

Avner Pancreatic Cancer Foundation Standard Grant Terms and Conditions

Please read these standard terms and conditions carefully. These standard terms and conditions incorporate and should be read together with, each of the Avner Pancreatic Cancer Foundation Funding Agreements (“Funding Agreements”). On execution of a separate Funding Agreement, the terms of these standard terms and conditions, will become binding on you and together with the Funding Agreement, will govern the relationship between us, and the relevant project.

1 Introduction and definitions

1.1 Parties: These standard terms and conditions (referred to within this document as “Standard Terms”) apply to the Avner Pancreatic Cancer Foundation with ABN 22 145 513 060 (referred to in this document as “Foundation”, “we”, “our” or “us”) and each grant recipient named in a Funding Agreement (referred to in this document as “Grant Recipient”, “you” or “your”). If the context requires each Grant Recipient and the Foundation may each be referred to as a “party” or referred to together as the “parties”.

1.2 Definitions: In these Standard Terms:

- “Confidential Information” of a party means all information of that party which is by its nature confidential, is designated by that party as confidential or which another party knows or reasonably ought to know is confidential.
- “Funding Agreement” means the document entitled “Avner Pancreatic Cancer Foundation Funding Agreement ” that sets out the specific terms, conditions and details of a Project and that may include objectives, timelines, funding, obligations and other information relating to the implementation, running and evaluation of that Project.
- “Project” means a project, program, initiative or other arrangement funded or resourced by the Foundation (in whole or in part).
- “Relationship manager” means the person identified as such in the Funding Agreement or as otherwise notified to the other party from time to time.
- “Third Party Provider” means any entity that provides funding, property, personnel or other resource in connection with a Project other than the Foundation and the Grant Recipient.

2 Special conditions and the application and duration of these Standard Terms

2.1 Standard Terms part of Funding Agreement: These Standard Terms are part of, and should always be read together with, each Funding Agreement.

2.2 Start Date: These Standard Terms commence on the date a Funding Agreement has been signed by both parties or, if the Funding Agreement specifies a different date, on that date.

2.3 End date: Except for those terms and conditions that, by their nature, continue after a Funding Agreement ends, these Standard Terms stop applying with respect to a particular Funding Agreement when that Funding Agreement ends.

2.4 Special conditions: Each party must comply with any special conditions set out in the relevant Funding Agreement.

2.5 Differences between the Standard Terms and a Funding Agreement: Sometimes the terms and conditions of a Funding Agreement will be different from these Standard Terms. If so, these Standard Terms will apply to the exclusion of any inconsistency, unless a Funding Agreement specifically states otherwise.

3 Performance of obligations

3.1 Standard of performance: Each party agrees to perform its obligations under these Standard Terms and each Funding Agreement in accordance with the law, with care and skill and to the best of its ability.

3.2 Time: Each party agrees to:

- Perform its obligations under these Standard Terms and each Funding Agreement in a diligent, efficient and timely manner; and
- Follow any Project timeline and meet any of its designated targets and deadlines that may be described in a Funding Agreement.

3.3 Objectives and outcomes: You must strive at all times and in good faith to meet any objectives or outcomes described in a Funding Agreement.

4 Reports, meetings and inspections

4.1 Reports: You agree to keep us informed of the progress of each Project and to provide us with any report (including any financial report) described in a Funding Agreement by the times and in the format specified.

4.2 Meetings: The parties will meet as specified within a Funding Agreement and at any other time as may be reasonably requested by us. Unless otherwise agreed, all meetings will be held at the address or by the method specified in the relevant Funding Agreement.

4.3 Inspections: You agree to allow us to inspect your premises and inspect any books, accounts and records but only:

- If the inspection is connected with these Standard Terms or a relevant Funding Agreement;
- Upon reasonable notice and within usual working hours; and
- So long as such inspection will not breach your confidentiality or privacy obligations.

5 Services and staff

5.1 Introduction: The development, implementation, running and evaluation of a Project may involve the provision of certain services or the commitment of certain human resources by either or both of the parties. The nature of the services to be provided and who will provide them, the number of people to be committed to the Project, the level of experience and skill required, the duties and tasks to be performed, the number of hours or days to be committed, which party is to commit the resources and where the resources are to be deployed and other details will vary depending on the Project and, if required, will be described in the relevant Funding Agreement.

5.2 Obligations: When receiving services or hosting one or more persons, you will ensure that each such service provider and each person is:

- Treated with respect and dignity;
- Supplied with a safe and healthy work environment;
- Not subject to any workplace discrimination, abuse, bullying or harassment; and

- Given all reasonable access, assistance, materials and co-operation needed to perform the services or to fulfil the person's agreed duties.

5.3 Fees: whether or not fees are to be paid in connection with the provision of services or the hosting of one or more persons and the amount of such fees will depend on each Project and will, if required, be described in a Funding Agreement.

6 Funding

6.1 Introduction: the amount of funding provided for or towards a Project by each party and when, where and for what purpose the funds are provided will depend on the nature of the Project. Each Funding Agreement will provide more detail.

6.2 Payment of funds: Subject to clause 10.2, each party agrees to pay the funds it has committed to a Project in accordance with the arrangements described in a Funding Agreement or as otherwise agreed by the parties.

6.3 Use of funds: You must, and must ensure that those working with and for you:

- Use any funds received in connection with a Project in accordance with these Standard Terms and any corresponding Funding Agreement which may include a specific budget, timeline and/or targets; and
- Do not lose, steal or misappropriate any funds received in connection with any Project or otherwise use such funds in a fraudulent or unlawful way.

6.4 Withholding and stopping funding: We may withhold or stop any or all of the funding we have agreed to commit to one or more Projects if you do not carry out your obligations in accordance with these Standard Terms or a relevant Funding Agreement. You acknowledge that some Projects may involve multiple payments, each tied to certain targets or a certain timeline, and agree that failure to follow any timeline or to meet one or more targets or obligations may result in us withholding or stopping one or more payments or withdrawing the funding altogether.

6.5 Repaying the funding: You agree to repay the funding (or the relevant part of it) if we overpay you or pay you an amount you are not entitled to, if you fail to use the funding provided in the way required under the corresponding Funding Agreement or if you spend an amount in a way inconsistent with or in contravention of these Standard Terms or the terms of the Funding Agreement under which the funds were provided. You agree to repay any amount within 14 days after you have been notified and that we may charge interest on any amount that is outstanding for more than 14 days calculated at 5% on a daily compound basis. We may recover the amount and any interest as a debt due to us including by deducting it from amounts we are yet to pay under a current or future Funding Agreement.

6.6 Conflict with Third Party Provider: You agree to promptly notify us of any conflict that arises, or could arise, between your obligations under an arrangement with any Third Party Provider and your obligations under these Standard Terms or a Funding Agreement.

6.7 Duty to Account: We may request that you account for any funds you receive from us in connection with one or more Projects by, for instance, providing receipts and invoices relating to the use of the Funds. If we do ask you to account, you will do so in accordance with any request.

7 Support and resources

7.1 Introduction: The type and amount of non-monetary support and resources each party is to contribute to a Project and whether or not a fee is payable for the contribution will depend on the nature of the Project. The non-monetary support and resources may be provided on its own or together with funding. Each Funding Agreement will provide more detail.

7.2 Use of resources: You must, and must ensure that those working with and for you:

- Use any property or other resources received in connection with a Project in accordance

with these Standard Terms and the corresponding Funding Agreement; and

- Do not lose, steal, damage or misuse any property or other resources received in connection with any Project or otherwise use such property or other resources in a fraudulent or unlawful way.

8 Working with children and Vulnerable People

8.1 Vulnerable person: For the purpose of this clause, "Vulnerable Person" means:

- An individual under the age of 18; or
- An individual aged 18 years and above who is or may be, unable to take care of themselves or is unable to protect themselves against harm or exploitation for any reason, for instance, because of that persons illness, trauma or disability.

8.2 Obligations: You must, and must ensure that all those working with and for you (including each of your officers, employees, contractors and volunteers) and who are involved in working with or contacting children and Vulnerable People in connection with a Project:

- Undertake all applicable checks including a criminal record check;
- Are not prohibited by any Commonwealth, State or Territory law from being engaged in a capacity where they may have contact with children or Vulnerable Persons;
- Comply with all applicable laws; and
- Comply with any specific obligations and requirements relating to working with and contacting children and vulnerable people described in the relevant Funding Agreement.

9 Review and evaluation

9.1 Acknowledgements: You acknowledge that:

- Projects often require, or benefit from, evaluation and review; and
- The funding provided to a Project may sometimes be subject to certain terms and conditions relating to the evaluation and review of a Project.

9.2 Review and evaluation: You agree that any Project may be reviewed or evaluated:

- In accordance with a Funding Agreement;
- As reasonably directed by us from time to time; and
- Even if the Project has been completed or has otherwise ended.

10 Fees, Funding and GST

10.1 Fees: Each party agrees to pay any fees owing to the other party within 30 days after receipt of a valid tax invoice from that party.

10.2 Funding: Notwithstanding anything else in these Standard Terms, but subject to the terms of a Funding Agreement, We will pay you the agreed funding amounts within 60 days after the receipt of a valid tax invoice.

10.3 GST: Any consideration or amount payable in connection with these Standard Terms or a Funding Agreement including any non-monetary consideration (**Consideration**) is inclusive of GST.

If GST is or becomes payable on a Supply made under or in connection with these Standard Terms or a Funding Agreement, the party providing the Consideration for that Supply must pay an additional amount to the party making that Supply (**Supplier**) equal to the amount of

GST payable on that Supply as calculated by the Supplier in accordance with the GST Law (**Additional Amount**). The Additional Amount is payable at the same time and in the same manner as the Consideration for the Supply.

11 Acknowledgement of support, use of brand and announcements

11.1 Acknowledgement of the Foundation: You must and must ensure that all those working with and for you provide written, verbal and logo acknowledgement in relation to a Project funded by the Foundation (in whole or in part) as described in these Standard Terms and Funding Agreement, including but not limited to annual reports, correspondence, media releases, newsletters, presentations / speeches / public announcements (including radio or television interview), print and digital promotional/ advertising material, publications, social media platforms and/or websites.

11.2 Your acknowledgement obligations: You agree that:

- Your acknowledgement obligations extend to material produced by, on behalf of, or through you or a Third Party Provider, even if the Project has been completed or has otherwise ended;
- Verbal and written acknowledgements must state:
'the Project is made possible by an Avner Pancreatic Cancer Foundation Grant'
- All written acknowledgements must include a reference to our website
<http://www.avnersfoundation.org.au>
- Logo acknowledgements must be consistent with the brand guidelines that we may provide to you from time to time;
- You must include a summary of your verbal, word and logo acknowledgements of the Foundation in any report under the Funding Agreement; and
- You must not make press or other announcements or releases relating to a Project or a Funding Agreement without our prior written approval.

11.3 Our support and branding: If you wish to use our name, logo or other branding or acknowledge our involvement in a Project in addition to the circumstances described in clauses 11.1 and 11.2 or if we require this of you, you agree to follow the terms of the relevant Funding Agreement and any brand guidelines we may provide to you from time to time. You may use our name, logo and other branding in other ways but only after first obtaining our written approval.

11.4 Your support and branding: If we wish to use your name, logo or other branding or acknowledge your involvement in a Project, we agree to follow the terms of the relevant Funding Agreement and any brand guidelines you may provide us from time to time. We may use your name, logo and other branding in other ways but only after first obtaining your written approval.

11.5 Third Party Provider branding: If a Project is supported or funded by a Third Party Provider and that Third Party Provider is known prior to the start of the Project then you must:

- Provide us with details about the proposed use of that Third Party Provider's name, logo and other branding; and
- Work with us in good faith to agree on how that Third Party Provider's name, logo and other branding are to be used in connection with the Project and ensure that any agreement between you and that Third Party Provider properly reflects the agreed position.

If a Third Party Provider becomes involved with a Project after that Project has started, then you may not use that Third Party Provider's name, logo or other branding without obtaining our prior written approval.

11.6 Your support and promotion: You agree that you will work with us in good faith from time to time to promote a Project being funded by the Foundation (in whole or part). You must request that we provide a representative to provide a brief presentation regarding the Foundation at events hosted by you, on your behalf or a Third Party Provider in relation to a Project being funded by the Foundation (in whole or part).

11.7 Summary for Public Release: You must provide a Summary for Public Release in the Application Form and Funding Agreement. You agree that we can use and edit the Summary for Public Release provided by you for our promotional purposes as we see fit to meet our requirements.

11.8 Your obligations: You agree:

- We will review your compliance with all obligations under clause 11 throughout the course of the Project;
- Failure to comply with any one of your obligations under clause 11 may give rise to a fundamental breach; and
- We may withhold or stop one or more milestone payments described in the Funding Agreement or withdraw funding altogether if you do not comply with any one or more of your obligations under clause 11, as determined in our sole discretion.

12 Intellectual Property

12.1 Intellectual property provided by us: We retain ownership over any pre-existing documents and other materials that we contribute to a Project (referred to as “**Foundation IP**”). You may use Foundation IP for your own internal purposes, as may be described in a Funding Agreement and as otherwise agreed by us first in writing.

12.2 Intellectual property provided by you: You retain ownership over any pre-existing documents or other materials you contribute to a Project (referred to as “**Grant Recipient IP**”). You agree we may use the Grant Recipient IP for our own internal purposes, as may be described in an applicable Funding Agreement and as otherwise agreed by you first in writing.

12.3 New intellectual property: Any intellectual property resulting from a Project (referred to as “**New IP**”) will be owned by the Grant Recipient unless otherwise stated in a Funding Agreement.

12.4 License to Foundation: The Grant Recipient hereby grants the Foundation a worldwide, irrevocable, royalty-free, perpetual, non-exclusive license to use all New IP for its own internal purposes, including to aid it in its work by, among other things, when working with other grant recipients on other Projects, and to sublicense the New IP to another grant recipient in circumstances contemplated by clause 17.7. You agree that the license described in this clause 12.4 extends to the reproduction and publication of the Summary for Public Release for our current and future promotional purposes and you agree that we may modify the Summary for Public Release as we see fit to meet our requirements.

12.5 Third party intellectual property rights: Each party agrees to reimburse the other party for any loss or damage it incurs because of a legitimate claim by a third party that the use of Foundation IP or Grant Recipient IP (as the case may be) has breached that third party's intellectual property rights.

12.6 Consents: Each party will, if required under a Funding Agreement, ensure that each contributor to a Project or the materials associated with a Project waives all moral rights that person may have in the Project or the materials associated with a Project in favour of the person or entity stated in that written request.

13 Property

13.1 Title to property: The title to any equipment or other property we contribute to a Project, or provide to you for use in connection with any Project (referred to as “**Foundation Property**”) remains with us unless otherwise specified in a Funding Agreement.

13.2 Use of property: You must not, and must ensure that those working with and for you do not, sell or part with possession of the Foundation Property without our prior written consent. You must, and must ensure that all those working with and for you:

- Only use the Foundation Property for the purpose of fulfilling or completing the Project for which the property was provided;
- Keep the Foundation Property free of encumbrances, separate from other goods and marked to clearly indicate that the property belongs to us; and
- Keep the Foundation Property in clean and good condition.

14 Confidentiality and Privacy

14.1 Collection and use of confidential information: Each party must maintain the confidentiality of the terms of each Funding Agreement and the other party’s Confidential Information and must only use such Confidential Information to perform its obligations or exercise its rights under these Standard Terms and any relevant Funding Agreement.

14.2 Disclosure of Confidential Information: A party may not disclose the Confidential Information of the other party to any person except:

- To any of its advisors, employees, volunteers, officers, directors and subcontractors requiring that information in connection with these Standard Terms, a Project or a Funding Agreement;
- With the consent of the Party who supplied the information which consent may be given or withheld in that party’s absolute discretion;
- Where required by law or a stock exchange or in connection with legal proceedings but only to the extent required;
- Where the Confidential Information is in the public domain or already known by the recipient without a breach of this paragraph; or
- Where the Confidential Information has been independently created, developed or acquired by the recipient without breach of this paragraph.

14.3 Confidentiality: You must, if required under a Funding Agreement or as we may otherwise reasonably require, arrange for your officers, employees, contractors and volunteers engaged in the applicable Project to give written confidential undertakings relating to the use and non-disclosure of any confidential information. If required, you agree to use the form of confidentiality deed or other document we provide for that purpose.

14.4 Personal Information: Each party will ensure that any personal information collected, processed, used, disclosed or transferred in connection with these Standard Terms, a Funding Agreement or a Project is handled in accordance with all relevant privacy legislation.

15 Conflicts of interest

You must, and must ensure that all those working with and for you, properly identify, disclose and manage all conflicts of interest that arise in connection with, or in relation to, a Project in accordance with proper governance practices and the law. Any conflict that does, or could, directly affect the outcome or progress of the Project or that could damage our reputation must be notified to us in writing within 5 days after the date you become aware of the conflict.

16 Loss, damage and insurance

16.1 Loss suffered: Each party (referred to as the “**Offending Party**”) agrees to reimburse the other party for any loss it suffers as a direct result of:

- A breach by the Offending Party of its obligations under these Standard Terms or a Funding Agreement; and
- Personal injury or death of any person caused by the Offending Party or others working with or for it in connection with a Project.

16.2 Maximum amount of reimbursement: Unless otherwise specified in a Funding Agreement, the maximum amount payable by any party to any other party for loss arising out of or in connection with a Project is the total amount of funding actually provided for that Project.

16.3 Insurance: In addition to any specific insurance requirements that may be required under a Funding Agreement, the Grant Recipient must obtain and maintain all necessary and appropriate insurances for each Project during the term of a Funding Agreement and for a period of 12 months after the expiry or termination of that Funding Agreement. The Grant Recipient agrees to promptly provide the Foundation with evidence of the currency of that insurance upon request.

17 Term and termination

17.1 Introduction: Clause 2 of these Standard Terms provides that these Standard Terms continue to apply for so long as one or more Funding Agreements are in operation. As such it is important to understand when a Funding Agreement starts and ends.

17.2 Start date: A Funding Agreement starts on the date that Funding Agreement has been signed by both parties or, if the Funding Agreement specifies a different date, on that date.

17.3 End date: a Funding Agreement terminates on the earlier of:

- The date on which the Project to which that Funding Agreement relates has been completed; and
- The date on which that Funding Agreement is terminated in accordance with clause 17.4 or 17.5.

17.4 Termination of a Funding Agreement immediately: A party may terminate a Funding Agreement immediately upon notice in writing to the other party if that other party:

- Breaches a material term of a Funding Agreement or these Standard Terms and does not remedy the breach within 14 days of receipt of a notice specifying the breach and requiring it to be remedied; or
- Becomes or resolves to become subject to any form of insolvency, administration, receivership, liquidation, bankruptcy or similar.

17.5 Termination of a Funding Agreement with notice: We may terminate a Funding Agreement by giving you at least seven days’ notice if:

- you do not comply with a timeline or meet a deadline specified in that Funding Agreement;
- you do not complete the Project by the completion date specified in that Funding Agreement or such later date as agreed between the parties; or
- you damage our reputation or, in our reasonable opinion, the continuation of the Project or our continued association with you is likely to damage our reputation.

17.6 Transition and wind-down: The relationship managers agree to meet as soon as practicable after the parties become aware that a Project is to be terminated for the purpose of:

- Devising an appropriate exit strategy for the Project which may include the transition to another organisation; and
- Minimising, so far as is possible, the effect that the termination may have on each party and any end user or recipient of goods, services or funding under that Project.

17.7 Assistance with transition: If a Project is, or is to be, terminated, we may nominate another organisation to continue that Project. If we do, each party will provide reasonable assistance with the transition of the Project even if such assistance is required beyond the date on which the relevant Funding Agreement is terminated, including:

- Transferring by way of assignment any New IP to that organisation; and
- Providing that organisation with a worldwide, royalty-free, irrevocable, perpetual, non-exclusive license to use all Grant Recipient IP necessary for that organisation to properly continue that Project.

17.8 Return or destruction of Confidential Information: Upon termination or expiry of a Funding Agreement, each party must promptly return the Confidential Information of the other party relating to that Funding Agreement or, if directed to do so by the other party, destroy it.

17.9 Return of Property: As soon as practicable after a Funding Agreement has expired or been terminated you must, and must ensure that those working with and for you, return the Foundation Property to us unless we decide otherwise.

17.10 Survival: all Terms of the Standard Terms and each Funding Agreement that by their nature are intended to survive termination will survive termination.

18 Changes to Projects

18.1 Introduction: Each party understands and acknowledges that:

- Things can happen from time to time that will, or could, delay or stop a Project, result in the change to the scope or nature of a Project or result in a Project no longer being possible at all (referred to as "**Project Change**"); and
- Some Projects have been funded or resourced for a specific purpose or out of a particular funding stream and that changes to a Project may not always be possible or desirable.

18.2 Project Change: You must let us know of any circumstances that have, or could, result in a Project Change as soon as practicable, but no more than 7 days, after you become aware of such circumstances. You must meet with us as soon as practicable, but no more than 7 days, after notifying us of any circumstances that have, or could, result in a Project Change. Notification of a Project Change should consider, among other things:

- The details of, and reasons for, a Project Change;
- What effect, if any, a Project Change could have on other Projects;
- Strategies on how to remove or limit any negative effect of a Project Change;
- If relevant, a proposed new completion date for the Project or Projects; and
- Any criteria under which the funding or resources were granted.

19 Managing disputes

19.1 Resolution through relationship manager: Where possible, a dispute arising in relation to these Standard Terms or a Funding Agreement, should be resolved between the most relevant relationship managers of each party.

19.2 Notice of dispute: If a dispute arises in relation to these Standard Terms or a Funding Agreement, and it is not possible for the dispute to be resolved by the relationship managers, the party claiming that a dispute has arisen must give written notice to the other party indicating the nature of the dispute (referred to as a “**Dispute Notice**”).

19.3 Resolving the dispute: A senior representative of each party must meet and attempt to resolve the dispute within 5 business days after receipt of the Dispute Notice. If within a further 5 business days the parties are unable to resolve the dispute, the Chief Executive Officer of each party (or his or her nominee) must meet and attempt to resolve the dispute.

19.4 Dispute not resolved: If, within 15 business days after receipt of the Dispute Notice, the parties are unable to resolve the dispute, the parties may take whatever action they consider necessary to resolve the dispute.

19.5 Injunctive relief: Nothing in this clause prevents a party from issuing proceedings seeking urgent injunctive relief.

20 General

20.1 Each Funding Agreement, together with these Standard Terms, is governed by the laws of the state designated in the Funding Agreement and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of that state.

These terms supersede all previous agreements about their subject matter and embody the entire agreement between the parties.

Neither party will be liable for any failure to perform its obligations under these terms where that performance is delayed, prevented, restricted or interfered with for any reason outside that party's control.

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of these terms.

The rights of a party under these terms are in addition to and do not exclude or limit any other rights or remedies provided by law.

If any part of these terms and conditions is held to be unenforceable, the unenforceable part is to be given effect to the greatest extent possible and the remainder will remain in full force and effect.

No, amendment or addition to these Standard Terms or a Funding Agreement is binding unless in writing and signed by an authorised representative of each party.

20.2 Assignment and subcontracting: Unless specified in a Funding Agreement, no party can assign, subcontract or novate its rights or liabilities under these Standard Terms or a Funding Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

20.3 Legal Relationship: Except as expressly provided in these Standard Terms or a Funding Agreement:

- Nothing in these Standard Terms or a Funding Agreement is intended to constitute a fiduciary relationship or an agency, partnership or trust; and
- No party has authority to bind any other party.

20.4 Notices: Any written notice given in connection with these Standard Terms or a Funding Agreement must be given by emailing the notice to the email address of the other party set out in the Funding Agreement.

20.5 Counterparts: These Standard Terms and a Funding Agreement may be executed in any number of counterparts, each of which, when executed, is an original. Those counterparts together make one instrument.

20.6 Interpretation: Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings. A monetary amount is in Australian dollars. Phrases such as “for example”, “for instance” and “such as” are not, and should not be interpreted to be, words of limitation unless the context otherwise requires.