



Queensland
Government

FINANCIAL INCENTIVE AGREEMENT

**QUEENSLAND-CHINESE ACADEMY OF SCIENCES
COLLABORATIVE SCIENCE FUND**

BETWEEN

STATE OF QUEENSLAND
through the
Department of Environment and Science
(ABN 46 640 294 485)

AND

<RECIPIENT ORGANISATION>
(ABN XX XXX XXX XXX)

PROJECT: <PROJECT NAME>

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THIS AGREEMENT IS MADE

BETWEEN: **STATE OF QUEENSLAND** through the Department of Environment and Science
 (ABN 46 640 294 485)
 ('the Department')

AND: <RECIPIENT ORGANISATION> **(ABN XX XXX XXX XXX)**
 ('the Recipient')

BACKGROUND:

- A. The Department administers the Queensland-Chinese Academy of Sciences Collaborative Science Fund (the Program) which aims to increase and strengthen collaborations between Queensland and Chinese researchers by enabling them to conduct new projects that deliver benefits to Queensland and China through the development of new or improved products, processes or systems that have the potential to be commercialised or have public good applications within the identified priority areas
- B. The Recipient applied for Funding for the Project under the Program.
- C. The Department has agreed to provide the Funding to the Recipient for the Project on the terms of this Agreement.

AGREED TERMS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears:

'Agreement' means this document and any schedules or attachments to it;

'Any Law' means any law operating in the State of Queensland including:

- (a) common law;
- (b) the law of equity; or
- (c) any State or Federal statutory instrument;

'Deputy Director-General' means the Deputy Director-General, Science and Technology Division, Department of Environment and Science;

'Authorised Officer' means the person specified as the authorised officer for the Recipient in relation to Disputes as set out in Item 11 of Schedule 1;

'Background Intellectual Property' means Intellectual Property owned or controlled by the Recipient and the Participants as at the Start Date that is used for, in connection with, or otherwise contributed to the Project;

'Book of Account' means:

- (a) any account, register or financial statement prepared by the Recipient for the Project;
and
- (b) any source document used in the preparation of accounts or financial statements for the Project;

'Business Day' means a day that is not a Saturday, Sunday or public holiday in the place of business of the Parties;

'Claim' includes any claim, action, suit, proceeding, demand, liability, obligation for any cost, loss, injury, damage or expense of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, direct, indirect or consequential, whether at law, in equity, under statute or otherwise;

'Confidential Information' means all information not in the public domain (including data, know how, trade secrets and commercial-in-confidence information) which is communicated from one Party to the other on the expressed or implied understanding that the information is:

- (a) confidential; or
- (b) restricted to being used and/or disclosed for a particular purpose;

'Conflict of Interest' means having an interest (whether personal, financial or otherwise) which conflicts, or may reasonably be perceived as conflicting, with the ability of the Recipient to perform its obligations under this Agreement fairly and objectively;

'Contact Officer' means the person specified as the point of contact for each Party in Item 7 of Schedule 1 or as otherwise notified by one Party to the other Party from time to time in writing;

'Contributions' means the cash contributions made, or to be made to the Project by the Recipient and each of the Participants in accordance with the Contribution Table;

'Contribution Table' means the table attached as Schedule 4 to this Agreement;

'Corporations Act' means the *Corporations Act 2001* (Cth);

'Dispute' means any dispute, controversy or difference between the Parties as to:

- (a) the construction of this Agreement;
- (b) the rights or obligations of a Party under this Agreement; or
- (c) any other matter arising out of or relating to this Agreement including any question regarding the existence, validity or termination of this Agreement;

'Eligible Project Costs' means those costs:

- (a) identified as such in the Program Guidelines; or
- (b) approved as part of the Proposal;

'End Date' means the date on which this Agreement will end, as specified in Item 4 of Schedule 1;

'Final Report' means a Progress Report including the additional material specified in Item 2 of Schedule 5;

'Force Majeure Event' means an unforeseeable event beyond the control of an affected Party that occurs without fault or negligence of the affected Party including:

- (a) acts of God;
- (b) war, riot, insurrection, vandalism or sabotage;
- (c) strike, lockout, ban, limitation of work or other industrial disturbance; and
- (d) law, rule or regulation of any government or governmental agency and executive or

administrative order or act of general or particular application;

‘Formal Public Statement’ means any formal statement or address by the Recipient or on the Recipient’s behalf in relation to the Project which is intended for the public domain, including:

- (a) media releases about the Project;
- (b) discussions about the Project with television or newspaper journalists;
- (c) presentations at conferences about the Project;
- (d) promotional and advertising material; and
- (e) any recording or publication resulting from the Project (including, without limitation, reprints) which is intended to be distributed into the public domain;

‘Funding’ means the money, or any part of it, payable by the Department to the Recipient as specified in Item 5 of Schedule 1;

‘Funds’ means the Funding received by the Recipient under this Agreement;

‘Group Entity’ means any related body corporate or associate (as those terms are defined in the Corporations Act) of the Recipient;

‘GST’ means any tax imposed by or through the GST Legislation;

‘GST Amount’ means the amount of GST that is payable for any taxable supply under this Agreement (to be calculated at the applicable rate of GST at the time of the taxable supply);

‘GST Legislation’ means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related tax imposition Act (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such Acts;

‘Information Privacy Principle’ has the same meaning as in the *Information Privacy Act 2009 (Qld)*;

‘Intellectual Property’ – means any:

- (a) invention or discovery;
- (b) manner, method or process of manufacture;
- (c) drawing or design;
- (d) improvement;

- (e) patent, application for a patent, or right to apply for a patent;
- (f) right of secrecy or confidentiality in respect of any information or document;
- (g) common law or registered trademark; and
- (h) copyright or other rights in the nature of copyright subsisting in any works including reports, software and circuit layouts;

'Milestone Date' means the date by which the Milestone Deliverable must be achieved, as set out in Schedule 3;

'Milestone Deliverable' means the performance criteria set out in Schedule 3 which must be achieved before the corresponding instalment of Funding will be paid;

'Participant' means a participant identified in Item 8 of Schedule 1;

'Party' means a party to this Agreement;

'Payment Claim' means a valid Tax Invoice for an instalment amount as set out in Schedule 3;

'Program' means the Queensland-Chinese Academy of Sciences Collaborative Science Fund;

'Program Guidelines' means the program guidelines attached as Schedule 7;

'Progress Report' means a report presented in the format contained in Schedule 8, as amended and notified by the Department to the Recipient in writing from time to time, and otherwise which includes the material specified in Item 1 of Schedule 5;

'Project' means the project described in Items 1 and 2 of Schedule 1;

'Project Intellectual Property' means the Intellectual Property created or developed by the Recipient and/or the Participants during the course of, or as an outcome of the Project;

'Proposal' means the application submitted by the Recipient to the Department that formed the basis of the approval for the provision of Funding for the Project attached as Schedule 6 (or as otherwise agreed to by the Department in accordance with clauses 4 or 7);

'Record' means any agreement, report, Book of Account, transaction record and operating record relating to the Project; including all information and material necessary to prepare a Report or Payment Claim;

'Report' means a Progress Report, a Final Report or an Update Report as referred to in Schedule 5;

‘Research Program’ means the project plan including the Project activities and expected outcomes set out in Schedule 2;

‘Special Condition’ means any special condition forming part of this Agreement as set out in Item 10 of Schedule 1;

‘Specified Personnel’ means those person identified as such in Item 9 of Schedule 1;

‘Start Date’ means the date this Agreement is signed by the last Party to sign this Agreement;

‘Tax Invoice’ means the same as that term is defined in the GST Legislation;

‘Term’ means the term of this Agreement as defined in Clause 3;

‘Unlawful’ means any act or omission (including wilful misconduct) which is not authorised justified or excused by Any Law; and

‘Update Report’ means a report presented in a format notified by the Department to the Recipient in writing from time to time, which includes the material specified in Item 3 of Schedule 5.

1.2 In this Agreement:

- (a) a reference to an individual or person includes a corporation or other legal entity or, where a person is nominated, the individual occupying that position;
- (b) words importing a gender include any other gender;
- (c) words in the singular include the plural and vice versa;
- (d) headings have been inserted for ease of reference only and are not intended to affect the meaning of this Agreement;
- (e) in the case of any inconsistency between a schedule and a clause in this Agreement, the clause will prevail to the extent of any inconsistency;
- (f) defined terms include other parts of speech and grammatical forms of the defined word or phrase;
- (g) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (h) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (i) a reference to any government department or entity includes any successor or

replacement government entity;

- (j) unless stated otherwise, a reference to a schedule is referring to a schedule to this Agreement; and
- (k) the Parties must, in fulfilling their obligations and exercising their powers under this Agreement, act reasonably and in good faith and in a timely manner.

2. SPECIAL CONDITIONS

2.1 The Parties agree to be bound by the Special Conditions (if any) set out in Item 10 of Schedule 1.

3. TERM

3.1 This Agreement starts on the Start Date and ends on the End Date.

4. PROVISION OF FUNDING

Funding Instalments

4.1 Subject to the Recipient's compliance with terms of this Agreement, the Department shall pay the Funding to the Recipient for the Project at the times and in the amounts set out in Schedule 3, subject to:

- (a) Clause 4.2;
- (b) the completion of the relevant Project activities set out in Schedule 2 and referable to the relevant Milestone Deliverables set out in Schedule 3; and
- (c) within a reasonable time of receiving a valid Payment Claim.

4.2 The Department may, by notice in writing, withhold payment of any amount where it reasonably believes the Recipient has not complied with this Agreement including the requirements of Schedule 3 or 4 or is unable or unwilling to undertake the Project.

4.3 A notice under clause 4.2 will contain the reasons for any payment being withheld and the steps the Recipient can take to address those reasons.

4.4 The Department will pay the withheld amount once the Recipient has satisfactorily addressed the reasons contained in a notice under clause 4.2.

4.5 The Recipient agrees to spend the Funding for the purpose of undertaking the Project only in accordance with this Agreement.

4.6 If any of the Funding has been spent other than in accordance with this Agreement or any amount of the Funding is additional to the requirements of the Project, the Recipient

agrees to repay that amount to the Department.

4.7 The amount to be repaid under clause 4.6 may be deducted by the Department from subsequent payments of the Funding.

Effect of breach on payment of instalments

4.8 If the Recipient breaches any of the terms of this Agreement, the Department may do any or all of the following:

- (a) not pay the Recipient any Funding until the breach is remedied to the satisfaction of the Department;
- (b) by notice in writing to the Recipient, require the Recipient to repay:
 - (i) any Funds that are unspent;
 - (ii) any Funds that have been spent otherwise than in accordance with the terms of this Agreement; and
 - (iii) the amount of the Funds which exceeds the total cash Contributions that have been made by the Recipient and the Participants to the Project as at the date of the notice;
- (c) vary the amount of Funding for the Project, or the amount of the Funding instalments; and
- (d) terminate the Agreement in accordance with Clause 16 if the provisions of that clause have been satisfied.

4.9 The Department may, in its absolute discretion, defer or reduce payment of a Funding instalment where a Report reveals that the Recipient holds unspent Funds. The Department will pay the amount of a Funding instalment deferred or reduced pursuant to this clause within a reasonable time of the Department receiving from the Recipient evidence of expenditure of the unspent Funds in the form of an official financial acquittal statement.

4.10 The Department's obligation to pay an instalment of Funding is subject to all information contained in the Proposal and all Reports being complete, accurate and not misleading, and all Reports being completed to the satisfaction of the Department. The Department regards inaccurate and misleading information as including, but not being limited to, claiming fictitious track records, inflating the cost of services obtained from other sources and false claims in any publication or other Record, for example describing a paper as being

“in press or accepted” even if it has only been submitted.

Payment is not an admission

4.11 Any payment to the Recipient by the Department:

- (a) will not constitute an admission or acceptance by the Department that the Recipient has complied with its obligations with this Agreement; and
- (b) will not release the Recipient from its obligations under this Agreement, and the Department reserves its rights in this regard.

No further obligation

4.12 The Recipient acknowledges that the Department is under no obligation to provide additional funding for the Project, unless the Department in its absolute discretion determines otherwise.

5. PAYMENT CLAIMS AND REPORTS

5.1 The Recipient must give the Department a Payment Claim for each Milestone Deliverable in Schedule 3 (for which a Funding instalment is payable under Clause 4) no later than the Milestone Date.

5.2 The Recipient must give to the Department:

- (a) a Progress Report:
 - (i) for each Milestone Deliverable in Schedule 3, which requires a Progress Report to be submitted, no later than the relevant Milestone Date;
 - (ii) at any other time during the Term of the Agreement, within 20 Business Days of a written request from the Department for a Progress Report; and
- (b) a Final Report on or before the relevant Milestone Date specified in Schedule 3.

5.3 At any time after the End Date until the second anniversary from the End Date, the Department may request (in writing) that the Recipient provide an Update Report. The Department can only exercise its right to make a request for an Update Report under this clause once during the period referred to in this clause.

5.4 The Recipient shall provide an Update Report within 40 Business Days of receiving the written request from the Department.

- 5.5 If the Department is not satisfied with a submitted Report, the Department may require the Recipient to provide further information about any matter relating to the Report or to update and resubmit the Report, within 20 Business Days of receiving the Department's request.
- 5.6 If the Department requests further information from the Recipient about any matter relating to a Payment Claim, the Recipient must provide that information within 20 Business Days of receiving the Department's request.
- 5.7 The Recipient is not required to disclose personal information about an individual to the Department when such disclosure will amount to a breach of any applicable privacy legislation.

6. GST

- 6.1 Unless otherwise stated, all amounts payable are exclusive of GST.
- 6.2 A Party need not make a payment for a taxable supply until it receives a Tax Invoice (or adjustment note) for that supply.
- 6.3 The Parties agree to use all reasonable endeavours to assist each other in meeting their lawful obligations under the GST Legislation.

7. RECIPIENT'S OBLIGATIONS

Conduct of Project

- 7.1 The Recipient must:
- (a) conduct the Project substantially in accordance with the Research Program and the Proposal, or as otherwise approved by the Department in writing;
 - (b) provide the information required pursuant to Schedule 3 and Schedule 5 for each Payment Claim;
 - (c) exercise due care and skill in carrying out the Project;
 - (d) take all reasonable steps to minimise delay in completing the Project;
 - (e) ensure that the Project remains eligible according to the eligibility criteria in the Program Guidelines throughout the Term of the Agreement;
 - (f) ensure that the Recipient and each Participant provides the Contributions to the Project in accordance with the Contribution Table, unless otherwise agreed to by the Department in writing;
 - (g) ensure that the Contributions made by the Recipient and the Participants to the

Project throughout the Term of the Agreement satisfy the funding principles in the Program Guidelines;

- (h) spend the Funds and ensure that the Contributions of the Recipient and each of the Participants are applied:
 - (i) only on Eligible Project Costs incurred on or after the Start Date; and:
 - (ii) substantially in accordance with the budget in the Proposal, unless otherwise agreed to by the Department in writing.

Specified Personnel

7.2 The Recipient must ensure that it employs or otherwise procures the Specified Personnel to carry out the Project throughout the Term.

7.3 The Recipient may replace the Specified Personnel during the Term without the approval of the Department, provided that the Recipient:

- (a) ensures that any such replacement personnel have the time commitment, qualifications and competency to carry out the Project;
- (b) ensures that any such replacement personnel have similar expertise and ability to those of the Specified Personnel they are to replace; and
- (c) notifies the Department in writing within 15 Business Days of the name and qualifications of the person(s) replacing the Specified Personnel.

Obligation to notify

7.4 The Recipient must notify the Department within 10 Business Days of becoming aware of any of the following developments:

- (a) a material breach by the Recipient of any provision of this Agreement;
- (b) a change of or cessation of work by a Specified Personnel;
- (c) the Recipient being approved to receive financial assistance for the Project from another Commonwealth, State or Territory government source or agency, including the amount of the funding and the name of the program under which it was provided; or
- (d) any other change which will materially affect the outcome of the Project or the Recipient's continuing eligibility under the Program Guidelines.

8. RECORDS

- 8.1 The Recipient agrees to maintain complete and accurate Records for the Project including, without limitation:
- (a) records that allow the audit of all Project costs (including Eligible Project Costs) incurred by the Recipient;
 - (b) records that show any funding made available to the Project (including the source, amount and timing of such funds);
 - (c) records that track the Project activities and expected outcomes and all steps undertaken by the Recipient for the purposes of meeting its obligations under this Agreement; and
 - (d) any other records relating to the Project which are reasonably required by the Department from time to time.
- 8.2 The Recipient must provide any Record to the Department within 20 Business Days of being requested to do so.
- 8.3 The Recipient must, if requested to do so by the Department and at its own expense:
- (a) have its Books of Account audited at the end of the Recipient's financial year; and
 - (b) provide a copy of its audited Books of Account to the Department within 80 Business Days of the Recipient's end of financial year.
- 8.4 The Recipient must allow the Department, its employees, agents and contractors, access to the Recipient's premises at a mutually agreeable time (but not later than 20 Business Days after receiving written notice from the Department that such access is required) to enable the Department and its employees, agents and contractors to:
- (a) inspect and copy any Records;
 - (b) discuss with the Recipient, any matter pertaining to the Project and/or the Recipient's compliance with its obligations under this Agreement.
- 8.5 The Recipient's obligations under clauses 8 and 9 are subject to any agreement between the Recipient and a Participant which restricts access and can be justified to the satisfaction of the Department on the grounds of commercial sensitivity (including Intellectual Property considerations).
- 9. CONFIDENTIAL INFORMATION**
- 9.1 Subject to Clause 9.2, where Confidential Information is disclosed from one Party to another under this Agreement, the Party receiving the Confidential Information must not

(except when authorised by Any Law or the other Party):

- (a) disclose Confidential Information coming to their knowledge through this Agreement;
- (b) use or disclose any Confidential Information provided under this Agreement other than for the purpose for which it is originally disclosed; or
- (c) use any Confidential Information in a direct or indirect way, or in a manner inconsistent with this Agreement so as to cause loss, injury or damage to the other Party.

9.2 The Recipient agrees that the Department may publicly disclose:

- (a) the name of the Recipient;
- (b) details of the Project, subject to:
 - (i) such disclosure not infringing or interfering with the rights of the Recipient and the Participants in regard to the Background Intellectual Property and the Project Intellectual Property; and
 - (ii) other commercial sensitivities and Intellectual Property considerations which are to be determined in consultation with the Recipient prior to such disclosure;
- (c) details of the Funding provided under this Agreement;
- (d) photos and videos provided pursuant to clause 24; or
- (e) any information which is required to be disclosed under Any Law.

9.3 The Department is not in default of Clause 9.1 if the Confidential Information:

- (a) is disclosed by the responsible Minister administering the Department from time to time;
- (b) is disclosed by the Department, in response to a request by a House or Committee of the Parliament of the State of Queensland; or
- (c) is shared by the Department within the Department or with another agency, where this serves the Department's legitimate interests.

10. ACKNOWLEDGEMENT OF ASSISTANCE

10.1 The Recipient agrees to acknowledge the Department's support in material published in connection with the Project.

10.2 The Recipient agrees to make its officers available for media opportunities.

10.3 The Recipient must, in making any Formal Public Statement about the Project (whether during the Term of this Agreement or after its expiry), include an acknowledgement of the Program and the Funding received from the Department.

10.4 The Recipient must notify the Department prior to finalising the following types of Formal Public Statement:

- (a) media statement about the Project; or
- (b) discussions about the Project with television or newspaper journalists.

The Department at its discretion may elect to participate in the Formal Public Statement opportunity.

10.5 The Recipient will not represent, claim or hold out in any way that the Department is a party to the delivery of the Project, other than as a financial contributor.

11. ETHICAL PRACTICES

11.1 The Recipient, in undertaking the Project, must ensure, where relevant, that it:

- (a) complies with the National Health and Medical Research Council guidelines;
- (b) complies with all applicable ethical Codes (including the Code of Ethical Practice for Biotechnology in Queensland if the Project involves biotechnology);
- (c) clears the activities it undertakes in connection with the Project with all relevant ethical committees prescribed by the Recipient's research rules;
- (d) does not undertake any activity with any party that the Recipient becomes aware of that does not comply with Clause 11; and
- (e) whenever reasonably required by the Department, promptly furnish to the Department a written certification of compliance with the requirements of this clause.

12. DISCLAIMER, RELEASE AND INDEMNITY

12.1 The Recipient carries out the Project entirely at its own risk.

12.2 To the full extent permitted by Any Law, the Department disclaims any and all liability for any Claim brought against, made upon or incurred by the Recipient in carrying out the Project, unless that Claim arose as the result of any breach, fault, negligent or Unlawful act or omission by the Department, its employees, officers or agents.

12.3 To the full extent permitted by Any Law, the Recipient releases and indemnifies the Department, its employees, officers and agents from and against any Claim which may be

brought against, made upon or incurred by the Department, whether by the Recipient or a third party, which arises directly or indirectly as a result of:

- (a) any breach of this Agreement by the Recipient;
- (b) any negligent or Unlawful act or omission by the Recipient, a Group Entity or a Participant in relation to the Recipient's, a Group Entity's or Participant's performance of the Project;
- (c) the Recipient's performance of this Agreement or any other agreement relating to this Project; or
- (d) any infringement (or alleged infringement) of Intellectual Property rights by the Recipient, its Group Entity or Participants in the course of, or incidental to, performing the Project.

12.4 The Recipient's obligation to indemnify the Department will reduce proportionally to the extent any act or omission involving fault on the part of the Department contributed to the claim, loss or damage.

12.5 The Department will not in any circumstances be liable for any loss of revenue, profit, opportunity, goodwill, reputation or any indirect or consequential loss in connection with the Project or the Agreement.

12.6 Subject to clause 12.4, the Department's liability in connection with this Agreement is limited in aggregate to the Funding amount.

12.7 For the purpose of this Clause 12, a reference to the Department or the Recipient includes that Party's employees, officers and agents.

13. INSURANCE

13.1 The Recipient will take out and maintain the insurances identified in Item 6 of Schedule 1 of this Agreement throughout the Term of this Agreement.

13.2 The Recipient must give copies of the certificates of currency for the insurance policies required by Clause 13.1 to the Department within 20 Business Days of a written request by the Department to do so.

14. DELAY

14.1 Within 20 Business Days of becoming aware that a Project activity in the Research Program will not be undertaken or that there will be a substantial delay to the Project, the Recipient must notify the Department in writing of the impact of the delay on the progress of the

Project, the actions (if any) it has taken or intends to take to address the cause of the delay and, if applicable, the projected date by which the project deliverable will be achieved.

14.2 Nothing in this Clause 14 shall affect the right of the Department to terminate this Agreement if the Recipient fails to conduct the Project substantially in accordance with the Research Program (the timing and output of the Project activities) and the Proposal, or as otherwise approved by the Department in writing.

15. FORCE MAJEURE

15.1 If a Party is prevented from or delayed in performing their obligations (other than to pay money) because of a Force Majeure Event, the affected Party must:

- (a) notify the other Party as soon as possible after the Force Majeure Event occurs; and
- (b) do all things necessary to mitigate and/or remove the effects of the Force Majeure Event.

15.2 Notice of a Force Majeure Event must include:

- (a) the full particulars of the Force Majeure Event;
- (b) the effect of the Force Majeure Event on the affected Party's performance of their obligations;
- (c) the anticipated period for which the Force Majeure Event will continue; and
- (d) the action the affected Party intends to take (if any) to mitigate or remove the effect of the Force Majeure Event.

15.3 Subject to clauses 15.1 and 15.2 the obligations of both Parties under this Agreement are suspended until such time as a Force Majeure Event ends.

15.4 Either Party may terminate this Agreement if the affected Party is prevented from or delayed in performing their obligations because of a Force Majeure Event for at least 20 Business Days.

16. TERMINATION

16.1 The Department may immediately terminate this Agreement by notice in writing if the Recipient:

- (a) commits a material breach of this Agreement where the Department reasonably considers the breach is not capable of remedy;
- (b) has submitted information in support of the Project or a Payment Claim which is found

to have been false or misleading in a material particular;

- (c) has failed to maintain satisfactory progress towards completion of the Project;
- (d) commits a breach which is capable of being remedied, but the Recipient fails to remedy the breach within 10 Business Days after receiving a notice to remedy the breach from the Department specifying the breach;
- (e) has become bankrupt or insolvent, entered into a scheme of arrangement with creditors or come under any form of external administration;
- (f) fails to resolve a Conflict of Interest in accordance with clause 27.4; or
- (g) withdraws from or refuses to continue with the Project, without sufficient justification (in the opinion of the Department acting reasonably).

16.2 A material breach under Clause 16.1 of this Agreement includes a breach of any of the Recipient's obligations under clauses 7, 8, 9, 11, 13 or a Special Condition.

16.3 The Recipient may terminate this Agreement by notice in writing to the Department:

- (a) at any time before the first Milestone Date, where no Funding has been paid or is payable on or before the termination; or
- (b) upon the Department committing a material breach of this Agreement and:
 - (i) the breach is not capable of being cured; or
 - (ii) the breach is capable of being cured, but the Department fails to remedy the breach within 20 Business Days after receiving a notice to remedy the breach from the Recipient specifying the breach.

16.4 The Department is not required to pay any Funding to the Recipient if this Agreement is terminated under Clause 16.3 (a).

16.5 The Department may at any time, by reasonable written notice, terminate this Agreement for convenience, including for a machinery of government change.

17. RIGHTS ON TERMINATION

17.1 Upon termination or expiration of the Agreement, the Recipient must deliver to the Department within 20 Business Days:

- (a) all Reports due under this Agreement at the date of termination or expiration; and
- (b) the Recipient must repay any unspent or legally uncommitted Funds, or Funding not spent in accordance with this Agreement, which will be a debt due to and recoverable by the Department.

17.2 Termination of this Agreement will not affect any Claim or action either Party may have against the other by reason of any antecedent breach of this Agreement and will not relieve either Party of any obligation under this Agreement which is expressed to continue after termination.

17.3 If this Agreement is terminated by the Department under clause 16.5, the Recipient:

- (a) must immediately stop the conduct of the Project and take all available steps to minimise loss resulting from the termination of the Agreement;
- (b) will be entitled to submit a Payment Claim for any part of the Funding due and owing for Eligible Project Costs incurred for Project activities satisfactorily performed under this Agreement at the date of the notice; and
- (c) will be entitled to reasonable costs (if any) that have been or will be incurred by the Recipient as a direct result of the termination of the Agreement and which the Recipient cannot recoup or avoid.

17.4 The Parties agree to negotiate the amount of the reasonable costs in good faith, and in the event that the Parties cannot reach agreement, the Department may determine the reasonable costs in its absolute discretion.

17.5 For the avoidance of doubt, the amount payable by the Department pursuant to clause 17.3, in addition to the Funds paid, will not exceed the maximum Funding payable pursuant to this Agreement.

18. ACQUITTAL OF FUNDS

18.1 At any time within 6 months from the End Date or the date of termination of this Agreement (as applicable), other than termination for convenience under Clause 16.5, the Department may require the Recipient (by notice in writing) to repay:

- (a) any Funds that at the End Date or date of termination (as applicable) are unspent;
- (b) any Funds that have been spent otherwise than in accordance with the terms of this Agreement;
- (c) where the Agreement is terminated pursuant to clause 16.1(f), any Funds paid up to the date of termination.

18.2 Any amount payable under clauses 4.8(b) or 18.1 is a debt due to the Department (without further proof of the debt being necessary), payable within 20 Business Days of the notice given under the relevant clause.

19. SURVIVAL OF CLAUSES

19.1 The following clauses will survive termination or expiration of this Agreement:

- (a) Clause 5.3 (Update Report);
- (b) Clause 8 (Records);
- (c) Clause 9 (Confidential Information);
- (d) Clause 10 (Acknowledgement of Assistance);
- (e) Clause 12 (Disclaimer, Release & Indemnity);
- (f) Clause 13 (Insurance);
- (g) Clause 17 (Rights on Termination);
- (h) Clause 18 (Acquittal of Funds); and
- (i) Clause 24 (Intellectual Property).

20. DISPUTE RESOLUTION

20.1 Subject to Clause 20.3, the Parties agree not to commence any legal proceedings in respect of any Dispute arising under this Agreement, which cannot be resolved by informal discussion, until the procedure provided by this Clause 20 has been used.

20.2 The Parties agree that any Dispute arising during the Term of this Agreement is dealt with as follows:

- (a) the Party claiming that there is a Dispute will send the other Party a written notice stating that:
 - (i) it is a notice under this Clause 20.2(a) and
 - (ii) specifying in reasonable detail:
 - (A) the nature of the Dispute; and
 - (B) the matters on which the Parties are unable to agree at the date of the notice of the Dispute;
- (b) the Parties will try to resolve the Dispute through direct negotiation, using all reasonable endeavours and acting in good faith to resolve the Dispute by joint discussions, in accordance with the following stepped escalation process:
 - (i) no later than 10 Business Days after receipt of a notice under Clause 20.2(a), each of the Parties' Contact Officers (and any other staff of the Parties directly involved in the Project that may assist with resolution of the Dispute) shall meet

to attempt to resolve the Dispute;

- (ii) if the Dispute is not resolved under Clause 20.2(b)(i) within 20 Business Days, the Dispute must be referred to the Deputy Director-General and the Authorised Officer for resolution within 30 Business Days from the date of referral.

20.3 This Clause 20 does not apply if:

- (a) either Party commences legal proceedings for urgent interlocutory relief; or
- (b) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by the Recipient or Major Participants.

20.4 Despite the existence of a Dispute, each Party must (unless otherwise agreed in writing) continue to perform its obligations under this Agreement.

21. AGREEMENT MANAGEMENT

21.1 The Parties nominate the persons identified in Item 7 of Schedule 1 as the Contact Officers for the day to day management of this Agreement.

21.2 A Party may change its Contact Officer for the Agreement by notice to the other Party.

22. NOTICES

22.1 Any notice or other communication to be given under this Agreement must be in writing and sent to the respective addresses set out in Item 7 of Schedule 1.

22.2 Notices will be deemed to have been given:

- (a) if mailed – 2 Business Days after posting;
- (b) if delivered – on the date of delivery; or
- (c) if emailed – on the date that receipt of the email is acknowledged by the recipient, except that a notice that is delivered or emailed after 5:00 pm on any day, will be deemed to be received on the next Business Day.

23. VARIATION AND PRECEDENCE OF DOCUMENTS

23.1 This Agreement may only be varied by agreement in writing signed by both Parties.

23.2 If any part of this Agreement conflicts with any other part, that part higher in the following list shall take precedence:

- (a) the Special Conditions in Item 10 of Schedule 1;
- (b) the terms and conditions contained in the clauses of the Agreement;
- (c) the schedules; and

(d) the Proposal.

24. INTELLECTUAL PROPERTY

24.1 Nothing in this Agreement affects a Party's Intellectual Property rights existing as at the Start Date.

24.2 Subject to 24.4 all rights in and to the Project Intellectual Property shall vest in the Recipient.

24.3 The Department hereby expressly disclaims any legal or equitable interest in the Project Intellectual Property.

24.4 The Recipient grants to the Department a perpetual, non-exclusive, royalty-free licence (including right of sublicense) to use, adapt, reproduce, publish and exploit any photos and videos either:

(a) comprised within Project Intellectual Property; or

(b) produced by or on behalf of the Recipient for publicity or media purposes;

for the purposes of this Agreement and for any related purpose.

24.5 The Recipient expressly consents, and will ensure that its employees provide express written consent, to the exercise of rights by the Department as contemplated in clause 24.4, in relation to the personal information and likeness of the Recipient and/or its employees comprised in any photos and videos.

24.6 The Recipient will use reasonable endeavours to obtain the express written consent of any other person or third party, to the exercise of rights by the Department as contemplated in clause 24.4, in relation to the personal information and likeness of the other person or third party comprised in any photos and videos.

24.7 Upon request by the Department, the Recipient must promptly provide copies of the express written consents obtained pursuant to clause 24.5 and 24.6.

24.8 Intellectual Property rights in Reports vests upon creation in the Department.

25. GENERAL PROVISIONS

25.1 **Entire Agreement** - This Agreement constitutes the entire agreement between the Parties and supersedes all communications and negotiations (oral and written) between the Parties.

25.2 **No Assignment** – The Recipient may not assign the Agreement or any of the benefits or

obligations under the Agreement without the prior written consent of the Department.

25.3 **Subcontracting** – The Recipient may not subcontract any part of its obligations under this Agreement without the prior written consent of the Department.

25.4 **Relationship** – The Parties agree that no employment relationship, agency or partnership exists between the Department and the Recipient.

25.5 **Jurisdiction** – This Agreement is governed by the law of the State of Queensland and the Parties agree to submit to the jurisdiction of the courts of the State of Queensland.

25.6 **Waiver** – No right under this Agreement will be deemed to be waived except by notice in writing agreed by the waiving Party. A failure by a Party to enforce at any time any provision of this Agreement will not constitute a waiver of the Party's rights in respect of the provision.

25.7 **Compliance with laws** – The Recipient and all Participants must comply with all relevant laws that may be applicable to its activities, including the *Biodiscovery Act 2004*.

25.8 **Costs** - The Parties will pay their own costs (including legal costs), expenses and disbursements of and incidental to the preparation, execution and stamping of this Agreement.

25.9 **Time** - Any act, matter or thing required under this Agreement to be done on a day which is not a Business Day must be done on the next succeeding Business Day.

25.10 **Privacy** - When dealing with Personal Information in performing their obligations, the Parties agree not to do anything which, if done by the Department, would be a breach of an Information Privacy Principle.

25.11 **Corporate Existence** – The Recipient must notify the Department within 30 Business Days of when it becomes aware of any actual or proposed change in control of the Recipient.

26. COUNTERPARTS

26.1 This Agreement may be executed in two (2) counterparts, each of which, when executed and delivered, shall be deemed an original, but all of which shall constitute one and the same instrument.

26.2 Delivery of an executed counterpart by email delivery in portable document form (PDF) shall be equally effective as delivery of a manually executed counterpart thereof.

26.3 Any Party delivering an executed counterpart of this Agreement by PDF shall also deliver one (1) manually executed counterpart thereof, but failure to do so shall not affect the

validity, enforceability or binding effect of this Agreement.

27. REPRESENTATIONS OF RECIPIENT AND CONFLICT OF INTEREST

27.1 The Recipient represents and warrants to the Department that:

- (a) the representations and information contained in the Proposal are true, correct and do not contain any material omissions;
- (b) the Recipient is aware that the Department has relied on the representations and information contained in the Proposal; and
- (c) if at any time the Recipient becomes aware that a representation or information contained in the Proposal is no longer true and correct, or contains a material omission, the Recipient will immediately notify the Department in writing.

27.2 The Recipient warrants that, to the best of its knowledge and belief after making diligent inquiries, at the time of submitting its Proposal, neither it nor its Specified Personnel have or are likely to have a Conflict of Interest in the performance of this Agreement.

27.3 The Recipient must not, and must take all reasonable measures to ensure its Specified Personnel do not, engage in any activity or obtain any interest in conflict with performance of this Agreement.

27.4 If a Conflict of Interest arises in respect of the Recipient or its Specified Personnel, whether actual or perceived, the Recipient undertakes to immediately notify the Department and promptly consult with the Department to agree steps to resolve or otherwise deal with the Conflict of Interest. The Recipient must carry out the agreed steps within a reasonable timeframe to resolve the Conflict of Interest. If the Recipient fails to notify or consult with the Department or carry out the agreed steps within a reasonable timeframe, or the Conflict of Interest is not capable of resolution, the Department may suspend or terminate this Agreement in accordance with clause 16.1(e).

SCHEDULE 1 – PROJECT DETAILS

1.	Project title: (clause 1.1)	
2.	Project Description: (clause 1.1)	
3.	Start Date:	The date this Agreement is signed by the last Party to sign this Agreement.
4.	End Date: (clause 1.1)	The earlier of: (a) three months after the Final Report Milestone Date; or (b) three calendar months after the date of submission of the Final Report by the Recipient.
5.	Amount of Funding (exclusive of GST): (clause 1.1)	
6.	Insurance cover: (clause 13)	<ul style="list-style-type: none"> • Public liability insurance for the amount of \$10,000,000, in respect of each claim. • Workers' compensation insurance for the Recipient's employees in accordance with the <i>Workers' Compensation and Rehabilitation Act 2003 (Qld)</i>, as amended 29 October 2013. • General insurance in respect of all property (in which the Recipient has an insurable interest) for the full reinstatement value, that is used in connection with the Project, including all buildings, fixtures and fittings and contents contained thereon or therein, against all loss and damage caused by or resulting from accident, fire, theft, malicious damage or storms and any other insurable risk which property of a similar nature is commonly insured against. • Professional indemnity insurance for the amount of \$10,000,000, in respect of each claim, covering the Recipient and its employees.

7.	Contact Officers: (clause 21.1)	For the Department: Julia Playford Executive Director, Science Strategy and Partnerships Department of Environment and Science Level 3, EcoSciences Precinct Block B 41 Boggo Road, Dutton Park QLD 4102 GPO BOX 2454, Brisbane QLD 4001 Telephone: (07) 3170 5850 julia.playford@des.qld.gov.au For the Recipient:
8.	Participants: (clause 1.1)	
9.	Specified Personnel: (clause 7.2)	
10.	Special Conditions: (clause 2)	
11.	Authorised Officer: (clause 1.1)	

SCHEDULE 2 – RESEARCH PROGRAM

Research Period 1		Start Date Completion date: 6 months (less one day) from the Start Date
Description of Project activities		
Expected outcomes		
Research Period 2		Commencement date: 6 months from the Start Date Completion date: 12 months (less one day) from the Start Date
Description of Project activities		
Expected outcomes		
Research Period 3		Commencement date: 12 months from the Start Date Completion date: 18 months (less one day) from the Start Date
Description of Project activities		
Expected outcomes		
Research Period 4		Commencement date: 18 months from the Start Date Completion date: 24 months (less one day) from the Start Date
Description of Project activities		
Expected outcomes		

SCHEDULE 3 – AGREEMENT MILESTONES

NO.	MILESTONE DELIVERABLE *	MILESTONE DATE	INSTALMENT AMOUNT (EXC GST)	GST AMOUNT	INSTALMENT AMOUNT (INC GST)
1	Execution of Financial Incentive Agreement	N/A	\$50,000	\$5,000	\$55,000
2	Submission of <i>Progress Report on Research Period 1</i>	7 calendar months from the Start Date	\$0	\$0	\$0
3	Submission of <i>Progress Report on Research Period 2</i>	13 calendar months from the Start Date	\$50,000	\$5,000	\$55,000
4	Submission of <i>Progress Report on Research Period 3</i>	19 calendar months from the Start Date	\$0	\$0	\$0
5	Submission of <i>Final Report on Research Periods 1 – 4</i>	25 calendar months from the Start Date	\$25,000	\$2,500	\$27,500
			\$125,000	\$12,500	\$137,500

SCHEDULE 4 – CONTRIBUTION TABLE

Contributions Year	DES	Queensland- based Applicant	Queensland Partner(s)	CAS	CAS Institute	China Partner(s)	TOTAL
Year 1 Total	\$50,000			\$50,000			
Year 2 Total	\$75,000			\$75,000			
PROJECT TOTAL	\$125,000			\$125,000			

SCHEDULE 5 – INFORMATION AND MATERIAL REQUIRED FOR REPORTS

Item 1 – Progress Report

S5.1 A Progress Report must be in the format contained in Schedule 8 (or as amended from time to time by the Department upon the Recipient receiving written notice of such amendment), and include the following information:

- (a) an outline of Project activities undertaken and outcomes achieved during the relevant Research Program research period(s);
- (b) an outline of any Project activities planned for the relevant Research Program reporting period that did not take place, the reasons for this, and any plans to rectify;
- (c) the total expenditure by the Recipient on the Project claimed as Eligible Project Costs to date;
- (d) evidence of expenditure on the Project in the form of an official financial statement showing expenditure claimed by the Recipient as Eligible Project Costs;
- (e) the amount of any unspent Funds, the reason why the unspent Funds have not been spent, and a prediction of when the Recipient expects that the unspent Funds will be spent;
- (f) details of the amount and type of Contribution made by the Recipient and each of the Participants to the Project;
- (g) any adverse matter which may materially affect the Project or the Recipient;
- (h) a declaration signed by the Contact Officer testifying as to the truth and veracity of the information submitted in support of the claim; and
- (i) any other information and material reasonably requested by the Department relating to the Project.

Item 2 – Final Report

S5.2 A Final Report is a Progress Report in the format contained in Schedule 8 (or as amended from time to time by the Department upon the Recipient receiving written notice of such

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amendment), and including the following additional information:

- (a) an outline of the work on the Project from the Start Date to the date of completion of the Final Report;
- (b) a summary of the key achievements of the Project;
- (c) an outline of how the Project has contributed to the Recipient's future development; facilitated the collaboration between partners on the Project; and benefited Queensland;
- (d) evidence of the amount and type of Contribution made by the Recipient and each of the Participants to the Project.

Item 3 – Update Report

S5.3 An Update Report shall include any information pertaining to the Project that is reasonably requested by the Department.

S5.4 The Recipient is only required to provide information in an Update Report which:

- (a) is readily available to the Recipient;
- (b) can be obtained using the Recipient's reasonable endeavours; and
- (c) is not subject to obligations of confidentiality owed to any third parties.

SCHEDULE 6 – PROPOSAL

(AS ATTACHED)

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SCHEDULE 7 – PROGRAM GUIDELINES

(AS ATTACHED)

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SCHEDULE 8 – PROGRESS REPORT

The Progress Report template will be made available online via the Department's SmartyGrants site.

FINANCIAL INCENTIVE AGREEMENT

Q-CAS COLLABORATIVE SCIENCE FUND

EXECUTED AS A DEED by the Parties on the dates set out below.

SIGNED for and on behalf of **State of Queensland**

through the Department of Environment and

Science (ABN 46 640 294 485) by:

.....
(signature)

..... (name)

..... (position)

A duly authorised person, in the presence of:

.....
(date)

.....
(signature of witness)

FINANCIAL INCENTIVE AGREEMENT

Q-CAS COLLABORATIVE SCIENCE FUND

SIGNED for and on behalf of **<RECIPIENT ORGANISATION>** (ABN: XX XXX XXX XXX) by:

.....
(signature)

..... (name)

..... (position)

A duly authorised person, in the presence of:

.....
(date)

.....
(signature of witness)