

Attachment X to Schedule

H.1. Definitions and interpretation

H.1.1 In this Funding Condition H of Attachment X:

<p>Commercialisation Agreement</p>	<p>means any proposed or final agreement, undertaking, commitment, dealing or other arrangement (including any Formal Agreement or subcontracting arrangement that provides some or all of the Grant to a subcontractor to perform and deliver some or all of the Research Activity):</p> <p>(a) involving the Eligible Organisation in; or</p> <p>(b) under which it is contemplated that there will be,</p> <p>the Commercialisation of the Relevant Intellectual Property.</p>
<p>Commercialisation Plan</p>	<p>means the plan required to be developed and delivered in accordance with Funding Condition H.5.1 of this Attachment 2.</p>
<p>Commercialise or Commercialisation</p>	<p>means, in relation to Relevant Intellectual Property:</p> <p>(a) the use, research, development, testing, manufacture, or exploitation of;</p> <p>(b) the creation or development of a product, good, process, treatment or service incorporating or based on;</p> <p>(c) the transfer, assignment, sale, hire or disposal of;</p> <p>(d) the granting of a licence (including any sublicense) for the exclusive or non-exclusive use of; or</p> <p>(e) any other transaction or arrangement dealing with (including via trust),</p> <p>that Relevant Intellectual property (whether in whole or in part).</p>
<p>Commercialised Product</p>	<p>means any product, good, process, treatment or service which is:</p>

	<p>(a) created, developed, derived or otherwise brought about from performing or delivering the Research Activity;</p> <p>(b) funded under or through the Grant; or</p> <p>(c) Commercialised under a Commercialisation Agreement.</p>
Commitment Deed Poll	means a deed poll in favour of the Commonwealth in the form of Annexure A to this Schedule.
Commitment Deed Poll Register	means a register of all Commitment Deed Polls.
Relevant Intellectual Property	<p>means any Intellectual Property which is:</p> <p>(a) created, developed, derived or otherwise brought about from performing or delivering the Research Activity; or</p> <p>(b) funded under or through the Grant,</p>

H.1.2 In this Funding Condition H of Attachment 2, unless expressly indicated otherwise:

- (a) capitalised terms not defined in this Funding Condition H of Attachment 2 have the meaning as defined in clause 1 of the Agreement;
- (b) clause 2 applies to the interpretation of this Attachment 2;
- (c) "or" will be that of the inclusive, being one, some or all of a number of possibilities;
- (d) a reference to any thing (including any right) includes any part of that thing, but nothing in this Funding Condition H.1.2(d) of Attachment 2 implies that performance of part of an obligation constitutes performance of the entire obligation;
- (e) specifying anything after the words 'includes', 'including' or 'for example' or similar expressions do not limit what else is included; and
- (f) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document.

H.2. Management of commercialisation and intellectual property framework

Where the Research Activity:

- (a) involves the Eligible Organisation undertaking health and medical research and medical innovation projects that have, or could have, commercial potential; and
- (b) contemplates the Eligible Organisation entering, or already having entered, into Commercialisation Agreements,

the Eligible Organisation must manage and implement a commercialisation and intellectual property framework in accordance with this Attachment 2.

H.3. Parties' Acknowledgements**H.3.1 Commonwealth Acknowledgements**

The Commonwealth acknowledges and agrees that:

- (a) it will not make or have any claim to ownership of the Relevant Intellectual Property (whether in whole or in part); and
- (b) except for the rights specified in this Agreement (including this Attachment 2), or in a Commitment Deed Poll, it will not claim any commercial or financial right outside this Agreement or a Commitment Deed Poll.

H.3.2 Eligible Organisation Acknowledgements

The Eligible Organisation acknowledges and agrees that:

- (a) it may only Commercialise the Relevant Intellectual Property in accordance with its rights and obligations under this Agreement (including this Attachment 2); and
- (b) it must not:
 - (i) Commercialise any Commercialised Product; or
 - (ii) enter into a Commercialisation Agreement,

inconsistent with, or contrary to, those rights and obligations set out in this Agreement (including this Attachment 2), unless otherwise agreed by the Commonwealth in writing.

H.4. Commercialisation**H.4.1 Acknowledgement**

The Eligible Organisation acknowledges and agrees that:

- (a) opportunities to Commercialise products or services may arise or be contemplated during or after the Funding Period; and
- (b) if these opportunities to Commercialise result in Commercialised Products, the Commonwealth will be granted the opportunity to secure these Commercialised Products at the earliest possible time by entering into an agreement or other arrangement with the Eligible Organisation or other relevant party to purchase or acquire these resulting Commercialised Products (but excluding the purchase or transfer of the Relevant Intellectual Property).

H.4.2 Right of First Offer

- (a) The Eligible Organisation agrees:
 - (i) to offer to the Commonwealth, or procure an offer for the Commonwealth, to purchase or acquire any Commercialised Products at the earliest possible time; and
 - (ii) to make, or to procure that such offer is made, to the Commonwealth first before any other offers are made to any other party and, when received by the Commonwealth, that offer is irrevocable and cannot be withdrawn until 60 calendar days have lapsed following the date on which the Commonwealth first received that offer.

- (b) When making or procuring an offer under Funding Condition H.4.2.(a) of Attachment 2, the Eligible Organisation must make or procure such offer on commercial terms not more onerous or less favourable than terms to be offered to any other party in relation to the purchase or acquisition of the Commercialised Products, including in relation to:
- (i) product specifications and product support arrangements;
 - (ii) product volume and supply;
 - (iii) manufacturer's warranties;
 - (iv) timing and delivery schedule; and
 - (v) price.
- (c) For clarity, nothing in this Attachment 2 prevents the Eligible Organisation from making and accepting other offers once the Commonwealth has received the first offer, even if the Commonwealth has not yet accepted the first offer.

H.4.3 Commitment Deed Polls

- (a) When entering into, or proposing to enter into, a Commercialisation Agreement with a counterparty (including any Participating Institution), the Eligible Organisation must procure from each counterparty a duly executed Commitment Deed Poll on or before execution of that Commercialisation Agreement by the Eligible Organisation.
- (b) If and when any counterparty in Funding Condition H.4.3(a) of Attachment 2 enters into, or proposes to enter, another Commercialisation Agreement with a third party, the Eligible Organisation must ensure that the counterparty is contractually required:
- (i) to procure a duly executed Commitment Deed Poll from each third party on or before execution by the counterparty of that other Commercialisation Agreement; and
 - (ii) to promptly provide a copy of each duly executed Commitment Deed Poll to both the Eligible Organisation and the Commonwealth.

H.4.4 Management of Commitment Deed Polls

The Eligible Organisation must:

- (a) promptly provide to the Commonwealth a copy of each duly executed Commitment Deed Poll required to be procured under Funding Condition H.4.3 of Attachment 2, unless already delivered to the Commonwealth;
- (b) establish, maintain and keep current a complete Commitment Deed Poll Register setting out:
 - (i) details of each Commitment Deed Poll procured under Funding Conditions H.4.3(a) and (b) of Attachment 2 including attaching or linking a duly executed copy of each Commitment Deed Poll as part of the Commitment Deed Poll Register;
 - (ii) the details of each organisation or entity that executed a Commitment Deed Poll;
 - (iii) a summary of the subject matter of each Commercialisation Agreement to which the Commitment Deed Poll relates; and
- (c) deliver a complete copy of the Commitment Deed Poll Register to the Commonwealth:

- (i) upon the expiry or end of the Funding Period, and
- (ii) at any other time requested by the Commonwealth during or after the term of the Agreement.

H.5. Commercialisation Plans and Reporting

H.5.1 Content of a Commercialisation Plan

A Commercialisation Plan developed for the purposes of this Funding Condition H.5 of Attachment 2 must include as a minimum:

- (a) an overview of how the Eligible Organisation proposes to Commercialise the Relevant Intellectual Property;
- (b) details of the key milestones and timelines anticipated by the Eligible Organisation for the Commercialisation of the Relevant Intellectual Property;
- (c) details of all relevant parties involved in Commercialising the Relevant Intellectual Property (including potential counterparties and third parties for the purposes of any and all Commercialisation Agreements);
- (d) details of all proposed and executed Commercialisation Agreements in respect of the Relevant Intellectual Property and, once executed, details of relevant milestones achieved under each of those Commercialisation Agreements; and
- (e) details of a business plan or other document identifying possible Commercialised Products and the strategy to bring Commercialised Products to market.

H.5.2 Review and approval of Commercialisation Plan

- (a) Within 60 calendar days of the date this Schedule is entered into, the Eligible Organisation must deliver a draft Commercialisation Plan to the Commonwealth for review.
- (b) The Commonwealth (or its nominee) will promptly review the draft Commercialisation Plan submitted by the Eligible Organisation under Funding Condition H.5.2(a) of this Attachment 2 and may:
 - (i) approve the draft Commercialisation Plan as the approved Commercialisation Plan; or
 - (ii) require the Eligible Organisation to make further amendments to the draft Commercialisation Plan which the Commonwealth (acting reasonably) considers necessary for approval.
- (c) If Funding Condition H.5.2(b)(ii) of Attachment 2 applies, the Eligible Organisation must promptly resubmit the amended draft Commercialisation Plan to the Commonwealth for review as contemplated under Funding Condition H.5.2(a) of Attachment 2 and the Commonwealth may approve the amended draft Commercialisation Plan as the approved Commercialisation Plan.
- (d) Where a draft Commercialisation Plan has been approved by the Commonwealth as the approved Commercialisation Plan under Funding Condition H.5.2(b)(ii) or H5.2(c) of Attachment 2, the Eligible Organisation must use all reasonable endeavours to comply with the approved Commercialisation Plan.

H.5.3 Replacement of approved Commercialisation Plan

- (a) If at any time the Eligible Organisation becomes aware of circumstances or events that require significant or material changes to the approved Commercialisation Plan, then within 21 calendar days of becoming aware, the Eligible Organisation must deliver a draft replacement Commercialisation Plan to the Commonwealth for review.
- (b) The Commonwealth (or its nominee) will promptly review the draft replacement Commercialisation Plan submitted by the Eligible Organisation under Funding Condition H.5.3(a) of Attachment 2 and may:
 - (i) approve the draft replacement Commercialisation Plan as the latest approved Commercialisation Plan; or
 - (ii) require the Eligible Organisation to make further amendments to the draft replacement Commercialisation Plan which the Commonwealth (acting reasonably) considers necessary for approval.
- (c) If Funding Condition H.5.3(b)(ii) of Attachment 2 applies, the Eligible Organisation must promptly resubmit the amended draft replacement Commercialisation Plan to the Commonwealth for review as contemplated under Funding Condition H.5.3(a) of Attachment 2 and the Commonwealth may approve the amended draft replacement Commercialisation Plan as the latest approved Commercialisation Plan.
- (d) Where a draft Commercialisation Plan has been approved by the Commonwealth as the latest approved Commercialisation Plan under Funding Condition 5.3(b)(i) or 5.3(c) of Attachment 2, the Eligible Organisation must use all reasonable endeavours to comply with the latest approved Commercialisation Plan.
- (e) This Funding Condition H.5.3 of Attachment 2 is to be followed each time (no matter how many times) significant and material changes are made to an approved Commercialisation Plan.

H.5.4 Reporting

- (a) Without limiting any other requirements the Eligible Organisation has under this Agreement, the Eligible Organisation must provide a report to the Commonwealth when the signing of any of the following occurs:
 - (i) any preliminary agreement, terms sheet, memorandum of understanding or other non-binding arrangement relating to the Commercialisation of the Relevant Intellectual Property; and
 - (ii) any Commercialisation Agreement,such report to be provided within 21 calendar days after:
 - (iii) the date this Schedule is entered into; or
 - (iv) the date on which the signing has occurred,whichever is the later.
- (b) As a minimum, the report in Funding Condition H.5.4(a) of Attachment 2 needs to:

- (i) identify the type and subject matter of the non-binding arrangement or Commercialisation Agreement entered into, and when it was signed;
- (ii) provide details of the parties that have signed the relevant non-binding arrangement or Commercialisation Agreement;
- (iii) include a summary of the commercial objectives and outcomes sought by entering into that non-binding arrangement or Commercialisation Agreement; and
- (iv) provide confirmation (upon which the Commonwealth will rely) that the non-binding arrangement or Commercialisation Agreement will not impact or affect the Commonwealth's benefit under this Schedule or under any Commitment Deed Polls in any detrimental or negative way.

H.6. Compliance

- (i) Without limiting any other rights the Commonwealth has under this Agreement, the Commonwealth may request further information from the Eligible Organisation at any time for the purposes of evaluating and determining compliance with this Schedule and with any Commitment Deed Polls, including by requesting:
 - (i) a copy of the relevant non-binding arrangement and any supporting information or documentation to be read alongside that arrangement;
 - (ii) a copy of the relevant Commercialisation Agreement and any supporting information or documentation to be read alongside that agreement; and
 - (iii) such other information as may be required or desired by the Commonwealth to assist the Commonwealth in evaluating and determining compliance with this Schedule and with any Commitment Deed Polls.
- (ii) Without limiting Funding Condition H.6.(a) of Attachment 2 in any way, the Commonwealth may request further information from the Eligible Organisation at any time if the Commonwealth:
 - (i) receives a report that fails to provide an adequate confirmation in accordance with clause Funding Condition H5.4(b)(iv) of Attachment 2;
 - (ii) receives a Commitment Deed Poll Register that is incomplete or inaccurate; or
 - (iii) otherwise decides to undertake an audit or review for the purposes of evaluating and determining compliance with this Schedule and with any Commitment Deed Polls.
- (b) The Eligible Organisation must provide, or procure the provision of, the requested information to the Commonwealth within 21 calendar days of receiving the request from the Commonwealth.

H.7. Survival

Without limiting clause 35, this Attachment 2 survives the expiration or earlier termination of the Agreement.

H.8. Notices

Health Contact Officer:

Director, Translation and Commercialisation Section
Health and Medical Research Office
Australian Government Department of Health and Aged Care
PO Box 9848
Canberra ACT 2601
mrff@health.gov.au

Annexure A - Commitment Deed Poll