**Loan Agreement**

**(Borrower)**

**{$USR\_Business}**

**AND**

**{$PT2\_Business}**

|  |
| --- |
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PARTIES & EXECUTION

By signing below, the parties agree to the Particulars and General Conditions set out in this Agreement.

|  |  |  |  |
| --- | --- | --- | --- |
| Name | {$USR\_Name|upper}{if !empty($USR\_ABN)}, ABN {$USR\_ABN|phone\_format:”%2 %3 %3 %3”}{/if} (**Borrower**) | | |
| Address | {$USR\_Address|replace:“AU”:”Australia”} | | |
| Contact | {$USR\_Contact\_FN} {$USR\_Contact\_LN} – {$USR\_Contact\_Role} - {$USR\_Contact\_Email} | | |
| Signatory | {$USR\_Signatory\_FN} {$USR\_Signatory\_LN} – {$USR\_Signatory\_Role} | | |
| Signature | [sig|req|signer1] | Date | [date|req|signer1] |

|  |  |  |  |
| --- | --- | --- | --- |
| Name | {$PT2\_Name|upper}{if !empty($PT2\_ABN)}, ABN {$PT2\_ABN|phone\_format:”%2 %3 %3 %3”}{/if} (**Lender**) | | |
| Address | {$PT2\_Address|replace:“AU”:”Australia”} | | |
| Contact | {$PT2\_Contact\_FN} {$PT2\_Contact\_LN} – {$PT2\_Contact\_Role} - {$PT2\_Contact\_Email} | | |
| Signatory | {$PT2\_Signatory\_FN} {$PT2\_Signatory\_LN} – {$PT2\_Signatory\_Role} | | |
| Signature | [sig|req|signer2] | Date | [date|req|signer2] |

PARTICULARS

1. Introduction

|  |  |
| --- | --- |
| * 1. Agreement Date | {$Comc\_Date|date\_format:"d F Y"}. |
| * 1. {tableif $Loan\_Purpose == “Yes”}Background | * + 1. The Borrower acknowledges that funding is being provided by the Lender as a temporary arrangement which is being properly treated as a loan.     2. The Borrower acknowledges that funds made available to it through this loan are to be applied as directed by the Lender to pay for research and development activities conducted on the Borrower’s behalf by the Lender or third parties.     3. It is the Borrower’s intention to assign any distributions of income received to the Lender in full or part satisfaction of the loan obligation.     4. The Lender and the Borrower have now agreed to enter into this formal Agreement to determine the terms and conditions governing the loan and its repayment. {/tableif} |
| * 1. {tableif $Loan\_Purpose == “No”}Background | * + 1. The Borrower acknowledges that funding is being provided by the Lender as a temporary arrangement which is being properly treated as a loan.     2. The Borrower acknowledges that funds made available to it through this loan are to be applied as directed by the Lender.     3. It is the Borrower’s intention to assign any distributions of income received to the Lender in full or part satisfaction of the loan obligation.     4. The Lender and the Borrower have now agreed to enter into this formal Agreement to determine the terms and conditions governing the loan and its repayment. {/tableif} |

1. Key Terms

|  |  |
| --- | --- |
| * 1. Loan Amount | * + 1. The maximum total amount to be lent by the Lender to the Borrower subject to this Agreement is {$LN\_AMT|number\_to\_words} dollars (${$LN\_AMT|number\_format}).     2. The parties may agree in writing to increase or decrease the Loan Amount from time-to-time. |
| * 1. Initial Advance | {$ADV\_AMT|number\_to\_words|capitalize\_sentences} dollars (${$ADV\_AMT|number\_format}) provided under this Agreement by the Lender to the Borrower. |
| * 1. Drawdown Date | The Agreement Date, or such other date as the parties agree in writing. |
| * 1. Interest Rate | {$INT\_RT|number\_to\_words|capitalize\_sentences} per cent ({$INT\_RT}%) per annum, or, such other rate as the parties agree in writing. |
| * 1. Interest Payment Dates | The Borrower shall make interest payments by the 28th day of each month commencing on the first month after the Drawdown Date, until (and including) the Repayment Date. |
| * 1. Repayment Date | * + 1. The Borrower must repay the Loan on the earlier occurrence of:        1. The date on which the Borrower has available funds to discharge the Loan (whether from revenue for services performed in respect of research & development activities or another source of income); or        2. {if $Loan\_Purpose == “Yes”}48 months{elseif $Loan\_Purpose == “No”}{$Term} {$Term\_Length}{/if}{if $Term > 1}s{/if} from the Agreement Date.     2. The parties may agree in writing to vary the Repayment Date, subject to any provisions of this Agreement relating to accelerated repayment of the Loan. |
| * 1. Default Interest Rate | {$DEF\_RT|number\_to\_words|capitalize\_sentences} per cent ({$DEF\_RT}%) per annum, or, such other rate as the parties agree in writing. |
| * 1. Security | {if $Security == “No”}Unsecured.{elseif $Security == “Yes”}{$Security\_Description|capitalize\_sentences}{/if} |
| * 1. Special Conditions | {if empty ($Special\_Conditions)}Not Applicable.{elseif !empty ($Special\_Conditions)}{$Special\_Conditions|capitalize\_sentences}{/if} |

GENERAL CONDITIONS

1. DEFINITIONS
   1. **Definitions****.** In this Agreement capitalised terms have the following meanings:
      1. **Advances** means the Initial Advance and all subsequent advances of money or funding from the Lender to the Borrower during the Term.
      2. **Business Day** means a day that is not a Saturday, Sunday or public holiday in the Location.
      3. **Corporations Act** means the *Corporations Act 2001* (Cth).
      4. **Default Event** means any of the events, omissions or occurrences specified in clause 9.2.
      5. **Default Interest Rate** means the rate at item B.7 of the Particulars.
      6. **Initial Advance** means the amount in item B.2 of the Particulars.
      7. **Interest** means the interest payable on the Advances at the Interest Rate and the Default Interest Rate (as applicable).
      8. **Interest Rate** means the rate at item B.4 of the Particulars.
      9. **Loan** means, at any time and from time to time, the principal amount of the Advances outstanding, and any interest due but not paid on those Advances, at that time.
      10. **Loan Amount** means the amount in item B.1 of the Particulars.
      11. **Location** means {$REF\_State}, Australia.
      12. **PPSA** means *Personal Property Securities Act 2009* (Cth).
      13. **PPSR** means the [Personal Property and Securities Register](https://www.ppsr.gov.au/) established under the PPSA.
      14. **Repayment Date** meansthedate described in item B.6 of the Particulars.
      15. **Security** means any mortgage, pledge, lien, hypothecation, charge, security interest or other encumbrance, given by the Borrower or a guarantor in favour of the Lender, securing the obligations of the Borrower under this Agreement, including:
          1. any security described in the Particulars; and
          2. any guarantee executed by a guarantor,

described at item B.8 of the Particulars or otherwise in place between the parties to secure this Loan or any other obligation owed to the Lender by the Borrower.

* + 1. **Special Conditions** means the additional terms and conditions agreed between the parties (if any) that relate to this Agreement as set out in item B.9 of the Particulars.
    2. **Term** means the term of this Agreement, commencing on the Agreement Date and continuing until the Repayment Date.

1. PROVISION OF ADVANCES
   1. The Lender shall provide the Initial Advance to the Borrower by way of cash advance or other form of funding on the Drawdown Date on the terms and subject to the conditions set out in this Agreement.
   2. The Lender will make Advances up to the value of the Loan Amount to the Borrower, on request, during the Term of this Agreement.
2. PAYMENT OF INTEREST
   1. **Rate of interest.** Unless otherwise advised by the Lender, interest is payable by the Borrower on the Loan at the Interest Rate and will be calculated on the daily balance of the Loan on the basis of a 365-day year.
   2. **Payment of interest.** The Borrower must pay interest in arrears in equal monthly instalments on each Interest Payment Date.
   3. **Default interest.**
      1. Default interest will accrue on the outstanding amount where an amount payable by the Borrower under this Agreement is not paid on or before its due date for payment, unless otherwise advised by the Lender.
      2. Accrued Default interest must be paid by the Borrower to the Lender upon demand by the Lender.
      3. Default interest will be calculated at the Default Interest Rate for the period for which the outstanding amount is overdue.
      4. Default interest will accrue on and from the due date for payment of the outstanding amount, up to but excluding its date of payment. It will be calculated on a daily basis and will be compounded on the last day of each month.
3. OTHER PAYMENTS
   1. **Costs and expenses.** The Borrower must indemnify the Lender against, all costs, losses, charges, expenses, liabilities, damages, fees and disbursements paid or incurred by the Lender for or incidental to:
      1. any breach of, or default under, this Agreement or the Security by the Borrower or any guarantor (including the fees of all professional consultants properly incurred by the Lender in consequence of or in connection with, any such breach or default);
      2. the exercise or attempted exercise of any right, power, privilege, authority or remedy of the Lender pursuant to this Agreement or the Security; and
      3. all taxes (excluding any income tax payable by the Lender), outgoings, penalties, fines, demands, charges or costs, stamp and other duties and assessments imposed by any court or by any federal, state or municipal, statutory or other authority or otherwise (including any related bank charges, financial institutions duties and debits taxes) directly or indirectly upon this Agreement or the Security or any receipt or payment under this Agreement or the Security.
4. REPAYMENT
   1. The Borrower must repay and finally discharge the Loan on the Repayment Date. The Borrower must also pay:
      1. Any interest accrued on the Loan but not yet paid; and
      2. All other amounts payable under this Agreement and unpaid, to the Lender on or before the Repayment Date.
5. METHOD OF PAYMENT
   1. **Time of payment.** Unless otherwise specified or agreed by the Lender, all payments to be made under this Agreement by the Borrower must be made as immediately available funds, no later than midday on the due date.
   2. **Manner of payment.** All payments to be made under this Agreement by the Borrower to the Lender must be paid to the Lender in such manner as the Lender may from time to time direct in writing. Any payment made in any other way will be at the Borrower’s risk until it is actually received by the Lender.
   3. **No set-off or counterclaim.** Notwithstanding any term, whether express or implied, in this Agreement or any rule of law or course of conduct to the contrary, payments under this Agreement must be made by the Borrower without set-off or counterclaim and, subject to clause 6.4, free and clear of, and without, any deductions whatsoever.
   4. **No withholdings.** All payments to be made under this Agreement, whatever their nature, must, to the full extent permitted by law, be made by the Borrower without any deduction for, or on account of, any income or other taxes, imposts, deductions or other withholdings of any kind (collectively ‘withholdings’). If the Borrower is compelled by law to deduct any withholdings from any payment, the Borrower must ensure that the deduction made does not exceed the minimum legal liability in that regard.
6. REPRESENTATIONS AND WARRANTIES
   1. **Borrower’s representations and warranties.** The Borrower represents and warrants to the Lender that:
      1. No existing default. Except as disclosed in writing to the Lender and consented to in writing by the Lender, the Borrower is not in default or difficulty, in such a way that is reasonably likely to adversely affect the ability of the Borrower to comply with its obligations under this Agreement or the Security, including:
         1. under any deed, agreement or other document or obligation to which it is a party or by which it is bound; or
         2. in respect of any financial commitment or obligation (including obligations under guarantees or other contingent liabilities).
      2. Trustee. The Borrower enters into this Agreement on its own behalf and not as trustee of any trust.
7. BORROWER’S UNDERTAKINGS
   1. **Undertakings and Agreements.** The Borrower undertakes the following:
      1. the Borrower will use the Loan to pay its debts, including its debts to the Lender;
      2. the Borrower will comply with the requirements of all applicable laws, rules, regulations, orders and decrees of any person, non-compliance with which would, or might, in the Lender’s opinion, have a material adverse effect on the Borrower’s ability to comply with its obligations under this Agreement or the Security;
      3. the Borrower must immediately notify the Lender if:
         1. a Default Event has occurred; or
         2. circumstances are arising where a Default Event is likely to occur.
      4. the Borrower will immediately notify the Lender of an event or change in the Borrower’s circumstances, that is capable of rendering any representation or warranty made in this Agreement or the Security untrue or incorrect.
   2. **Further Assurances.**
      1. The Borrower will execute and do all things necessary to ensure the Lender enjoys the full benefit of the covenants contained or implied in this Agreement, including:
         1. causing necessary documentation to be executed by any guarantor or other third party;
         2. enabling the Lender to register its interest over any Security on the PPSR; and
         3. providing such assurances or taking such actions as are reasonably required by the Lender for giving effect to, or protecting the Lender’s rights, powers and remedies under this Agreement.
8. DEFAULT AND TERMINATION
   1. **Consequences of Default.** If any of the events described in clause 9.2 occur, the Loan and all other amounts payable under this Agreement and unpaid shall, at the option of the Lender and notwithstanding any delay or previous waiver of the right to exercise that option, immediately become due and payable without the necessity for any demand or notice to the Borrower become due and payable upon demand by the Lender. In addition, if the Lender exercises that option, the Security will become immediately enforceable.
   2. **Default Events.** Each of the following events is a Default Event:
      1. the Borrower fails to, on the due date for payment:
         1. repay the Loan on the Repayment Date;
         2. pay any instalment of interest on the relevant Interest Payment Date; or
         3. pay any other money payable under this Agreement,

and such failure continues for more than ten (10) Business Days; or

* + 1. the Borrower fails to perform or observe any of the covenants or provisions of this Agreement on the part of the Borrower to be performed or observed and (if capable of remedy) such default continues for more than twenty (20) Business Days (or such longer period as the Lender in its absolute discretion permits) after notice from the Lender requiring the Borrower to remedy the default, unless the non-performance or non-observance has been waived or excused by the Lender in writing.
  1. **Acceptance of moneys.** The Lender may exercise its rights under clause 9.1:
     1. notwithstanding acceptance of any part of any of the amounts payable under this Agreement after the occurrence of any Default Event;
     2. notwithstanding the occurrence of any previous or other Default Events; and
     3. without the necessity for any notice to, or of any consent or concurrence on the part of, the Borrower or any other person.

1. GENERAL
   1. **Amendments.** This Agreement may only be amended by written agreement between all parties.
   2. **Statutes not to abrogate agreement.** Unless application is mandatory by law, no statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, will apply to this Agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the Lender under this Agreement.
   3. **Reimbursement of Lender.** To the extent permissible at law, the Borrower must, forthwith upon demand, pay to the Lender an amount equivalent to any moneys paid by the Lender in respect of any liability imposed on the Borrower under or by virtue of this Agreement, notwithstanding that any statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, directly or indirectly, imposes such liability upon the Lender.
   4. **Assignments.** This Agreement is binding on, and operates for the benefit of, both the Borrower and the Lender and their respective successors and assigns, except that the Borrower must not assign this Agreement or any of its rights or obligations under this Agreement without the Lender's prior written consent. The Lender may at any time assign, charge or otherwise deal with its rights under this Agreement and the Security.
   5. **Statement by Lender.** A statement in writing signed by a director, secretary, or officer of the Lender whose title includes the word 'manager' stating the amount due or owing by the Borrower to the Lender or any other act, matter or thing arising under this Agreement as at any date or dates set out in that statement will be prima facie evidence of the facts so stated.
   6. **Prohibition on oral amendments.** Neither this Agreement nor any provision of this Agreement may be amended, modified, waived, discharged or terminated orally.
   7. **Counterparts.** This Agreement may be executed in any numbers of counterparts. All counterparts together make one instrument.
   8. **Prevalence.** 
      1. To the extent that the Particulars are inconsistent with the General Conditions, the Particulars will take precedence;
      2. To the extent that any Special Conditions are inconsistent with any other term of this Agreement, the Special Conditions will take precedence.
   9. **Cumulative rights.** The powers and rights of a party under this Agreement do not exclude any other power or right.
   10. **No merger.** The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this Agreement.
   11. **Entire Agreement.** 
       1. This Agreement supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.
       2. To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference in this Agreement.
   12. **Further Assurances.** Each party must do all things necessary (including executing documents) to give full effect to this Agreement and the transactions contemplated by this Agreement.
   13. **To the extent not excluded by law.** The rights, duties and remedies granted or imposed by this Agreement operate to the extent not excluded by law.
   14. **Governing law and jurisdiction.** 
       1. The laws of the {$REF\_State} in Australia govern this Agreement.
       2. Each party irrevocably submits to the non-exclusive jurisdiction of the Courts in the {$REF\_State} in Australia and the Federal Court of Australia sitting in the {$REF\_State}.
   15. **No waiver.**
       1. The failure of a party to require full or partial performance of a provision of this Agreement does not affect the right of that party to require performance subsequently.
       2. A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
       3. A right under this Agreement may only be waived in writing signed by the party granting the waiver and is effective only to the extent specifically set out in that waiver.
   16. **Severability**. A clause or part of a clause of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining clauses or parts of the clause of this Agreement continue in force.
   17. **Interpretation.**
       1. The singular includes the plural and the opposite also applies.
       2. If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
       3. A reference to a clause refers to clauses in this Agreement.
       4. A reference to legislation is to that legislation as amended, re‑enacted or replaced, and includes any subordinate legislation issued under it.
       5. Mentioning anything after includes, including, or similar expressions, does not limit anything else that might be included.
       6. A reference to a party to this Agreement or another agreement or document includes that party’s successors and permitted substitutes and assigns (and, where applicable, the party’s legal personal representatives).
       7. A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
       8. Any term which is defined in the Corporations Act, but is not defined in this Agreement, has the meaning given to it in the Corporations Act.
       9. A reference to a monetary amount in this Agreement is in Australian dollars.

{$DISPLAY\_NAME} {$DISPLAY\_EMAIL} {$Login\_ID}