



Australian Government
**Department of Innovation
 Industry, Science and Research**

Funding Agreement

#insert name and address of Funding recipient#

#insert date#

Dear #insert name of funding recipient#,

Enterprise Connect - Funding for Researchers in Business

The Researchers in Business initiative will contribute to the funding of the placement of individuals from research organisations in small and medium sized enterprises.

The Commonwealth is offering You funding for a Researchers in Business placement on the terms of this letter and the attached standard terms (**Standard Terms**) (together, the **Agreement**).

DETAILS

Parties	The Commonwealth and You .
Commonwealth	<p>The Commonwealth of Australia, as represented by the Department of Innovation, Industry, Science and Research ABN 74 599 608 295, of Industry House, 10 Binara Street, Canberra City ACT 2601.</p> <p>Address for notices:</p> <p>Mr Maurice Wilcox Innovation House Mawson Lakes Boulevard Mawson Lakes SA 5095</p> <p>maurice.wilcox@innovation.gov.au</p>
You (and Your)	<p>#insert name, ABN/ACN and address of funding recipient#</p> <p>Address for notices:</p> <p>#insert address, facsimile number and email (if email notice is accepted) address for notices#</p>
Commencement Date	Date that this Agreement is signed by the last signing party
Term	<p>The period starting on the Commencement Date and ending on the earlier of:</p> <p>(a) #insert number of months – this should be the same number of months as the Placement Term from the Placement Contract# months from the Commencement Date; and</p>



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(b) the effective date of termination, if the Agreement is terminated earlier in accordance with clause 8.

(See clause 13.2(g) for how a month is calculated.)

Placement Provider	#insert name, ABN/ACN and address of university or research organisation providing the Researcher. If it is the funding recipient, insert the word "You" #
Placement Recipient	#insert name, ABN/ACN and address of the SME receiving the Researcher. If it is the funding recipient, insert the word "You" #
Researcher	#insert the name of the Researcher #
Funding	#insert the maximum total funding payable to the Funding recipient (exclusive of GST). The amount specified must be 50% of the salary of the Researcher for the performance of the Placement, up to a maximum of \$50,000 #
Insurance	Public Liability - \$10million to be maintained for the Term. Professional Indemnity - \$5million to be maintained for the Term and a period of 3 years afterwards.

To accept these terms, please sign and return the attached copy of this letter.

If you have any queries, please do not hesitate to contact

Mr Maurice Wilcox

Innovation House

Mawson Lakes Boulevard

Mawson Lakes SA 5095

maurice.wilcox@innovation.gov.au

Yours faithfully,

Evangelos Lambrinos

National Manager

Enterprise Connect



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SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA
 represented by the Department of
 Innovation, Industry, Science and Research
 ABN 74 599 608 295 by its duly authorised
 delegate:

.....
sign here Date

in the presence of:

.....
 print name of witness *witness sign here*

University Signature Block

SIGNED for **UNIVERSITY OF XYZ** by
 its duly authorised representative:

.....
 Name of authorised representative (block letters) Signature of authorised representative Date

.....
 print name of witness (block letters) witness sign here Date

Company Signature Block



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EXECUTED by **XYZ PTY LTD** in
 accordance with section 127(1) of the
 Corporations Act 2001 (Cwlth) by
 authority of its directors:

.....
 Signature of director

.....
 Signature of witness

.....
 Date

.....
 Name of director (block letters)

.....
 Name of witness

.....
 Date



Standard Terms

1. Your obligations

1.1 The Placement contract

- (a) You warrant that, as at Commencement Date, You are party to a contract for the performance of the Placement with the Placement Provider or the Placement Recipient (as applicable) that includes, and is otherwise consistent with, the terms and conditions specified in clause 11.
- (b) You must:
 - (i) comply with the terms of the Placement Contract;
 - (ii) before agreeing to make any variations to the Placement Contract, obtain the Commonwealth's prior written consent; and
 - (iii) provide the Commonwealth with all reasonable assistance to enforce those provisions of the Placement Contract which are for the benefit of the Commonwealth.

1.2 Researchers in Business Client Guidelines

- (a) Subject to clause 13.3, You must comply with the Researchers in Business Client Guidelines.
- (b) You acknowledge that You have been provided with, and have read, a copy of the Researchers in Business Client Guidelines.

1.3 Conflict of Interest

You:

- (a) warrant that no Conflict exists, or is likely to arise, in the performance of Your obligations under this Agreement (and, if You are the Placement Provider, the Researcher's performance of the Placement under, this Agreement); and
- (b) must ensure that no Conflict arises during the Term.

If a Conflict arises, You must notify the Commonwealth immediately and take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the Conflict.

2. Funding

- (a) Subject to paragraph (d) of this clause, the Commonwealth will pay:
 - (i) 70% of the Funding within 30 days of receiving a tax invoice, satisfying paragraph (b) of this clause, after the execution of this Agreement by You and the Commonwealth; and



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- (ii) 30% of the Funding within 30 days of receiving the following after the end of the Term:
 - (A) the final reports specified in clause 9(c);
 - (B) if You are the Placement Provider, evidence to the satisfaction of the Commonwealth that the Placement Recipient has received the services of the Researcher through the Placement, and a tax invoice satisfying paragraph (b) of this clause; and
 - (C) if You are the Placement Recipient, evidence to the satisfaction of the Commonwealth that You have paid an amount equal to 50% of the salary paid to the Researcher by the Placement Provider for the period of the Placement on or before the end of the Term, and a tax invoice satisfying paragraph (b) of this clause.
- (b) You must provide a tax invoice to the Commonwealth's Representative as soon as practicable after:
 - (i) the execution of this Agreement by You and the Commonwealth; and
 - (ii) the end of the Term,which sets out the amount of Funding to which the invoice relates (as specified in paragraph (a) of this clause) and any other information that the Commonwealth requires.
- (c) You must use the Funding to pay for the provision of the Researcher for the performance of the Placement.
- (d) The Commonwealth may vary, withhold or cease (in whole or in part) the Funding if:
 - (i) the Placement ceases at any time during the Term including by reason of the Researcher, Placement Provider, or Placement Recipient failing to perform the Placement;
 - (ii) You are in breach of a term of this Agreement;
 - (iii) there is a variation in the funding of the Enterprise Connect Program or in any relevant Federal Government appropriation;
 - (iv) payment of the Funding will cause Funding paid or payable to exceed the maximum amount specified in the Details;
 - (v) the Commonwealth is not satisfied with a report provided according to clause 9; or
 - (vi) otherwise, by not less than three months notice in writing to You.
- (e) If You:
 - (i) do not fully commit or expend the Funding paid to You by the end of the Term; or
 - (ii) spend any amount of the Funding otherwise than in accordance with this Agreement,

the amount underspent or spent otherwise than in accordance with this Agreement (as the case may be), together with any interest earned on that Funding by You, must, at



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the option of the Commonwealth, be paid to the Commonwealth as and when required by the Commonwealth or set-off against amounts payable to You under this Agreement.

- (f) Nothing in this clause 2 limits the Commonwealth's rights under clause 8.

3. GST

- (a) The consideration specified in this Agreement does not include any amount for GST.
- (b) If a supply under this Agreement is subject to GST, the recipient must pay to the supplier (at the same time as the consideration for the supply is payable or is to be provided) an additional amount equal to the amount of the consideration multiplied by the applicable GST rate, provided that the supplier gives the recipient a tax invoice .
- (c) If a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an input tax credit.

4. Intellectual property

- (a) Commonwealth Material, and the intellectual property rights in Commonwealth Material, remain the property of the Commonwealth. Immediately on the expiry or termination of this Agreement You must return all Commonwealth Material to the Commonwealth, or deal with it as otherwise directed by the Commonwealth.
- (b) Agreement Material and the intellectual property rights in Agreement Material, vests in the Commonwealth on its creation, however You are granted a world-wide, non-exclusive licence to use that material in the performance of this Agreement. You must assign to the Commonwealth, or do all things necessary to procure the valid assignment to the Commonwealth of, any Intellectual Property rights in Agreement Material, which from time to time vest in You or any of Your employees or contractors.
- (c) Clause 4(b) does not apply to Intellectual Property rights in material that existed prior to the Commencement Date ("**Existing Material**").
- (d) You indemnify the Commonwealth, its officers and employees from and against any loss or liability, cost or expense arising out of or as a consequence of a claim by a third party that the Commonwealth's use of the Agreement Material or Existing Material infringes their intellectual property rights.
- (e) You indemnify the Commonwealth against any compensation, remuneration or other amount payable to a third party for the use or exploitation of the Agreement Material and Existing Material (or any of it), or exercise of any intellectual property right of a third party embodied in the Agreement Material and Existing Material, by the Commonwealth (or any person authorised by the Commonwealth) in circumstances where that use, exploitation or exercise is permitted under legislation without infringing the third party's intellectual property right, and against all loss, liability, cost and expense arising out of or in connection with a claim for payment of any such compensation, remuneration or other amount.



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- (f) In this clause 4, “use” in relation to the Agreement Material or Existing Material, includes to copy, reproduce, modify, make extracts from, display publicly, publicise, or adapt that material or any adaptation of that material.

5. Publicity and Promotion

- (a) Each party will comply with the requirements and obligations regarding publicity and promotion set out in the Enterprise Connect Program Guidelines.
- (b) Without limiting clause 5(a), You must ensure that the Commonwealth’s funding is acknowledged.

6. Liability and indemnity

- (a) The Commonwealth is not liable to you for any loss, liability, cost, damage or expense (“**Liability**”) incurred by You in connection with the Placement or the RIB Project, except to the extent that the Liability arises directly as a consequence of the Commonwealth’s negligence or breach of this Agreement.
- (b) You indemnify the Commonwealth for any Liability incurred by the Commonwealth in connection with:
- (i) Your fraud, negligence or wilful misconduct;
 - (ii) any breach by You of this Agreement or the Placement Contract; and
 - (iii) any claim for payment of remuneration or any other amount to the Researcher in connection with the Placement, except to the extent that the claim arises directly as a consequence of the Commonwealth’s breach of clause 2 of this Agreement.

7. Insurance

- (a) You must maintain the insurance policies specified in the Details.
- (b) You must provide evidence of insurance promptly on request by the Commonwealth.

8. Termination

8.1 Termination and reduction for convenience

- (a) The Commonwealth may, at any time and in its absolute discretion, terminate this Agreement by giving You 30 days’ written notice.
- (b) If this Agreement is terminated under clause 8.1(a), the Commonwealth is liable only for:
- (i) any instalments of the Funding under clause 2(a) which have become due and payable in accordance with this Agreement before the effective date of termination; and
 - (ii) reasonable costs actually incurred by You and directly attributable to the termination (excluding redundancies and costs arising from termination of subcontractors).



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- (c) The Commonwealth is not liable to pay:
 - (i) compensation for loss of prospective profits; or
 - (ii) compensation which would, in addition to any amounts paid or due, or becoming due, to You under this Agreement, exceed the total amount of funding payable under this Agreement.
- (d) You may terminate this Agreement, at any time, by giving the Commonwealth 30 days' written notice, in which case the Commonwealth is liable only for payments under clause 2(a) which have become due and payable in accordance with this Agreement before the effective date of termination.

8.2 Termination for default

- (a) The Commonwealth may terminate this Agreement effective immediately by giving notice to You if:
 - (i) You breach any provision of this Agreement and You fail to remedy the breach within 14 days after receiving notice requiring You to do so; or
 - (ii) the Placement ceases at any time during the Term (including by reason of the Researcher, Placement Provider, or Placement Recipient failing to perform the Placement); or
 - (iii) an event specified in clause 8.2(b) occurs.
- (b) You must notify the Commonwealth immediately if:
 - (i) You cease to be able to pay Your debts as they become due; or
 - (ii) You are guilty of conduct which, in the reasonable opinion of the Commonwealth, would or might bring the Commonwealth or any officer of the Commonwealth into disrepute; or
 - (iii) there is a breach of the Placement Contract by either party to it, or the Researcher acts in a manner that is inconsistent with the terms of the Placement Contract or this Agreement.

8.3 Your obligations on termination

On termination of this Agreement, You must:

- (a) stop participation in the Placement as specified in the notice of termination;
- (b) take all available steps to minimise loss resulting from that termination;
- (c) protect Commonwealth Material and Agreement Material, and deal with Commonwealth Material and Agreement Material as reasonably directed by the Commonwealth; and
- (d) return all the Commonwealth's Confidential Information (or any third party information obtained as a consequence of Your participation in the Placement) to the Commonwealth.

8.4 Termination does not affect accrued rights

Termination of this Agreement does not affect any accrued rights or remedies of a party.



9. Records and reporting

You must provide the following reports to the Commonwealth (in a form and containing the content reasonably required by the Commonwealth from time to time):

- (a) written confirmation, within 21 days of the date of the letter from the Commonwealth to You enclosing an executed copy of this Agreement (or other period of time approved by the Commonwealth in writing), of the commencement of the Placement;
- (b) a progress report, within 14 days of the day that occurs half-way during the Term in the form, and containing the content, required by the Commonwealth and in accordance with the Researchers in Business Client Guidelines;
- (c) the following reports within 30 days of the end of the Term, in the form and containing the content, required by the Commonwealth:
 - (i) a final report completed by the Placement Recipient;
 - (ii) an audit report completed by an Approved Auditor confirming that the Funding has been used in accordance with this Agreement; and
 - (iii) a final report completed by the Researcher; and
- (d) any other report required under the Researchers in Business Client Guidelines, in accordance with those guidelines.

The reports referred to in paragraphs (b) and (c) of this clause must detail Your use of the Funding and describe the performance of the Placement and the RIB Project during the period from the Commencement Date to the date of preparation of the report.

You must keep records of Your use of the Funding and Your participation in the Placement.

10. Audit and access

- (a) You must give the Auditor-General and persons authorised by the Commonwealth (collectively, “**those permitted**”) access to premises at which records are stored or work in connection with the Placement is undertaken at all reasonable times and allow those permitted to inspect and copy records in Your possession or control for purposes associated with this Agreement or any review of performance under this Agreement.
- (b) You must provide all reasonable assistance to those permitted.

11. The Placement Contract

- (a) The Placement Contract must include the following terms and conditions:
 - (i) the Placement may be for a period of up to 12 months, with the Placement term commencing on the date the Commonwealth executes this Agreement;
 - (ii) the parties to the Placement Contract agree to commence the Placement promptly upon the Commonwealth’s execution of this Agreement, and in any event, no later than 14 days after the date of the letter from the Commonwealth to You enclosing



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- an executed copy of this Agreement (or other period of time approved by the Commonwealth in writing);
- (iii) Funding will be provided by the Commonwealth for 50% of the salary payable to the Researcher for the performance of the Placement, up to a maximum of \$50,000 (excluding GST), and the Placement Recipient must contribute an amount to the payment of the Researcher's salary that is equal to the Funding provided by the Commonwealth;
 - (iv) the details and outcome of the Placement will be made available by the Researcher, the Placement Provider and the Placement Recipient, for use by the Commonwealth as an Enterprise Connect Program case study and other purposes relating to the Commonwealth's evaluation of the Researchers in Business program;
 - (v) the Placement must not involve the replacement of a former or existing researcher or other employee, officer or agent of the Placement Recipient previously or currently employed or otherwise engaged by the Approved Recipient for similar purposes to those for which the Placement Recipient intends to obtain the Placement; and
 - (vi) an acknowledgment that the Commonwealth may in its discretion terminate the Funding Agreement if the Placement Provider or the Placement Recipient breaches the Placement Contract or the Researcher acts in a manner that is inconsistent with the terms of the Placement Contract.
- (b) The Placement Contract must also:
- (i) require the Placement Recipient to provide reasonable access and assistance to the Researcher to permit the Researcher to perform the RIB Project through the Placement in accordance with this Agreement and the Placement Contract;
 - (ii) require the Placement Provider to ensure that the Researcher performs the RIB Project through the Placement:
 - (A) in accordance with this Agreement and the Placement Contract;
 - (B) diligently and with reasonable care and skill; and
 - (C) co-operatively with the Placement Recipient;
 - (iii) specify who is to own the intellectual property created in the performance of the Placement, whether that intellectual property is created by the Researcher or the Placement Recipient, and the intellectual property rights (if any) of the participants in the Placement that do not own that intellectual property; and
 - (iv) include provisions permitting:
 - (A) it to be terminated in circumstances where this Agreement is terminated; and



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- (B) the Commonwealth and the Auditor-General to audit the performance of the Placement Contract and the RIB Project on terms that are substantially the same as clause 10 of this Agreement.

12. Miscellaneous

- (a) Clauses 2(d), 2(e), 4, 6, 8, 9 and 10, and provisions of the Enterprise Connect Program Guidelines and the Researchers in Business Client Guidelines, to the extent that they relate to confidentiality, protection of personal information, books and records, reports and audit and access, survive the expiry or termination of this Agreement.
- (b) Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.
- (c) A party may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the other party.
- (d) This Agreement does not create a relationship of employment, agency or partnership between the parties, and You must not represent Yourself as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.
- (e) The Commonwealth need not incur expense or make payment before exercising a right of indemnity under this Agreement.

12.2 Governing law and jurisdiction

This Agreement is governed by the law of the Australian Capital Territory.

13. Definitions and interpretation

13.1 Definitions

In this Agreement, except where the contrary intention is expressed, the following definitions are used in addition to the terms defined in the Details:

Agreement Material	all reports and other information which You are required to provide to the Commonwealth under this Agreement. For the avoidance of doubt, the Agreement Material does not include the results of the research undertaken by the Researcher.
Approved Auditor	a person who is registered as a company auditor under the <i>Corporations Act 2001</i> (Cth), or a member of the Institute of Chartered Accountants in Australia, CPA Australia or the National Institute.
Business Day	a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the notice is received.
Commencement Date	the date on which this Agreement commences, as specified in the Details.
Commonwealth	any material provided to You by the Commonwealth.



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Material

Confidential Information

information that is by its nature confidential and:

- (a) is designated by a party as confidential; or
- (b) a party knows or ought to know is confidential,

but does not include:

- (c) information that is or becomes public knowledge otherwise than by breach of this Agreement or any other confidentiality obligation.

Conflict

means a conflict of interests, duties, or interest and duty, or risk of a conflict of any of these kinds, or an apparent conflict of any of these kinds:

- (a) arising as a result of You (and, if You are the Placement Provider, the Researcher) engaging in any activity, having any interest or holding any office; and
- (b) which affects or is likely to affect Your (and, if You are the Placement Provider, the Researcher's) ability to participate in the Placement in accordance with this Agreement, fairly and independently.

Enterprise Connect Program

means the Commonwealth's Enterprise Connect Program.

Enterprise Connect Program Guidelines

the guidelines for the Enterprise Connect Program provided to you by the Commonwealth, as amended by the Commonwealth from time to time.

Placement

the placement of the Researcher with the Placement Recipient under a Placement Contract for the purpose of performing the RIB Project.

Placement Contract

a contract, described in clause 1.1, between the Placement Provider and the Placement Recipient for the performance of the Placement.

Researchers in Business Client Guidelines

the guidelines for the Enterprise Connect Researchers in Business Program provided to you by the Commonwealth, as amended by the Commonwealth from time to time.

RIB Project

means the project described in Schedule 1.

SME

a small to medium sized enterprise. For the purposes of the Enterprise Connect Program this will be bodies corporate registered in Australia with an annual turnover between \$1 million and \$100 million.

13.2 Interpretation

In this Agreement, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;



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- (b) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (c) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (d) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (f) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (g) a reference to **month** is a reference to a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month (for example, one month starting 19 June ends 18 July) or, if there is no such corresponding day, ending at the expiration of the next month; and
- (h) headings are for ease of reference only and do not affect interpretation.

13.3 Priority of Agreement documents

If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) Standard Terms;
- (b) the Schedule;
- (c) the Details; and
- (d) the Researchers in Business Client Guidelines.



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Schedule 1– RIB Project

#Insert description of RIB Project approved by the Commonwealth#