government agency which will deliver outcomes for Queensland.
- B. The objective of the Accelerate Fellowships is to establish and develop the professional reputations of early and mid career researchers in Queensland, and to support novel research which will deliver outcomes for Queensland.
- C. The program aims to do this by providing funds through the Accelerate Fellowships for those researchers to undertake new research in the State which targets government research and science priorities.
- D. The Fellow has applied for a Fellowship and the Department agrees to award the Fellowship, subject to these Terms and Conditions and the information provided in the Application.
- E. The Sponsor has agreed to administer the funding for the Fellowship on the terms and conditions of the Agreement.

AGREED TERMS:

1. DEFINITIONS & INTERPRETATION

- 1.1 In the Agreement unless the context otherwise requires or the contrary intention appears, the following terms will have the meanings assigned to them:

“**Agreement**” means agreement between the State of Queensland (acting through the Department), the Sponsor and the Fellow comprising these Terms and Conditions, the Application and any Annexures to it;

“**Application**” means the application form and supporting documentation submitted by the Fellow to the Department for Funding;

“**Business Day**” means a day (other than a Saturday, Sunday, or Public Holiday) on which banks are open for business in Brisbane, Queensland;

“Business Hours” means from 9.00am to 5.00pm on a Business Day;

“Commencement Date” means the date specified in Annexure 1 of the Application;

“Completion Date” means the date which is 39 months from the Commencement Date;

“Confidential Information” of a Party (“the Discloser”) means all information concerning or belonging to the Discloser and its activities of which another Party (“the Recipient”) becomes aware directly or indirectly as a result of this Agreement or in the course of the Research Project that:

- (i) is by its nature confidential;
 - (ii) is communicated by a Party as confidential; or
 - (iii) a Party knows or ought to know is confidential,
- and includes information which is comprised in or relating to any Intellectual Property Rights of the Discloser;

but does **not** include information that:

- (iv) has become public knowledge other than by breach of this Agreement;
- (v) was already lawfully disclosed by a Party prior to the party being required to treat the information as confidential;
- (vi) is lawfully received by a Party from a third party who is not bound by a duty of confidentiality;
- (vii) was independently developed or released by a Party without reference to the Confidential Information;
- (viii) a Party is required by law to disclose; or
- (ix) a Party is required by this Agreement to disclose to a third party.

“Co-Sponsor” means an organisation identified as a Co-Sponsor in the Application, or in Annexure 1 of the Application;

“Deliverable” means the performance requirements set out in Schedule 1;

“Fellow” means the applicant for the Fellowship named in the Application;

“Fellowship” means the endowment awarded to the Fellow by the Department under the Accelerate Fellowship in accordance with the Agreement;

“Final Report” means a report the Fellow is required to prepare and the Sponsor is required to endorse and submit to the Department in accordance with clause 6;

“Force Majeure” means any occurrence or non-occurrence as a direct or indirect result of which a party is prevented from or delayed in performing any of its obligations (other than a payment obligation) under the Agreement and that is beyond the reasonable control of that party, including forces of nature, industrial action, act of war or embargo;

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

- (a) media releases about the Research Project;

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

“Funding” means the funding to be provided by the Department to the Sponsor for the benefit of the Fellow, being an amount of up to \$180,000 (excluding GST) over three years for early-career fellowships, or \$300,000 (excluding GST) over three years for mid-career fellowships, as set out in Schedule 1;

“GST Law” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) related Acts which constitute the Commonwealth taxation reform and any ruling or advice given or published by the Commonwealth Commissioner for Taxation for the purposes of section 37 of the *Taxation Administration Act 1953* (Cth);

“Guidelines” means the Accelerate Fellowships Guidelines and any amendment or variation of that document as attached as Schedule 2;

“Intellectual Property Rights” includes all copyright, patents, trade marks, designs, semiconductor or circuit layout rights, confidentiality rights and other proprietary rights recognised by the World Intellectual Property Organisation, whether registrable or not, whether created before, on or after the Start Date;

“Law” means any statute, regulation, rule, local law or ordinance made by any government or any governmental, administrative, fiscal or judicial body, department, authority, tribunal or agency;

“Milestone Table” means the table including milestones, performance indicators and completion dates set out in Attachment 2 of the Application together with the variations (if any) subsequently agreed to in writing by the Department;

“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 material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

“Preliminary Progress Report” means a report the Fellow is required to prepare and the Sponsor is required to endorse and submit to the Department in accordance with clause 6;

“Program” means the Accelerate Fellowships Program;

“Progress Report” means a report the Fellow is required to prepare and the Sponsor is required to endorse and submit to the Department in accordance with clause 6 of this Agreement;

“Project Material” means all material including but not limited to documents, computer software, and data stored by any means which is created by the Fellow in the course of undertaking the Research Project;

“Published Material” means any material disseminated to another person or persons through printed, audible, electronic or other media;

“Research Plan” means the Fellow’s proposed method and timing of undertaking the Research Project, as set out in the Application and the Milestone Table;

“Research Project” means the research set out in the Application;

“Sponsor” means the Fellow’s employing organisation which will administer the funds, named in the Application;

“Sponsor/Co-Sponsor Contribution” means the amount of a Sponsor/Co-Sponsor’s own funds to be contributed to the Research Project as set out in Attachment 1 of the Application, or as revised in Annexure 1 of the Application;

“Start Date” means the date that the last party to the Agreement signs the Application;

“Terms and Conditions” means the terms and conditions set out in this document, including the schedules annexed, forming part of the Agreement; and

“Unlawful” means any act or omission (including wilful misconduct) which is not authorised, justified or excused by any Law.

1.2 In the Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this document and includes any amendments to them made in accordance with this document;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to any monetary amount is to Australian currency;
- (f) a reference to time is to Brisbane, Australia time;
- (g) a reference to a party is to a party to the Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a Law will be deemed to extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing the Law;
- (j) the meaning of general words is not limited by specific examples introduced by 'including, for example' or similar expressions;

- (k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (m) the headings have been inserted for ease of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms of the Agreement;
- (n) a reference to the Department and any government department or entity or other authority, association and body, whether statutory or otherwise ("Government Entity") will in the event of any such Government Entity ceasing to exist or being reconstituted, renamed or replaced or the powers or functions of the Government Entity being transferred to any other department, entity, authority, association or body, be deemed to refer respectively to the Government Entity established or constituted in lieu of the Government Entity and succeeding, or as nearly as may be, to the powers or functions of the Government Entity;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Agreement or any part of it;
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (q) in the case of any inconsistency in the Agreement, items in sub-clause 1.2 (q) (i) to (iv) will prevail in the following order:
 - (i) the Terms and Conditions;
 - (ii) Schedule 1;
 - (iii) Schedule 2; and
 - (iv) The Application submitted by the Fellow.

2. TERM OF THE AGREEMENT

This Agreement will commence on the Start Date and continue unless and until the earlier of:

- (a) termination in accordance with clause 12 of these Terms and Conditions;
- (b) written agreement between the parties; or
- (c) the Completion Date.

3. OBLIGATIONS OF THE DEPARTMENT

Subject to the Fellow and Sponsor complying with the terms of the Agreement, the Department will provide the Funding to the Sponsor in instalments, the amounts and timing of which are set out in Schedule 1.

4. OBLIGATIONS OF THE SPONSOR

4.1 The Sponsor must:

- (a) administer the Funding and, in doing so:
 - (i) ensure that the Funding is used only for the purposes of the Research Project and for eligible project activities as outlined in the Guidelines; and
 - (ii) exercise reasonable diligence, care and skill;
- (b) make the Sponsor Contributions to the Research Project in accordance with Attachment 1 of the Application, or as revised in Annexure 1 of the Application;
- (c) submit a valid tax invoice to the Department when an instalment of the Funding is associated with the Deliverable;
- (d) provide financial acquittal statements outlining the fellowship expenditure to the Department 12, 24 and 36 months after the Commencement Date;
- (e) receive and administer the Co-Sponsor Contributions for the purposes of the Research Project;
- (f) enter into a written agreement with each Co-Sponsor on terms satisfactory to the Department, pursuant to which the Co-Sponsor agrees to provide the Co-Sponsor Contribution for the term of the Agreement; and
- (g) provide the Department with a signed copy of the agreement(s) referred to in sub-clause 4.1 (f) within three months of the Commencement Date.

4.2 Without limiting any other provision of this Agreement, the Sponsor must immediately notify the Department on becoming aware of:

- (a) any breach of the Agreement by the Fellow;
- (b) any actual or proposed material change to the Research Project or Research Plan; or
- (c) the failure by a Co-Sponsor to make a Co-Sponsor Contribution.

4.3 The Sponsor must monitor the delivery of the Research Project in accordance with its usual administrative procedures.

5. OBLIGATIONS OF THE FELLOW

In consideration of payment of the Funding by the Department, the Fellow must:

- (a) achieve the milestones and associated performance indicators as set out in the Milestone Table by the relevant completion dates as provided in Attachment 2 of the Application;
- (b) provide the required information and reporting specified in Schedule 1;
- (c) use all reasonable endeavours to carry out the Research Project substantially in accordance with the Research Plan;

- (d) apply himself or herself diligently to the Research Project;
- (e) promptly notify the Department of any actual or proposed material change to the Research Project or Research Plan and obtain the Department's written consent to the material changes;
- (f) immediately notify the Department of any matter that may affect the Fellow's eligibility for Funding under the Guidelines, including:
 - (i) the cessation of employment with the Sponsor; or
 - (ii) the Fellow moving residence to outside of the State of Queensland;
- (g) be available for media opportunities organised by the Department, including discussions with Department officers to gather information and attending special promotional opportunities or events associated with the Fellowship, provided that disclosures made under this clause will not prejudice applications for formal protection of Intellectual Property Rights in and to the Project Material nor adversely affect commercialisation of such Intellectual Property Rights;
- (h) obtain the written consent of the Department in relation to any period of Research Project-related travel outside Queensland for more than six weeks during the term of the Agreement; and
- (i) ensure that, where relevant, the Research Project:
 - (i) complies with the National Health and Medical Research Council guidelines;
 - (ii) complies with the Code of Ethical Practice for Biotechnology in Queensland; and
 - (iii) is cleared by all relevant ethical committees prescribed by the Sponsor's research rules.

6. REPORTING AND RECORDS

- 6.1 The Fellow must prepare the reports referred to in Schedule 1 on a reporting proforma provided by the Department. The submitted reports must be to the satisfaction of the Department. The reporting proforma will be distributed to the Fellow by the Department prior to the reporting deadlines.
- 6.2 The Sponsor must endorse and submit the reports referred to in clause 6.1 to the Department at the times specified in Schedule 1.
- 6.3 If the Department asks the Sponsor and/or the Fellow to provide further information about any matter in a report, the Sponsor must provide or must ensure that the Fellow provides that information within 15 Business Days after the request.
- 6.4 The Fellow must, if requested by the Department, complete and return an annual survey form regarding his/her Fellowship within one month of the request.
- 6.5 The Sponsor must keep proper and adequate books of account and records of expenditure in relation to the Funding and the Research Project, separate from all other income and expenditure of the Sponsor.

- 6.6 The Fellow's and the Sponsor's obligations under this Clause 6 is subject to any agreement between the Fellow, the Sponsor and/or Co-Sponsor which restricts access and can be justified to the satisfaction of the Department on the grounds of commercial sensitivity (including Intellectual Property Rights considerations).

7. ACCESS TO PREMISES

The Sponsor agrees to permit the employees, servants and agents of the Department access to its premises at all reasonable times to:

- (a) inspect any records, books of account or documentation relating to the performance of the Agreement; or
- (b) conduct an audit or inspection of the performance of the Agreement at a mutually agreeable time (but not later than 20 Business Days after receiving written notice from the Department that such access is required).

8. CONFIDENTIALITY

8.1 A Recipient of Confidential Information:

- (a) must not, without the prior written approval of the Discloser, use, make public or disclose to any person any Confidential Information;
- (b) must immediately notify the Discloser if it becomes aware of any unauthorised use or disclosure of the Confidential Information;
- (c) must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it;
- (d) may disclose Confidential Information only:
 - (i) to its personnel who are aware that the Confidential Information is confidential and are subject to the same obligations of confidentiality as the Recipient and only to the extent necessary to exercise its rights and perform its obligations under this Agreement;
 - (ii) to the extent required by Law, provided that the Recipient must use its best endeavours to immediately notify the Discloser prior to the information being disclosed; and
 - (iii) to the Recipient's professional advisors;
- (e) will ensure that its personnel comply with any obligations of confidentiality in relation to the Confidential Information and will enforce those obligations in case of breach;
- (f) acknowledges that unauthorised use or disclosure of Confidential Information will cause the Discloser harm that cannot be adequately compensated by damages, and that the Discloser may obtain interlocutory injunctions and any other orders necessary to restrain the disclosure of any Confidential Information;

- (g) must immediately notify the Discloser that it or any other person is doing or has done anything inconsistent with or in contravention of this clause 8.1 and must provide to the Discloser all relevant assistance and information it requests.
- 8.2 The Sponsor and the Fellow agree that the Department may disclose publicly the fact that the Funding has been made available to the Fellow through the Sponsor, the amount of the Funding, and general details of the Agreement.
- 8.3 The Department is not in default of clause 8.1 if the Confidential Information:
 - (a) is disclosed by the responsible Minister administering the Department from time to time;
 - (b) is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the State; or
 - (c) is shared by the Department within the Department or with another agency, where this serves the State's legitimate interests.

9. PRIVACY

Where a party collects, holds or has access to Personal Information in order to fulfil its obligations under the Agreement, the party must:

- (a) ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
- (b) not use Personal Information other than for the purposes of the Agreement, unless required or authorised by Law;
- (c) not disclose Personal Information without the written agreement of the Department, unless required or authorised by Law;
- (d) ensure that only authorised personnel have access to Personal Information;
- (e) immediately notify the Department if it becomes aware that a disclosure of Personal Information is, or may be required or authorised by Law;
- (f) make its employees, agents and subcontractors aware of the Fellow's obligations under this clause 9; and
- (g) comply with such other privacy and security measures as the Department reasonably advises the party in writing from time to time.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The parties agree that the Department will not seek ownership of any Intellectual Property Rights in the Project Material.
- 10.2 The Fellow authorises the Department to promote the Fellow in relation to the Project Material for the purpose of advancing the status of science and research in Queensland.

11. ACKNOWLEDGMENT OF SUPPORT & PROMOTION

- 11.1 The Fellow must include an acknowledgment of the Funding received from the Department in any public statement or Published Material relating to the Research Project.
- 11.2 The Fellow must use his or her best endeavours to ensure that the Co-Sponsors acknowledge the Department's contribution to the Research Project in any Published Material relating to the Research Project.
- 11.3 Where the Department considers it appropriate, the Department will acknowledge the role of the Sponsor, Co-Sponsors and the Fellow in relation to the Agreement and the Research Project generally.
- 11.4 The Sponsor authorises the Department to promote the Sponsor in relation to the Research Project for the purpose of advancing the status of science and research in Queensland.
- 11.5 The Fellow will use his or her best endeavours to ensure that the Co-Sponsors authorise the Department to promote the Co-Sponsors and the Fellowship for the purpose of advancing the status of science and research in Queensland.
- 11.6 Subject to commercial sensitivities or Intellectual Property Rights considerations, the Fellow and the Sponsor will use their reasonable endeavours to communicate the outcomes of the Research Project to the research community and, where appropriate and possible, to the community at large.
- 11.7 The Sponsor must, in making any Formal Public Statement about the Research Project (either during the Term of the Agreement or after its expiry), include an acknowledgement of the Program and the financial assistance received from the Department.
- 11.8 The Sponsor must notify the Department prior to making the following types of Formal Public Statement:
 - (a) media statement about the Research Project; or;
 - (b) discussions about the Research Project with television or newspaper journalists.

The Sponsor must allow the Department to participate in the notified Formal Public Statement opportunity at the Department's discretion.
- 11.9 The Sponsor will not represent, claim or hold out in any way that the Department is a party to the delivery of the Project, other than as a financial contributor.

12. TERMINATION

- 12.1 A party is in breach of the Agreement if any of the following events occur:
 - (a) the Fellow has not complied with any of his/her obligations under this Agreement;
 - (b) the Sponsor has not complied with any of its obligations under the Agreement;
 - (c) the Fellow ceases to be eligible for Funding under the Guidelines; or

- (d) the submitted Application is found to have been misleading or deceptive in a material particular, which in the reasonable opinion of the Department would have caused the Application to be rejected if known at the time of assessment;
- (e) in the reasonable opinion of the Department, the Fellow fails to maintain satisfactory progress towards the completion of the Research Project; or
- (f) the Fellow withdraws from the Research Project without sufficient justification (in the reasonable opinion of the Department).

12.2 The Department may immediately terminate the Agreement by notice in writing if:

- (a) in the reasonable opinion of the Department, the Fellow has failed to remedy a breach of the Agreement outlined in clause 12.1 (a), (c), (d), (e) or (f) (or any combination of them) within 15 Business Days after a notice to remedy from the Department specifying the breach; or
- (b) in the reasonable opinion of the Department, the Sponsor has failed to remedy a breach of the Agreement outlined in clause 12.1 (b) within 15 Business Days after a notice to remedy from the Department specifying the breach.
- (c) in the reasonable opinion of the Department, the breach of the Agreement outlined in clause 12.1 (a), (b), (c), (d), (e) or (f) (or any combination of them) is not capable of remedy.

12.3 Termination for convenience

- (a) The Department may, at any time, by reasonable written notice, terminate this Agreement for convenience, including for a machinery of government change.
- (b) If this Agreement is terminated by the Department under clause 12.3(a), the Sponsor will be entitled to the reasonable costs (if any) that have been or will be incurred by the Sponsor as a direct result of the termination of the Agreement and which the Sponsor cannot recoup or avoid and which would not otherwise have been incurred by the Sponsor if the Agreement had continued until its expiry.
- (c) For the avoidance of doubt, the Funding amount is the maximum amount payable by the Department pursuant to this clause 12.3.

13. REPAYMENT OF FUNDING

13.1 If on the expiry or earlier termination under clause 12.2 or 12.3 of the Agreement, any amount of Funding:

- (a) remains unspent or uncommitted; or
- (b) cannot, by reconciliation between the accounts and records kept by the Sponsor, as reported under clause 6, be shown to the reasonable satisfaction of the Department to have been spent, committed or matched by the Sponsor/Co-Sponsor Contributions over the term of the Agreement,

the Department may by written notice to the Sponsor require the Sponsor to repay that part of the Funding and the Sponsor must repay to the Department the amount set out in the notice within 20 Business Days of receipt of the notice.

13.2 If the Agreement is terminated under clause 12.2 for breaches under clause 12.1 (d) or (f), the Department may by written notice to the Sponsor require the Sponsor to repay all of the Funding paid up to the date of termination, within 20 Business Days of receipt of the notice.

13.3 The Sponsor acknowledges that any amount required to be repaid under clause 13.1 or 13.2 will be a debt due and owing to and recoverable by the Department.

14. INSURANCE

14.1 The Sponsor must effect and maintain the following insurances:

- (a) public liability insurance for the amount of \$10,000,000;
- (b) workers' compensation insurance for the Administering Organisation's employees in accordance with the *Workers' Compensation and Rehabilitation Act 2004* (Qld.); and
- (c) professional indemnity insurance for the amount of \$10,000,000 covering the Fellow and the Sponsor's employees.

14.2 Upon receipt of written request in writing the Sponsor must produce evidence (by way of certificates of currency) to the Department that the insurances required by this clause have been effected and maintained.

15. INDEMNITY

15.1 The Fellow and Sponsor carry out the Research Project entirely at their own risk and the Department will not be liable for any claim, suit, demand, action or proceeding brought against the Fellow or the Sponsor as a result of carrying out the Research Project.

15.2 The Sponsor releases and indemnifies the Department (to the full extent permitted by any Law) against any claim, suit, demand, action or proceeding which may be brought against the Department which arises directly or indirectly as a result of:

- (a) any breach of the Agreement by the Sponsor or the Fellow;
- (b) any negligent or Unlawful act or omission by the Sponsor or the Fellow in relation to the Sponsor's or Fellow's performance of the Research Project; or
- (c) the Fellow's or Sponsor's performance of the Agreement or any other agreement relating to the Research Project; and
- (d) any infringement (or alleged infringement) of Intellectual Property Rights by the Fellow, Sponsor, or Co-Sponsor in the course of, or incidental to, performing the Research Project,

except to the extent that any breach, fault, negligent or Unlawful act or omission by the Department has directly or indirectly caused or contributed to the claim.

15.3 The indemnity referred to in clause 15.2 shall survive the expiration or termination of the Agreement.

16. GOODS AND SERVICES TAX (GST)

- 16.1 In this clause 16, words and expressions which are not defined in the Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.
- 16.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under the Agreement are exclusive of GST.
- 16.3 If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under or in connection with this Agreement, the consideration for the supply but for the application of this clause 16.3 (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- 16.4 Subject to clause 16.5 the recipient of a supply must pay the amount referred to in clause 16.3 in addition to and at the same time that the consideration for the supply is to be provided under the Agreement.
- 16.5 A party need not make a payment for a taxable supply made under or in connection with the Agreement until it receives a tax invoice for the supply to which the payment relates.
- 16.6 If an adjustment event arises in respect of a taxable supply made by a supplier under the Agreement, the amount payable by the recipient of the supply under clause 16.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- 16.7 Where a party is required under the Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
 - (b) if the payment or reimbursement is subject to GST, an amount payable in accordance with clause 16.3.

17. DISPUTE RESOLUTION

- 17.1 Subject to clause 17.3, the parties agree not to commence any legal proceedings in respect of any dispute arising under the Agreement, which cannot be resolved by informal discussion, until the procedure provided by this clause 17 has been used.
- 17.2 The parties agree that any dispute arising during the term of the Agreement is dealt with as follows:
- (a) the party claiming that there is a dispute will send the other parties a written notice setting out the nature of the dispute;
 - (b) the parties will try to resolve the dispute through direct negotiation by persons whom they have given the authority to resolve the dispute;

- (c) the parties have 15 Business Days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and

if:

- (d) there is no resolution of the dispute;
- (e) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
- (f) there is a submission to mediation or some alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or extended time as the parties may agree in writing before the expiration of the 15 Business Days;

then, the party may commence legal proceedings.

17.3 This clause 17 does not apply if:

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

18. NOTICES

18.1 Any notice or other communication to be given under the Agreement must be in writing and may be delivered by hand, or sent by pre-paid post or facsimile to the respective addresses (or any substitute address a party may notify to the others for the purposes of this clause) as follows:

- (a) for the Fellow, to the address set out in the Application
- (b) for the Sponsor, to the address set out in the Application, and
- (c) For the Department, to the following address:

Contract and Investment Management
Department of Science, Information Technology, Innovation and the Arts
PO Box 5078
(Level 10, 111 George Street)
BRISBANE QLD 4001

Email: isinvestment@innovation.dsitia.qld.gov.au

18.2 Notices will be deemed to be received:

- (a) 2 Business Days after deposit in the mail with the postage prepaid;
- (b) the day delivered by hand;

- (c) if sent by facsimile transmission, when the sender's facsimile system generates a message confirming successful transmission of the entire notice unless, within 8 Business Hours after the transmission, the recipient informs the sender that it has not received the entire notice,
- (d) but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

19. GENERAL PROVISIONS

- 19.1 **No assignment** – Neither the Sponsor nor the Fellow may assign the Agreement or any of the benefits or obligations under the Agreement.
- 19.2 **Relationship** – Neither the Sponsor nor the Fellow will by reason of the Agreement be deemed to be an employee, agent or partner of the Department.
- 19.3 **Variation** – The Agreement may only be varied by agreement in writing signed by all parties.
- 19.4 **Costs** – Each party must pay its own costs and expenses of and in relation to the negotiation, preparation, signing and performance of the Agreement.
- 19.5 **Entire Agreement** – These Terms and Conditions and the Application constitute the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements (either oral or written) between the parties in relation to the subject matter of the Agreement.
- 19.6 **Severability** – The invalidity or unenforceability of any one or more of the provisions of the Agreement will not invalidate or render unenforceable the remaining provisions of the Agreement. Any illegal or invalid provision of the Agreement will be severable and all other provisions will remain in full force and effect.
- 19.7 **Governing law** – The Agreement is governed by the Law of the State of Queensland and the parties agree to submit to the jurisdiction of the courts of the State of Queensland.
- 19.8 **Waiver** – No right under the Agreement will be deemed to be waived except by notice in writing agreed by the waiving party. A failure by a party to enforce at any time any provision of the Agreement will not constitute a waiver of the party's rights in respect of the provision.
- 19.9 **Matching Funding** – The total amount of the Sponsor/Co-Sponsor Contributions to the Research Project must equal or exceed the total amount of Funding provided by the Department for the Research Project under the Agreement, over the term of the Agreement.
- 19.10 **Counterparts** – The Agreement may consist of a number of copies, each signed by one or more parties to the Agreement. If so, the signed copies are treated as making up the one document and the date on which the last counterpart is executed will be the date of the Agreement.
- 19.11 **Reasonableness and good faith** – The parties must, in fulfilling their obligations and exercising their powers under the Agreement, act reasonably and in good faith.

19.12 **Force Majeure** – If any party is unable by reason of Force Majeure to carry out any of its obligations whether wholly or in part under the Agreement, the party so affected will immediately give notice to the other party in writing of the Force Majeure specifying full particulars thereof whereupon its obligations will to the extent to which they are affected by the Force Majeure be suspended and the time prescribed under the Agreement for performing its obligations be suspended or extended, but for no longer than the continuance of the Force Majeure. The party so claiming Force Majeure will use all reasonable diligence to remove or overcome the conditions constituting Force Majeure and minimise the impact as quickly as possible.

SCHEDULE 1 – DELIVERABLES AND PAYMENTS

Milestone No.	Deliverable	Instalment amount	Due Date
1	Approval of the Application, evidenced by the execution of the Application by the delegated officer from the Department.	\$60,000 (early career) or \$100,000 (mid-career) (excluding GST)	Following approval of the Application by the Department.
2	Submission of a Preliminary Progress Report satisfactory to the Department.	NIL	6 months after the Commencement Date.
3	Submission of Progress Report 1 satisfactory to the Department.	\$60,000 (early career) or \$100,000 (mid-career) (excluding GST)	12 months after the Commencement Date.
4	Submission of Progress Report 2 satisfactory to the Department.	\$45,000 (early career) or \$80,000 (mid-career) (excluding GST)	24 months after the Commencement Date.
5	Submission of a Final Report satisfactory to the Department.	\$15,000 (early career) or \$20,000 (mid-career) (excluding GST)	36 months after the Commencement Date.

SCHEDULE 2 – GUIDELINES