

# Research Grant Funding Agreement

PanKind Australian Pancreatic Cancer Foundation Limited  
Pankind

**[Insert Grant Recipient]**  
Recipient

**[Insert Project Title]**  
Project Title

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# Research Grant Funding Agreement

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Date [insert date on execution]

Parties Pankind Australian Pancreatic Cancer Foundation Limited ABN 22 145 513 060  
of PO Box 1216, Manly NSW 1655 (Pankind)

[insert Name] ABN [insert] of [insert address] (Recipient)

## Background

- A. The Recipient has made a Grant Application for a grant to be made by Pankind in respect of the Project.
- B. Pankind has agreed to make a grant to the Recipient on the terms of this Agreement.

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## 1. Definitions and interpretation

### 1.1 Definitions

In this Agreement:

**Agreement** means this document including its Schedules and Attachments.

**Agreement Details** means the details specified in Schedule 1.

**Annual Pankind Scientific Meeting** means the annual scientific conference convened by Pankind for leading researchers, clinicians and experts to share research, foster collaboration and advance progress in the detection, treatment and care of pancreatic cancer.

**Business Day** means any day other than a Saturday, Sunday or public holiday in New South Wales.

**Collaborator** means any third party with which the Recipient is working or collaborating in relation to the Project, as set out in the Grant Application.

**Confidential Information** means:

- (a) the terms of this Agreement;
- (b) all information relating to the operations or affairs of a party (**first party**) or any of its Related Bodies Corporate, including all financial or accounting information, all customer names and lists, terms and conditions of supply, sales records, marketing analysis and research and reports and other marketing information and all trade secrets, know how, operating procedures and technical information;
- (c) all other information:
  - (i) treated by the first party as confidential;
  - (ii) which is capable of being protected at Law or equity as confidential information;

- (iii) in respect of which the first party owes a duty of confidence to a third party; or
- (iv) the disclosure of which might cause loss or damage to or otherwise adversely affect the first party,

in whatever form and in each case including information that has been disclosed by the first party under the terms of a confidentiality agreement.

**Commencement Date** means the date this Agreement is executed by the parties and executed counterparts exchanged.

**Consequential Loss** means any:

- (a) loss or damage which does not naturally or directly result in the ordinary course of events from the breach, action or inaction in question;
- (b) indirect loss, being loss which may reasonably be supposed to have been in the contemplation of the parties at the time they made this Agreement, as the probable result of the breach; and
- (c) special loss or damage, loss of profit or anticipated profit, economic loss, loss of revenue, loss of opportunity, loss of anticipated savings or loss of goodwill.

**Correctly Rendered Invoice** means an invoice that is correctly rendered in accordance with this Agreement and includes:

- (a) the words 'tax invoice' stated prominently;
- (b) the Recipient's name and ABN;
- (c) Pankind's name and address;
- (d) the invoice date and a unique invoice number;
- (e) the Project title as it appears in the Grant Application;
- (f) the Principal Investigator's full name;
- (g) the Milestone reference to which the invoice relates;
- (h) the total amount of the instalment payable and GST treatment (inclusive or exclusive);
- (i) bank account details for payment and the payment reference to be used; and
- (j) other information as reasonably required by Pankind.

**Conflict of Interest** means any direct or indirect pecuniary or non-pecuniary interest as defined in the *National Health and Medical Research Council Act 1992* (Cth).

**Financial Acquittal Statement** has the meaning given in clause 13.3(a).

**Grant** means the total grant amounts paid or payable for the Project as specified in Schedule 2.

**Grant Application** means the grant application in respect of the Project attached to this Agreement as Attachment 1.

**Grants Portal** means Pankind's electronic grants management system for the submission of invoices, reports and other documentation as required under this Agreement.

**GST** has the meaning in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property Rights** means:

- (a) patents, designs, trade marks and service marks (whether registered or unregistered) and any applications for, or rights to apply for, registration of any patent, design, trade mark or service mark;
- (b) copyright (including copyright in software, websites, databases and advertising and other promotional materials);
- (c) all rights to have information (including trade secrets, know how, operating procedures and technical information) kept confidential; and
- (d) all other rights or protections having similar effects anywhere in the world.

**Law** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government.

**Liability and Liabilities** includes all liabilities (whether actual, contingent or prospective), losses, costs, charges, damages, penalties and other liabilities (including all legal costs on a full indemnity basis) and expenses of whatever description, however it arises and whether present, unascertained, immediate, future or contingent.

**Material** means any software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation any reports, financial or accounting information, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

**Milestones** means any obligation to be performed by the Recipient under Schedule 2 or the Grant Application and which is identified as a 'Milestone'.

**Objectives** means the parties' objectives in entering into this Agreement as specified in the Grant Application and clause 2(a).

**Pankind Data Sharing Policy** means Pankind's policy governing the sharing, access and use of data generated from Pankind funded research, as updated from time to time and accessible on Pankind's website at [pankind.org.au](http://pankind.org.au).

**Payment Milestone** means a Milestone that is specified as a 'Payment Milestone' in Schedule 2 and which, when completed in accordance with the Agreement, will entitle the Recipient to submit a Correctly Rendered Invoice for payment of the relevant Grant amount.

**Personal Information** has the meaning given to the term in the Privacy Act.

**Personnel** means, in relation to a party, its employees, sub-contractors, agents, volunteers, executives and representatives.

**Post Award Policies and Procedures** means Pankind's policies and procedures applicable to the administration of grants during the life of a project, which are accessible on our website [pankind.org.au](http://pankind.org.au)

**Principal Investigator** means the person identified in Item 3 of the Agreement Details, as updated from time to time in accordance with this Agreement.

**Privacy Act** means the *Privacy Act 1988* (Cth) and the Australian Privacy Principles.

**Project** means the project described in the Grant Application.

**Project Material** means any Material:

- (a) developed or created by or on behalf of the Recipient or its Personnel under this Agreement, including as part of carrying out the Project; or
- (b) incorporated in, or supplied as part of, or for the purpose of, the Recipient or its Personnel carrying out its obligations under this Agreement or the Project.

**Related Body Corporate** has the meaning given in section 9 of the *Corporations Act 2001* (Cth).

**Representative** means:

- (a) in respect of Pankind, the person set out in Item 2 of the Agreement Details; and
- (b) in respect of the Recipient, the person set out in Item 4 of the Agreement Details.

**Report** means the reports set out in column B of Schedule 2.

**Term** has the meaning given in clause 3.

**Third Party Provider** means any entity that provides funding, property, personnel or other resources in connection with the Project other than Pankind, the Recipient or their Personnel, as set out in the Grant Application.

## 1.2 Interpretation

In this Agreement:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and the plural includes the singular;
- (c) other parts of speech and grammatical forms of the word or phrase defined in this Agreement have a corresponding meaning;
- (d) an expression importing a person includes any company, joint venture, association or other body corporate and any government agency as well as an individual;
- (e) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) "**includes**" in any form is not a word of limitation; and
- (g) a reference to "**\$**" or "**dollar**" is to Australian currency.
- (h) where the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the next business day in Sydney.

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## 2. Project Objectives

- (a) Pankind's key Objective is to improve pancreatic cancer outcomes by performing patient support services, advocacy activities and research. The Recipient acknowledges that the funding granted to it by Pankind is for the purpose of furthering its research Objective, with a view to improving the survival rates and quality of life for individuals affected by pancreatic cancer.
- (b) The aim of the Project is as described in the Grant Application.
- (c) The Grant Application may set out additional Objectives that are applicable to the Project.
- (d) The parties enter into this Agreement in the spirit of mutual collaboration to support the achievement of the Objectives.

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## 3. Term

This Agreement commences on the Commencement Date and expires on [insert date] (the **Term**), unless terminated earlier in accordance with its terms or extended by the parties by agreement in writing.

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## 4. Parties' roles and obligations

### 4.1 Pankind's role

Pankind will pay the Grant to the Recipient in accordance with clause 7.

### 4.2 Recipient's role

In consideration of the provision of the Grant to the Recipient, the Recipient must (and must procure that its Personnel):

- (a) obtain all relevant ethics and governance approvals prior to commencement of the Project, ensure all such approvals remain valid for the duration of the Project, and upon request by Pankind, provide evidence of such approvals;
- (b) carry out the Project:
  - (i) in furtherance of the Objectives;
  - (ii) with due care and skill in a timely and professional manner;
  - (iii) in accordance with all applicable Laws and having undertaken reasonable investigation and enquiries without knowingly infringing the Intellectual Property Rights of any third party;
  - (iv) so as to meet the Milestones and any other timeframes specified in this Agreement (or otherwise agreed between the parties in writing), and where no Milestones or timeframes are specified or agreed, promptly and without delay; and
  - (v) in accordance with all other provisions of this Agreement and any additional requirements set out in the Grant Application; and
- (c) provide, or procure the provision of, all of the other funds, resources and in-kind contributions from Collaborators and other sources as set out in the Grant

Application as required to properly deliver and manage the Project to a high professional standard.

#### **4.3 Personnel**

- (a) The Recipient is responsible for the performance of its obligations under this Agreement, including in relation to its Personnel.
- (b) The Recipient must ensure that all Personnel engaged in the performance of the Project or any obligations under this Agreement are appropriately qualified and fit and proper to do so.

#### **4.4 Principal Investigator**

The Recipient must:

- (a) appoint and procure the Principal Investigator to work on the Project in accordance with the Grant Application;
- (b) give Pankind reasonable notice of any change in, or departure of, the Principal Investigator pursuant to clauses 5 and 6; and
- (c) following notice under clause 4.4(b) use its best endeavours to find a replacement for the Principal Investigator that Pankind agrees is reasonably suitable to continue the Project.

#### **4.5 Co-operation and liaison**

- (a) The Recipient Representative and the Pankind Representative will be responsible for the day-to-day management of this Agreement.
- (b) The Recipient Representative must liaise with the Pankind Representative and comply with all reasonable requests of Pankind in relation to this Agreement.
- (c) Each party agrees to promptly notify the other party of anything reasonably likely to adversely affect the undertaking of the Project, the proper management of the Grant or the performance of any other obligations under this Agreement.
- (d) The parties will meet as specified within this Agreement and at any other time as may be reasonably requested by Pankind. Unless otherwise agreed, all meetings will be held at the address specified under Item 1 of the Agreement Details.

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### **5. Variation of the Project**

- (a) The Recipient must notify Pankind as soon as practicable, and in any event within 10 Business Days, after it becomes aware of any circumstances that may require a change or amendment to the timetable, Principal Investigator, Third Party Providers, Collaborators, nature or scope of the Project and provide details of those circumstances and any required changes to the Project.
- (b) Requests for variation must:
  - (i) be submitted using the Recipient's institutional letterhead;
  - (ii) be sent to the Pankind Representative at [grants@pankind.org.au](mailto:grants@pankind.org.au); and
  - (iii) outline the change in circumstances and impact on the Project.

- (c) Pankind agrees to consider the variation request received in accordance with clause 5(b) and the Post Award Policies and Procedures.
- (d) The Recipient will be notified in writing (by email) of the outcome of the submitted variation.
- (e) The parties must use reasonable endeavours to agree to the terms of any variation within 21 days of the notice given under clause 5(a). No variation is binding unless confirmed in writing by both parties. For the avoidance of doubt, Pankind is not obliged to approve any variation request and may, in its reasonable discretion, approve or reject the request or propose alternative terms.
- (f) If the parties fail to agree to a variation within 21 days of the notice given under clause 5(a), Pankind may, upon written notice to the Recipient, terminate or reduce the scope of this Agreement in accordance with clause 17.

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## **6. Transfer of the Grant**

- (a) If the Principal Investigator ceases to be employed by or affiliated with the administering institution, or wishes to transfer the Project to another institution, the Recipient acknowledges that the Grant does not automatically transfer with the Principal Investigator to that other institution.
- (b) The parties agree that Pankind may, in its sole discretion, approve the transfer of the Grant to another institution, provided that the Recipient notifies Pankind in writing, within 10 Business Days of becoming aware that the Principal Investigator has departed or intends to depart from the administering institution, of the following matters:
  - (i) details of the circumstances of the Principal Investigator's departure and any proposed arrangements for continuation of the Project; and
  - (ii) if the Recipient wishes to transfer the Grant to another institution, details of the proposed new institution, the qualifications and capacity of that institution to carry out the Project, and confirmation that the Principal Investigator agrees to the continuation of the Project.
- (c) The Recipient must cooperate with Pankind and the receiving institution to effect the transfer of the Grant.
- (d) Pankind has no obligation to approve any transfer of the Grant to another institution under this clause and may withhold approval where the proposed arrangement does not meet Pankind's funding conditions. If a transfer is not approved or cannot be reasonably arranged, Pankind reserves the right to immediately, upon written notice to the Recipient, terminate this Agreement and require repayment of any amount of the Grant that has not been spent or committed in accordance with clause 7.4.

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## **7. Grant**

### **7.1 Payment of the Grant**

- (a) Subject to the provisions of this Agreement, Pankind agrees to pay the Grant to the Recipient in instalments as set out in Schedule 2 and in accordance with this Agreement.
- (b) Upon completion of each Milestone, the Recipient will be entitled to submit a Correctly Rendered Invoice to Pankind for the amount due and payable. The

invoice must be addressed to the Pankind Representative and uploaded to the Grants Portal.

- (c) Pankind will pay a Correctly Rendered Invoice that is issued in accordance with clause 7.1(b) within 30 days of receipt or such other time as agreed between the parties in writing. Payment will be made to the Recipient's nominated bank account specified in Item 5 of the Agreement Details. For the avoidance of doubt, where a Milestone has not been completed by the due date specified in Schedule 2, Pankind is not obliged to make the corresponding payment until the Milestone is completed to Pankind's reasonable satisfaction.
- (d) Notwithstanding any other clause of this Agreement, Pankind may, by written notice to the Recipient, suspend, defer or withhold the Grant (in whole or in part) if, at any time:
  - (i) Pankind determines it is unable to provide any of the grant funds due to its financial position;
  - (ii) the Recipient has not:
    - A. completed a Milestone;
    - B. submitted an adequate Report, pursuant to clause 13.2, that was due to be completed before the date of payment;
    - C. performed the Project in accordance with the terms of this Agreement and the Grant Application,until the Recipient remedies its non-performance; or
  - (iii) there is a serious concern (as reasonably determined by Pankind) relating to:
    - A. the Recipient; or
    - B. the Recipient's or its Personnel's ability to carry out their obligations under this Agreement,that requires investigation.
- (e) A notice under clause 7.1(d) must contain the reasons for any action taken under clause 7.1(d) and, where relevant, the steps the Recipient can take to address those reasons.
- (f) Pankind will only be obligated to pay a suspended, deferred or withheld amount if and to the extent the Recipient has addressed (to Pankind's reasonable satisfaction) the reasons for suspending, deferring or withholding the amount as specified in the relevant notice.

## 7.2 Use and management of the Grant

- (a) Except where otherwise agreed by Pankind in writing:
  - (i) the Recipient and its Personnel must only use the Grant in connection with the Project and in accordance with this Agreement and the Grant Application; and
  - (ii) Pankind is not responsible for the provision of any money or resources in excess of the Grant.

- (b) The Recipient must, during the Term:
- (i) ensure that all payments from the Grant that the Recipient makes are correctly made and properly authorised and that the Recipient maintains proper and diligent control over the incurring of all expenses and liabilities associated with the Grant;
  - (ii) have sufficient systems, controls and processes in place to protect the Grant amounts from loss, theft, fraud and other misuse;
  - (iii) obtain and maintain for the duration of the Project all required ethics approvals in accordance with the NHMRC National Statement on Ethical Conduct in Human Research and only use the Grant in respect of approved research activities;
  - (iv) conduct the Project in compliance with the Australian Code for the Responsible Conduct of Research; and
  - (v) immediately notify the Pankind Representative if the Recipient becomes aware of any loss, theft, fraud or other misuse of a Grant amount, or any allegation or investigation of research misconduct in connection with the Project.

### **7.3 Excluded Activities**

Without limiting clause 7.2(a)(i), the Grant must not be used on any of the following activities, despite their relation to the Project, without the prior written consent of Pankind:

- (a) institutional overhead costs, including ongoing operational costs of the Recipient, in excess of 10% of the Grant funds;
- (b) attendance at events, conferences or ceremonies;
- (c) feasibility studies;
- (d) marketing and communication costs;
- (e) central administrative support;
- (f) international travel;
- (g) domestic travel that is not inherent to the Project; and
- (h) website development that is not inherent to the Project.

### **7.4 Repayment**

- (a) If:
  - (i) Pankind overpays the Recipient or pays the Recipient an amount it is not entitled to;
  - (ii) on the expiry or termination of this Agreement, any amount of the Grant has not been spent or committed by the Recipient in accordance with this Agreement; or
  - (iii) at any other time, Pankind forms the reasonable opinion that any amount of the Grant has been used, spent or committed by the Recipient other than in accordance with this Agreement,

Pankind may, in its sole discretion, by written notice to the Recipient:

- (iv) require the Recipient to repay that part of the Grant, and the Recipient must repay to Pankind the amount set out in the notice;
  - (v) deduct an equivalent amount from the Grant payable to the Recipient pursuant to this Agreement or from any other amounts payable to the Recipient under any other agreement with Pankind; or
  - (vi) require the Recipient to use all or part of the amount as directed by Pankind in its sole discretion.
- (b) If Pankind issues a notice pursuant to clause 7.4(a) requiring the Recipient to repay any Grant amount:
- (i) the Recipient must do so within 30 days of receipt of the notice or such longer time period specified in the notice; and
  - (ii) Pankind may recover the amount under this Agreement as a debt due and payable to Pankind on demand.
- (c) If the Recipient fails to repay an amount within the time period specified in accordance with clause 7.4(b)(i), then, without limiting any other remedy of Pankind, the Recipient must pay to Pankind on demand interest on the due amount calculated at a 2% rate, with interest to accrue from the due date to the day immediately before the actual date of payment, calculated daily on the basis of a 365 day year and capitalised daily.

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## **8. Communications, acknowledgements and branding**

### **8.1 Recipient acknowledgements**

- (a) The Recipient must acknowledge (and must procure that its Personnel acknowledge) Pankind's support in all publicity relating to the Project. This includes all written, verbal and logo acknowledgement as set out in Schedule 3.
- (b) The Recipient must not distribute any media release in connection with the Project without Pankind's prior written approval.
- (c) Any acknowledgment required under clause 8.1(a) must be in the following form (as applicable):
  - (i) Written and verbal acknowledgement:

*"This project is funded and supported by a grant from Pankind, Pancreatic Cancer Australia"*

Written acknowledgment must also include a reference to Pankind's website: [pankind.org.au](http://pankind.org.au).
  - (ii) Logo acknowledgment must be in line with any Pankind logo and brand guidelines provided by Pankind to the Recipient from time to time.
  - (iii) In any resulting journal of scientific publication Pankind must be acknowledged in the funding section (as applicable to respective journal publishers) and written as *"This project is funded and supported by a grant from Pankind, Pancreatic Cancer Australia, pankind.org.au."*
- (d) The Recipient must provide a:

- (i) Project description for public release of approximately 500 words, as set out in the Grant Application; and
- (ii) summary of all written, verbal and logo acknowledgments of Pankind in each Report.

## **8.2 Recipient promotion**

- (a) The Recipient must work with Pankind in good faith to promote the Project, as reasonably requested by Pankind from time to time.
- (b) The Recipient must request that Pankind provide a representative to present at events that relate to the Project and which are hosted by the Recipient.
- (c) Pankind will invite the Recipient to attend and participate in the Annual Pankind Scientific Meeting.

## **8.3 Third Party Provider branding**

Prior to entering into any agreement or arrangement with a Third Party Provider of funding in respect of the Project, the Recipient must:

- (a) notify Pankind in writing of its intention to engage the relevant Third Party Provider, including the identity and a description of the Third Party Provider and the nature of the proposed engagement;
- (b) provide Pankind with such information as Pankind reasonably requires in relation to the Third Party Provider, including the Third Party Provider's relevant qualifications, experience, financial standing and any proposed use of the Third Party Provider's name, logo or other branding in connection with the Project;
- (c) obtain Pankind's prior written approval of the proposed engagement with the Third Party Provider (such approval not to be unreasonably withheld or delayed);
- (d) negotiate in good faith with Pankind to agree how the Third Party Provider's name, logo and other branding are to be used in connection with the Project; and
- (e) ensure that any agreement or arrangement with the Third Party Provider reflects the position agreed under clause 8.3(d) and is otherwise on terms acceptable to Pankind, acting reasonably.

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## **9. Confidentiality**

- (a) A party must not disclose to third parties, or use for any purpose (other than under this Agreement) any Confidential Information of the other party or any information about this Agreement except:
  - (i) where the disclosure or use is authorised in writing by the disclosing party;
  - (ii) where the disclosure or use is required to be made by Law or the rules of a recognised stock or securities exchange and the party whose obligation it is to keep matters confidential or procure that those matters are kept confidential:
    - A. has not through any voluntary act or omission (other than the execution of this Agreement) caused the disclosure obligation to arise; and

- B. has before disclosure is made notified the other party of the requirement to disclose and, where the relevant Law or rules permit and where practicable to do so, given the other party a reasonable opportunity to comment on the requirement for and proposed contents of the proposed disclosure;
  - (iii) where disclosure is made by way of a written announcement, the terms of which have been agreed in writing by the parties prior to the making of the announcement;
  - (iv) where disclosure or use is reasonably required to enable a party to perform its obligations under this Agreement;
  - (v) where the disclosure or use is to or by any professional adviser of a party who has been retained to advise in relation to this Agreement or to or by the auditor of a party;
  - (vi) where the matter has come into the public domain otherwise than as a result of a breach by any party of this Agreement; or
  - (vii) where the disclosure or use is to or by its Personnel, a Collaborator or a Collaborator's Personnel in connection with the performance and discharge of the obligations under this Agreement and provided that such Collaborator or Personnel are subject to the same confidentiality obligations as under this Agreement.
- (b) Upon request by Pankind, the Recipient must procure that its Personnel and any Collaborators and Third Party Providers involved in the Project provide confidentiality undertakings in favour of Pankind, on terms reasonably required by Pankind.

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## **10. Intellectual Property**

### **10.1 Intellectual Property Rights in Project Material**

- (a) Without limiting clause 8, the parties agree that all rights, title and interest (including all Intellectual Property Rights) in Project Material created by the Recipient will vest, upon creation, in the Recipient.
- (b) The Recipient grants to Pankind a non-exclusive, perpetual, royalty-free, irrevocable licence to use, reproduce and present in lay or summary form any Project Material (including any publications, findings, images and data arising from the Project) that is:
  - (i) provided to Pankind by the Recipient;
  - (ii) publicly presented by the Recipient: or
  - (iii) expressly approved in writing by the Recipient for use by Pankind,
    - solely for the purposes of:
      - (iv) Pankind's internal reporting, promotional and fundraising activities;
      - (v) communicating the outcomes of the Project to the public, donors and stakeholders; and
      - (vi) Pankind's advocacy activities in connection with pancreatic cancer research,

provided that Pankind must not, in exercising its rights under this licence, materially alter or adapt the Project Material without the Recipient's prior written consent.

## **10.2 Future Use of Project Material**

The Recipient must use its reasonable endeavours to ensure any benefits arising from the Project are able to be realised including by undertaking (or promoting or permitting the undertaking by third parties of) further publication, research and development and/or commercialisation activities using the Intellectual Property Rights created in Project Material.

## **10.3 Background Intellectual Property**

Nothing in this Agreement affects the Recipient's ownership of any Intellectual Property Rights that existed prior to the Commencement Date or that are developed independently of the Project (**Background IP**). To the extent that this Background IP is incorporated into or is necessary for the use of any Project Material, the Recipient grants Pankind a licence to use that Background IP on the same terms described in clause 10.1(b).

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## **11. Data Sharing**

### **11.1 Data Sharing Statement**

- (a) The Recipient must use reasonable endeavours to ensure that data generated through research supported under this Agreement is shared to the maximum extent feasible, subject to applicable legal and ethical constraints.
- (b) Subject always to clause 12, the Recipient must complete a Data Management and Sharing Plan as set out in Schedule 4.

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## **12. Privacy**

- (a) The Recipient must comply with the Privacy Act in relation to any Personal Information collected, used or disclosed in connection with the Project.
- (b) The Recipient must notify Pankind immediately upon becoming aware of any actual or suspected data breach (as defined in the Privacy Act) that relates to Personal Information collected in connection with the Project.

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## **13. Records and reports**

### **13.1 Records and accounts**

The Recipient must:

- (a) maintain all records and other documents relating to the Project and use and application of the Grant (including financial accounts and invoices); and
- (b) on reasonable request by Pankind, provide Pankind with copies of those records and other documents, throughout the Project and for a period of 7 years after the Project is completed or terminated.

### **13.2 Reports**

- (a) The Recipient must provide to Pankind:
  - (i) the Reports on or before the due date, as set out in Schedule 2; and

- (ii) such other updates or reports as may be reasonably required by Pankind from time to time.
- (b) All Reports must:
  - (i) be in the form required by Pankind utilising the Grants Portal;
  - (ii) be submitted via the Grants Portal (and not by email) within 30 days of the documented due date;
  - (iii) include a summary of all written, verbal and logo acknowledgments of Pankind in accordance with clause 8.1(d)(ii);
  - (iv) be error free and fit for their intended purpose adhering to the Pankind Post Award Policies and Procedures; and
  - (v) be provided in accordance with the Milestones and any other timeframes specified in this Agreement and the Grant Application (or otherwise agreed between the parties in writing).
- (c) If the Recipient fails to submit a Report by the due date specified in Schedule 2 or within the 30-day period required under clause 13.2(a)(ii), Pankind may by written notice to the Recipient:
  - (i) require the Recipient to provide a written explanation for the delay and a revised timeline for submission of the relevant Report within 10 Business Days of the notice;
  - (ii) suspend, defer or withhold payment of the Grant in accordance with clause 7.1(d) until the relevant Report is submitted to Pankind's reasonable satisfaction; and
  - (iii) if the Report remains outstanding for more than [30] Business Days after the due date, treat the failure to submit the Report as a breach for the purposes of clause 17.1(e).
- (d) Pankind may request that the Recipient re-submit any Report if, in Pankind's reasonable opinion, the Report is of poor quality, contains errors or does not comply with this Agreement.
- (e) Where the Recipient receives a request from Pankind under clause 13.2(d) the Recipient must promptly prepare, and submit to Pankind within the timeframe required by Pankind (acting reasonably), a revised version of the Report to address all of the issues raised by Pankind.

### 13.3 Financial Acquittal Statement

- (a) The Recipient must provide to Pankind a financial acquittal statement on or before the due date, as set out in Schedule 2, in accordance with clause 13.3(b) **(Financial Acquittal Statement)**.
- (b) The Financial Acquittal Statement must:
  - (i) be signed by a senior finance executive of the Recipient; and
  - (ii) show all amounts received from Pankind, details of expenditure and any balance of the Grant.

## **13.4 Participation in evaluations**

- (a) The Recipient must participate, at its own cost and as reasonably required by Pankind, in studies, evaluations and other activities to assess the success of the Project in achieving the Objectives.
- (b) This clause 13.4 applies for the duration of the Project and for a period of 12 months from the completion or termination of the Project.

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## **14. Recipient warranties**

- (a) The Recipient represents and warrants to Pankind that, as at the Commencement Date and on an ongoing basis throughout the Term:
  - (i) it has full power and authority to enter into and perform its obligations under this Agreement;
  - (ii) the execution and performance of this Agreement does not and will not breach any Law, any obligation owed to a third party, or any constituent document of the Recipient;
  - (iii) all information provided to Pankind in the Grant Application and in connection with this Agreement is true, complete and accurate in all material respects and is not misleading;
  - (iv) it is not aware of any existing or threatened claims, investigations or proceedings that could materially affect its ability to carry out the Project;
  - (v) it has obtained, or will obtain prior to commencement of the Project, all necessary ethics approvals, licences, permits and consents required to carry out the Project in accordance with this Agreement and applicable Law; and
  - (vi) to the best of its knowledge and belief, the performance of the Project will not infringe the Intellectual Property Rights of any third party.

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## **15. Liability and Indemnity**

### **15.1 No liability for Consequential Loss**

So far as the Law permits, the parties agree that:

- (a) neither party is liable to the other party for any Consequential Loss arising out of or otherwise in relation to this Agreement; and
- (b) excluding any Liability arising from fraud or wilful misconduct (and without limiting clause 15.2(a)), the maximum aggregate Liability of each party will not exceed the amount of the Grant.

### **15.2 Liability and Indemnity**

- (a) The Recipient indemnifies Pankind against any Liability suffered or incurred by Pankind arising out of or in connection with the Project including, without limitation:
  - (i) the research process (including any findings); and
  - (ii) as a result of fraud, a negligent act or omission, wilful misconduct or unlawful act of the Recipient.

- (b) The Recipient indemnifies Pankind against any Liability to any third party claimant arising from any claim, action or proceedings brought by that third party claimant against Pankind in connection with the Project (including any third party claims for Intellectual Property Rights infringement).

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## **16. Insurance**

The Recipient must:

- (a) effect and maintain insurance policies with a reputable and solvent insurer for the types and amounts specified in Item 7 of the Agreement Details, as well as any other insurance required by Law, during the Project and for a period of 12 months after the completion or termination of the Project; and
- (b) give Pankind (as reasonably requested from time to time) copies of certificates evidencing the currency of the insurance policies and, other than for the professional indemnity insurance, copies of the insurance policies, including wordings, schedules and any endorsements.

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## **17. Termination and reduction**

### **17.1 Termination or reduction for fault**

If the Recipient:

- (a) misuses any Grant amount, where this, in the sole opinion of Pankind, has or could reasonably be expected to have a material detrimental impact on Pankind or the Project;
- (b) provides any false or misleading information in relation to this Agreement;
- (c) damages or, in Pankind's reasonable opinion, is likely to damage Pankind's reputation;
- (d) fails to meet a Milestone or ceases to carry out the Project;
- (e) fails to carry out the Project to a satisfactory standard or otherwise breaches an obligation under this Agreement and does not rectify the breach within 10 Business Days (or such longer period as agreed by Pankind) of receiving a notice in writing from Pankind to do so;
- (f) fails to find a replacement Principal Investigator that Pankind agrees is reasonably suitable in accordance with clause 4.4, within a period of 90 days;
- (g) requests a change to the Project in accordance with clause 5 and the parties do not agree the change in accordance with that clause;
- (h) becomes bankrupt or insolvent, enters into a scheme of arrangement with creditors, or comes under any form of external administration; or
- (i) breaches any Law, then Pankind may immediately, upon written notice to the Recipient, terminate this Agreement or, in its sole discretion, reduce its scope and reduce the amount of the Grant.

### **17.2 Consequences of termination or reduction**

- (a) Upon receipt of a notice of termination or reduction from Pankind pursuant to this clause 17 the Recipient must (as applicable):

- (i) meet with the Pankind Representative to devise an appropriate strategy that will minimise, so far as is possible, the effect that the termination or reduction will have on either party and any end user or recipient of goods, services or funding under the Project;
- (ii) cease or (in relation to a reduction in scope) reduce carrying out the Project to the extent specified in the notice;
- (iii) take all available steps to minimise any losses resulting from the termination or reduction in scope;
- (iv) in relation to a reduction in scope, continue carrying out parts of the Project not affected by the reduction in scope; and
- (v) in relation to a termination of this Agreement:
  - A. return any unused amounts of the Grant to Pankind or otherwise deal with the Grant as reasonably directed by Pankind; and
  - B. deliver to Pankind, or at Pankind's option destroy, all Pankind property and Materials (including any Confidential Information) in the Recipient's possession.
- (b) Where there has been a reduction in the scope of this Agreement, the amount of the Grant will be reduced in proportion to the reduction in scope and the Recipient must return any unused amounts from the Grant to Pankind or otherwise deal with the Grant as reasonably directed by Pankind in writing.

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## 18. Dispute resolution

- (a) If a dispute arises in relation to this Agreement (**Dispute**), the parties agree not to initiate legal proceedings in relation to the Dispute until they have followed the procedure in this clause 18.
- (b) If a dispute is unable to be resolved between the Pankind Representative and the Recipient Representative, the party claiming that a dispute has arisen must give to the other party a written notice of dispute.
- (c) Within 5 Business Days of receiving a notice of a Dispute under clause 18(b) or such longer period as agreed by the parties in writing, a senior representative of each party must meet to resolve the dispute in good faith.
- (d) If the Dispute is not resolved within 10 Business Days following the meeting of the parties' Representatives under clause 18(c), the Dispute will be escalated to the Chief Executive Officer of each party who must meet and attempt to resolve the Dispute in good faith.
- (e) The procedure for dispute resolution under this clause 18 does not apply to any action for urgent interlocutory relief.
- (f) Each party must bear its own costs of complying with this clause 18.

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## 19. Conflict of interest

- (a) Other than those which have already been disclosed to Pankind, the Recipient warrants that, to the best of its knowledge, at the date of this Agreement neither it nor its officers have any actual, perceived or potential conflicts of interest in relation to this Agreement.

- (b) If, during the Project, any actual, perceived or potential conflict arises or there is any material change to a previously disclosed conflict of interest, the Recipient must:
- (i) notify Pankind within 5 Business Days and make full disclosure of all relevant information relating to the conflict; and
  - (ii) take any steps Pankind reasonably requires to resolve or otherwise deal with that conflict.

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## 20. Taxes, duties and government charges

### 20.1 Liability for taxes, duties and government charges

Subject to this clause 20, all taxes, duties and government charges imposed or levied in connection with this Agreement must be borne by the Recipient.

### 20.2 GST

- (a) **(Interpretation):** The parties agree that:
- (i) except where the context suggests otherwise, terms used in this clause 20.2 have the meanings given to those terms by the GST Act;
  - (ii) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 20.2;
  - (iii) unless otherwise expressly stated, all consideration to be provided under any other provision of this Agreement is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 20.2; and
  - (iv) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts. A reference to the GST payable by an entity or the input tax credit entitlements of an entity will include a reference to the GST payable or input tax credit entitlements of the representative member of any GST group to which that entity may belong.
- (b) **(Reimbursements and similar payments):** Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(GST payable):** If GST is payable in relation to a supply made under this Agreement then any party (**GST Recipient**) that is required to provide consideration to another party (**GST Supplier**) for that supply must pay an additional amount to the GST Supplier equal to the amount of that GST at the same times as other consideration is to be provided for that supply or, if later, within 7 days of the GST Supplier providing a valid tax invoice to the GST Recipient.
- (d) **(Variation of GST):** If the GST payable in relation to a supply made under or in connection with this Agreement varies from the additional amount paid by the GST Recipient under clause 20.2(c), then the GST Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the GST Recipient. Any payment, credit or refund under this clause 20.2(d) is deemed

to be a payment, credit or refund of the additional amount payable under clause 20.2(c). Where there is an adjustment event, the GST Supplier must issue an adjustment note to the GST Recipient as soon as the GST Supplier becomes aware of the adjustment event.

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## **21. Notices**

- (a) A notice, demand, consent, approval or communication under this Agreement (**Notice**) must be:
  - (i) in writing, in English and signed by a person duly authorised by the sender; and
  - (ii) sent by email to the email address of the receiving party as specified in Item 6 of the Agreement Details, as varied by any Notice given by the recipient to the sender.
- (b) Subject to clause 21(c), a notice given in accordance with clause 21(a) is effective when the email is sent, unless the sending party receives a notification of delivery failure.
- (c) If the email is sent on a day that is not a Business Day or is sent after 5:00pm (recipient's time) on a Business Day, the Notice is taken to be received at 9:00am on the next Business Day.

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## **22. General**

### **22.1 Survival**

All clauses in this Agreement that by their nature are intended to survive termination will survive termination.

### **22.2 Operation of indemnities**

Without limiting any other provision of this Agreement, the parties agree that:

- (a) each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement; and
- (b) it is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.

### **22.3 Amendments**

This Agreement may only be varied by a document signed by or on behalf of each party or, if the context so requires, by email exchange in accordance with clause 5.

### **22.4 Assignment, subcontracting and novation**

- (a) The Recipient may only assign, subcontract or novate its rights and obligations under this Agreement with the prior written consent of Pankind.
- (b) Pankind may assign its rights or novate its rights and obligations under this Agreement by notice to the Recipient.

## **22.5 Counterparts**

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and all together constitute one Agreement.

## **22.6 Entire Agreement**

To the extent permitted by law, in relation to its subject matter, this Agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other Agreement of the parties.

## **22.7 Further action**

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

## **22.8 Severability**

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

## **22.9 Waiver**

A waiver by a party of any of its rights under this Agreement is only effective if it is in a signed written notice to the other party and then only to the extent specified in that notice.

## **22.10 Relationship**

- (a) Nothing in this Agreement will be construed or interpreted as:
  - (i) constituting the relationship between Pankind on one hand and the Recipient on the other hand as that of partners or joint venturers; or
  - (ii) creating any other fiduciary or employment relationship.
- (b) Neither party is authorised to bind or represent the other party.

## **22.11 Governing law and jurisdiction**

This Agreement is governed by the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

## Schedule 1 - Agreement Details

Item No.	Description	Details
1.	<b>Pankind details</b>	Pankind Australian Pancreatic Cancer Foundation Limited ABN: 22 145 513 060 Mailing Address: PO Box 1216, Manly NSW 1655 Physical Address: Suite A/3 Best Avenue, Mosman NSW 2088
2.	<b>Pankind Representative</b>	Name: Michelle Stewart, CEO Phone: 1800 003 800 Email: <a href="mailto:grants@pankind.org.au">grants@pankind.org.au</a>
3.	<b>Recipient's details</b>	Administering Institution: [insert name] ABN: [insert ABN] Address: [insert address]  Principal Investigator: [insert PI name] Institution/Organisation: [insert if different from Administering Institution] Position: [insert] Phone: [insert] Email: [insert]
4.	<b>Recipient Representative</b>	Name: [insert] Phone: [insert] Email: [insert]
5.	<b>Recipient's bank account details</b>	The Recipient's nominated bank account information is: Account name: [insert] Financial Institution: [insert] BSB: [insert] Account number: [insert] BPay Biller Code: [insert]
6.	<b>Address for notices</b>	<b>Pankind:</b> Addressee's name: [insert] Position: [insert] Email: <a href="mailto:grants@pankind.org.au">grants@pankind.org.au</a> <b>Recipient:</b> Addressee's name: [insert] Position: [insert] Email: [insert]

Item No.	Description	Details
7.	<b>Insurance</b>	Public Liability: \$10,000,000 Professional Indemnity: \$10,000,000 Workers Compensation: As required by Law

## Schedule 2 - Milestones

A	B	C	D	E
Milestone Reference Code	Milestones*	Timelines**	Due Date	Payment Milestone (Amount (excl GST))
[insert]	1. Signing of Agreement	-	[insert]	[insert]
[insert]	2. 6-month Interim Report Due	-	[insert]	-
[insert]	3. Year 1 Annual Report Due	-	[insert]	[insert]
[insert]	4. 18-month Interim Report Due	-	[insert]	-
[insert]	5. Final Report and Financial Acquittal Statement Due and Project Close Out Meeting (Final Report and Financial Acquittal is due within 30 days of term end date)	-	[insert]	[insert]
<p>*The Milestones are those specified in this schedule and any additional milestones specified by the Recipient in the Grant Application.</p> <p>** The timelines for the Milestones are as specified in the Grant Application.</p>			Total	[insert]

### Schedule 3 - Publicity and acknowledgments

<b>Activities/operations directly related to the Project / acknowledgement</b>	<b>Written</b>	<b>Verbal</b>	<b>Logo</b>
<b>Publications</b>	✓	n/a	✓
<b>Media releases</b>	✓	n/a	✓
<b>Speeches /public announcements</b>	n/a	✓	✓
<b>Annual Reports</b>	✓	n/a	✓
<b>Promotional videos</b>	✓	✓	✓
<b>Television and newspaper</b>	✓	✓	✓
<b>Newsletters</b>	✓	n/a	✓
<b>Print and electronic promotional materials (such as brochures, posters, conference programs, performance programs and invitations)</b>	✓	n/a	✓
<b>Signage at promotional events</b>	✓	n/a	✓
<b>Websites</b>	✓	n/a	✓
<b>Correspondence (such as email signatures)</b>	✓	n/a	✓

## Schedule 4 - Data Management and Sharing Plan

Pankind supports data sharing and its ability to advance research and scientific knowledge, provide benchmarks for accountability, encourage cooperation, collaboration and governance and promote health and the fair distribution of benefits. The responsibilities of researchers to facilitate the sharing and re-use of data are provided in national and international guidelines and the Pankind Data Sharing Policy.

### Details of Data Subjects, Personal Data and Processing

Describe the scientific data that will be retained and shared, along with the rationale behind this decision:	
When and how long the scientific data will be made available:	
Specify the common data standards that will be applied to the scientific data to ensure interoperability. Include the names of the data standards, and if no consensus standards exist, indicate this accordingly:	
Repository where scientific data will be archived (if applicable):	
Describe factors impacting the future access, distribution, or reuse of scientific data:	
Describe how compliance with, and oversight of this Plan will be monitored and managed, and by whom at your institution:	

**Attachment 1 – Grant Application**

**Signed** as an agreement.

<b>Signed</b> for and on behalf of <b>PanKind Australian Pancreatic Cancer Foundation Limited (ABN 22 145 513 060)</b> by its authorised signatory in the presence of:		
Signature of witness		Signature of authorised signatory
Full name of witness		Full name of authorised signatory

**Recipient**

<b>Signed</b> for and on behalf of <b>[Insert Recipient Full Name and ABN/ACN]</b> by its authorised signatory in the presence of:		
Signature of witness		Signature of authorised signatory
Full name of witness		Full name of authorised signatory