**BIODISCOVERY BENEFIT SHARING AGREEMENT**

***Between***

**THE STATE OF QUEENSLAND**

***and***

**[BIODISCOVERY ENTITY]**

**Biodiscovery Benefit Sharing Agreement**

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**THIS AGREEMENT** is made on 2021

**BETWEEN** **The State of Queensland** (the “**State**”)

**AND** The party specified in **Item 1** of **Schedule 1** (the “**Biodiscovery Entity**”).

## 

## RECITALS

1. The State wishes to facilitate the development of the Queensland biodiscovery industry for the benefit of Queensland’s community and economy.
2. The Biodiscovery Entity wishes to conduct Biodiscovery on Native Biological Material collected from Queensland.
3. The entry into this Agreement is governed by the Act.
4. Both the State and the Biodiscovery Entity wish to capture an equitable share of the Benefits of Biodiscovery derived from the Biodiscovery.
5. The State agrees to allow the Biodiscovery Entity to use Native Biological Material for Biodiscovery and the Biodiscovery Entity agrees to provide Benefits of Biodiscovery to the State on the terms and conditions set out in this Agreement.

**IT IS AGREED**

# INTERPRETATION

## Definitions

## In this Agreement:

* 1. **"Act"** means the *Biodiscovery Act* *2004* *(Qld)* and any other code, regulation or protocol established by virtue of the *Biodiscovery Act* *2004 (Qld).*
  2. **“Agreement”** means this biodiscovery benefit sharing agreement including all Schedules and annexures to it.
  3. **"Benefits of Biodiscovery"** has the meaning given to it in the Act and includes, but are not limited to, the monetary and non-monetary benefits as described in the Act, and may also include:
     1. overseas or interstate scientists working in Queensland;
     2. conducting field, clinical and product trials in Queensland;
     3. discovery of new species and increased taxonomic information;
     4. creation of databases and distribution maps that will assist in the management of the Queensland ecosystem;
     5. creation of new industries and employment opportunities;
     6. funding and employment of research and support staff in Queensland;
     7. advancing scientific knowledge and the development of new species;
     8. scientific training; and
     9. ex situ and in situ propagation of rare and threatened species.
  4. **"Biodiscovery"** has the meaning given to it in the Act.
  5. **“Biodiscovery Research”** has the meaning given to it in the Act.
  6. **“Business Day”** means a day other than a Saturday, Sunday, bank or public holiday in Brisbane, Queensland, Australia.
  7. **“Code of Ethics”** means any applicable ethical code approved by the Department, as amended from time to time.
  8. **"Collection Authority"** means:
     1. the authority granted to the Biodiscovery Entity in accordance with the Act;
     2. any relevant permit or authority in existence prior to the Act which authorises collection within the scope of the Act; or
     3. any other permit authorising the collection of Native Biological Material.
  9. **“Collection Protocol”** has the meaning given to it in the Act.
  10. **“Commencement Date”** means the date specified in Item 2 of Schedule 1.
  11. **“Commercialise”** has the meaning given to it in the Act and **“Commercialisation”** has a corresponding meaning.
  12. **“Commercialisation Activities”** has the meaning given to it in the Act.
  13. **“Commercialisation Receipts”** means:
      1. the value of any monetary benefits or consideration provided to, received by or for the benefit of the Biodiscovery Entity (or on its behalf) after the commencement of the Act in relation to, or in any way connected with Commercialisation involving Native Biological Material, including but not limited to:
         1. transferring, delivering or providing access to Intellectual Property, Samples or Products; or
         2. assigning or granting rights in Intellectual Property, Samples or Products; or
         3. Disposing of any Intellectual Property (arising from Biodiscovery of the Native Biological Material),

(but not including funds received for the explicit purpose of research); and

* + 1. in respect of Products - Sales of those Products occurring after the commencement of the Act.
  1. **“Compliance Code”** has the meaning given to it in the Act.
  2. **“Confidential Information"** means in relation to a party, information that:
     1. is by its nature confidential;
     2. is designated by the partyas confidential; or
     3. the other partyknows or ought to know by the circumstances in which it is disclosed to be confidential;

and includes any of the following information (whenever it was obtained either before or after the Commencement Date):

* + 1. information in relation to the party’s or a Related Corporation’s business, operations or strategies;
    2. the terms of this Agreement or Schedules of this Agreement (except to the extent they are disclosed for the purpose of negotiating a Subsequent Use Agreement and the relevant disclosure is protected by obligations of confidentiality equivalent to those imposed by this Agreement);
    3. Intellectual Property of the partyor a Related Corporation; and
    4. actual or prospective customers, clients or competitors of the partyor a Related Corporation.

Information is not confidential in any of the following circumstances:

* + 1. it is in the public domain, unless it came into the public domain by a breach of confidentiality;
    2. it is already known by the other partyat the time this Agreement is entered into; or
    3. it is obtained lawfully from a third party without any breach of confidentiality.
  1. **“Corporations Act”** means the *Corporations Act 2001* (Cth) and the Corporations Regulations made under it, as amended from time to time.
  2. **“Department”** means the State of Queensland through the Department of Environment and Science or any other department authorised to administer this Agreement.
  3. **“Dispose”** means to sell, transfer, assign or create an interest over, grant a right to use or licence and "**Disposal**" has a corresponding meaning.
  4. **“Initial Term”** means the period specified in Item 3 of Schedule 1.
  5. **“Insolvency Event”** means any of the following:
     1. a person is or states that the person is unable to pay from the person’s own money all the person’s debts as and when they become due and payable;
     2. a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
     3. an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
     4. an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven (7) Business Days;
     5. a receiver or receiver and manager is appointed in respect of any property of a corporation;
     6. a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
     7. a distress, attachment or execution is levied or becomes enforceable against any property of a person;
     8. a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person’s creditors or members or a moratorium involving any of them;
     9. a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven (7) Business Days or a person presents a petition against himself or herself;
     10. a corporation ceases or threatens to cease to carry on its main business; or
     11. anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.
  6. **“Intellectual Property”** includes any:
     1. inventions, innovations or improvement (whether patentable or not);
     2. granted patents or patent applications including divisionals, continuations (whole or in part), reissues, re-examined, renewed or extended patents;
     3. Trade Secrets;
     4. the right to keep Confidential Information confidential;
     5. know-how (whether patentable or not);
     6. plant breeder’s rights;
     7. registered or unregistered trade marks;
     8. copyright including moral rights; or
     9. registered and unregistered designs

which have been created or acquired or which is in the process of being created or acquired.

* 1. **“Loss”** means any loss, claim, action, liability, damage, cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind or character, which the State pays, suffers or incurs or is liable for including:
     1. liabilities on account of Tax;
     2. Interest and other amounts payable to third parties; and
     3. legal (on a full indemnity basis) and other expenses reasonably incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability and all amounts paid in settlement of any claim or action

but does not include any loss or damage under clause 14.7.

* 1. "**Memoranda**" or "**Memorandum**" means a memorandum in the form set out in Schedule 4.
  2. **"Nagoya Protocol"** means the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity* - a supplementary agreement to the Convention on Biological Diversity.
  3. **"Native Biological Material"** has the meaning given to it in the Act.
  4. "**Other Code**" means any code approved by the Department which relates to the Act (as notified by the State to the Biodiscovery Entity from time to time).
  5. **"Prescribed Minimum Terms"** means those terms prescribed under the Act and set out at Schedule 5 to this Agreement;
  6. **"Products"** means any thing (physical or non-physical, for example, data including sequence information) in relation to which property rights (including Intellectual Property rights) which incorporates, is created, produced, extracted or derived from the Native Biological Material.
  7. **“Queensland-based”** in relation to any entity, means that:
     1. the entity has its principal place of business in Queensland;
     2. the entity is a body corporate established under Queensland legislation and conducting some business in Queensland;
     3. the entity, together with any Related Corporation, employs more than ten (10) employees on a permanent full time basis in a workplace located in Queensland; or
     4. the Department consents in writing to the entity being considered as a Queensland-based entity for the purposes of this Agreement.
  8. **“Related Corporation”** in relation to an entity, means any body corporate which is, under section 50 of the Corporations Act, related to the entity.
  9. **“Reporting Period”** means:
     1. the period between the Commencement Date and the period ending on the next 31 December; and
     2. any subsequent twelve (12) month period ending on 31 December.
  10. **"Royalties"** means the royalties described in clause 7 and Schedule 3 to this Agreement.
  11. "**Sales**" means the total gross value of revenue of cash or non-cash consideration received (and if less than arm’s length consideration, then the value of the arm's length consideration which would have been received) by the Biodiscovery Entity in all jurisdictions in connection with the sale or supply of the Products.
  12. **“Sample”** means a sample of Native Biological Material or its derivative.
  13. **"State"** means the state of Queensland.
  14. **"Subsequent Use Agreement"** has the meaning given to it in the Act and must include the Prescribed Minimum Terms;
  15. **"Subsequent User"** has the meaning given to it in the Act;
  16. **“Tax”** includes:
      1. all taxes levied, imposed or assessed under the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth) or any other statute, ordinance or law in Australia or elsewhere;
      2. taxes in the nature of sales tax, consumption tax, value added tax, payroll tax, group tax, PAYE, PAYG, undistributed profits, fringe benefits tax, recoupment tax, withholding tax, land tax, water rates, municipal rates, stamp duties, gift duties or other state, territorial, Commonwealth of Australia or municipal charges or impositions levied, imposed or collected by any governmental body; and
      3. together with any additional tax, interest, penalty, charge, fee or other amount of any kind assessed, charged or imposed in relation to the late or short payment of the same or the failure to file any return.
  17. "**Term**" means the Initial Term and any further term pursuant to clause 2.2, unless this Agreement is terminated in accordance with clause 13.
  18. **“Trade Secret”** means any secret information of commercial benefit or advantage, formulae, designs, concepts, ideas, flow charts, compilations, programs, devices, methods, techniques or processes that are, or may be, used in relation to, or arise from, Biodiscovery.
  19. **"Traditional Knowledge"** has the meaning given to it in the Act.
  20. **"Traditional Knowledge Code of Practice"** has the meaning given to it in the Act.
  21. **"Traditional Knowledge Obligation"** has the meaning given to it in the Act.

**Construction**

* 1. Unless expressed to the contrary, in this Agreement:
     1. words in the singular include the plural and vice versa;
     2. any gender includes the other genders;
     3. if a word or phrase is defined, its other grammatical forms have corresponding meanings;
     4. “includes” means includes without limitation;
     5. no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
     6. a reference to:
        1. a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
        2. a thing or amount includes the whole and each part of it;
        3. any legislation or subordinate legislation includes any corresponding later legislation, statutory modification, substitution or re-enactment or such legislation or legislative provision or subordinate legislation;
        4. an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
        5. Ya right includes a benefit, remedy, discretion and power;
        6. time is to local time in Brisbane, Queensland, Australia;
        7. “$” or “dollars” is a reference to Australian currency;
        8. this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
        9. writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission and email; and
        10. this Agreement includes all Schedules and annexures to it;
     7. if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day; and
     8. where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

# TERM

* 1. This Agreement commences on the Commencement Date and continues for the Initial Term unless it is terminated in accordance with clause 13.
  2. Prior to the end of the Initial Term the parties may (by notice in writing) agree to extend this Agreement for a further term subject to any terms and conditions agreed between them at that time.
  3. The parties acknowledge that the Act is subject to periodic review and the Department agrees that if amendments are made to the Act during the Term then any position under the amended Act that is more beneficial to the Biodiscovery Entity will take precedence over the terms of this Agreement. The parties agree to make any necessary amendment to this Agreement to reflect those amendments to the Act.

# MEMORANDUM

## Agreement of the parties

* 1. The parties agree that this Agreement is intended to be the master agreement which governs the conduct of the Biodiscovery set out in each individual Memoranda.
  2. Memoranda will be prepared and agreed between the parties in the manner specified in this clause 3.

## Formation of Memorandum

* 1. Subject to the Act and clause 3.4, each time the Biodiscovery Entity intends to commence new Biodiscovery, it will first issue a written Memorandum to the Department specifying those matters set out in the template Memorandum in Schedule 4 to this Agreement. For the avoidance of doubt, the Biodiscovery Entity must not commence new Biodiscovery until a Memorandum in relation to that Biodiscovery has been agreed and executed by the Department in accordance with this clause 3.
  2. The Biodiscovery Entity acknowledges that the Department will not enter into a Memorandum unless the Minister is satisfied the Biodiscovery Entity has:
     1. not accessed, and will not access, Traditional Knowledge for Biodiscovery the subject of the Memorandum; or
     2. complied with and will continue to comply with the Biodiscovery Entity's Traditional Knowledge Obligation for the Biodiscovery the subject of the Memorandum.
  3. If the Department is prepared to accept the terms of the Memorandum it will notify the Biodiscovery Entity in writing and will execute and return a copy of the Memorandum to the Biodiscovery Entity.
  4. If the Department requires a meeting to discuss the Memorandum, a representative of the Biodiscovery Entity must meet with representatives from the Department in good faith at a time convenient to the parties.
  5. The parties agree to endeavour to negotiate the content of the Memorandum in a timely manner.
  6. Upon the execution of a Memorandum, this Agreement applies to the Memorandum and the Memorandum will operate as a variation to this Agreement.
  7. Any special conditions in a Memorandum will take precedence over the terms of this Agreement to the extent of any inconsistency.

# RIGHT TO UNDERTAKE BIODISCOVERY

## Grant of rights

* 1. Subject to the terms of this Agreement and the Act, the Department hereby grants to the Biodiscovery Entity the right to use Native Biological Material for Biodiscovery (as described in a Memorandum).

## Statutory condition of Agreement

* 1. The Biodiscovery Entity acknowledges and confirms that Section 35(1) of the Act is a condition of this Agreement.

## Compliance

* 1. To the extent they are in force and subject to the Act, the Biodiscovery Entity must comply with:
     1. the Compliance Code;
     2. the Collection Protocols;
     3. the Code of Ethics;
     4. Other Codes;
     5. the Nagoya Protocol;
     6. the Traditional Knowledge Code of Practice (to the extent the Biodiscovery Entity relies on the Traditional Knowledge Code of Practice in order to comply with the Traditional Knowledge Obligation); and
     7. any other code, regulation or protocol established by virtue of the Act,

when conducting Biodiscovery.

## Restriction on Exportation

* 1. The Biodiscovery Entity shall use its best endeavours to ensure that the Samples are not exported from Australia, unless:
     1. the exportation of the Samples cannot be avoided by the importation into Australia, on reasonable, practicable and affordable terms, of any equipment, technology or expertise necessary for conducting the Biodiscovery;
     2. the quantity of the Samples exported from Australia is limited to the minimum quantity of the Samples necessary for the Biodiscovery to be conducted outside of Australia; and
     3. any portion of the Samples exported from Australia which is not destroyed by destructive analysis is returned to the Biodiscovery Entity upon completion of the Biodiscovery, or destroyed pursuant to the written instructions of the Biodiscovery Entity.

# BIODISCOVERY

* 1. The Biodiscovery Entity must use its best endeavours to undertake Biodiscovery in Queensland, using Queensland-based entities or service providers as appropriate.
  2. In conducting Biodiscovery, the Biodiscovery Entity must use its best endeavours to maximise the Benefits of Biodiscovery for Queensland and to provide the Benefits of Biodiscovery to the State as set out in each Memorandum.

**Subsequent Use Agreements**

* 1. If the Biodiscovery Entity enters into a Subsequent Use Agreement, the Biodiscovery Entity must:
     1. ensure that the relevant party or parties to any Subsequent Use Agreement comply with the Prescribed Minimum Terms; and
     2. report any failure to comply referred to in clause 5.3.1 to the Department as soon as reasonably possible after it becomes aware of the failure.

**Traditional Knowledge Obligation**

* 1. If the Biodiscovery Entity:
     1. is not accessing Traditional Knowledge when engaging in Biodiscovery, the subject of a Memorandum, it confirms and warrants it has not accessed and will not access Traditional Knowledge for the Biodiscovery the subject of the relevant Memorandum; or
     2. is accessing Traditional Knowledge when engaging in Biodiscovery, the subject of a Memorandum, it confirms and warrants it has complied and will continue to comply with the Biodiscovery Entity's Traditional Knowledge Obligation for the Biodiscovery the subject of the Memorandum.
  2. The Biodiscovery Entity must report:
     1. any failure to comply with the Traditional Knowledge Obligation; or
     2. withdrawal of consent in relation to the use of the Traditional Knowledge,

in relation to Biodiscovery the subject of any relevant Memorandum to the Department as soon as reasonably possible after it becomes aware of the failure.

# INTELLECTUAL PROPERTY AND DEALING WITH SAMPLES

* 1. The Biodiscovery Entity must, at its own cost, take all reasonable steps to protect and secure any Intellectual Property arising out of the Biodiscovery (described in the Memoranda) including by obtaining and maintaining appropriate Intellectual Property rights registration.

## Disposal of Intellectual Property, Samples or Products

* 1. The Biodiscovery Entity agrees and acknowledges that any Disposal of Intellectual Property (falling within the scope of the Act), Samples or Products is subject to the Act.
  2. On the completion of a Disposal pursuant to clause 6.2, except to the extent that Royalties are payable for the period up to and including the date of completion of the Disposal or in connection with the Disposal, the relevant Memorandum will terminate to the extent it relates to the relevant Intellectual Property, Samples or Products. For clarity, if there are arrangements in place between a disposee and the Biodiscovery Entity in relation to Samples or Products, the obligations under this Agreement and the relevant Memorandum in relation to those Samples and Products will continue (unless otherwise agreed with the Department).

# ROYALTIES

## Royalties

The Biodiscovery Entity must pay to the Department an amount by way of Royalties calculated in accordance with Schedule 3 as described in the relevant Memorandum.

## Payment of Royalties

* 1. The Biodiscovery Entity must by 1 March each year:
     1. render to the Department a true statement in respect of all Commercialisation Receipts for the preceding calendar year in such form as the Department may require; and
     2. within thirty (30) days of the date of a correctly rendered tax invoice by the Department, pay into the bank account notified in writing by the Department the amount due under clause 7.1 in respect of Royalties for that period.
  2. The statement rendered pursuant to clause 7.1.1 for the period ending on 31 December in the first year of the Term shall only be for the period from the Commencement Date to 31 December in that year.

## Foreign Currency

* 1. Where a foreign currency must be converted for the purposes of calculating the Royalty payable under this clause 7, the applicable exchange rate shall be:
     1. the exchange rate which the parties agree, or if no agreement is able to be reached;
     2. the exchange rate which is the mid-point of the buy and sell rate between the relevant currency and the Australian dollar released by Reuters in Brisbane, Queensland Australia on the date the Biodiscovery Entity submits its annual report to the Department.

# KEEPING OF RECORDS AND ACCOUNTS

* 1. The Biodiscovery Entity must comply with the Act with respect to record keeping and must also keep and cause to be kept true and proper records and accounts in respect of all Commercialisation Receipts and all other matters necessary to enable calculation of amounts payable by the Biodiscovery Entity pursuant to clause 7.
  2. The Biodiscovery Entity must keep separate records evidencing the results of the Biodiscovery in sufficient detail to enable the Department to review the Biodiscovery conducted by the Biodiscovery Entity and any Subsequent User.
  3. The Biodiscovery Entity must allow the Department to inspect and copy those records kept in accordance with the Act and this clause 8 (for the sole purposes of a review of the Biodiscovery (including as undertaken by any Subsequent User) and this Agreement) on reasonable notice.

# AUDIT OF RECORDS AND ACCOUNTS

* 1. The Biodiscovery Entity must, within one (1) month after each anniversary of the Commencement Date, and on any other occasion in normal business hours with at least two (2) Business Days prior written notice, allow the Department or its duly authorised agent to verify the Biodiscovery Entity’s and Subsequent User's compliance with clause 8.
  2. The Biodiscovery Entity must permit the Department or its duly authorised agent to inspect and to take copies or extracts from any books, accounts, receipts, papers and documents and such other information necessary to enable compliance to be ascertained, in the possession or under the control of the Biodiscovery Entity and relating in whole or in part to verifying and auditing:
     1. the Biodiscovery Entity’s compliance with its obligations under this Agreement and the Act; and
     2. a Subsequent User's compliance with its obligations under its Subsequent Use Agreement and the Act;
     3. activities undertaken pursuant to any Subsequent Use Agreement.
  3. The Department will bear the cost of verifying the statements rendered pursuant to clause 7.1, unless such verification reveals that the Biodiscovery Entity has understated the value of Commercialisation Receipts by more than three (3) percent, in which case, the Biodiscovery Entity must meet the Department’s costs associated with the verification.

# ANNUAL REPORTING

## Annual Report

* 1. The Biodiscovery Entity must, by 1 March after each Reporting Period, submit to the Department, a written report in the form as notified by the Department to the Biodiscovery Entity from time to time, which must provide, to the reasonable satisfaction of the Department, the information set out in the reporting template in Schedule 2 including information in relation to Biodiscovery undertaken:
     1. under this Agreement; and
     2. pursuant to any Subsequent Use Agreement.
  2. The matters in Items 1, 2 and 3 of Schedule 2 are reportable matters for the purposes of the Act.

## Annual Report deemed Satisfactory

* 1. A report in accordance with clause 10.1 will be deemed to be to the satisfaction of the Department if the Department does not otherwise notify the Biodiscovery Entity within sixty (60) Business Days from the date on which the Department receives the report.

## Unsatisfactory Annual Report

* 1. In the event the Department is not satisfied with the report provided by the Biodiscovery Entity in accordance with clause 10.1 of this Agreement, the Department may request a meeting with the Biodiscovery Entity for the purposes of:
     1. determining an agreed course of action with the Biodiscovery Entity in respect of the obligation on the Biodiscovery Entity to maximise the Benefits of Biodiscovery to Queensland; and
     2. discussing any other matters at the request of the Biodiscovery Entity or the Department arising out of the Biodiscovery and this Agreement generally.
  2. A representative of the Biodiscovery Entity must attend a meeting requested by the Department under clause 10.3.

**Biodiscovery Entity must correct misleading and inaccurate reports**

* 1. If the Biodiscovery Entity discovers that any aspect of the annual report or other report provided to the Department is inaccurate or misleading, the Biodiscovery Entity must within ten (10) Business Days of making this discovery provide the Department with an updated report highlighting the revised sections and providing a brief explanation as to why the information was inaccurate and/or misleading.

**Final report to be provided on termination or ending of this Agreement**

* 1. Within thirty (30) Business Days of the termination or ending of:
     1. this Agreement; and
     2. any Subsequent Use Agreement,

the Biodiscovery Entity must provide the Department with a written report setting out the information detailed in Schedule 2.

# CONFIDENTIALITY

* 1. Each party (the **Recipient**) must not, and must ensure that its officers, employees, agents, sub-contractors do not use or disclose any Confidential Information of the other party (the **Disclosing Party**) without the Disclosing Party’s written consent, other than in accordance with clauses 11.2 and 11.4.
  2. The Recipient may disclose Confidential Information of the Disclosing Party to its officers, employees, agents and sub-contractors to the extent necessary for the performance of this Agreement, provided that the Recipient makes such persons aware that the information is confidential.
  3. The Recipient must keep all Confidential Information of the Disclosing Party in a secure location so that no unauthorised person is able to gain access to it.
  4. The Recipient may disclose Confidential Information of the Disclosing Party:
     1. if required by law or by the Australian Stock Exchange Limited after, if reasonably possible, first providing notice to the Disclosing Party to enable the Disclosing Party to seek to limit the disclosure required;
     2. with the written consent of the Disclosing Party;
     3. if the information is in the public domain other than as a result of breach of this Agreement;
     4. if the information is already known or in the possession of the Recipient without restrictions relating to the disclosure before the date of receipt;
     5. if the information is obtained from a source other than the party who supplied the information, provided that the source was not subject to any prohibition against disclosure;
     6. in the case of the Biodiscovery Entity, if it is necessary for the Biodiscovery Entity to disclose the information to a person in the course of negotiating an agreement concerning Biodiscovery with the person, on the condition that the person agrees in writing to respect the confidentiality of the Confidential Information in a manner consistent with the confidentiality obligations imposed by this Agreement;
     7. in the case of the Department, to any Minister or to Parliament in connection with the carrying out of any functions, duties, powers and discretions conferred on the Department;
     8. in the case of the Department, within the Department's organisation, or with another agency, where this serves the State's legitimate interests;
     9. in connection with the codes and documents described in clause 4.3 of this Agreement;
     10. if required by the Act; and
     11. to the parties’ professional advisers on condition that they agree to be bound by the terms of this clause.
  5. The Biodiscovery Entity will acknowledge this Agreement in all publications relating to Biodiscovery in a manner approved by the Department in advance.
  6. If requested by the Department and subject to the protection of any Intellectual Property, the Biodiscovery Entity will provide the Department with a short statement about the results of any Biodiscovery pursuant to this Agreement, for publication by the Department.

# NNOTICES

## General

* 1. A notice, report or other communication relating to this Agreement must be in writing in English and may be given by an agent of the sender.

## How to Give a Communication

* 1. A communication may be given by being:
     1. personally delivered;
     2. left at the party’s current address for notices;
     3. sent to the party’s current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
     4. sent by email to the party's current email address for notices; or
     5. sent by fax to the party’s current fax number for notices.

## Particulars for Delivery of Notices

* 1. The particulars for delivery of notices to:
     1. the Biodiscovery Entity are the particulars specified in Item 4 of Schedule 1; and
     2. the Department are the particulars specified in Item 5 of Schedule 1.
  2. Each party may change its particulars for delivery of notices by notice to each other party.

## Communications by Post

* 1. Subject to clause 12.10,a communication is given if posted:
     1. within Australia to an Australian address, five (5) Business Days after posting; or
     2. in any other case, ten (10) Business Days after posting.

## Communications by Fax

* 1. Subject to clause 12.10, a communication is given if sent by fax, when the sender’s fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.
  2. A party is not entitled to object to a fax being illegible unless the party requests retransmission within one (1) Business Day of completion of the transmission. This clause 12.7 applies to any retransmission.

## Communications by Email

* 1. Subject to clause 12.10, a communication is given if sent by email, when the email (including any attachment) is sent to the receiving party at that email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.
  2. A party is not entitled to object to an email being incomplete unless the party requests the email be resent within one (1) Business Day of the time that the email was received by the addressee. This clause 12.9applies to the resending of the email.

## After Hours Communications

* 1. If a communication is given:
     1. after 5.00 pm in the place of receipt; or
     2. on a day which is not a Business Day in the place of receipt,

the communication is taken as having been given on the next Business Day.

# TERMINATION

## Termination on Default

* 1. Subject to clause 13.2 and clause 13.10, a party (the **Terminating Party**) may immediately terminate this Agreement or Memorandum (as applicable) by written notice to the other party (the **Defaulting Party**) if:
     1. the Defaulting Party breaches this Agreement or Memorandum (as applicable), where that breach is not capable of remedy; or
     2. the Defaulting Party breaches this Agreement or Memorandum (as applicable) and in the case of a breach which is capable of remedy, does not remedy that breach within ten (10) Business Days after the Terminating Party serves written notice on the Defaulting Party requiring it to be remedied; or
     3. any representation or warranty made by the Defaulting Party is materially inaccurate or untrue.

## Termination by State

* 1. Subject to clauses 13.5 and 13.10, the Department may terminate this Agreement or Memorandum (as applicable) immediately upon notice, if the Biodiscovery Entity:
     1. does not pay any money due for payment under this Agreement on the due date and does not pay that money within a further period of twenty one (21) Business Days after the Department serves written notice on the Biodiscovery Entity requiring payment;
     2. becomes subject to an Insolvency Event;
     3. ceases or threatens to cease to carry on its business or a substantial part of its business;
     4. is convicted of an offence under the Act or is in breach of the Act;
     5. is conducting or has conducted Biodiscovery in relation to Samples which have been collected by the Biodiscovery Entity or on behalf of the Biodiscovery Entity without the appropriate authority or permit required to collect the Sample;
     6. breaches or is non-compliant with the Traditional Knowledge Obligation where such breach or non-compliance is of such magnitude or impact (as reasonably determined by the Department) that the Department no longer considers it appropriate to grant rights to the Biodiscovery Entity under this Agreement or a Memorandum; or
     7. is found by the Department to have included inaccurate or misleading information in the annual report (provided pursuant to clause 10).
  2. The Department may terminate this Agreement or Memorandum (as applicable) by providing written notice to the Biodiscovery Entity in the event that any change in the Act, or any other legislative framework or policy, the codes and documents described in clause 4.3 of this Agreement means that the Department is no longer able to grant the rights granted to the Biodiscovery Entity under this Agreement.
  3. The Biodiscovery Entity may terminate this Agreement or Memorandum (as applicable) by providing written notice to the Department in the event of any change in the Act, or any other legislative framework or policy, and documents described in clause 4.3 of this Agreement:
     1. that makes it unlawful for the Biodiscovery Entity to perform any of its obligations or exercise any of its rights under this Agreement; or
     2. such that the Biodiscovery Entity determines that it cannot (for whatever reason) comply with the Act, or any other legislative framework or policy or the documents described in clause 4.3 of this Agreement.
  4. The Department may terminate an individual Memorandum immediately upon notice, if the Biodiscovery Entity does not comply with the Traditional Knowledge Obligation (which applies to the relevant Memorandum):
     1. and does not remedy the breach within twenty (20) Business Days of being provided with a notice in writing to do so from the Department; or
     2. in circumstances where the non-compliance is unable to be remedied.

## Termination for convenience

* 1. The Department may terminate this Agreement by providing at least six (6) months prior written notice of termination to the Biodiscovery Entity after the Initial Term.
  2. The Biodiscovery Entity may terminate this Agreement by providing at least six (6) months prior written notice of termination to the Department.

## Termination by Mutual Agreement

* 1. This Agreement or an individual Memorandum may be terminated by mutual consent of the parties in writing signed by the parties.

## Biodiscovery Entity ceasing Biodiscovery specified in a Memorandum

* 1. If the Biodiscovery Entity ceases conducting Biodiscovery as specified in an individual Memorandum, the Biodiscovery Entity must notify the Department in writing (including the date on which the relevant Biodiscovery ceased) and subject to clause 15, the terms of this Agreement will cease to apply to that Memorandum. This Agreement will continue in respect of all other Memoranda.

## Termination of whole Agreement or Biodiscovery specified in a Memorandum

* 1. Termination under this clause 13 (excluding clauses 13.6 and 13.7) can be either termination of the Agreement, if the default relates to the Agreement, or termination of a Memorandum if the default relates to that Memorandum.
  2. If a Memorandum is terminated pursuant to this clause 13, this Agreement and each other Memorandum under this Agreement that has not been terminated will continue. Subject to clauses 13.12 and 15, the terms of this Agreement cease to apply to the Memorandum that has been terminated.
  3. If this Agreement is terminated pursuant to this clause 13, each Memorandum under this Agreement will be terminated.

# EFFECT OF TERMINATION OR EXPIRY

## Effect of Termination by either Party or expiry

* 1. On termination of:
     1. this Agreement by either party or on expiry of this Agreement, subject to clause 13.12, the Biodiscovery Entity must:
        1. not exercise any further rights granted to it under a Collection Authority, including collecting any additional Native Biological Material;
        2. follow the Department's directions in relation to the destruction, Disposal or return of any Samples and Products and account to the State in respect of any associated Commercialisation Receipts;
        3. not use or permit to be used (including by a Subsequent User) the Native Biological Material to conduct Biodiscovery (pursuant to the rights granted in clause 4.1);
        4. not use or permit to be used (including by a Subsequent User) the Traditional Knowledge to undertake the Biodiscovery (pursuant to the rights granted in clause 4.1); and
        5. not use, or cause, permit or allow to be used, any Samples, Products or Intellectual Property arising out of the rights granted in clause 4.1.
     2. an individual Memorandum by either party, the Biodiscovery Entity must:
        1. not exercise any further rights granted to it under a Collection Authority, including collecting any additional Native Biological Material in relation to the relevant Memorandum;
        2. follow the Department's directions in relation to the destruction, Disposal or return of any Samples and Products to the extent those Samples and Products relate to the relevant Memorandum and account to the State in respect of any associated Commercialisation Receipts;
        3. not use or permit to be used (including by a Subsequent User) the Native Biological Material to conduct Biodiscovery as described in the relevant Memorandum;
        4. not use or permit to be used (including by a Subsequent User) the Traditional Knowledge to undertake the Biodiscovery as described in the relevant Memorandum; and
        5. not use, or cause, permit or allow to be used, any Samples, Products or Intellectual Property arising out of the rights granted in clause 4.1 which relate to the Biodiscovery described in the relevant Memorandum.
  2. For the avoidance of doubt:
     1. the rights granted in clause 4.1 end on the termination or expiry of this Agreement or relevant Memorandum; and
     2. a Subsequent Use Agreement ceases to have effect if this Agreement or relevant Memorandum ceases ends.
  3. Termination of an individual Memorandum pursuant to clause 13 will not effect any ongoing rights or obligations under this Agreement in respect of any other Memoranda in force between the parties.

## Accrued Rights

* 1. If this Agreement is terminated, each party will retain and may enforce all its rights accrued prior to or as a result of the termination.

## No Restriction on Damages

* 1. Any right to damages, whether under this Agreement or at common law, that a party may have arising from a breach by the other party of any of its obligations under this Agreement is not in any way limited or prejudiced by the right to terminate or the termination of this Agreement by that party under clause 13.

## Indirect or Consequential Loss

* 1. Neither party is to be liable to the other for any indirect or consequential loss (including loss of profit) however arising from the breach or non‑performance of any of that party's obligations under this Agreement, even if that party has been specifically put on notice of the risk of that loss.

# SURVIVAL OF OBLIGATIONS AFTER TERMINATION

* 1. This clause and clauses 5.3, 7, 8, 9, 10.7, 11, 12, 14, 15, 16, 17, 19, 20 and 21.3 of this Agreement will remain in full force and effect and survive the termination of this Agreement.

# DISPUTE RESOLUTION

## Notice of Dispute

* 1. If a difference or dispute (a **Dispute**) between the parties arises out of or relates to this Agreement, or the breach, termination, validity or subject matter of it, or as to any claim in tort, in equity or pursuant to any domestic or international statute or law, then any party may give the other a written notice of dispute adequately identifying and providing details of the Dispute (a **Notice of Dispute**).
  2. Notwithstanding the existence of a Dispute, all parties will, subject to this Agreement, continue to perform the Agreement.
  3. Nothing in this clause 16 shall prejudice the right of a party to seek urgent interlocutory relief from any court having jurisdiction.

## Conference

* 1. Within ten (10) Business Days after receiving a Notice of Dispute, the parties will confer at least once to resolve the Dispute or to agree on methods of doing so. At every such conference each party will be represented by a person having authority to agree such resolution or methods. All aspects of every such conference, except the fact of its occurrence, will be privileged.

**Mediation**

* 1. If a Dispute has not been resolved within sixty (60) days after receiving a Notice of Dispute then any party may refer the dispute to mediation and must do so before initiating proceedings in a court to resolve the Dispute.
  2. Any Dispute which is referred to mediation must be referred to the Australian Disputes Centre (**ADC**) and be conducted in accordance with the Mediation Rules as determined by ADC by a mediator nominated by the parties or, if the parties cannot reach agreement, by ADC.
  3. Each party must bear its own costs, and equally share the costs incurred through mediation, associated with the resolution of any Dispute prior to the matter being initiated as a court proceeding.

## Expert Determination

* 1. If the Dispute is not resolved by mediation, the parties in dispute agree to settle the dispute by expert determination administered by the ADC before having recourse to arbitration or litigation.
  2. The expert determination will be conducted in accordance with ADC Rules for Expert Determination which set out the procedures to be adopted, the process of selection of the expert and the costs involved and the terms of those Rules are incorporated by reference into this Agreement.

## Exchange of Information

* 1. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the Dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by clause 16 for any purpose other than an attempt to settle a Dispute between the parties.

## Termination of Dispute Resolution

* 1. After expiration of the time established by or agreed under this clause 16 for agreement on the dispute resolution process, any party which has complied with the provisions of clause 16, may in writing terminate the dispute resolution process provided for in those clauses and may then refer the Dispute to litigation.

# INDEMNITY

## Indemnity

* 1. Subject to clause 14.6, 17.2 and 17.3, the Biodiscovery Entity indemnifies the State against all Loss arising directly from any:
     1. breach by the Biodiscovery Entity, its employees and officers of this Agreement, codes and documents described in clause 4.3 of this Agreement or any other applicable code, policy or regulation;
     2. negligence, unlawful conduct or wilful misconduct by the Biodiscovery Entity, its employees or officers;
     3. Biodiscovery undertaken by the Biodiscovery Entity (including arising out of a Subsequent Use Agreement);
     4. Commercialisation undertaken by the Biodiscovery Entity (including arising out of a Subsequent Use Agreement);
     5. non-compliance with the Traditional Knowledge Obligation (as it applies to any Memorandum);
     6. non-compliance with a Collection Authority by the Biodiscovery Entity; and
     7. illegal, harmful or improper use of any of the Samples by the Biodiscovery Entity the subject of this Agreement.

## Independence of Indemnities

* 1. Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Biodiscovery Entity and survives the termination of this Agreement.
  2. It is not necessary for the State to incur expense or make a payment before enforcing any indemnity conferred by this Agreement.

# INSURANCE

* 1. During the term of this Agreement and otherwise, while the Biodiscovery Entity undertakes Biodiscovery, the Biodiscovery Entity must effect and maintain the insurance described in Item 6 of Schedule 1 with a limit of liability not less than the amounts set out in Item 6 of Schedule 1.
  2. In consultation with the Biodiscovery Entity, the Department may request additional insurances to those described in Item 6 of Schedule 1.
  3. The Biodiscovery Entity must, within thirty (30) Business Days after receiving a written request from time to time from the Department, provide to the Department a copy of insurances and a copy of the certificate of currency in respect of the applicable policies.

# GENERAL

## Duty

* 1. The Biodiscovery Entity, as between the parties, is liable for and must pay all duty (including any fine or penalty except where it arises from default by the other party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.
  2. If a party other than the Biodiscovery Entity pays any duty (including any fine or penalty) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it, the Biodiscovery Entity must pay that amount to the paying party on demand.

## Goods and Services Tax

* 1. In these clauses 19.3 to 19.7 inclusive, the terms **GST**, **Recipient Created Tax Invoice**, **Supply**, **Taxable Supply** and **Tax Invoice** have the meanings given to them by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
  2. All sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.
  3. If GST is imposed on any Supply made by a party (the **Supplier**) to another party (the **Recipient**), to the extent that any consideration payable or to be provided by the Recipient for the Taxable Supply is exclusive of GST the Recipient must pay to the Supplier, in addition to that GST exclusive consideration, an additional amount for the Taxable Supply calculated by multiplying the GST rate by the GST exclusive consideration for the Taxable Supply, without any deduction or set off.
  4. Where the Biodiscovery Entity is a class of Recipient determined by the Commissioner of Taxation as one which may issue a recipient created tax invoice then:
     1. the statement required to be rendered by the Biodiscovery Entity pursuant to clause 7.4 must be rendered in such a manner that it constitutes a valid Recipient Created Tax Invoice;
     2. the Department warrants that it will not issue a Tax Invoice in respect of any Supply for which the statement rendered by the Biodiscovery Entity pursuant to clause 7.4 constitutes a Recipient Created Tax Invoice;
     3. the Biodiscovery Entity warrants that it is registered for GST purposes, and that it will notify the Department if it ceases to so registered;
     4. the Department warrants that it is registered for GST purposes, and that it will notify the Biodiscovery Entity if the Department ceases to be so registered;
     5. the Biodiscovery Entity will indemnify the Department for any penalty, interest, costs or other expenses incurred by the Department as a result of its reasonable reliance on the information contained in a Recipient Created Tax Invoice issued in accordance with this clause 19; and
     6. if an amount recovered from the Recipient on account of GST differs for any reason from the amount of GST paid or payable by the Supplier to the Commissioner of Taxation, the difference between the two amounts must be paid by or to the Recipient (as the case requires), but no amount is payable to the Recipient unless the Supplier is entitled to a refund and has been paid the refund from the Commissioner of Taxation.
  5. If clause 19.6does not apply, the Department will issue a tax invoice to the Biodiscovery Entity within sixty (60) Business Days of receipt of the statement required to be rendered by the Biodiscovery Entity pursuant to clause 7.2.

## Legal Costs

* 1. Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

## Amendment

* 1. Subject to clause 21, this Agreement may only be varied or replaced by a document duly executed by the parties.

## Waiver and Exercise of Rights

* 1. A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
  2. A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

## Rights Cumulative

* 1. Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

## Consents

* 1. Except as expressly stated otherwise in this Agreement, a party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

## Severability

* 1. Each provision of this Agreement is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this Agreement in the relevant jurisdiction, but the rest of this Agreement will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

## Further action

* 1. Each party must do or cause to be done all acts and things necessary or desirable to give effect to this Agreement and refrain from doing all acts and things that could hinder performance by any party of this Agreement.

## Governing Law and Jurisdiction

* 1. This Agreement is governed by and is to be construed in accordance with the laws applicable in Queensland, Australia.
  2. Each party irrevocably and unconditionally submits to the non‑exclusive jurisdiction of the courts of Queensland, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

## Assignment

* 1. Subject to clause 6, the Biodiscovery Entity must not assign, novate or, subject to the terms of this Agreement, deal with any right under this Agreement without the prior written consent of the Department and in accordance with any reasonable conditions imposed by the Department and any requirements of the Act.
  2. For the avoidance of doubt, the Department will not consent to any assignment of this Agreement pursuant to clause 19.18 unless the Minister is satisfied in relation to the matters described in clause 3.4 in relation to the assignee.
  3. Any purported dealing in breach of clause 19.18 is of no effect.

## Liability

* 1. An obligation of two or more persons binds them separately and together.

## Counterparts

* 1. This Agreement may be executed by the parties in counterparts, which once exchanged between the parties form the one document. An executed counterpart may be delivered by email.

## Entire Understanding

* 1. Subject to the Collection Authorities, executed Memoranda, the documents described in clause 4.3 of this Agreement and the Act, this Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.
  2. All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. No party is liable to any other party in respect of those matters.
  3. No oral explanation or information provided by any party to another:
     1. affects the meaning or interpretation of this Agreement; or
     2. constitutes any collateral agreement, warranty or understanding between any of the parties.

## Inconsistency

* 1. If there is any inconsistency between the following it shall be resolved in accordance with their order of appearance below with the earlier listed document having paramountcy over those listed after:
     1. The Act;
     2. The documents described in clause 4.3 of this Agreement;
     3. An executed Memoranda; and
     4. This Agreement.

## Relationship of Parties

* 1. This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.
  2. The Biodiscovery Entity is not, as a result of this Agreement, an officer, delegate, employee or agent of the Department or the State. The Biodiscovery Entity does not have any power to bind the State or the Department.

## Electronic consent

* 1. The parties give their consent pursuant to the *Electronic Transactions (Queensland) Act 2001* (Qld) for the purposes of entering into this Agreement and all other matters pertaining to it. The parties agree that the electronic signature of a party this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement.

# WARRANTIES

* 1. Each party warrants to each other party that:
     1. it has the legal right and power to enter into this Agreement and to perform its obligations under the terms of this Agreement;
     2. the execution, delivery and performance of this Agreement by it has been duly and validly authorised by all necessary corporate action or Government action on its part;
     3. this Agreement is valid and binding agreement of it, enforceable in accordance with its terms; and
     4. the execution and performance of this Agreement by it does not, and other transactions contemplated by this Agreement do not, violate or conflict with or result in a breach of or constitute a default under its constitution or laws.

## No warranty by the State as to identity or quality

* 1. To the extent permitted by law, the Department makes no warranties as to the identity or the quality of the Samples collected pursuant to the Collection Authority or the results of any Biodiscovery conducted by the Biodiscovery Entity.

## Compliance with standards

* 1. The Biodiscovery Entity warrants that it will comply with all laws, policies, codes or practice and guidelines in relation to the performance of this Agreement (including the documents described in clause 4.3 and the Australian Code for the Responsible Conduct of Research).

# REVIEW OF AGREEMENT AND INFORMATION AT THE REQUEST OF THE DEPARTMENT

* 1. If requested by either party, the parties agree to meet at least once within sixty (60) Business Days after each anniversary of the Commencement Date to discuss any matter relating to this Agreement, at which time, the parties may, at their absolute discretion, agree to vary this Agreement which variation will be of no effect until the Agreement is amended under clauses 19.18 and 19.9.
  2. With the consent of the Biodiscovery Entity, the Department reserves the right to amend this Agreement to effect any change in the Act, documents described in clause 4.3 or other legislative framework or policy. The Biodiscovery Entity must not unreasonably withhold its consent to any such amendment.
  3. At the request of the Department, the Biodiscovery Entity will provide the Department with information reasonably requested by it in relation to this Agreement and the matters covered by it.

# FORCE MAJEURE

* 1. A party is not liable for failure to perform, or delay in performing, an obligation (except an obligation to pay money) if each of the following is satisfied:
     1. the failure or delay arose from a cause beyond the reasonable control of that party. A cause beyond the reasonable control of a party includes an act of God, strike, pandemic, lockout, other industrial disturbance or labour difficulty, war, act of public enemy, blockade, revolution, riot, insurrection, civil commotion, lightning, storm, flood, fire, earthquake, explosion, embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation, or anything done or not done by or to a person, except the party relying on force majeure.
     2. the party took all reasonable precautions against that cause and did its best to mitigate its consequences. This does not require the party to settle a labour dispute if, in the party’s opinion, that is not in its best interests; and
     3. the party gave each other party notice of the cause as soon as practicable after becoming aware of it.
  2. From the date notice is served in accordance with clause 22.1, no party is required to perform its obligations under this Agreement that are dependent on the delayed or failed obligations until the party that gave notice is able to resume fully performance of its obligations.
  3. If the cause and the resulting failure or delay lasts for more than ninety (90) Business Days, either party is entitled to terminate this Agreement immediately by giving each other party written notice.

SCHEDULE 1 – GENERAL INFORMATION

|  |  |  |
| --- | --- | --- |
| Item 1 | Name of Biodiscovery Entity |  |
|  | ABN (if any) |  |
| Item 2 | Commencement Date | The date upon which the last of the parties to sign this Agreement does so. |
| Item 3 | Initial Term | 10 years from the Commencement Date |
| Item 4 | Address |  |
|  | Facsimile No. |  |
|  | Email |  |
|  | Attention |  |
| Item 5 | Address |  |
|  | Facsimile No. |  |
|  | Email |  |
|  | Attention |  |
| Item 6 | Public liability | $10 million per claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be. |
|  | Professional indemnity | $10 million per claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be. |
|  | Product liability | $[*insert*] million per claim, or occurrence giving rise to a claim, in respect to activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be. |

SCHEDULE 2 – REPORTING TEMPLATE

|  |  |  |
| --- | --- | --- |
| 1 | Results of Biodiscovery Research carried out by or for the Biodiscovery Entity carried out under this Agreement | [*to provide an update on research activity and any new knowledge generated and possibly an outline of planned research for the year ahead*] |
| 2 | Outline of Commercialisation Activities carried out by or for the Biodiscovery Entity carried out under this Agreement | [*this should provide an update on progress towards commercialisation of products and services including new opportunities identified and commercialisation plans that are in place*] |
| 3 | The amount or value of the total consideration given to or to be given to the Biodiscovery Entity, or someone else at the entity's direction for the Commercialisation Activities carried out under this Agreement | [*amount or value to be provided*] |
| 4 | Financial information | [*basic information about amounts received for that year to enable verification of any royalty payments*] |
| 5 | Disposals of Intellectual Property | [*information in relation to any proposed disposals licences etc*] |
| 6 | Benefits of Biodiscovery | [*details of the Benefits of Biodiscovery provided*] |
| 7 | Use of Traditional Knowledge by the Biodiscovery Entity | [*if applicable, details whether the Biodiscovery Entity has used traditional knowledge for biodiscovery*] |
| 8 | [*Insert any additional requirements*] |  |

*Note: information included in this template should cover information relating to the Biodiscovery Entity, any Subsequent User and their respective activities.*

SCHEDULE 3 – ROYALTY

Where the gross Commercialisation Receipts received by the Biodiscovery Entity in a calendar year falls within the relevant range specified in column 1 of the table below, the Biodiscovery Entity will pay to the State the corresponding percentage of gross Commercialisation Receipts specified in column 2 of the table.

|  |  |  |
| --- | --- | --- |
| **Purpose of Product** | **Gross Commercialisation Receipts received by the Biodiscovery Entity in one calendar year ($AUD)** | **Payment (% of gross Commercialisation Receipts)** |
| Pharmaceutical, Nutraceutical or Agricultural | < 500,000  500,000-5,000,000  > 5,000,000 | 0  2.5  5.0 |
| Chemical and Diagnostic | **Option 1:**  >200,000  or  **Option 2:** < 100,000  100,000-3,000,000  > 3,000,000 | 1.5     0  1.0  2.0 |
| Other Research | **Option 1:** >200,000  or  **Option 2:** < 100,000  100,000-3,000,000  > 3,000,000 | 2.5     0  1.0  3.0 |

SCHEDULE 4 – Memorandum

1. Description of Biodiscovery:

[*insert*]

1. Benefits of Biodiscovery to be provided?  
     
   [*insert*]
2. When are the Benefits of Biodiscovery described in Item 2 be provided?

[*insert*]

1. What Royalty Rates apply:  
     
   [*insert*]
2. Identification of Collection Authority or other permit pursuant to which Native Biological Material will be or has been collected:

[*insert*]

1. Has the Biodiscovery Entity accessed (or does it propose to access) Traditional Knowledge for the Biodiscovery?

[*insert – yes/no*]

1. If the answer to Item 6 is yes, has the Biodiscovery Entity complied with the Traditional Knowledge Obligation for the Biodiscovery?

[*insert*]

1. Special conditions:

[*insert*]

[*signing blocks / date*]

SCHEDULE 5 – Prescribed Minimum Terms

[*to be inserted*]

**EXECUTED** as an agreement.

|  |  |  |
| --- | --- | --- |
| Signed for and on behalf of the **State of Queensland**, through the Department of Environment and Science | )  ) |  |
| ..............................................................……..  Witness  ..............................................................……..  Name of witness (print)  ………………………………………………….. Date |  | ..............................................................……..  Signature  ..............................................................……..  Position (print)  ………………………………………………….. Date |

[*Note: Use the following signing block if the Biodiscovery Entity is an individual*]:

SIGNED for and on behalf of **[BIODISCOVERY ENTITY]** by

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name and role title of signatory)

in the presence of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name of Witness)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of Witness)

[*Note: Use the following signing block if the Biodiscovery Entity is a company – amendments may be required if the company has a sole director or is an international company*]:

|  |  |  |
| --- | --- | --- |
| Signed for and on behalf of **[BIODISCOVERY ENTITY] Pty Ltd ACN [insert]** pursuant to section 127 of the Corporations Act 2001 (Cth) | )  ) |  |
| ..............................................................……..  Signature of Director/ Company Secretary  ..............................................................……..  Name of Director/ Company Secretary  ………………………………………………….. Date |  | ..............................................................……..  Signature of Director  ..............................................................……..  Name of Director  ………………………………………………….. Date |

[*Note: Universities may provide their own execution block*]