

# Annexure A to Schedule 2

## Commitment Deed Poll

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Made by **[insert name and ABN]** of **[insert address]**  
(Organisation)

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In favour of the **Commonwealth of Australia represented by the Department of Health and Aged Care ABN 83 605 426 759** of 23 Furzer Street, Phillip ACT 2606  
(Commonwealth)

### Recitals

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- A. The Commonwealth and **[insert name of Eligible Organisation]** (**Eligible Organisation**) entered into an agreement for the provision of funding from the Medical Research Future Fund in relation to **[insert description of Research Activity]** (**Research Activity**) on or around **[insert date]** (**Funding Agreement**).
- B. The Organisation is, or will be, a party to a Commercialisation Agreement in relation to the Funding Agreement. The activities to be performed and delivered by the Organisation under the Commercialisation Agreement involve the use of Relevant Intellectual Property.
- C. In consideration and recognition of the Commonwealth funding contribution, the Organisation makes the commitments set out in this deed poll for the benefit and in favour of the Commonwealth.

## 1. Definitions and Interpretation

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### 1.1 Definitions

In this deed poll:

**Commercialisation Agreement** means any proposed or final agreement, undertaking, commitment, dealing or other arrangement:

- (a) involving the Organisation in; or
- (b) under which it is contemplated that there will be,

the Commercialisation of Relevant Intellectual Property.

**Commercialise** or **Commercialisation** means, in relation to Relevant Intellectual Property:

- (a) the use, research, development, testing, manufacture or exploitation of;
- (b) the creation or development of a product, good, process, treatment or service incorporating or based on;

- (c) the transfer, assignment, sale, hire or disposal of;
- (d) the granting of a licence (including any sublicense) for the exclusive or non-exclusive use of; or
- (e) any other transaction or arrangement dealing with (including via trust),

that Relevant Intellectual Property (whether in whole or in part).

**Commercialised Product** means any product, good, process, treatment or service which is:

- (a) created, developed, derived or otherwise brought about from performing or delivering the Research Activity under the Funding Agreement;
- (b) funded under or through the Funding Agreement; or
- (c) Commercialised under a Commercialisation Agreement.

**Eligible Organisation** has the same meaning as given to it in Recital A of this deed poll.

**Funding Agreement** has the same meaning as given to it in Recital A of this deed poll.

**Intellectual Property Rights** means all rights in relation to copyright, inventions (including patent rights), registered and unregistered designs, circuit layouts, plant varieties, registered and unregistered trademarks (including service marks and goodwill associated with trademarks), and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields but does not include Moral Rights.

**Moral Rights** has the same meaning as given to it in the *Copyright Act 1968* (Cth).

**Objective** has the same meaning as given to it in clause 2.1 of this deed poll.

**Relevant Intellectual Property** means any Intellectual Property Rights which are:

- (a) created, developed, derived or otherwise brought about from performing or delivering the Research Activity under the Funding Agreement; or
- (b) funded under or through the Funding Agreement.

**Research Activity** has the same meaning as given to it in Recital A of this deed poll.

## 1.2 Interpretation

In this deed poll, unless a contrary indication appears or is expressed:

- (a) headings are used for ease of reference and do not affect the interpretation of this deed poll;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a reference to one gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed poll have a corresponding meaning;
- (e) the word 'includes' in any form is not a word of limitation; and
- (f) a reference to a party includes that party's successors and permitted assigns.

### 1.3 Nature of deed poll

- (a) The Organisation acknowledges and agrees that this deed poll is for the benefit of the Commonwealth and may be relied on and enforced directly by the Commonwealth against the Organisation in accordance with its terms, even though the Commonwealth is not party to it.
- (b) This deed poll is irrevocable and cannot be unilaterally terminated or amended by the Organisation without the prior written approval of the Commonwealth, such termination or amendment (if approved) to be in the form of a deed.

## 2. Organisation Commitments

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### 2.1 Objective

The Organisation acknowledges that the Commonwealth:

- (a) has contributed to funding the Relevant Intellectual Property; and
- (b) has strategic priorities and functions to ensure better health outcomes for all Australians,

and in this context the objective of this deed poll is to provide a right of first offer for the Commonwealth to purchase or acquire any resulting Commercialised Products, excluding the purchase of the Relevant Intellectual Property (**Objective**).

### 2.2 Right of First Offer

- (a) The Organisation agrees:
  - (i) to offer to the Commonwealth, or to procure for the Commonwealth an offer, 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 days have lapsed following the date on which the Commonwealth first received that offer.
- (b) When making or procuring an offer under clause 2.2(a) of this deed poll, the 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 deed poll prevents the Organisation from making and accepting other offers once the Commonwealth has received the first offer, even if the Commonwealth has not yet accepted its first offer.

## **2.3 Entering into Commercialisation Agreements**

When entering into, or proposing to enter into, a Commercialisation Agreement with any third party, the Organisation must:

- (a) procure from that third party a duly executed deed poll substantially in the form of this deed poll (including this clause 2.3) in favour of the Commonwealth on or before execution of that Commercialisation Agreement by the Organisation; and
- (b) promptly provide a copy of that duly executed deed poll to both the Commonwealth and the Eligible Organisation.

## **2.4 Good faith**

The Organisation must:

- (a) act in good faith in the performance of this deed poll; and
- (b) not:
  - (i) use any technique or strategy; or
  - (ii) enter into any arrangement with any third party (including a related party),  
which has, or would have, the aim or effect of defeating, removing, diminishing or eroding the Objective (in whole or in part) in any way.

## **2.5 Access to information**

- (a) Upon a written request from the Commonwealth, the Organisation agrees to provide the requested information to the Commonwealth to the extent reasonably necessary or desirable for the Commonwealth to evaluate and determine to demonstrate the Organisation's compliance with clause 2 of this deed poll.
- (b) The Organisation agrees to provide, or procure the provision of, the requested information to the Commonwealth within 21 days of receiving the request from the Commonwealth.

## **3. Warranties**

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The Organisation represents and warrants (upon which the Commonwealth relies) that:

- (a) it has taken all necessary corporate and other action to authorise the entry into, and the performance of all obligations under, this deed poll;
- (b) the persons signing this deed poll are fully authorised and have all necessary power to execute this deed poll on behalf of the Organisation and to legally bind the Organisation to it; and
- (c) when signed, this deed poll is valid and legally binding on the Organisation, and enforceable against it in accordance with its terms.

## 4. Injunctive Relief

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The Organisation:

- (a) acknowledges that damages may not be a sufficient remedy for the Commonwealth for any breach of this deed poll; and
- (b) agrees that the Commonwealth may seek injunctive relief (including specific performance seeking an order that the Organisation comply with its obligations under this deed poll) as remedies for any breach or threatened breach by the Organisation, in addition to any other remedies available at law or in equity.

## 5. Confidentiality

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The Organisation agrees to treat the terms of this deed poll as confidential, and to only disclose such terms on a confidential basis:

- (a) in order to pursue and achieve the Objective;
- (b) as required by law; or
- (c) with the prior written approval of the Commonwealth.

## 6. General

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### 6.1 Further assurances

The Organisation agrees to do all things and execute all documents necessary or desirable to give full effect to this deed poll and the transactions contemplated by it.

### 6.2 Cumulative rights

The rights and remedies provided under this deed poll are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy provided under any other deed or agreement, including the Funding Agreement.

### 6.3 Waiver and variation

- (a) The provisions of this deed poll cannot be waived or varied by the Organisation except with the prior written approval of the Commonwealth.
- (b) Failure at any time by the Commonwealth to enforce a provision of this deed poll will not be construed in any way as affecting the enforceability of that provision or this deed poll as a whole.

### 6.4 Governing law and jurisdiction

- (a) The laws of the Australian Capital Territory apply to this deed poll.
- (b) The courts of the Australian Capital Territory have non-exclusive jurisdiction to decide any matter relating to this deed poll.

## 6.5 Assignment

The Organisation must not assign, transfer or novate any rights or obligations under this deed poll without the prior written approval of the Commonwealth.

## 6.6 Severability

If a term or part of a term of this deed poll is found to be illegal or unenforceable, that term or part of the term may be severed from this deed poll and the remaining terms or parts of the terms of this deed poll will continue in force.

## Executed as a deed poll

**Executed** by the **Organisation** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

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Signature of Director

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Signature of Director/Company Secretary

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Full name (print)

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Full name (print)

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Date

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Date