

Research Funding Agreement

The Diabetic Association of South Australia Incorporated

and

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Research Funding Agreement

Date Click or tap to enter a date.

Parties

The Diabetic Association of South Australia Incorporated trading as Diabetes SA

Registration Number A1515 of 159 Sir Donald Bradman Drive, Hilton SA 5033

(Diabetes SA)

Institute/Organisation

ABN Number

(Entity)

Recitals

A. Diabetes SA's purpose is to reduce the risk and impact of diabetes in our community and to support people living with diabetes. Diabetes SA wishes to support and provide funding for research which is consistent with its goals and strategic directions.

B. The Entity has applied for Funding which has been approved by Diabetes SA.

C. The parties have agreed that Diabetes SA will provide the Research Funds to the Entity, and the Entity will undertake the Project on the terms and conditions set out in this Agreement.

The parties agree, in consideration of, among other things, the mutual promises contained in this Agreement as follows:

1. Definitions and interpretation clauses

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following words have the following meanings:

Additional Funding	means funding for the Project supplied by other funding bodies.
Approved Researcher	means the person(s) named as the Lead Chief Investigator or Primary Contact in Item 1 of Schedule 1.
Application for Funding	means the application submitted by the Entity to Diabetes SA describing the proposed project and funding requirements.
Article	means an article regarding the Project, or such other topic as may be requested by Diabetes SA, in a form understandable by a layperson for inclusion in the Diabetes SA magazine.
Background IP	means Intellectual Property (including Intellectual Property of a third party used under licence) that is created, developed or acquired by a party prior to the Commencement Date, or independently of the Project.
Business Day	means any day except Saturdays, Sundays and declared public holidays in South Australia.
Business Hours	means the hours between 9am to 5pm on a Business Day.
Commencement Date	means the date of this Agreement.
Confidential Information	means any information in any form disclosed by a party to another party or acquired by one party from the other (including but not limited to the Intellectual Property of a party), whether deliberately or inadvertently and regardless of whether or not marked confidential, including (a) Any information relating to this Agreement, its subject matter, any negotiations or transactions contemplated or provided for in this Agreement; and

- (b) any information regarding the Project IP or other Project outcomes,

but excluding any information that receiving party can establish:

- (c) is in the public domain other than through disclosure in breach of this Agreement.
- (d) is independently developed by the receiving party; or
- (e) is received from a third party who is not bound by obligations of confidence in relation to the information.

**Funding
Commencement
Date**

means the date specified in Item 2 of Schedule 1.

Funding Period

means the period commencing on the Funding Commencement Date and continuing for the duration listed in Item 3 of Schedule 1.

Insurances

means insurance policies in respect of such risks that a reasonable, prudent person carrying on the activities of the Entity, and undertaking the Project, would be likely to insure against.

**Intellectual
Property**

means any and all intellectual and industrial property rights anywhere in the world (including present and future intellectual property rights) including (but not limited to) rights in respect of or in connection with:

- (a) any confidential information, know-how or any right to have information kept confidential;
- (b) copyright (including future copyright and rights in the nature of or analogous to copyright);
- (c) inventions (including patents);
- (d) trademarks, service marks and other related marks;
- (e) designs; and
- (f) business names, domain names and company names;

whether or not existing at the date of this Agreement and whether or not registered or registrable and includes any and all variations, modifications or enhancements to each of them

together with any application or right to apply for registration of those rights and includes all renewals and extensions.

Nominated Account	means the bank account described in Item 5 of Schedule 1.
Payment Date	means the date on which the Research Funds will be paid to the Entity as set out in Schedule 3.
Project	means the project described in the Application for Funding approved by Diabetes SA and specifically described in the Project Plan, the title and a brief summary of which are included in Item 4 of Schedule 1. Project Plan may be used interchangeably with the term "Research Project".
Project Budget	means the approved budget for expenditure of Research Funds, included as part of the Project Budget.
Project IP	means all Intellectual Property developed in the course of undertaking, or as a result of, the Project.
Project Plan	means the plan for the conduct of the Research Project attached as Schedule 2.
Reports	means the reports described in the Project Plan that the Entity is required to supply to Diabetes SA under clause 4.1.
Report and Article Delivery Timetable	means the schedule for delivery of the Reports and Articles as set out in Item 7 of Schedule 1.
Research Funds	means the amount described in Schedule 3.
Research Misconduct	has the same meaning as in the <i>Australian Code for the Responsible Conduct of Research</i> (2018), as amended or replaced from time to time during the Term.
Term	means the period described in clause 7.1.

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) words denoting the singular include the plural and vice versa;
- (b) a reference to any gender includes all genders;
- (c) a reference to a person or entity includes a natural person, a partnership, corporation, trust, association, unincorporated body, authority or other entity;
- (d) headings and the table of contents (if any) are for convenience only and do not affect interpretation;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to any document is a reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (g) a reference to a party to this Agreement includes that party's executors, administrators, successors and permitted assigns;
- (h) a reference to (\$) or (**Dollars**) is a reference to Australian currency;
- (i) a reference to a recital, clause, schedule or annexure is to a recital, clause (including sub-clause, paragraph, sub-paragraph or further subdivision of a clause), schedule or annexure of or to this Agreement and a reference to a paragraph is to a paragraph in a schedule;
- (j) a reference to any books or records or writing includes a reference to such documents or writing in all formats including electronic, disk, magnetic or written format;
- (k) the word (including) is not to be treated as a word of limitation;
- (l) a reference to time is a reference to the time in Adelaide, South Australia;
- (m) if the time prescribed or allowed by this Agreement for doing any act or thing falls or expires on a day which is not a Business Day, such time is extended so as to fall or expire on the next succeeding Business Day after that day; and
- (n) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement.

1.3 Schedules and Annexures

The schedules and annexures (if any) form part of this Agreement.

2. Agreement to supply Research Funds

- (a) Diabetes SA agrees to make the Research Funds available to the Entity, to enable the Entity to undertake the Project, on the terms and conditions set out in this Agreement.
- (b) The Entity agrees to accept the Research Funds and administer and deal with them in accordance with the terms and conditions set out in this Agreement.
- (c) The Entity acknowledges and agrees that the Research Funds are supplied only for the Project and are not transferable to other projects or activities.

3. Entity obligations and warranties

3.1 Obligations

The Entity must:

- (a) ensure that the Project is undertaken by the Approved Researcher, and obtain the prior written consent of Diabetes SA (which may be withheld in its absolute discretion) in the event that the Approved Researcher is unable or unwilling to undertake the Project and a replacement researcher is proposed;
- (b) not vary the Project without Diabetes SA's prior written consent (which will not be unreasonably withheld);
- (c) take all steps necessary to ensure that the Project commences no later than the Funding Commencement Date;
- (d) take all steps necessary to ensure that the Approved Researcher undertakes the Project in accordance with the Project Plan, including by expending the Research Funds in accordance with the Project Budget;
- (e) take all steps necessary to ensure that the Approved Researcher conducts the Project in a diligent manner, to a high professional standard consistent with best Australian research and academic practice;
- (f) take all steps necessary to ensure that the Research Funds are used only for the purposes of undertaking the Project, in accordance with the Project Plan and Project Budget, within the Funding Period;
- (g) take all steps necessary to ensure that the Project prioritises one or more unmet needs for the South Australian diabetes community, and that at least one Chief Investigator is based in South Australia;
- (h) expend, or otherwise ensure the expenditure of, the Research Funds in South Australia (unless Diabetes SA has given prior written consent (which can be withheld in its absolute discretion) for the Entity to do otherwise), in accordance with the Project Budget;

- (i) take all steps necessary to ensure that the Project is completed within the Funding Period;
- (j) take all steps necessary to ensure that the Approved Researcher achieves or completes the deliverables specified in the Project Plan by any relevant due dates specified in the Project Plan;
- (k) ensure that all relevant licences, permits, consents and approvals necessary for the Project are obtained and maintained for the duration of the Project, and provide copies of the same as required by Diabetes SA from time to time within a reasonable time;
- (l) obtain, and otherwise ensure that the Approved Researcher obtains, all ethics clearances required for the undertaking of the Project, and maintain or otherwise ensure the maintenance of these clearances for the duration of the Project, and provide copies of these clearances as required by Diabetes SA from time to time;
- (m) comply with all applicable laws, regulations and government requirements when administering the Research Funds;
- (n) ensure that the Approved Researcher or such other replacement lead researcher as Diabetes SA may approve from time to time in writing, is primarily responsible for carrying out the Project;
- (o) provide all personnel, equipment, facilities, services and premises required for the conduct of the Project at its own cost and expense, unless expressly provided to the contrary in this Agreement.
- (p) notify Diabetes SA as soon as possible and no later than 30 calendar days of any anticipated or actual delays, suspensions, or variations to the research (including delayed reporting), and of any resignation or departure of the Lead Chief Investigator from the administering institution during the funding period.
- (q) notify Diabetes SA as soon as possible and no more than 30 calendar days of an investigation into, or receipt of complaint of, Research Misconduct alleged to have been engaged in by the Approved Researcher;
- (r) use its best efforts to ensure that Diabetes SA is acknowledged in any public statements, advertising material, research reports, articles or materials produced and published by the Entity to the extent permitted by this Agreement; and
- (s) provide appropriate forms of recognition to, and promotion of Diabetes SA which may include hosting an official function (**Function**) attended by a prominent South Australian (such person approved by Diabetes SA) with the purpose of enhancing and further promoting Diabetes SA profile. For the avoidance of doubt, the Entity is responsible for all organisation and logistics required to host the Function, including any set up, catering, hiring of venue and invitation of the prominent South Australian.

3.2 Warranties

The Entity, after making due enquires of the Approved Researcher, warrants and represents to Diabetes SA that:

- (a) the information supplied, and statements made, in the Application for Funding are true, accurate and correct;
- (b) it is not aware of any threatened or pending litigation or any third-party claim that relates to the use of its Background IP;
- (c) use of the Project IP created or developed that is based on any Background IP of the Entity will not infringe any rights of a third party, including Intellectual Property rights (excluding patent rights);
- (d) use of the Project IP that is based on the Entity's Background IP will not, to the best of its knowledge as at the date of creation of that Project IP, infringe any third-party Intellectual Property that takes the form of patent rights that are published as at the date of creation. For the avoidance of doubt, the Entity makes no warranty regarding non-infringement of third party patent rights that are filed but remain unpublished as at the date of creation of the Project IP;
- (e) the Approved Researcher is not engaging in Research Misconduct, and is not subject to any investigation or complaint of alleged Research Misconduct,
- (f) the Approved Researcher has not in the 3 years prior to the Funding Commencement Date engaged in Research Misconduct, or been the subject of any investigation into or complaint of alleged Research Misconduct;
- (g) it will comply with all applicable laws in relation to the performance of its obligations under this Agreement; and
- (h) it will not enter into any agreement, arrangement or understanding with any third party or engage in any conduct which is contrary to or inconsistent with any of its rights, duties and obligations under this Agreement.

4. Reports and Articles

4.1 Supply of Reports

- (a) The Entity must submit the Reports specified in accordance with the Grant Guidelines and project milestone requirements (including as to quality of content and form) set out in the approved Project Plan.
- (b) The Reports must be submitted to Diabetes SA in accordance with the Report and Article Delivery Timetable as set out in Item 7 of Schedule 1.

4.2 Articles

- (a) As part of the Reports, the Entity must submit Articles to Diabetes SA in accordance with the Report and Article Delivery Timetable. The Articles must be written in a manner so as to be understandable by a layperson.
- (b) The Entity acknowledges that Diabetes SA may reasonably edit the Articles to ensure they are in a form suitable for consumer facing publications that Diabetes SA share with its members, donors, corporate partners, and/or the wider public (e.g. MyLife Magazine, Annual Reports, social media posts).

5. Payment of Research Funds

5.1 Invoice by Entity

Not less than 5 Business Days before the Payment Date, the Entity must supply to Diabetes SA an invoice for the amount of Research Funds due to be paid by Diabetes SA on the Payment Date.

5.2 Payment by Diabetes SA

- (a) Subject to receiving an invoice from the Entity in accordance with clause 5.1, Diabetes SA will pay the Research Funds into the Nominated Account of the Entity on the Payment Date.
- (b) The sum of all amounts to be supplied by Diabetes SA towards the Project will not exceed the Research Funds, unless otherwise agreed by Diabetes SA in writing.
- (c) The release of funds is conditional upon Diabetes SA being fully satisfied with the content and quality of submitted reports.

5.3 Additional Funding

If the Project Budget is, or anticipates, leveraging Additional Funding, the Entity must inform Diabetes SA as soon as possible and no more than 30 calendar days if the Additional Funding is (or is likely to be) awarded, or reduced, suspended or terminated early. If Diabetes SA forms the reasonable view that such reduction, suspension or termination will adversely affect the Entity's ability to undertake the Project, Diabetes SA can at its absolute discretion terminate this Agreement or reduce the scope of the Project under clause 12.1.

6. GST

6.1 Construction

In this clause:

- (a) words and expressions which are not defined in this Agreement, but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) GST Law has the same meaning given to that expression in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

6.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

6.3 Payment of GST

If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under this Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

6.4 Timing of GST Payment

The recipient will pay the amount referred to in clause 6.3 in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

6.5 Tax Invoice

The supplier must deliver a tax invoice, or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 6.3. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

6.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under this Agreement, the amount payable by the recipient under clause 6.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

6.7 Reimbursements

Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

7. Term

7.1 Term

This Agreement commences on the Funding Commencement Date and continues for the Funding Period, subject to extension in accordance with clause 7.2 and termination in accordance with clause 12.

7.2 Request for extension for funding period

- (a) At any time prior to the expiry date of the Funding Period, the Entity may request an extension to the term of the Research Funds from Diabetes SA. Upon receiving such written request with justification or any other information required, Diabetes SA may agree to extend the Term if required.
- (b) If the Term is extended, Diabetes SA will specify the new, extended end date of the Funding Period, and the Term of this Agreement will continue until such date.

8. Intellectual Property

8.1 Background IP

- (a) Nothing in this Agreement affects the ownership of the Background IP. Accordingly, each party retains all rights (including ownership, as appropriate) of its Background IP in existence as at the Commencement Date.
- (b) Subject to clause 8.2(b), if use of any Background IP is necessary for the commercialisation of Project IP, the party which has contributed the relevant Background IP will offer a non-exclusive licence for that Background IP to the commercialising party on terms no less favourable than those that the party would offer to any third party in an arm's length commercial dealing.
- (c) The Entity, after making due enquiries of the Approved Researcher, warrants that:
 - (i) it has disclosed to Diabetes SA prior to the Commencement Date all Background IP that will be used in carrying out the Project (and if that Background IP includes any third-party Intellectual Property, the Entity further warrants such material is used with permission of the relevant

third-party owner in terms that permit its use in connection with the Project);

- (ii) the Entity's use of its Background IP in carrying out the Project will not infringe the rights of any third party (excluding patent rights);
 - (iii) use of the Project IP that is based on the Entity's Background IP will not, to the best of its knowledge as at the date of creation of that Project IP, infringe any third-party Intellectual Property that takes the form of patent rights that are published as at the date of creation. For the avoidance of doubt, the Entity makes no warranty regarding non-infringement of third party patent rights that are filed but remain unpublished as at the date of creation of the Project IP; and
 - (iv) apart from any disclosed Background IP or as specified in the Project Plan, the Entity will not utilise, and will ensure that the Approved Researcher does not utilise, any material or Intellectual Property owned, or part owned, by any third parties in undertaking the Project, without the prior written permission of Diabetes SA (which will not unreasonably be withheld).
- (d) The Entity agrees to indemnify Diabetes SA and its related entities from and against all actions, claims, proceedings or demands, and all losses, costs, expenses and damages (including legal costs and disbursements on a solicitor-own client basis) sustained or incurred directly by Diabetes SA or any of its related entities if the warranties in clause 8.1(c) are breached at any time.

8.2 Project IP

- (a) The Entity must disclose to Diabetes SA any Project IP developed or created during the course of undertaking the Project, and must ensure that the Reports provided to Diabetes SA under clause 4.1 summarise all Project IP that is in existence as at the date of the relevant Report.
- (b) The Entity must not copy, exploit, utilise or modify any of Diabetes SA's Background IP without Diabetes SA's prior express written consent.
- (c) The parties agree that ownership of all Project IP and all associated materials and documentation, and all other Project outcomes and materials, will vest in the Entity. The Entity will ensure that the Approved Researcher take all actions and execute all Agreements required to ensure such ownership vests in the Entity. Diabetes SA will execute such documentation as the Entity may reasonably request to confirm the Entity's sole ownership.
- (d) The Entity will commercialise Project IP at its own cost, and in its discretion.
- (e) The Entity must:
 - (i) upon request from Diabetes SA, immediately grant (and as required, use its reasonable endeavours to procure the grant, in the case of Project IP that is co-owned by the Entity with another party including but not limited to a provider of Additional Funding) to Diabetes SA a

perpetual, world-wide, non-exclusive, fee-free, royalty-free licence to use the Project IP and all associated materials and documentation for any purpose, provided that purpose does not compromise or interfere with the Entity's actual or prospective commercialisation of Project IP; and

- (ii) immediately upon commercialisation of the Project IP as permitted by clause 8.2 pay reasonable royalties to Diabetes SA in accordance with a separate written agreement to be entered into by the parties. The amount of the royalties, and payment arrangements will be agreed between Diabetes SA, the Entity and any supplier(s) of Additional Funding that is/are a co-owner of Project IP and documented in writing.
- (f) If any provision of this Agreement or any agreed commercialisation royalty arrangements affects the tax exemption status of Diabetes SA, the parties will immediately amend the relevant provision to ensure that Diabetes SA maintains its tax exemption status.

8.3 Continuation

This clause 8 continues to operate after expiration of the Term or termination of this Agreement.

9. Confidentiality

9.1 Obligation

Each party must keep confidential any Confidential Information and must not use or disclose the Confidential Information of any other party for any purpose other than that which the information was disclosed.

9.2 Exclusions

The obligations of confidence under this Agreement do not apply to any information that:

- (a) is in the public domain (other than through any breach of this Agreement);
- (b) the receiving party can prove was known to it at the time of disclosure by the disclosing party, free from any obligation of confidence; or
- (c) a party is required by law to disclose; or
- (d) a party is required to disclose in order to obtain the approval or consent of any government body, authority or agency in connection with the purpose for which that information was disclosed.

9.3 **Survival of obligations**

The obligations of confidentiality under this Agreement survive the expiration or termination of this Agreement.

9.4 **Permitted disclosure**

Each party may only disclose another party's Confidential Information to those of its employees, contractors or professional advisers who need to know the information and who are aware of the confidential nature of the information and undertake in writing to keep the information in confidence.

9.5 **Public statements**

- (a) No party may make any public statement or make any representation in relation to this Agreement or any part to it, or its subject matter, including but not limited to the Project and Project IP without the prior written consent of the other party.
- (b) If a party wishes to publish any information, it must provide a draft of the publication to the other party at least 2 weeks prior to publication. The other party must within two (2) weeks from receipt of the draft publication notify the first party in writing of any concerns or request reasonable alterations or restrictions in relation to:
 - (i) the content of the publication;
 - (ii) the timeframe for publication; or
 - (iii) any other aspect of the publication.
- (c) If no notice is provided to the first party within the timeframe specified in clause 9.5(b), then the other party is deemed to have consented to publication of the information.
- (d) Consent to publication under this clause 9.5 must not be unreasonably withheld. A party may withhold consent to publication on the grounds that it reasonably believes the publication discloses its Confidential Information or Project IP, or that the publication is likely to mislead or deceive the public.
- (e) Each party must acknowledge the contribution of the other party in any publications produced about the Project. A party may request that their name is withheld from a publication.

10. **Insurance**

10.1 **Obligation to insure**

The Entity must, at all times during the Term maintain the Insurances with reputable insurers, at its own cost.

10.2 Proof of compliance

The Entity must immediately provide Diabetes SA with certificates of currency as proof of compliance with clause 10.1, as Diabetes SA may reasonably request from time to time.

11. Privacy

11.1 Definitions

In this clause 11:

- (a) Act means the *Privacy Act 1988* (Cth);
- (b) Personal Information has the same meaning as in the Act, and (as a general summary, for the purposes of clarity and confirmation) 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 an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; and
- (c) Privacy Laws means:
 - (i) the Act; and
 - (ii) the Australian Privacy Principles prescribed by the Act, and any approved privacy code that applies to the Entity.

11.2 Privacy Law

The Entity accepts and undertakes as a term of this Agreement that it will observe the Privacy Laws in respect of all Personal Information that is collected or otherwise dealt with by it in the course of this Agreement or its undertaking of the Project.

12. Termination

12.1 Termination for convenience

- (a) Diabetes SA can, acting reasonably, at any time by giving the Entity not less than 60 calendar days' notice in writing elect to suspend or defer any instalment payment of the Research Funds, terminate this Agreement or reduce the amount of the Research funds or reduce the scope of the Project accordingly.
- (b) If a notice is given under clause 12.1(a), then to the maximum extent permitted by law, Diabetes SA is not responsible for any costs or losses sustained by the Entity that are attributable to the termination.

12.2 Immediate termination

Diabetes SA can immediately terminate this Agreement if:

- (a) commencement of the Project is delayed by 5 or more months for a 1-year grant OR by 12 months or more for a 2-year grant;
- (b) the Entity becomes insolvent or bankrupt;
- (c) the Entity has committed a material breach of this Agreement that is not capable of remedy;
- (d) the Entity has committed a material breach of this Agreement that is capable of remedy and has failed to remedy that breach within 14 calendar days of the date of a notice issued by Diabetes SA specifying the breach and requiring it to be remedied;
- (e) the Entity or the Approved Researcher does anything (in Diabetes SA's reasonable opinion) which brings Diabetes SA into disrepute; or
- (f) Diabetes SA is reasonably satisfied that any statement made in the Application for Funding is incorrect or incomplete in a manner that would have affected the original decision to approve the Application and award the Research Funds.

12.3 Effect of termination

- (a) Upon receipt of a notice given under clause 12.1(a) or clause 12.2:
 - (i) the Entity must stop work on the Project (entirely, or to the more limited extent expressly specified in any notice issued by Diabetes SA);
 - (ii) the Entity must take all reasonable steps to minimise costs, loss and damage resulting from the termination; and

the Entity must repay to Diabetes SA the amount of any Research Funds not spent or otherwise committed for spending in a manner approved by Diabetes SA, as affected by the notice issued by Diabetes SA.

12.4 Return of Research Funds

- (a) If at the expiry of the Term, and upon early termination of the Term, any Research Funds that have been supplied by Diabetes SA are unused, then the Entity must repay these amounts to Diabetes SA, within 10 Business Days of receipt of a notice from Diabetes SA requesting it to do so.
- (b) If at the expiry of the Term, or upon early termination of the Term, Diabetes SA is satisfied, acting reasonably, that Research Funds have been used for activities other than the conduct of the Project than in accordance with the requirements of this Agreement, the Entity must repay these amounts to

Diabetes SA within 10 Business Days of receipt of a notice from Diabetes SA requesting it to do so.

12.5 Consequences of Expiry and Termination

- (a) Any expiry or termination of this Agreement does not relieve the Entity of any obligation remaining to be or performed or capable of having effect after such termination and is without prejudice to any right or cause of action already accrued to Diabetes SA in respect of any breach of this Agreement by the Entity.
- (b) Clauses 8, 9, 11, 12.1(b), 12.3, 12.4, 12.5, 13, 14, 15.2 and 18 survive expiry or termination of this Agreement and continue in full force and effect, together with any other clauses which expressed as continuing or are by their nature or effect capable of surviving.

13. Limitation of liability

- (a) To the maximum extent permitted by law, Diabetes SA disclaims and excludes any and all liability to the Entity or any other party arising from or otherwise connected with its obligations under this Agreement, including but not limited to liability in tort (including negligence), contract, or for breach of statutory duty for any costs, losses, damages or claims directly or indirectly suffered or incurred by the Entity or any other party, except to the extent that such loss or damage arises as a result of any negligent act or omission on the part of Diabetes SA.
- (b) To the extent that clause 13(a) is not sufficient for Diabetes SA to exclude its liability for any matter, then to the fullest extent legally permissible, in no circumstances will Diabetes SA's liability exceed the amount of the Research Funds.

14. Indemnity

14.1 Indemnity

The Entity agrees to indemnify Diabetes SA, its related entities and their respective officers, employees, agents and contractors and other representatives (**Indemnified Parties**) from and against any law suits, claims, losses, costs, damages or liabilities (or actions or proceedings in respect thereof) that the Indemnified Parties incur or may incur related to or arising from:

- (a) any breach of this Agreement by the Entity, or any of its personnel or representatives (including the Approved Researcher);
- (b) any wilful misconduct (including Research Misconduct), unlawful acts or negligence of the Entity, or its personnel or representatives (including the Approved Researcher); or

- (c) any warranty given by the Entity (including under clauses 3.2) being false.

15. Records and inspection

15.1 Records

The Entity must keep or cause to be kept for the Term and 7 years thereafter true and accurate records, files and books of account in accordance with generally accepted accounting standards relating to the Research Funds and the Project (**Records**) containing all information relevant to the receipt and expenditure of the Research Funds and performance of the Project, in sufficient detail to enable the performance of the Entity's obligations under this Agreement to be verified.

15.2 Inspection

Diabetes SA or its authorised representatives, may during the Term or a period of 7 years thereafter, inspect and make copies of the Records at any time during Business Hours, following the provision of 2 Business Days' notice to the Entity. The Entity must cooperate fully with Diabetes SA and its representatives in carrying out any inspection or audit under this clause.

16. Notices

16.1 Requirements

Any notice given under this Agreement must be in writing and signed by or for the sender and delivered by post, hand, fax or email to the relevant address specified in Item 6 of Schedule 1 or such other address as may be specified by a party by notice in writing to the other party.

16.2 Time of delivery

A notice or other communication is deemed given:

- (a) if personally delivered, upon delivery;
- (b) if mailed to an address in Australia by regular post, 6 Business Days after the date of posting (whether received or not);
- (c) if sent by facsimile, at the time of transmission provided that the sender's machine produces a transmission report confirming the successful transmission of the total number of pages of the notice; and
- (d) if sent by email, at the time of sending provided that the sender receives confirmation the email has been successfully delivered to an email system accessible to the addressee (whether or not such confirmation is automated).

17. Dispute resolution

17.1 Negotiation

All disputes between the parties must be notified in writing to the other party. If a notice is given under this clause 17.1, each of Diabetes SA and the Entity will appoint a representative to act on their respective behalves, and those representatives will attempt to resolve the dispute by negotiating reasonably and in good faith and attempt to resolve the dispute.

17.2 Mediation

- (a) If the parties are unable to resolve the dispute by negotiation pursuant to clause 17.1 within 10 Business Days of one party notifying the existence of the dispute to the other, the parties agree to refer the dispute to a mediator to be mutually agreed, or in default of agreement within 5 Business Days of a party requesting the others to agree a mediator, to be appointed by the President for the time being of the Law Society of South Australia Inc.
- (b) Mediation will be held in Adelaide within 7 Business Days of the appointment of the mediator.
- (c) The parties will each bear their own costs of mediation, and will equally share the costs of the mediator, unless the mediator otherwise directs, or the parties mutually agreed otherwise.
- (d) If mediation fails to resolve the dispute to the satisfaction of both parties, each party is free to commence legal proceedings to resolve the dispute.

17.3 Interlocutory relief

Nothing in this clause 17 is to be interpreted as preventing either party from obtaining interlocutory relief from an appropriate court if it is reasonably necessary to do so to protect the interests of that party.

18. General

18.1 Amendment

This Agreement can only be amended in writing signed by all the parties and must not be amended in any other manner.

18.2 Entire agreement

This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

18.3 **Relationship**

The relationship between the parties is and will remain that of independent contractors, and nothing in this Agreement constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to an employment relationship or any other form of fiduciary relationship between the parties.

18.4 **Waiver**

No waiver by a party of any breach or default by any other party is effective unless reduced to writing and signed by the party making such waiver, and any such waiver does not constitute a waiver of any other continuing breach or default under this Agreement.

18.5 **Governing law**

This Agreement is governed by the law in force in South Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State and the South Australian Registry of the Federal Court of Australia in respect of all proceedings arising in connection with this Agreement.

18.6 **Assignment and novation**

The Entity may not assign, transfer, mortgage, charge or otherwise encumber any of its rights, entitlements or obligations under this Agreement without the prior written consent of Diabetes SA.

18.7 **Further assurances**

Each party will promptly do all things required by law or reasonably requested by any other party to give effect to this Agreement.

18.8 **Counterparts**

This Agreement can be executed in any number of counterparts and all of those counterparts taken together will be deemed to constitute the same Agreement.

Schedule 1 Agreement Details

Item 1	Approved Researchers	Name of Approved Researcher Address of Research Institute
Item 2	Funding Commencement Date	Click or tap to enter a date.
Item 3	Duration of Funding Period	Click or tap here to enter text.
Item 4	Title and summary of projects	Click or tap here to enter text.
Item 5	Nominated account	BSB: Account Number: Account Name:
Item 6	Address for notices	Diabetes SA Attention: Ms Catherine Hughes, CEO Postal Address: Diabetes SA 159 Sir Donald Bradman Drive, Hilton SA 5033 Phone: 8354 5830 Facsimile: 08 8234 2013 Email: catherine@diabetessa.com.au Entity Attention: Click or tap here to enter text. Postal Address: Click or tap here to enter text.

Email: Click or tap here to enter text.

Telephone: Click or tap here to enter text.

Item 7 Report and
Article Delivery
Timetable

Reports and Articles to be delivered to Diabetes SA in line with the dates below (*select the timeline that applies for the Approved Research*):

For a two-year grant period

Report 1 - Interim Progress Report; 6-months post Agreement execution Click or tap to enter a date.

Report 2 - Annual Progress Report; 12-months post Agreement execution Choose a building block.

Report 3 - Interim Progress Report; 18-months post Agreement execution Click or tap to enter a date.

Report 4 - Final Report*; 24-months post Agreement execution
Click or tap to enter a date.

For a one-year grant period

Report 1 - Interim Progress Report; 6-months post Agreement execution Click or tap to enter a date.

Report 2 - Final Report*; 12-months post Agreement execution
Click or tap to enter a date.

A Diabetes SA Report template will be provided to investigators as part of the Diabetes SA Research Agreement.

Final Reports* should include the financial acquittal and Diabetes SA will also provide the Financial Acquittal template.

Schedule 2 Project Plan

Documents Attached – include the project aims, background and plan including the project timeline and milestones.

Click or tap here to enter text.

Schedule 3 Research Funds and Payment Date

Research Funds: \$50,000 for 1 year

Total Research Funds Awarded: Click or tap here to enter text.

Instalment Payment Dates:

Instalment 1- upon Agreement execution Click or tap here to enter text.

Instalment 2 - 6-months post Agreement execution Click or tap here to enter text.

Research Funds: \$100,000 for 2 years

Total Research Funds Awarded: Click or tap here to enter text.

Instalment Payment Dates:

Instalment 1- upon Agreement execution Click or tap here to enter text.

Instalment 2 - 6-months post Agreement execution Click or tap here to enter text.

Instalment 3 - 12-months post Agreement execution Click or tap here to enter text.

Instalment 4 - 18-months post Agreement execution Click or tap here to enter text.

Signing page

Executed as an agreement

**Executed by The Diabetic Association
of South Australia Incorporated**
(Registration Number A1515) **trading as
Diabetes SA** by its authorised
representative in the presence of:

Signature of witness

Signature of representative

Full name of witness (print)

Full name of representative (print)

Address of witness (print)

Position held by representative (print)

Executed for and on behalf of Institute by
its authorised representative in the
presence of:

Signature of witness

Signature of representative

Full name of witness (print)

Full name of representative (print)

Address of witness (print)

Position held by representative (print)