

<b>Parties</b>	<p>Snow Medical Research Foundation Limited ABN 27 635 741 374 of Level 4, 21 Terminal Avenue, Plaza Offices – West, Canberra Airport, ACT 2609 (<b>Snow Medical</b>)</p> <p>[Name, ABN and registered address of university or MRI] (<b>Host Organisation</b>)</p>
<b>Agreement</b>	<p>The parties agree to conduct the Grant Activities on the terms set out below in the Details and in the attached document headed 'General Terms'. The Details, General Terms and Annexures form part of this agreement.</p>

Details	
<b>Commencement Date</b>	[insert date no later than 31 March 2026]
<b>Agreement End Date</b>	[insert date 5 years after Commencement Date] subject to any Extension approved by Snow Medical in accordance with clauses 3.5 and 3.6
<b>Fellow</b>	[Name of fellow]
<b>Project</b>	[Project title] as detailed in Annexure 1
<b>Total Funds</b>	\$(insert total of 5 year budget) exclusive of GST and subject to clauses 3.5, 3.6 and 5.1
<b>Payment Schedule</b>	The Approved Annual Budget will be paid in equal quarterly instalments, in advance and commencing on the Commencement Date and subject to completion of the Milestones
<b>Annual Reports</b>	28 February 2027 and thereafter on 28 February of each year of the Term
<b>Final Report</b>	Within 3 months of the expiry of the Term or termination of this agreement (whichever date is earlier)
<b>Financial Reports</b>	60 calendar days after the end of each financial year or 60 days after termination of this agreement (whichever date is earlier)
<b>Address for Notices</b>	<p><b><u>Snow Medical</u></b></p> <p>Ann-Marie Heinrich Associate Director, Policy and Contracts Snow Medical Research Foundation Level 4, 21 Terminal Avenue, Plaza Offices – West Canberra Airport, ACT 2609 Email: a.heinrich@snowmedical.org.au</p> <p><b><u>Host Organisation</u></b></p> <p>[Name] [Position]</p>

	<p>[Host Organisation name]</p> <p>[Address]</p> <p>Email: [insert address]</p>
<b>Special Terms</b>	<p>This agreement is subject to the following special terms:</p> <ol style="list-style-type: none"> <li>1. The Host Organisation will ensure the Fellow identifies themselves as a “Snow Fellow” where possible, including in all communications with the media regarding the Grant Activities and in accordance with the Funding Policies and any associated guides.</li> <li>2. If requested by Snow Medical, the Host Organisation will ensure the Fellow participates in and contributes to the assessment of Snow Medical grant applications which may include their appointment to the Snow Medical Scientific Review and Advisory Committee.</li> <li>3. The Host Organisation will respond positively and punctually to Snow Medical’s request(s) to provide organisational information and data on gender and gender equity measures including, without limitation, participating in Snow Medical’s gender equality benchmark as required by Snow Medical.</li> <li>4. The Host Organisation may submit an amendment to the Fellowship Application by completing a Snow Medical pre-commencement amendment form and submitting it to Snow Medical for approval no later than 90 days prior to the Commencement Date. Approval of amendments to the Fellowship Application are at Snow Medical’s absolute discretion. This Special Term 4 is deemed effective as at the date of this agreement.</li> </ol>

Signed on behalf of **SNOW MEDICAL** by its authorised officer:

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Signature of authorised officer

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Name (please print)

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Position

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Date of signing

Signed on behalf of **[Name of Host Organisation]** by its authorised officer:

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Signature of authorised officer

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Name (please print)

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Position

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Date of signing

By signing this agreement, each signatory warrants that they have authority to enter into this agreement on behalf of the party they are stated to represent.

## RECITALS

- A. The Fellow has applied for and has been awarded funding under the Snow Medical Research Foundation Fellowship Program (the **Funding Program**).
- B. Snow Medical has agreed to provide the funding to the Fellow for the purposes of the Fellow carrying out the Grant Activities on the terms of this agreement.
- C. The Host Organisation accepts the funding for the purpose of the Fellow carrying out the Grant Activities and agrees to administer the Funding and the Grant Activities in accordance with the terms of this agreement.

## GENERAL TERMS

### 1. INTERPRETATION

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#### 1.1 Definitions

The following definitions apply throughout this agreement.

**ACNC's External Conduct Standards** means the Australian Charities and Not-for-Profit Commission's [External Conduct Standards](#) that govern how a registered charity must manage its activities and resources outside Australia.

**Annual Report** means the report to be submitted by the Host Organisation to Snow Medical on the dates specified in the Details which details progress of the performance and outcomes of the Grant Activities relating to the previous calendar year pursuant to clause 17 and in the format and including the information as specified by Snow Medical from time to time.

**Approved Annual Budget** means the annual operating budget for the Grant Activities approved by Snow Medical in accordance with clause 5.

**Australian Accounting Standards** refers to the Australian Accounting Standards published by the Australian Accounting Standards Board as amended from time to time.

**Australian Auditing Standards** refers to the Australian Auditing Standards published by the Australian Auditing and Assurance Standards Board as amended from time to time.

**Background Intellectual Property** means Intellectual Property in existence at the date of this agreement and set out in Schedule 1 or

Intellectual Property created independently of the Grant Activities.

**Bullying** means repeated unreasonable behaviour directed to an employee or a group of employees that creates a risk to their health and safety.

**Co-Investment Agreement** has the meaning attributed to it under clause 10.4 (b).

**Co-Investment Rights** has the meaning attributed to it under clause 10.4 (a).

**Code** means the [Australian Code for the Responsible Conduct of Research 2018](#).

**Collaborating Organisation** means an organisation that contributes to the Grant Activities and, where the context permits, includes its employees, advisers, officers, agents, students and contractors.

**Commercialise** includes, without limitation:

- (i) to manufacture, sell, license, assign or hire for commercial benefit or otherwise exploit a product or process or other subject matter in which Intellectual Property rights subsist;
- (ii) to provide a service for commercial benefit; or
- (iii) to license or authorise any person to do any of the above for commercial benefit.

Commercialisation is similarly construed.

**Confidential Information** means any information which by its nature is confidential, is received on the understanding that it is confidential, or is marked as being confidential. Confidential Information does not include information that is in the public domain, is already lawfully known to the receiving party or has been independently developed by the receiving party.

**Conflict of Interest** means a conflict of interest as defined in the [Australian Code for the Responsible Conduct of Research 2018](#).

**Equipment** means any item of property (including animals and bio banks), purchased, leased, created or otherwise brought into existence wholly, or in part, with the use of the Funds, which has at that time a value of over \$5,000 inclusive of GST, but excluding real property and Intellectual Property.

**Extension** has the meaning attributed to it under clause 3.5.

**Fellowship Application** means the fellowship application approved by Snow Medical and attached as Annexure 1 a) and, if applicable, as amended in accordance with the details specified in Annexure 1 b).

**Final Report** means a report to be submitted by the Host Organisation to Snow Medical within three (3) months of the expiry of the Term or termination of this agreement (whichever date is earlier) pursuant to clause 17, and in the format and including the information as specified by Snow Medical from time to time.

**Financial Report** means the report to be submitted by the Host Organisation to Snow Medical to account for expenditure of the Funds pursuant to clause 18 in the format and including the information as specified by Snow Medical from time to time.

**Fraud** means dishonestly obtaining a benefit, or causing a loss, by deception or other means and requires intent.

**Funded Intellectual Property or Funded IP** means Intellectual Property arising from or developed in the course of the Grant Activities by the Research Personnel.

**Funding Policies** means the Funding Program policies published on Snow Medical's website and as amended from time to time.

**Funding Rules** means the funding rules for the Snow Medical Fellowship program 2024 attached as Annexure 2.

**Funds or Funding** means the amount of funds set out in the Approved Annual Budget and approved by Snow Medical in accordance with clause 5.1 and in any Extension.

**Grant Activity or Grant Activities** means any task, activity, services, work or other purpose to which the Funds relates and includes the conduct of the Project.

**Harassment** means unwelcome and unsolicited behaviour that a reasonable person would consider to be offensive, intimidating, humiliating or threatening.

**Intellectual Property** means all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered

designs, Confidential Information (including trade secrets and knowhow and circuit layouts), and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Milestones** means the milestones set out in the Fellowship Application, Extension and Approved Annual Budget.

**Notice of Investment** has the meaning attributed to it under clause 10.4.

**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 a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Project** means the research program described in the Fellowship Application, any variation to the Fellowship Application agreed by the parties in writing, and in any Extension.

**Reports** means any report that is required to be completed by the Host Organisation under this agreement including the Annual Reports and Final Report.

**Research Materials** includes all documents, software, goods, information and data stored by any means created, generated, developed or brought into existence by the Research Personnel in the course of the Grant Activities.

**Research Misconduct** means research misconduct as defined in the [Australian Code for the Responsible Conduct of Research 2018](#) and Fraud.

**Research Personnel** means the Fellow and any person working on the Grant Activities under their supervision.

**Student** means an individual enrolled as a candidate for a postgraduate research degree at the Host Organisation.

**Term** means the period from and including the Commencement Date to and including the Agreement End Date subject to clause 15 and any Extension under clauses 3.5 - 3.6 of this agreement.

**Third Party Investment Arrangement** means an agreement relating to the Funded Intellectual Property and its Commercialisation between the Host Organisation, a party appointed by the Host Organisation to Commercialise the Funded

IP or a company established to Commercialise the Funded IP and a party other than Snow Medical, and includes (without limitation) any assignment or commercial licence of the Funded IP, and any acquisition of ownership in the Host Organisation, a party appointed by the Host Organisation to Commercialise the Funded IP or a party established to Commercialise the Funded IP.

**Transfer Request** has the meaning attributed to it under clause 16.

Other capitalised terms have the meaning given to them in the Details.

## 1.2 Rules for interpreting this agreement

In this agreement, headings are for guidance only and do not affect the interpretation of the clauses. The following rules apply unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing one gender include all other genders;
- (c) reference to a person includes a body politic, a body corporate, a partnership, an unincorporated association and a natural person, and the person's executors, administrators, successors, transferees, substitutes (including persons taking by novation) and assigns;
- (d) reference to a statute, ordinance, code or other law includes regulations, directions and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) reference to \$, dollar or AUD is to Australian currency;
- (f) any agreement, obligation, representation, right or warranty on the part of or in favour of two or more persons binds or is for the benefit of them severally and not jointly or jointly and severally;
- (g) a term or definition incorporated by reference into this document remains in force even if the document from which it was referred may be no longer in force;
- (h) reference to a clause is a reference to a clause of this agreement and includes all sub-clauses, paragraphs and parts of that clause;

- (i) where a word or phrase has a particular meaning, other parts of speech and grammatical forms of that word have corresponding meanings;
- (j) any reference to "insurance", "insurance policy" or "insurer" in this agreement includes, mutual risk cover held with a mutual risk provider designed to cover similar insurable risks to insurance and the providers of that risk cover.

## 2. EMPLOYMENT OF RESEARCH PERSONNEL

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- (a) the Research Personnel will be employed by the Host Organisation;
- (b) the Host Organisation is responsible for the Research Personnel as employees of the Host Organisation including the payment of salary and applicable leave entitlements;
- (c) Snow Medical is not responsible for any salary, employee on-costs or other entitlements (including, without limitation, annual leave, parental leave, carer's leave sick leave, long service leave, public holidays, redundancy payments, and superannuation), employment-related taxes or any other similar benefits and payments under any law, industrial instrument or conditions of service in relation to any Research Personnel, except as explicitly included as part of the relevant Approved Annual Budget; and
- (d) Snow Medical accepts no responsibility for any costs or claims for which the Host Organisation may be liable as an employer or otherwise including, without limitation, redundancy, compensation, dismissal or discrimination claims.

## 3. CONDUCT OF THE GRANT ACTIVITIES

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### 3.1 Funding Award

Snow Medical awards the Funding to the Fellow and the Host Organisation on the terms set out in:

- (a) this agreement,
- (b) the Funding Rules;
- (c) the Fellowship Application; and
- (d) the Funding Policies and guidelines.

## 3.2 Grant Activities

The Host Organisation must conduct the Grant Activities and ensure the Research Personnel conduct the Grant Activities:

- (a) in a collaborative and professional manner;
- (b) in compliance with all reasonable directions provided to the Host Organisation by Snow Medical;
- (c) in compliance with all applicable laws and regulations; and
- (d) ethically and in accordance with the Code.

## 3.3 Contributions of the Host Organisation

The Host Organisation must provide all personnel, facilities, services and resources in accordance with the Fellowship Application, Approved Annual Budgets and any Extension.

## 3.4 Conduct of the Project

The Host Organisation must ensure:

- (a) the Fellow maintains reasonable, up to date and accurate records regarding the conduct and conclusions of the Project;
- (b) the Project is conducted in accordance with the Fellowship Application and any Extension; and
- (c) if the Project requires approval by the Host Organisation's ethics and/or biosafety committees (or equivalent), it provides evidence of the ethics and/or biosafety approval(s) to Snow Medical, and the Project does not commence until the required approvals are obtained.

## 3.5 Extension

At least one year before the Agreement End Date, Snow Medical will conduct a review of the conduct of the Grant Activities and may request the Fellow submits a further three year research plan and budget to commence on the Agreement End Date (the **Extension**).

## 3.6 Acceptance of the Extension

Snow Medical will determine in its absolute discretion whether to accept the Extension and extend the Term for an additional three year period. Should Snow Medical accept the Extension, the terms of this agreement will remain unamended and binding on the parties

except to the extent that they are varied by the Extension.

# 4. Research Integrity, Bullying and Harassment

## 4.1 Formal Procedures

The Host Organisation must have formal procedures in place for handling allegations of a breach of the Code, Research Misconduct, Bullying and Harassment in relation to the Research Personnel.

## 4.2 Allegations

- (a) This clause shall apply if there is any allegation of a breach of the Code, Research Misconduct, Bullying and Harassment in respect of Research Personnel (**Allegation**).
- (b) If the Host Organisation becomes aware that an Allegation has been made in a public forum and the person the subject of the Allegation has been publicly identified, the Host Organisation shall provide Snow Medical with details of the Allegation, the name of the person so identified and the steps it is taking to address the matter.
- (c) If an Allegation is made on a confidential basis pursuant to the Host Organisation's internal processes, or if the Host Organisation becomes aware that an Allegation has been made publicly but without identifying the person the subject of the Allegation, the Host Organisation shall notify Snow Medical that an Allegation has been made, the general nature of the Allegation, the name of the person the subject of the Allegation (provided that person is the Fellow) and the steps that it is taking to address the matter.

## 4.3 Investigation

- (a) Following a preliminary assessment of an Allegation involving Research Personnel, any formal investigation of an Allegation (the **Investigation**) must be led by an external independent investigator unless otherwise agreed in writing by the parties.
- (b) The Host Organisation must promptly keep Snow Medical informed of the progress of the Investigation and notify Snow Medical in confidence of the outcome of the Investigation.

- (c) In relation to an Allegation in respect of which an adverse finding is made, the Host Organisation, must provide Snow Medical, on a confidential basis, a copy of the investigative report, an analysis of the outcomes of the investigation and a summary of any remedial action taken by the Host Organisation which will (for the avoidance of doubt) include the identity of the respondent and the precise nature of the Allegation).

#### **4.4 Consequential Actions**

If Snow Medical determines that the Host Organisation has failed to conduct a timely investigation into any alleged breach of the Code or Research Misconduct relating to Research Personnel, or the Host Organisation has failed to keep Snow Medical appropriately informed of such an investigation, or Snow Medical is not satisfied with the outcomes of any investigation of an alleged breach of the Code or Research Misconduct and incidence of Bullying and Harassment by Research Personnel, Snow Medical may choose to:

- (a) withhold or suspend payment of the Funding in whole or in part;
- (b) terminate this agreement; and
- (c) not accept new grant applications from the Host Organisation.

### **5. BUDGET**

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#### **5.1 Approval of Annual Budgets**

Subject to clause 5.2, the initial annual budget will be as detailed in the Fellowship Application. Thereafter, annually on the 28 February of each year, the Host Organisation shall submit to Snow Medical for its approval a proposed annual budget, specifying an estimate of the annual operating budget for the Grant Activities for the upcoming financial year. Snow Medical may approve, not approve or request amendments to the proposed annual budget in its absolute discretion.

#### **5.2 Payments of Funds**

Payment of Funds by Snow Medical to the Host Organisation is subject to an Approved Annual Budget for the relevant year.

#### **5.3 Transfer between budget allocations**

The Host Organisation may only transfer Funds between the allocations set out in the Approved Annual Budget with Snow Medical's prior written consent.

### **6. PAYMENT AND GST**

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#### **6.1 The Funds**

The Host Organisation will invoice Snow Medical for the Funds in accordance with the Payment Schedule. The invoice must be in the form of a tax invoice.

#### **6.2 Use of Funds**

The Funds must only be used and applied to the Grant Activities in accordance with the Approved Annual Budget.

#### **6.3 Payment Terms**

Subject to clauses 6.1 and 6.5 of this agreement, Snow Medical will pay the Host Organisation's tax invoice within 28 calendar days of the date on which Snow Medical receives the invoice.

#### **6.4 GST wording**

Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 6.

#### **6.5 Payment of GST**

If any supply under this agreement is a taxable supply, the recipient of the supply must pay to the supplier an additional amount equal to the GST payable on the supply. Any amount of GST payable is payable at the same time as the payment for the supply to which it relates.

#### **6.6 Interest-bearing account**

The Host Organisation must hold the Funds as separately identifiable funds in an interest-bearing account and managed in a manner which applies interest earned on the Funds to the Grant Activities.

#### **6.7 Financial management**

The Host Organisation must ensure proper financial management of the Funds, including by obtaining and keeping invoices and maintaining proper books and detailed records of costs and expenses incurred in relation to the Grant Activities, and by applying its usual



arrangements for monitoring and preventing fraud, bribery and any other corrupt practices.

## **6.8 Accounts and records keeping**

The Host Organisation must keep financial accounts and records relating to the Funds and the Grant Activities to enable:

- (a) the preparation of Financial Reports in accordance with Australian Accounting Standards;
- (b) generation of an income and expenditure statements for each financial year of the Term, including:
  - i. a schedule of the Equipment acquired, sold, written-off or otherwise disposed of during each financial year;
  - ii. a comparison of the income and expenditure in each financial year against the Approved Annual Budget; and
  - iii. the audit of those records in accordance with Australian Auditing Standards.

## **7. WITHHOLDING, SUSPENSION AND REPAYMENT OF THE FUNDS**

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### **7.1 Withholding and Suspension of the Funds**

If the Host Organisation or Fellow fails to comply with this agreement, Snow Medical may withhold or suspend payment of the Funds until Snow Medical is satisfied that the Host Organisation or Fellow (as applicable) has performed its obligations under this agreement. If Snow Medical withholds or suspends payment of the Funds, the Host Organisation and Fellow must continue to perform its obligations under this agreement in respect of the Grant Activities that are not affected by the suspension or withholding of the Funds.

### **7.2 Repayment of Funds**

The Host Organisation must repay within 28 calendar days of a demand being sent:

- (a) any payment of the Funds spent in breach of this agreement;
- (b) all unspent Funds or Funds not legally committed for expenditure in accordance with the terms of this agreement if the Host Organisation is in breach of this agreement;

- (c) any overpayment; and
- (d) any interest earned on the Funds required to be repaid.

### **7.3 Calculation of the repayment**

Where the Host Organisation has failed to comply with this agreement, Snow Medical will calculate the amount of repayment the Host Organisation must make with regard to the extent of the failure to complete the Grant Activities.

### **7.4 Set off**

Snow Medical may set off the amount of any overpayment or claim for repayment against any future instalment of the Funds payable to the Host Organisation.

## **8. PUBLICATION, ACKNOWLEDGEMENTS AND OPEN ACCESS**

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### **8.1 Publication**

The Host Organisation must ensure that the Fellow uses their best endeavours to disseminate, through publications and conference presentations, the Fellow's research findings arising out of the Grant Activities.

### **8.2 Delay of Publication**

Publication or release of the Fellow's research findings arising out of the Grant Activities may be delayed for up to 90 calendar days to allow for protection and Commercialisation of Funded Intellectual Property.

### **8.3 Acknowledgements**

Snow Medical's support must be acknowledged in any publications or presentations arising from the Grant Activities.

### **8.4 Open access**

Any publication arising from the Grant Activities and its related data must be made openly accessible as soon as possible but, in any event, no later than six months from the publication date. Where this requirement cannot be met, reasons must be provided in the Annual Report. Metadata for all publications arising from the Grant Activities and its related data must be made available to the public in an institutional repository as soon as possible but no later than three months from the date of publication.

## 9. INTELLECTUAL PROPERTY

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### 9.1 Ownership and Licence

- (a) Nothing in this agreement affects the ownership of Background Intellectual Property.
- (b) Funded Intellectual Property vests in the Host Organisation upon its creation.
- (c) The Host Organisation grants Snow Medical a permanent, irrevocable, free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, communicate, modify and adapt material in the Fellowship Application, Extension and the Reports for its purposes (excluding Commercialisation).
- (d) If the Fellowship Application, Extension or a Report contains material belonging to a third party, the Host Organisation must ensure that it has in place all necessary consents sufficient to allow Snow Medical to deal with the third party material in accordance with this agreement.

### 9.2 Copyright in Student Thesis

Despite anything to the contrary in this agreement, a Student retains copyright in their thesis.

## 10. COMMERCIALISATION

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### 10.1 Notification of Funded Intellectual Property

If the Host Organisation believes any Funded Intellectual Property has commercial potential, it must promptly inform Snow Medical in writing.

### 10.2 Protection of Funded Intellectual Property

The Host Organisation will take the steps necessary to protect Funded Intellectual Property as is reasonable to do so with regard to commercial considerations. The Host Organisation will at all times promptly inform Snow Medical of significant measures considered and taken to protect, manage and Commercialise the Funded Intellectual Property.

### 10.3 Revenue sharing

- (a) Snow Medical (or its nominee) (the **Co-Investment Entity**) and the Host Organisation shall negotiate in good faith to agree the terms of a revenue share

agreement (the **Revenue Share Agreement**) in respect of net income received by the Host Organisation from the Commercialisation of Funded Intellectual Property (the **Revenue**).

- (b) For the purpose of agreeing the Revenue Share Agreement, Revenue will be apportioned between the Host Organisation and the Co-Investment Entity to fairly reflect the relative contribution of the Funding to the item of Intellectual Property being Commercialised, taking into account assessment of other direct and substantive intellectual and financial contributions in creating the item of Intellectual Property being Commercialised.
- (c) Notwithstanding clause 10.3(b), Revenue (after deducting any amounts the Host Organisation is required to pay to other parties) shall be constrained by the following proportions:
  - (i) maximum of 75% to the Host Organisation; and
  - (ii) minimum of 25% to the Co-Investment entity.

### 10.4 Co-Investment Rights

- (a) The Host Organisation may not enter into a Third Party Investment Arrangement without first notifying Snow Medical in writing of the Third Party Investment Arrangement (the **Notice of Investment**) and offering the Co-Investment Entity the opportunity to invest in the Funded Intellectual Property and its Commercialisation on Terms and Conditions equal to or more favourable than those agreed with the third party (the **Co-Investment Rights**). The Notice of Investment will include all information required by the Co-Investment Entity to consider the exercise of the Co-Investment Rights, and as a minimum all information provided by the Host Organisation to the third party in respect of the Third Party Investment Arrangement.
- (b) The Co-Investment Entity may exercise the Co-Investment Rights by giving notice in writing to the Host Organisation within 60 calendar days of receipt of the Notice of Investment, and the Host Organisation and the Co-Investment Entity shall forthwith

execute an investment agreement between them on such Terms and Conditions (the **Co-Investment Agreement**). At the Co-Investment Entity's discretion execution of the Co-Investment Agreement may be made conditional upon execution of the Third Party Investment Arrangement by the Host Organisation and third party.

For the purposes of this sub-clause 10.4, "Terms and Conditions" means the terms and conditions agreed by the Host Organisation and a third party pursuant to a Third Party Investment Arrangement but excludes any intangible and non-financial benefits to be made available by a third party under the Third Party Investment Arrangement. Under a Co-Investment Agreement, the Co-Investment Entity has no obligation to provide any intangible and non-financial benefits agreed with a third party pursuant to a Third Party Investment Arrangement.

If a Third Party Investment Arrangement involves an issue of shares, the Host Organisation must offer the Co-Investment Entity shares in the same quantity and at the same price agreed between the Host Organisation and the third party, or third party syndicate, as the case may be, under the Third Party Investment Arrangement.

#### **10.5 Rights to protect, manage and Commercialise the Funded Intellectual Property**

If the Host Organisation does not protect manage or Commercialise any Funded Intellectual Property to Snow Medical's reasonable satisfaction, then Snow Medical (or its nominee) will have the right by giving the Host Organisation six months' written notice to protect, manage and commercialise the Funded Intellectual Property on the Host Organisation's behalf. Snow Medical or its nominee, as the case may be, may exercise this right sooner where it reasonably believes the opportunity to protect, manage or commercialise the Funded Intellectual Property could be lost if more immediate action is not taken. The Host Organisation agrees to do, and will ensure that the Research Personnel do, all acts required to assist Snow Medical or its nominee in such protection, management and Commercialisation.

## **11. CONFIDENTIAL INFORMATION**

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### **11.1 Disclosure and Use of Confidential Information**

Each party must not during the Term or for five years after the end of the Term, disclose to any third party, or use for any purpose, any of the Confidential Information of the other party.

### **11.2 Obligations on a Receiving Party**

The party receiving Confidential Information (**Receiving Party**) must:

- (a) take all reasonable steps, and do anything reasonably required by the party disclosing the Confidential Information (**Disclosing Party**), to keep the Confidential Information under the Receiving Party's control;
- (b) immediately notify the Disclosing Party if the Receiving Party becomes aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce, nor cause or allow any other person to use, copy or reproduce, any Confidential Information other than in accordance with this agreement;
- (d) immediately upon completion of the Project or termination of this agreement deliver to the Disclosing Party, or if directed by the Disclosing Party destroy, every copy of Confidential Information in the Receiving Party's possession, except that:
  - (i) they may retain one copy of the Confidential Information to the extent required to comply with applicable law or regulation; and
  - (ii) they need not destroy copies of any computer records or files containing the Confidential Information which have been created as a result of automatic archiving or back-up procedures on secured central storage servers and which cannot reasonably be deleted; and
- (e) if any such Confidential Information is retained pursuant to sub-clause 11.2(d), the terms of this agreement remain in full force and effect with respect to such Confidential Information so retained for so long as such Confidential Information is retained.

### 11.3 Exceptions to Obligations

Neither party will be in breach of any obligation to keep any Confidential Information confidential to the extent that it:

- (a) is disclosed to the Receiving Party's employees or agents as necessary for the performance of this agreement and such employees or agents are instructed as to the confidential nature of the information;
- (b) is required to be disclosed by law and the Receiving Party first informs the Disclosing Party of the intended disclosure and cooperates with the Disclosing Party to limit disclosure as reasonably requested;
- (c) is disclosed to the Receiving Party's solicitors, auditors, insurers or accountants; or
- (d) is approved for release in writing by an authorised representative of the Disclosing Party.

## 12. PRIVACY

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### 12.1 Personal Information

Where a party has access to Personal Information in order to perform its obligations under this agreement, the party holding the Personal Information must comply with the requirements any privacy legislation applicable to the party, including if applicable, the *Privacy Act 1988* (Cth).

## 13. CONFLICTS OF INTEREST

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### 13.1 Notification of Conflicts of Interest

If a Conflict of Interest arises during the Term in respect of the Host Organisation's or the Research Personnel's performance of this agreement, the Host Organisation must immediately notify Snow Medical in writing of the full details of the Conflict of Interest and the steps it proposes to resolve or otherwise deal with that Conflict of Interest.

### 13.2 Dealing with Conflicts of Interest

The Host Organisation must take such steps as Snow Medical may reasonably require to resolve or otherwise deal with that Conflict of Interest. If the Host Organisation fails to notify Snow Medical under clause 13.1, or is unable or unwilling to resolve or deal with the Conflict of Interest as required by Snow Medical in

accordance with this clause 13.2, Snow Medical may suspend or terminate this agreement, withhold some or all of the Funds, require the Host Organisation to repay some or all of the Funds or reduce the scope of this agreement as it sees fit.

## 14. EQUIPMENT

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### 14.1 Use of Equipment

Any item of Equipment:

- (a) must be used for the Grant Activities and the Fellow and the Research Personnel must be given priority access to the Equipment; and
- (b) must be maintained in good condition and safe working order by the Host Organisation.

### 14.2 Ownership of Equipment

Ownership of any Equipment will vest in the Host Organisation and listed in its assets register, except to the extent that upon termination of this agreement, the Equipment must be dealt with in accordance with the directions of Snow Medical in a timely manner.

## 15. TERMINATION

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### 15.1 Termination for breach

A party may terminate this agreement in writing if the other party breaches a term of this agreement and fails to remedy the breach within 30 calendar days of receiving notice requiring it to do so.

### 15.2 Termination by Snow Medical

Snow Medical may terminate this agreement in writing if:

- (a) the Host Organisation has entered into any form of insolvency, liquidation or external administration, whether voluntary or involuntary, formal or otherwise;
- (b) the Host Organisation is charged with a breach of any law or is the subject of proceedings or investigations commenced or threatened by the Independent Commission Against Corruption, the NSW Police Force or a similar public body whether of a state, territory or the Commonwealth or in any other country;

- (c) the Host Organisation or Snow Medical determines that an allegation of a breach of the Code or Research Misconduct is substantiated against Research Personnel in accordance with clause 4 of this agreement; or
- (d) if the Host Organisation is in breach of any other agreement with Snow Medical.

### 15.3 Termination of Fellow

Should the Fellow:

- (a) resign or retire from employment at the Host Organisation;
- (b) become physically or mentally incapable of undertaking the Grant Activities for a period of longer than 90 calendar days; or
- (c) have his/her employment at the Host Organisation terminated,

then this agreement and the Funding will terminate at the election of Snow Medical.

### 15.4 Consequences

If this agreement is terminated for any reason, then:

- (a) each party must return all property in their possession belonging to the other party, including Confidential Information and Intellectual Property; and
- (b) the Host Organisation must repay any amounts of the Funding already paid to the Host Organisation:
  - (i) which has not been expended in performance of the Project; or
  - (ii) not irrevocably committed for expenditure in performance of the Project in accordance with the terms of this agreement up to the termination date, provided such costs are supported by appropriate receipts and documentation.

### 15.5 No prejudice

Termination of this agreement is without prejudice to the rights of the terminating party to obtain damages for any breach of this agreement.

### 15.6 Survival

Clauses 4 (Research Integrity), 7.2 – 7.3 (Repayment of Funds), 8 (Publication), 9 (Intellectual Property), 10 (Commercialisation), 12 (Privacy), 14.2 (Ownership of Equipment), 15 (Termination), 16 (Transfers), 17 (Reports), 18 (Financial Reports and Recovery of Funds), 19 (Peer Review), 20.6 (Indemnity), 21 (Insurance), 22 (Logos and Publicity) and other clauses required to give those clauses effect survive the termination or expiration of this agreement.

## 16. TRANSFERS

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### 16.1 Transfer request

If the Fellow resigns from employment at the Host Organisation, the Fellow may request that the conduct of the Grant Activities and the Funding are transferred to a new host organisation (the **Transfer Request**) and the provisions of this clause 16 shall apply. Snow Medical reserves the right, in its absolute discretion:

- (a) to terminate this agreement under clause 15.3;
- (b) to suspend or reduce payment of the Funds; and/or
- (c) to approve the Transfer Request and require the Host Organisation to respond positively and punctually to the Transfer Request, including without limitation, to transfer:
  - (i) any unexpended Funds to the new host organisation;
  - (ii) any Equipment to the new host organisation; and
  - (iii) the records and Research Materials to the new host organisation to enable the Project to be undertaken at the new host organisation in accordance with the requirements specified in the new host organisation's funding agreement with Snow Medical,

in such circumstances, the Host Organisation must promptly do all things necessary and complete and sign all necessary documents to facilitate the Transfer Request.

## **16.2 No liability**

Snow Medical will not be liable to pay any costs or compensation to the Host Organisation resulting from any action it takes in relation to the Transfer Request.

## **17. REPORTS**

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The Host Organisation must submit written reports relating to the Funds as required by Snow Medical, including the following:

- (a) Annual Report – due on the dates specified in the Details;
- (b) Final Report – due no later than three months from the expiry of the Term or any termination of this agreement, whichever is the earliest; and
- (c) any report relating to the Grant Activities reasonably requested by Snow Medical from time to time.

## **18. FINANCIAL REPORTS AND RECOVERY OF FUNDS**

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### **18.1 Provision of Financial Reports**

The Host Organisation must provide the Financial Reports to Snow Medical within 60 calendar days after:

- (a) expiry of the Term or any termination of this agreement, whichever is the earliest; and
- (b) the completion of each financial year in which the Funding is made.

### **18.2 Content of Financial Reports**

The Financial Reports must include a definitive statement as to whether:

- (a) the financial information for the Grant Activities represents the financial transactions fairly and is based on proper accounts and records; and
- (b) the Funding was expended in accordance with this agreement.

### **18.3 Recovery of Funds**

Snow Medical may recover any unspent Funds or ineligible costs and may offset any amounts owed to Snow Medical against any other sums (including any grant payments) owed to the Host Organisation.

## **19. PEER REVIEW**

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The Host Organisation will respond positively and punctually to requests from Snow Medical to peer review Snow Medical grant applications.

## **20. WARRANTIES AND LIABILITY**

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### **20.1 Due care and skill**

The Host Organisation warrants that it will carry out its Project obligations with due care and skill and in a professional manner consistent with generally accepted research and academic practice.

### **20.2 Background Intellectual Property**

The Host Organisation warrants that to its actual knowledge at the date of this agreement use of its Background Intellectual Property will not infringe the Intellectual Property rights of any third party.

### **20.3 Research integrity**

The Host Organisation warrants that at the date of this agreement, there are no allegations of a breach of the Code nor Research Misconduct currently being investigated against the Fellow nor have any allegations been previously upheld.

### **20.4 Bullying and harassment**

The Host Organisation warrants that at the date of this agreement there are no allegations of bullying and harassment currently being investigated against the Fellow nor have any allegations been previously upheld.

### **20.5 Conflicts of Interest**

The Host Organisation warrants that to its actual knowledge at the date of this agreement no Conflicts of Interest exist in connection with its or the Research Personnel's performance of this agreement. If a Conflict of Interest arises, it must immediately report it to Snow Medical and the steps it proposes to resolve or otherwise deal with the Conflict of Interest.

### **20.6 ACNC's External Conduct Standards**

The Host Organisation warrants that it will comply with the ACNC's External Conduct Standards to the extent they are relevant to the Funding and the Project.

## 20.7 Indemnity

The Host Organisation indemnifies Snow Medical against all damage, expense, loss or liability suffered or incurred by Snow Medical, its officers, employees and agents in connection with:

- (i) any breach, unlawful act or omission or negligence by the Host Organisation, any of the Research Personnel or a Collaborating Organisation in connection with this agreement and the Grant Activities; and
- (ii) any third party claim relating to the Grant Activities including its conduct or outcome, or that use by the Host Organisation or any of the Research Personnel or any Collaborating Organisation of the Background IP, Funded 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.

## 20.8 Contributory negligence

The Host Organisation's liability to Snow Medical under this agreement is reduced to the extent that any damages, liability, loss or costs arise from or are attributable to, any negligent act or omission of Snow Medical or its officers, employees, agents or contractors.

## 21. INSURANCE

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The Host Organisation must maintain insurances appropriate to its involvement in the Grant Activities. On request, the Host Organisation must provide evidence to Snow Medical of the currency of such insurance policies.

## 22. USE OF LOGOS AND PUBLICITY

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### 22.1 Use of logos

The Snow Medical logos may only be used by the Host Organisation in connection with the promotion of the Fellow and the Grant Activities. Otherwise, the Snow Medical logos must only be used with the prior written consent of Snow Medical.

### 22.2 Publicity

The Host Organisation will participate in media or other publicity events in connection with the

Grant Activities as reasonably requested by Snow Medical during the Term and for a period of 1 year following the Term or such other period as agreed in writing by the parties.

### 22.3 Communications to the media by the Host Organisation

The Host Organisation must ensure that Snow Medical is properly acknowledged in any correspondence, public announcement, advertising material, research report or other material produced by, on behalf of or through the Host Organisation or a Collaborating Organisation that relates to the Fellow and the Grant Activities in accordance with the Funding Policies.

### 22.4 Snow Medical Announcements

Snow Medical may publicise this agreement by (for example) including the Host Organisation's name, the Funds, the name of the Fellow, the names of the Fellow's research team, the title and a brief description of the Project in media releases, general announcements about research-related funding or annual reports, or through any other means as determined by Snow Medical.

### 22.5 Use of images

Snow Medical may request the Host Organisation provides it with copies of images and other information about the Grant Activities, which Snow Medical may use for publicity and other agreed purposes. The Host Organisation will respond positively and punctually to such requests.

## 23. NOTICES

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### 23.1 Method of giving Notice

A notice, request or other communication to a party (**Notice**) under this agreement, must be in writing and be delivered by hand or sent by prepaid post, or email to the notice address, or email address of that party as specified in the Details.

### 23.2 Effective Service

A Notice is given or served:

- (a) if delivered by hand, upon delivery;
- (b) if in the form of a letter sent by prepaid post, three days (eight days if sent from

one country to another country) after the date on which it was sent; and

- (c) if by email, when the recipient acknowledges receipt of the Notice by return email to the sender (other than by automatic acknowledgment sent by the recipient's server).

### 23.3 Notice Served Outside Business Hours

A Notice that would be given or served on a day which is not a business day in the place to which the Notice is sent, or is later than 5:00 p.m. (local time) it will be taken to have been given or served at the commencement of the next business day in that place.

### 23.4 Change of Address for Notices

A party may change its Notice address or email address by Notice to the other party.

## 24. FORMAL TERMS

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### 24.1 Jurisdiction

This agreement is governed by the laws of New South Wales and any dispute relating to it must only be referred to the courts of New South Wales and the Federal courts of Australia.

### 24.2 Relationship of Parties

Nothing in this agreement constitutes a relationship of employer and employee, principal and agent, or trust, or partnership between the parties. Neither party has authority or power to bind the other party.

### 24.3 Inconsistency

If there is an inconsistency between a provision of the Special Terms, Details, General Terms, Funding Policies, Funding Rules or an annexure then the provisions of the first-mentioned prevail.

### 24.4 Severability

If any clause or any part of this agreement, the Funding Rules or the Fellowship Application are adjudged by a court or other legal authority of competent jurisdiction to be invalid, that judgment does not affect the remainder of this agreement, the terms of which remain in full force and effect.

### 24.5 Entire Agreement

This is the entire agreement between the parties about its subject matter and replaces all oral and written prior communications and agreements between the parties.

### 24.6 Sub-contracting

The Host Organisation may sub-contract the performance of any part of the Grant Activities for which it is responsible only with the prior written consent of Snow Medical. The Host Organisation remains responsible and liable for the performance of its obligations under this agreement and for all costs incurred with respect to its subcontractors.

### 24.7 Variations

- (a) Snow Medical may amend the Funding Policies at any time. It will publish any changes to the Funding Policies on its website. Once published, any changes apply to the Grant Activities and the Funding.
- (b) This agreement may only be varied by the parties in writing.

### 24.8 No Waiver

A waiver by a party of any breach or of a failure to comply with any provision of this agreement by the other party has no effect unless it is in writing.

### 24.9 Disputes

- (a) In the case of a dispute arising under this agreement (the **Dispute**) a party to this agreement must not commence any court or arbitration proceedings unless the parties have complied with the following paragraphs of this clause except where a party seeks urgent interlocutory relief.
- (b) A party to this agreement claiming that a Dispute has arisen out of or in relation to this agreement must give written notice (the **Dispute Notice**) to the other party to this agreement specifying the nature of the Dispute.
- (c) Within fourteen (14) calendar days of receipt of the Dispute Notice (or such further period as agreed in writing by them) the parties must agree:



- (i) the dispute resolution technique (e.g. expert determination) and procedures to be adopted;
  - (ii) the timetable for all steps in those procedures; and
  - (iii) the selection and compensation of the independent person required for such technique.
- (d) If the parties cannot agree to the matters set out in clause 24.9(c) within fourteen (14) calendar days, the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales, and, the President of the Law Society of New South Wales or the President's nominee will select the

mediator and determine the mediator's remuneration.

- (e) If the Dispute has not been resolved within a timeframe agreed under clause 24.9(c)(ii), either party may at their discretion institute legal proceedings.

#### **24.10 Counterparts**

This agreement may be signed in counterparts which may be exchanged electronically.

#### **24.11 Assignment**

The Host Organisation must not assign or novate its obligations or interests under this agreement without the prior written consent of Snow Medical.

## **Annexure 1 a) – Fellowship Application**

## **Annexure 1 b) – Amendments to the Fellowship Application**

## **Annexure 2 – Funding Rules**

## **Schedule 1**

### **Background Intellectual Property**

**[insert details]**