

CABINET - SUBJECTS FOR CONSIDERATION, 16 JANUARY 2006 11:00 AM

Not Relevant

1 New Initiatives/Policy Matters

Not Relevant

103 CSMIE030106

Bio Innovation SA - South Australian Lifescience
Venture Capital Fund
APPROVED

Not Relevant

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CABINET COVER SHEET

1. **TITLE:** **BIO INNOVATION SA - SOUTH AUSTRALIAN LIFESCIENCE VENTURE CAPITAL FUND**
2. **MINISTER:** **Karlene Maywald**
Minister for Science & Information Economy

3. **PURPOSE:** To establish a \$35m **Venture Capital Fund** to support the **Life Science Industry** in **South Australia**. **Bio Innovation SA** and the **MTAA Super** have agreed on the wording of the agreement between the parties and this agreement in form of a **Memorandum of Understanding (MoU)** is submitted for **Cabinet** consideration and approval.
4. **IDENTIFY THE RELEVANT GOVERNMENT POLICY AND/OR STATE STRATEGIC PLAN TARGET:** The **STI Strategic Plan** has a performance target aimed at venture capital investments in **SA** (measured in early, mid and late stage investments) as a percentage of **GSP/GDP** to meet and exceed national levels, and hence this early stage bioscience **VC Fund** is a key platform to meet these targets.

Bio Innovation **SA** activities are implementing the **State Strategic Plan** in the areas of commercialisation of research (T4.2); investment in science, research and innovation (T4.6); and creative education (T4.10). They contribute to the **State** achieving targets in growth and prosperity by creating a competitive business environment (T1.4), economic growth (T1.5), growing an industry that is by its nature an exporter (T1.12), investment in a fast growing industry sector (T1.6), and interstate and overseas migration of skilled labour into the state (T1.8 and T1.9).
5. **RESOURCES REQUIRED FOR IMPLEMENTATION:** The **Bio Innovation SA** commitments will be funded out of the **Bio Innovation SA** operating budget.
6. **COMMUNITY AND ENVIRONMENTAL IMPACT:** The \$35 million **Venture Capital Fund** will provide financing for early stage companies in the medical, agricultural, wine, marine, veterinary, environment, materials, medical device, and health care sectors. The capacity to assist companies with early stage funding, is vital to their growth and development.

The bioscience industry is a fast growing industry globally and growth of the sector will have benefits in providing greater opportunities in professional and paraprofessional areas of the labour market. It will assist in diversifying the workforce and industry base in SA. Bioscience provides improved pathways into higher skilled and higher paying occupations.

This fund will provide a competitive advantage for South Australia when it comes to growing the local industry and attracting companies from interstate.

7. RISKS:

Bio Innovation SA is not a party to the Venture Capital Limited Partnership (VCLP) and does not manage, control or have equity in the fund management company Terra Rossa Capital P/L, nor in any investee company and no SA Government funds will be invested in bioscience companies.

The MTAA Super is a party to these arrangements and the MTAA Super is regulated by the Australian Prudential Regulation Authority (APRA), the prudential regulator of the Australian financial services industry.

Potential risk and conflict issues have been identified. The Board of Bio Innovation SA is satisfied that the issues can be managed from the legal and probity perspectives. However, there may be a risk to government that, in future, an investee or potential investor complains that the relationship between Bio Innovation SA and the MTAA Super has resulted in the MTAA Super being favoured by Bio Innovation SA over other potential investors. This is more a political risk than a legal one.

The \$35m Venture Capital Fund will operate independently of Bio Innovation SA and its structure and operations are consistent with current Australian Private Equity & Venture Capital Association Limited (AVCAL) documentation to ensure they are compliant with the relevant partnership and income tax assessment acts. The VCLP requires registration with the Federal Government and will the VCLP as well as Terra Rossa Capital will have to hold an Australian Financial Services License before any investments can be made.

8. CONSULTATION:

The offer to establish a \$35 million Venture Capital Fund in South Australia has been made on a 'commercial in confidence' basis. Cabinet has been briefed on the commercial terms of the transaction in April 2005 and approved Bio Innovation SA to finalise the establishment of the Venture Capital Fund. This was done after extensive consultation within Government and two external independent venture capital experts, with one being a member of the SA Venture Capital Board.

Cabinet was advised by a Working Group which had as members: the Chairman of the Board of Bio Innovation SA, the Chief Executive of the Department of the Premier and Cabinet, the Under Treasurer and the Chair of the Prudential Management Group.

As a result of the consultation the terms and risk/benefits were considered to be acceptable and Bio Innovation SA signed a 'Term Sheet' with the MTAA Super.

The Bio Innovation SA - MTAA Super MoU to be approved by Cabinet is consistent with that Term Sheet and the risk/benefit profile of the transaction has not changed.

DTF and AGD have been asked to provide comments on the Cabinet Submission and the MoU.

9. COMMUNICATION STRATEGY:

The submission provides that Bio Innovation SA coordinates a media release and signing ceremony involving the Premier, Minister for Science and Information Economy, Bio Innovation SA and representatives of the MTAA Super as soon as reasonably possible. The MoU provides that the parties make a public announcement within ten days of signing the MoU. The MTAA Super has agreed to this condition

10. URGENCY:

For Cabinet's consideration on 16 January 2006 under the Ten-Day-Rule.

11. RECOMMENDATIONS:

- 11.1. For Cabinet to Note:
- 11.2. Bio Innovation SA and the MTAA Super have been negotiating the establishment of a \$35m Bioscience Venture Capital Fund (VC Fund) in South Australia.
- 11.3. Cabinet approved in April 2005: "That Bio Innovation SA finalises the negotiations with the MTAA Super to establish the Venture Capital Fund, incorporating the changes to the terms recommended by the Bio Innovation SA Board and the Working Group in the final legal agreements and to resubmit the MTAA Super – Bio Innovation SA Agreement for Cabinet approval".
- 11.4. That Bio Innovation SA and the MTAA Super have reached agreement on the establishment of the VC Fund. This involves that the MTAA Super will register a Venture Capital Limited Partnership (VCLP) and to contract a newly established investment management company in Adelaide, Terra Rossa Capital P/L (TRC), to manage the VC Fund.
- 11.5. Bio Innovation SA is not a party to the VCLP and does not manage, control or have equity in TRC, nor in any investee company and no SA Government funds will be invested in bioscience companies.
- 11.6. The establishment of the VC Fund in South Australia requires no additional resources from the SA Government or Bio Innovation SA.
- 11.7. Bio Innovation SA and the MTAA Super have agreed to enter into a Memorandum of Understanding (MoU) outlining the rights and obligations of both parties in relation to the VC Fund. The approval for Bio Innovation SA to enter into the MoU is sought with this Cabinet Submission.
- 11.8. The MTAA Super has agreed to the terms of the MoU and has agreed to make a public announcement within 10 working days of signing the MoU.

RE: **BIO INNOVATION SA – SOUTH AUSTRALIAN LIFESCIENCE VENTURE CAPITAL FUND**

1. Proposal

- 1.1. That Cabinet notes:
- 1.2. Bio Innovation SA and the MTAA Super have been negotiating the establishment of a \$35m Bioscience Venture Capital Fund (VC Fund) in South Australia.
- 1.3. Cabinet approved in April 2005: "That Bio Innovation SA finalises the negotiations with the MTAA Super to establish the Venture Capital Fund, incorporating the changes to the terms recommended by the Bio Innovation SA Board and the Working Group in the final legal agreements and to resubmit the MTAA Super – Bio Innovation SA Agreement for Cabinet approval".
- 1.4. That Bio Innovation SA and the MTAA Super have reached agreement on the establishment of the VC Fund. This involves that the MTAA Super will register a Venture Capital Limited Partnership (VCLP) and to contract a newly established investment management company in Adelaide, Terra Rossa Capital P/L (TRC), to manage the VC Fund.
- 1.5. Bio Innovation SA is not a party to the VCLP and does not manage, control or have equity in TRC, nor in any investee company and no SA Government funds will be invested in bioscience companies.
- 1.6. The establishment of the VC Fund in South Australia requires no additional resources from the SA Government or Bio Innovation SA.
- 1.7. Bio Innovation SA and the MTAA Super have agreed to enter into a Memorandum of Understanding (MoU) outlining the rights and obligations of both parties in relation to the VC Fund. The approval for Bio Innovation SA to enter into the MoU is sought with this Cabinet Submission.
- 1.8. The MTAA Super has agreed to the terms of the MoU and has agreed to make a public announcement within 10 working days of signing the MoU.
- 1.9. The Bio Innovation SA Board has reviewed and agreed to the terms of the MoU. The Board is satisfied that the MoU is consistent with the Term Sheet signed by Bio Innovation SA and the MTAA Super and meets the conditions precedent set by Cabinet in April 2005 on recommendation by the Bio Innovation SA Board and the Working Group established by Cabinet.
- 1.10. That Cabinet approves:
 - 1.10.1. Bio Innovation SA to enter into the MoU with the MTAA Super for the establishment of the \$35m Life Science Venture Capital Fund in South Australia; and
 - 1.10.2. Bio Innovation SA to coordinate a media release and signing ceremony involving the Premier, Minister for Science and Information Economy, Bio

Innovation SA and representatives of the MTAA Super as soon as reasonably possible.

2. Background

- 2.1. Bio Innovation SA was established in June 2001 to coordinate and manage bioscience activities across South Australia, with a strong emphasis on industry formation and employment generation. The organisation was incorporated under the South Australian Public Corporations Act and has been operational at full capacity and staff levels since 2002. It is governed by a Board of directors and reports to the Minister for Science and Information Economy.
- 2.2. Bio Innovation SA has been instrumental in doubling the number of bioscience companies in SA to now over 70, which provides significant deal flow to the venture capital industry. In addition, with the expansion of the Thebarton Bioscience Precinct and the building of the bioscience business incubator, managed by Bio Innovation SA, state of the art facilities for some of the companies will be established. The attraction and establishment of the \$35m VC Fund in Adelaide will provide a strong growth impetus for the industry.
- 2.3. Bio Innovation SA has established successful relationships with capital providers and has been in negotiations with the Motor Trades Association of Australia Superannuation Fund Pty Limited (MTAA Super) to establish a \$35m VC Fund in South Australia for investment in the local bioscience industry for the past year.
- 2.4. Bio Innovation SA and the MTAA Super signed a non-binding Term Sheet in June 2005, after SA Government Cabinet approval was obtained in April 2005. A copy of the Term Sheet is attached to this Cabinet Submission for information. Both parties have agreed and documented in the MoU that the MoU is consistent with the provisions set out in the Term Sheet.
- 2.5. MTAA Super was established 14 years ago with headquarters in Canberra. It has more than 200,000 members and 14,000 employer sponsors and is one of the largest industry-based super funds in Australia. It has more than \$3 billion in assets under management and has invested in the Adelaide Airport, Outer Harbour port and other real estate in the CBD. The MTAA Super is regulated by the Australian Prudential Regulation Authority (APRA), the prudential regulator of the Australian financial services industry.
- 2.6. In April 2005 Cabinet discussed the opportunity to establish the VC Fund and approved: *"That Bio Innovation SA finalises the negotiations with MTAA Super to establish the Venture Capital Fund, incorporating the changes to the terms as recommended by the Bio Innovation SA Board and the Working Group in the final legal agreements and to resubmit the MTAA Super – Bio Innovation SA agreement for Cabinet approval."*
- 2.7. The members of the Working Group being at that time: the Chairman of the Board of Bio Innovation SA, the Chief Executive of the Department of the Premier and Cabinet, the Under Treasurer and the Chair of the Prudential Management Group.

- 2.8. Bio Innovation SA contracted the Crown Solicitor's office to draft the MoU and the Crown Solicitors Office has subcontracted the drafting of the MoU to Finlaysons Lawyers in Adelaide.
- 2.9. The establishment of the VC Fund in South Australia requires no additional resources from the SA Government or Bio Innovation SA.

3. Discussion

- 3.1 Attached to the Cabinet Submission is a copy of the draft MoU as agreed by the MTAA Super and for which Cabinet approval is being sought. Explanatory notes on the content of the draft MoU are as follows:
- 3.2 The draft MoU is consistent with the terms and conditions outlined in the Term Sheet signed by the MTAA Super and Bio Innovation SA which in turn has incorporated the changes and additions requested by Cabinet in April 2005.
- 3.3 The MTAA Super makes a financial commitment of up to \$35m over a period of 10 years to South Australian bioscience companies and constitutes one of the largest early stage biotechnology funds in Australia. The \$35m consists of investment capital and the management fee payable to TRC to operate the VC Fund. The \$35m is committed in two tranches of \$17.5m for the first five years and \$17.5m for the second five years of the VC Fund. The MTAA Super has the right to review its commitment for the second tranche based on the overall performance of the fund.
- 3.4 The Venture Capital Fund will be structured as a Venture Capital Limited Partnership (VCLP). VCLP's are becoming standard structures for venture capital funds in Australia.
- 3.5 Bio Innovation SA will not be involved in the VCLP. It will carry out its ordinary functions as in the past and hence, Bio Innovation SA's risk / reward profile will be no different to that of past years' operations.
- 3.6 Under the terms of the MoU, Bio Innovation SA has to continue to carry out its functions as a prerequisite to the MTAA Super making the \$35m investment capital available. These functions ('Functions') are defined in the *Public Corporations (Bio Innovation SA) Regulations 2001 (SA)*:
 - 3.6.1. The Bio Innovation SA Functions are limited to the *Public Corporations (Bio Innovation SA) Regulations 2001 (SA)*:
 - 3.6.1.1. *To foster the growth and development of the bioscience industry in South Australia by –*
 - 3.6.1.1.1. *Providing business support, including funding grants, to companies or persons involved in, or commencing involvement in, the bioscience industry; and*
 - 3.6.1.1.2. *Providing funding for bioscience education, information and referral services; and*

- 3.6.1.1.3. *Encouraging participation in the development of products and services relating to the bioscience industry to attract and facilitate the formation of major bioscience, pharmaceutical and agribusiness companies;*
 - 3.6.1.1.4. *To carry out other functions conferred on the subsidiary by the Minister.*
- 3.6.2. It is important to note that these Functions apply to the entire bioscience industry in South Australia and Bio Innovation SA has no obligations to carry out Functions specifically for the VC Fund or its investee companies.
- 3.6.3. Bio Innovation SA needs to perform the Functions during the same period that the MTAA Super makes investments in SA bioscience companies and subject to early termination provisions, for as long as the VCLP pays the operating expenses of TRC, for a period not exceeding ten years.
- 3.6.4. In order to carry out its Functions, Bio Innovation SA has to use its 'best endeavours' to ensure that during the period outlined in 3.6.3 its level of recurrent funding from the Government of South Australia is not materially reduced in real dollar terms below that applicable as at the date of the MoU. Cabinet agreed in December 2004 to adjust the budget of Bio Innovation SA and the organisation has in the forward estimates the required funding and indexation appropriated.
- 3.7 As a further prerequisite for the establishment of the VC Fund, Bio Innovation SA will cover part of the operating expenses of TRC, jointly with the MTAA Super.
 - 3.7.1. These operating expenses relate to TRC managing the day to day responsibilities of the VCLP, including being responsible for making investment and divestment decisions, supervising and governing investments and reporting on investment activities of the VC Fund to the MTAA Super and regulatory authorities. These operating expenses do not include the capital that is being invested in bioscience companies, and are payable for the period MTAA Super is making investments in SA-based bioscience companies (for a period up to ten years).
 - 3.7.2. Bio Innovation SA will make grant payments to TRC under a standard Bio Innovation SA grant deed and grant guidelines approved by the Bio Innovation SA Board, and MTAA Super will make payments to TRC via the VCLP, according to the following table:

VC Fund Operating Expenses and Investment Capital		
Operating Expenses		
Year*	Bio Innovation SA p.a.	VCLP p.a.
1	\$250,000	\$275,000
2	\$300,000	\$275,000
3	\$170,000	\$405,000
4	\$170,000	\$405,000
5	\$170,000	\$405,000
6	\$170,000	\$405,000
7	\$170,000	\$405,000
8	\$170,000	\$405,000
9	\$170,000	\$405,000
10	\$170,000	\$405,000
Subtotal	\$1,910,000	\$3,790,000
Investment Capital		
Years* 1 to 10	Bio Innovation SA	VCLP
	\$0	\$31,210,000
Total Financial Commitment	\$1,910,000	\$35,000,000

* From commencement date of MoU

- 3.7.3. The operating expenses are subject to CPI increases.
- 3.7.4. The figures in the table above are classed as a "budget", which may require adjustment against the actual operating expenses of TRC from time to time. However, Bio Innovation SA's contribution is a fixed contribution which is only subject to CPI adjustments, whereas any upward adjustment of the actual operating expenses of TRC will be borne by the MTAA Super via the VCLP.
- 3.7.5. Bio Innovation SA will make no additional payments to TRC, MTAA Super and/or the VCLP (see related section on pre-expenditure 3.10.3).
- 3.7.6. In addition, the MTAA Super will second, free of charge to TRC, a part-time financial controller to TRC.
- 3.7.7. The Bio Innovation SA payments to TRC will be met from the existing Bio Innovation SA budget, the MTAA Super payments are part of the \$35m capital commitment to the VC Fund.
- 3.7.8. In case MTAA Super or Bio Innovation SA terminate any of the agreements with TRC before the end of the ten-year investment period, the obligations to fund the TRC operating expenses ceases six-months after the termination notice is given. This means there are no ongoing obligations by Bio Innovation SA to TRC in case the MTAA Super does not make further investments in bioscience companies in SA.
- 3.7.9. Neither Bio Innovation SA, nor any other SA Government agency, or any employee, executive or director of Bio Innovation SA will have any beneficial interest in any securities (whether absolute, contingent, in

expectancy, or otherwise), or be a director (both as defined in the Corporations Act) of TRC.

- 3.7.10. No Bio innovation SA employee, executive or director will be an employee, executive or director of TRC.
 - 3.7.11. Bio Innovation SA will use its best endeavours to provide TRC with access and introductions to potential investments in South Australian bioscience companies, however this is subject to any limitations at law or under the charter of Bio Innovation SA on the scope of Bio Innovation SA's authorised activities. This includes the rights to refer potential investments to other venture capital firms and does not constitute a first right or exclusive arrangement between Bio Innovation SA and TRC or the VC Fund.
 - 3.7.12. TRC will also seek investment opportunities within South Australia outside the Bio Innovation SA networks.
- 3.8 As a further prerequisite for the establishment of the VC Fund, Bio Innovation SA will establish an Entrepreneur in Residence Program (EIR), within twelve months of the effective date of the Bio Innovation SA - MTAA Super MoU.
- 3.8.1. The aim of the EIR program is to assist companies with early stage product development, corporate growth strategies and long-term capital raising. The benefits of the EIR program are available to all bioscience companies in SA and the EIR program will operate at the sole discretion of Bio Innovation SA and no "first rights" or exclusive arrangements with the VC Fund are required.
 - 3.8.2. EIR candidates will be senior executives, most likely coming to South Australia from overseas. They are expected to have a successful track record in the development and growth of early stage bioscience companies (e.g. likely to have founded, grown and either sold or floated one or more companies). Candidates will have to demonstrate that they have significant active business relationships in the bioscience and pharmaceutical industries globally.
 - 3.8.3. Bio Innovation SA will fund the program at a senior executive level from existing budget allocations.
- 3.9 Additional terms of the arrangements are:
- 3.9.1. The VC Fund will make investments in South Australian based bioscience companies and has the option to make investments in early stage projects in SA research organisations before a spin-out company has been established. The VC Fund will provide pre-seed, seed and early stage investments. It is strategically aimed at early stage bioscience companies and through its pre-seed investments, facilitates commercialisation out of the research sector. Early stage investments in companies was identified by the SA Venture Capital Board as a

priority for South Australia and this will be the first early stage VC Fund located in SA.

- 3.9.2. The industry sectors covered include:
- Medical: diagnostics, therapeutics, devices
 - Agriculture: plant; wine, marine, and animal biosciences
 - Veterinary bioscience
 - Environmental bioscience
 - Biomaterials
 - Healthcare products and technologies
 - Other technologies with medical or biological applications
- 3.9.3. Bio Innovation SA will not take equity in the investment management company, TRC.
- 3.9.4. TRC will not be under the direction or control of Bio Innovation SA.
- 3.9.5. No State Government money (including Bio Innovation SA funds) will be invested in bioscience companies.
- 3.9.6. MTAA Super recognises:
- 3.9.6.1. That investment in bioscience companies (including investment of Capital Contribution in Investee Companies) is a high risk investment, the risk of which is assumed solely and exclusively by MTAA Super.
- 3.9.6.2. In performing its Functions Bio Innovation SA may not be able to achieve any outcomes that foster the growth and development of the bioscience industry in South Australia, including of any Investee Companies.
- 3.9.7. MTAA Super agrees to:
- 3.9.7.1. Irrevocably waive and release Bio Innovation SA, its related bodies corporate (as defined in the Corporations Act) and the Crown in right of South Australia and their respective employees, officers, agents and contractors from and against any and all Claims of MTAA Super for damages of any nature [for detailed wording refer to MoU clause 3.4]; and
- 3.9.7.2. Warrant and undertake to and in favour of Bio Innovation SA that it will not directly or indirectly assist any Investee Company in any way whatever to make or prosecute any Claim against Bio Innovation SA in any way in relation to the performance by Bio Innovation SA of the Bio Innovation SA Functions.

- 3.9.8. The commercial terms of the VC Fund are generally in line with venture capital industry standards for investments in early stage companies.
- 3.9.9. The MTAA Super will be responsible for drafting, implementing, managing and funding various other agreements, activities, companies and partnerships, which are related to the VC Fund. These activities, which are specific for the VC Fund – including Partnership Agreements, the Venture Capital Limited Partnership Deed, Management Partnership Deeds, Investment Management Agreement, Carried Interest Trust Deed, have been kept outside the influence of Bio Innovation SA and any SA Government organisation as part of the arms-length operations of the VC Fund and Bio Innovation SA.
- 3.9.10. The MTAA undertakes to ensure that the VCLP is established on terms consistent with the fundamental terms of the MoU, meaning that the various agreements will have to be drafted to comply with the specific need of the VCLP, however, they cannot change from the commercial deal outlined in the MoU which in turn is based on the Term Sheet signed by the parties in June 2005.
- 3.9.11. The MTAA Super also undertakes to ensure that no agreement constituting the VCLP and its operations, will be changed in future to become inconsistent with the fundamental terms of the MoU, unless Bio Innovation SA has approved such changes in writing.
- 3.9.12. Neither Bio Innovation SA nor any government agency is a party to these arrangements. The MoU however provides that these other arrangements are to be consistent with the terms of the MTAA Super – Bio Innovation SA MoU.
- 3.9.13. All arrangements are consistent with current Australian Venture Capital Australian Private Equity & Venture Capital Association Limited (AVCAL) documentation to ensure they are compliant with the relevant partnership and income tax assessment acts. These partnerships require registration with the Federal Government and will have to obtain an Australian Financial Services Licence before any investments can be made.
- 3.9.14. In addition, the MTAA Super is a party to these arrangements and certain agreements. The MTAA Super is regulated by the Australian Prudential Regulation Authority (APRA), the prudential regulator of the Australian financial services industry. It oversees banks, credit unions, building societies, general insurance and reinsurance companies, life insurance, friendly societies, and most members of the superannuation industry.
- 3.10 A number of provisions in these agreements are of relevance to Bio Innovation SA and the SA Government, and hence they are explained in the following paragraphs:

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MINUTES *forming* ENCLOSURE to

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- 3.10.1. The MTAA Super has agreed to cover all costs related to the establishment of the VC Fund, and these expenses are not being deducted from the \$35m capital committed.
- 3.10.2. The exception is the costs in relation to drafting the attached MoU which has been paid from Bio Innovation SA operating expenses.
- 3.10.3. The MTAA Super and Bio Innovation SA have agreed before signing this MoU that TRC will require some cash and in-kind assistance in the lead up to obtaining an Australian Financial Services Licence. All grant support by Bio Innovation SA to TRC before the establishment of the VC Fund will be deducted from the overall Bio Innovation SA cash contribution towards TRC's operational expenses once the VC Fund has been established. All cash contributions by the MTAA Super, if any, to TRC are to be paid in addition to the ongoing operational expenses covered by the MTAA Super.
- 3.10.4. The MTAA Super will as soon as practicable after signing the MoU establish the VC Fund and will assist TRC with obtaining an Australian Financial Services Licence. It is expected that TRC will begin making investments no later than Q2 2006.
- 3.10.5. The terms of the MoU become effective and binding only after a number of agreements have been executed and registered as well as licenses have been obtained. These "Conditions" are outlined in Clause 9.1 of the MoU and are:
 - 3.10.5.1. The coming into force and effect of the Limited Partnership Agreement;
 - 3.10.5.2. The coming into force and effect of the Investment Management Agreement;
 - 3.10.5.3. The coming into force and effect of an agreement between the General Partner and Bio Innovation SA in relation to the consultancy fee payable to Bio Innovation SA;
 - 3.10.5.4. The coming into force and effect of the incorporated limited partnership agreement in respect of the General Partner;
 - 3.10.5.5. The establishment of the Carried Interest Trust;
 - 3.10.5.6. The appointment of the Investment Committee;
 - 3.10.5.7. Dr Jurgen Michaelis has an undertaking to MTAA Super that he will not have any beneficial interest in any securities (whether absolute, contingent, in expectancy, or otherwise), or be a director, (both as defined in the Corporations Act) of the TRC or in any assets of the Carried Interest Trust during the period of his employment by Bio Innovation SA and for a period of 3 years after ceasing to be employed by Bio Innovation SA;

- 3.10.5.8. The grant to TRC of the Australian Financial Services Licence;
 - 3.10.5.9. The VCLP being exempt from the requirement to hold an Australian Financial Services Licence in respect of the financial services provided by it or being appointed as an authorised representative of TRC in respect of all of the financial services covered by TRC's AFSL; and
 - 3.10.5.10. The registration of the VCLP as a "venture capital limited partnership" under the *Venture Capital Act 2002* (Cth).
- 3.10.6. In the unlikely event that these Conditions are not met on or before the 30 June 2006, the MoU will automatically terminate.
- 3.10.7. The MTAA Super via the VCLP is responsible for appointing TRC as the manager of the investments and the VCLP and the MTAA Super will appoint the Investment Committee of TRC. Bio Innovation SA is not responsible for these appointments.
- 3.10.7.1. Under the terms of the arrangements, Bio Innovation SA has the right to nominate a senior person of Bio Innovation SA to be a member of the TRC Investment Committee. However, such nomination is not binding on the MTAA Super and the MTAA Super may not appoint a Bio Innovation SA nominee to the Committee.
 - 3.10.7.2. The Investment Committee will have four members and must act unanimously. Consequently, a single member cannot effect any particular investment. However, a single member can prevent investments in companies.
 - 3.10.7.3. TRC is required to hold under the Australian Financial Service Licence provision adequate insurance cover and the MTAA Super has agreed to ensure that TRC will carry at all times a minimum surplus of liquid funds.
 - 3.10.7.4. Under the terms of the MoU and as outlined in previous Cabinet submissions, the MTAA Super has agreed that Dr Jurgen Michaelis will be a member on the Investment Committee, subject to:
 - 3.10.7.5. Dr Michaelis' undertaking that he will not have any beneficial interest in any securities (whether absolute, contingent, in expectancy, or otherwise), or be a director, (both as defined in the Corporations Act) of TRC or in any assets of the Carried Interest Trust (the trust that distributes the investment profits) during the period of his employment by Bio Innovation SA and for a period of 3 years after ceasing to be employed by Bio Innovation SA. This means that Dr Michaelis will not share in any profits of

the VC Fund for three years after leaving Bio Innovation SA and such sharing in profits cannot be backdated.

- 3.10.7.6. Dr Michaelis' role on the Investment Committee is to provide high level business and investment expertise to TRC. His nomination to the Investment Committee is based on his industry track record and his intimate knowledge of the SA biotechnology sector. His role is similar to that of a director of the Board of a non-Government company.
- 3.10.7.7. These provisions of not being entitled to any profit sharing are also extended to other Bio Innovation SA employees whilst employed by Bio Innovation SA, with the exception of executives, senior executives or directors of Bio Innovation SA, who are bared for 3 years after leaving the organisation from any profit sharing, as well as to an associate of a Bio Innovation SA employee, executive or directors under the same conditions.
- 3.10.7.8. In addition, the relevant Partnership Agreements will reflect a term which provides that remuneration of:
- 3.10.7.8.1. A Bio Innovation SA employee, executive or directors (including Dr Michaelis and Bio Innovation SA Board members),
 - 3.10.7.8.2. an associate of a Bio Innovation SA employee, executive or director,
 - 3.10.7.8.3. by TRC, an Investee Company of the VCLP, the General Partner in the VCLP or MTAA Super will require the written approval by the South Australian Minister for Science and Information Economy.
 - 3.10.7.8.4. This approval may be sought for up to three years post employment by Bio Innovation SA of an executive, senior executive or director.
 - 3.10.7.8.5. Unless the prior written consent of the MTAA Super has been obtained for such payments to a former Bio Innovation SA employee, executive or director.
- 3.10.7.9. This is a far-reaching approval clause, and suitable operational procedures will need to be developed to ensure it can be implemented and applied to conflict of interest cases of real relevance. However, the MTAA Super insisted strongly on having this provision in the agreements, even though it was discussed that this provision may be to the disadvantage to the MTAA

Super, as potential investee companies may not agree to have such a condition on hiring staff imposed onto them by capital providers.

- 3.10.7.10. In addition, these clauses are not binding to the Minister, and the Minister may at any time elect not to comment on remuneration of former Bio Innovation SA employees in private sector companies. As such, this clause is a safeguard only should conflict of interest issues arise that are of concern to the MTAA Super and/or the SA Government.
- 3.10.8. As a member on the TRC Investment Committee, Dr Michaelis is entitled to a \$50,000 p.a. consulting fee (CPI indexed) and this fee is the only remuneration of Dr Michaelis from TRC, the VCLP, any investee company of the VCLP, the General Partner of the VCLP or the MTAA Super.
- 3.10.9. Any variation to the consulting fee (other than CPI increases) for Dr Michaelis whilst an employee of Bio Innovation SA, requires the written approval of the South Australian Minister for Science and Information Economy.
- 3.10.10. Potential risk and conflict issues have been identified by the parties to the MoU and the Bio Innovation SA Board. The Board is satisfied that the issues can be managed from the legal and probity perspectives. However, there may be a risk to government that, in future, an investee or potential investor complains that the relationship between Bio Innovation SA and MTAA has resulted in MTAA being favoured by Bio Innovation SA over other potential investors. This is more a political risk than a legal one.
- 3.10.11. The Board of Bio Innovation SA has the ongoing obligation to monitor any conflict of interest issues relating to the CEO, Dr Michaelis. A clear and transparent responsibility framework for the CEO of Bio Innovation SA is currently in place and it will be updated if required to take into account his additional responsibilities on the Investment Committee of TRC. The Board of Bio Innovation SA will oversee and monitor the CEO's performance.
- 3.11 Bio Innovation SA has created a business environment in the local bioscience industry that is attractive for capital providers to invest in the local industry. Over the past years Bio Innovation SA has already facilitated private equity investments of more than \$16m by a variety of investors.
- 3.12 MTAA Super believes it is important that the State Government through Bio Innovation SA continues to foster a business environment that is supportive of investors. The MoU deals in some detail with the terms under which the MTAA Super can either suspend or terminate its obligations in the VC Fund.
- 3.13 It is important to note that in case the MTAA Super suspends new investments or terminates the VC Fund, the State Government is not liable for any investments

made in the period leading up to the suspension or termination, and it is not liable to provide additional funds to TRC.

- 3.14 The MTAA Super can either suspend or terminate its obligations in the VC Fund:
- 3.14.1. In the unlikely event that the Conditions precedent as outlined above in section 3.10.5 are not met and the MoU terminates effective 1 July 2006, and the VC Fund may not be established.
 - 3.14.2. The MTAA can either suspend to make further investments in SA bioscience companies or terminate the VCLP or the VC Fund given appropriate notice at any time during the life of the VC Fund under the following conditions:
 - 3.14.2.1. Bio Innovation SA is dissolved and its successor organisation (if any) is unable to carry out the Bio Innovation SA 'Functions' previously carried out by Bio Innovation SA;
 - 3.14.2.2. Bio Innovation SA materially ceases to perform the Bio Innovation SA Functions as outlined in 3.6.1, unless the Bio Innovation SA Functions have been transferred to another entity with MTAA Super's consent (such consent not to be unreasonably withheld);
 - 3.14.2.3. Bio Innovation SA's key executive (Dr. Jurgen Michaelis) resigns as CEO of Bio Innovation SA and no successor approved by MTAA (such approval not to be unreasonably withheld) is found within 6 months of such resignation;
 - 3.14.2.4. Two of the 3 Investment Committee members (not being a nominee of Bio Innovation SA) become unavailable to serve as Committee members and no successors approved by MTAA Super (such approval not to be unreasonably withheld) are found within 3 months of such unavailability;
 - 3.14.2.5. The MTAA can either suspend further investments in SA bioscience companies or terminate the VCLP or the VC Fund given appropriate notice at any time after the fourth anniversary of the establishment of the VCLP. This right to termination is appropriate as after four years it can be estimated that the number of investments made per year is satisfactory and that the deal flow in terms of quality and quantity can be sustained. It will be in the interest of all parties to discontinue the VC Fund should the deal flow not support a positive outcome.
 - 3.14.2.6. On the other hand, and provided Bio Innovation SA continues to provide its Functions and the Investment Committee remains operational, the MTAA Super is bound to support the fund for a minimum of four years.

- 3.14.2.7. The MTAA Super can terminate the Investment Management Agreement with TRC by giving six-months notice to TRC if the MTAA Super has given notice to suspend further investments in SA bioscience companies or has given notice to terminate making further investments.
- 3.14.3. The following break events were part of the Term Sheet and the MTAA Super agreed not to have them adopted in this MoU:
 - 3.14.3.1. Failure to achieve an adequate level of investment over time.
 - 3.14.3.2. Valuation of the Fund (net present value test of distributions plus portfolio holdings against capital contributed) falls below 67% of committed capital. This is a standard term for a venture capital fund.
- 3.14.4. Bio Innovation SA can either suspend or terminate the agreement and hence fulfilling its Functions:
 - 3.14.4.1. With the MTAA Super, if the MTAA Super has given notice to suspend further investments in SA bioscience companies or has given notice to terminate making further investments.
 - 3.14.4.2. If the MTAA Super is in default of the agreement.
- 3.14.5. Bio Innovation SA can terminate the grant deed with TRC at any time under a Bio Innovation SA standard grant deed if TRC is in default of that grant deed.
- 3.14.6. Bio Innovation SA can terminate the grant deed with TRC by giving six-months notice to TRC if the MTAA Super has given notice to suspend further investments in SA bioscience companies or has given notice to terminate making further investments.
- 3.14.7. The effect of the six months notice period by the MTAA Super and Bio Innovation SA to TRC (as per proposed Investment Management Agreement and the Bio Innovation SA grant deed) allows for a six-months orderly winding up of TRC or transfer of the business to another party.
- 3.14.8. Bio Innovation SA can force the termination of the MoU at any time by notifying the MTAA Super that it intends to no longer fulfil its Functions as outlined in the MoU.
- 3.14.9. Irrespective of the way Bio Innovation SA prematurely terminates the MoU or grant deed with TRC, the MTAA can only:

- 3.14.9.1. Continue with the VC Fund independent of Bio Innovation SA fulfilling its obligations under the MoU.
- 3.14.9.2. Either suspends or terminates further investments in SA bioscience companies or terminate the VCLP.
- 3.14.10. The MTAA Super has no other recourse against Bio Innovation SA, indicating that both parties are entering into the MoU in the spirit of a partnership as stated in the recitals of the MoU: *"This MoU outlines the commitment of both Parties to foster the growth of the South Australian bioscience industry for the benefit of both Parties through the establishment and operation of the VCLP"*.
- 3.15 As agreed by Cabinet in April 2005, the MoU includes clauses that Bio Innovation SA will have an option to share in the upside of the fund should the fund return a profit to the MTAA Super over the next ten years. This will be in the form of a consultancy fee payable to Bio Innovation SA, such consultancy being equivalent to 4% of the investment profits assuming that there are sufficient investment profits.
- 3.16 Bio Innovation SA has to receive SA State Government approval before it receives the consultancy fee.
- 3.17 Bio Innovation SA acknowledges that the current position of government may not support Bio Innovation SA receiving the consultancy fee. However, this VC Fund will be operational for at least 10 years and current and future government positions may change and support participation in the upside of the fund. An appropriate time to do so could be when the fund has been successful and investment profits can be distributed.
- 3.18 Should Bio Innovation SA not receive at a future date the approval to share in the upside, the 4% profit share will remain with the MTAA Super and it will not be possible to seek this at a later stage.
- 3.19 Confidentiality and Public Announcements:
 - 3.19.1. Neither Bio Innovation SA nor the MTAA Super may make any public announcement regarding the terms of the MoU nor the transactions contemplated by it without obtaining the prior written approval of the other Party (such approval not to be unreasonably withheld). However, nothing limits disclosure of the terms of the MoU or transactions contemplated by it to the extent required by law or to advisers or agents of the relevant Party.
 - 3.19.2. The Parties agree to use their best endeavours to agree upon a joint public announcement regarding the transactions contemplated by the MoU, within 10 business days of the Parties' execution of the MoU.
- 3.20 State Development Impact

- 3.20.1. The capacity to assist companies with early stage funding, including Federal R&D grants is vital to their early growth and development. From an industry development perspective, the impact of lack of funding is that growth of companies at an early stage will be stifled. This impacts on the employment growth created by companies, diminishes the value of the company and acts as a disincentive to other entrepreneurs to venture beyond academic research.
 - 3.20.2. The Ernst & Young review of Bio Innovation SA (December 2003) concluded 'there is the potential for SA to become the hub of bioscience commercial activity in some sectors, leading to a net inflow of other companies, intellectual property and employment.'
 - 3.20.3. In fact, growth of the biotechnology sector would have benefits in providing greater opportunities in professional and paraprofessional areas of the labour market. The benefits are in terms of improved pathways into higher skilled and higher paying occupations. Increased flows into paraprofessional and skilled jobs would be met from reduced rates of entry into low skilled jobs, and reduced migration of skilled labour out of the State.
 - 3.20.4. The \$35 million Venture Capital Fund will provide financing for early stage companies. This fund will provide a competitive advantage for South Australia when it comes to growing the local industry and attracting companies from interstate.
- 3.21 Relationship with the South Australian Venture Capital Board
- 3.21.1. The Venture Capital Board has provided \$10m for the establishment of a Venture Capital Fund in South Australia to Paragon Equities. It is highly unlikely that Paragon will invest in early stage bioscience companies. It may however provide an option for follow-up funding for companies. The establishment of a \$35m Venture Capital Fund for bioscience in South Australia is aimed at a different market to that targeted by the Venture Capital Board. Bio Innovation SA interacts with more than 70 bioscience companies in South Australia and it is likely that investments would be made soon after the establishment of the \$35m MTAA Super VC Fund.
- 3.22 Relationship with the Premiers Science and Research Council
- 3.22.1. The Premier's Science and Research Council advises the Government on its long-term plan and priorities for science and research in South Australia. The Council has been highly supportive and complementary of the activities of Bio Innovation SA and its success in implementing a strategic plan for the bioscience sector.
 - 3.22.2. The STI Strategic Plan has a performance target aimed at venture capital investments in SA (measured in early, mid and late stage investments) as a percentage of GSP/GDP to meet and exceed national levels, and hence this early stage bioscience VC Fund is a key platform to meet these targets.

3.23 Fit with the State Strategic Plan

3.23.1. Bio Innovation SA activities are implementing the State Strategic Plan in the areas of commercialisation of research (T4.2); investment in science, research and innovation (T4.6); and creative education (T4.10). They contribute to the State achieving targets in growth and prosperity by creating a competitive business environment (T1.4), economic growth (T1.5), growing an industry that is by its nature an exporter (T1.12), investment in a fast growing industry sector (T1.6), and interstate and overseas migration of skilled labour into the state (T1.8 and T1.9).

3.24 Social Inclusion

3.24.1. Much of bioscience and biotechnology is an enabling tool. Accordingly, employment impact extends beyond highly qualified science and technology positions, with skill development required in positions such as manufacturing in quality-controlled environments, cleaning and cold-chain transportation. Growth of companies offers a range of employment options to bioscience graduates in areas such as business development, marketing, manufacturing and quality assurance.

3.25 Regional Impact

3.25.1. SA is a small regional economy that requires greater diversity and growth to sustainably withstand the pressures created by international market forces. While growth in wine and food production in particular has contributed greatly to the State's economy over recent years, there is a need to create new economic dimensions to the Gross State Product to ensure greater economic security in the future. Bioscience is an enabling technology in many traditional sectors and Bio Innovation SA's funding and business expertise is focussing on identifying innovative ways of using biotechnologies to add value to our existing industry sectors across the State.

3.25.2. SA must compete with aggressive funding strategies from other states by focussing its resources into areas of competitive advantage. For example, Queensland recently announced a further \$34m in state contributions to bioscience infrastructure, bringing the total since 1998 to \$2 billion. Victoria's new bioscience infrastructure program totals \$310m.

3.26 Small Business Impact

3.26.1. Since Bio Innovation SA was established, the number of bioscience companies in South Australia has doubled. By fostering company growth as part of an economic cluster, there is not only the potential benefit from the income streams of these companies, there is also a direct benefit from the competitiveness of the sector. The added advantage is that these companies' activities are research and development intensive, providing a career pathway for graduates and attracting venture capital investment.

3.27 Regulatory Impact

- 3.27.1. Bio Innovation SA will comply with all relevant regulatory requirements, unless specifically exempted. The establishment of the \$35m VC Fund has required the incorporation of an independent fund management company (TRC) which has contractual arrangements with MTAA Super. It will operate independently from Bio Innovation SA. TRC will be required to hold an Australian Financial Services License. The VCLP will have to be registered. The capital provider – MTAA Super - is a licensed superannuation fund regulated by APRA as outlined above.

3.28 Staffing Implications

3.28.1. There are no staffing implications for Bio Innovation SA.

3.29 Risk Management Strategy

3.29.1. The Board of Bio Innovation SA is satisfied that any potential conflict of interest issues can be managed from the legal and probity perspectives. However, there may be a risk to government that, in future, an investee or potential investor complains that the relationship between Bio Innovation SA and the MTAA Super has resulted in the MTAA Super being favoured by Bio Innovation SA over other potential investors. This is more a political risk than a legal one.

3.29.2. The MTAA Super Lifescience Venture Capital Fund will invest in early stage companies and a high failure rate of the companies is to be expected. This is compatible with the investment strategy by the MTAA Super. The MTAA Super has stated in the MoU:

3.29.3. *That investment in bioscience companies (including investment of Capital Contribution in Investee Companies) is a high risk investment, the risk of which is assumed solely and exclusively by MTAA Super. In performing its Functions Bio Innovation SA may not be able to achieve any outcomes that foster the growth and development of the bioscience industry in South Australia, including of any Investee Companies.*

3.29.4. There are other venture capital funds investing in Australia in the bioscience and other industry sectors with a similar risk profile and the MTAA Super VC Fund will be no different.

3.29.5. Break events in the Term Sheet stipulate that the MTAA Super can halt making any further investments if,

3.29.5.1. The SA Government stops funding Bio Innovation SA. However, the Functions of Bio Innovation SA can be transferred to other public sector organisations with the agreement of the MTAA Super giving the SA Government options to realign its industry support efforts. The investments by the fund are therefore not entirely dependent on the existence of Bio Innovation SA.

3.29.5.2. The CEO of Bio Innovation SA, Dr Michaelis, resigns as CEO of Bio Innovation SA and no successor approved by MTAA (such approval not to be unreasonably withheld) is found within 6 months of such resignation.

3.29.6. Other break events in the MoU are beyond the influence and control of the SA Government and are fund specific issues concerning the investment manager TRC.

3.30 Consultation

3.30.1. The offer to establish a \$35 million Venture Capital Fund in South Australia has been made on a 'commercial in confidence' basis and as such, limited consultation has occurred with government agencies. The Working Group established by Cabinet had as members: the Chairman of the Board of Bio Innovation SA, the Chief Executive of the Department of the Premier and Cabinet, the Under Treasurer and the Chair of the Prudential Management Group. The working group has reviewed the draft Term Sheet before it was submitted to Cabinet in April 2005 for approval to complete the transaction. The MoU is consistent with the Term Sheet.

3.30.2. The Venture Capital Board has offered to work closely with Bio Innovation SA on possible alignment of both organisations' venture capital fund establishment efforts.

4. Recommendations

- 4.1 That Cabinet notes:
- 4.2 Bio Innovation SA and the MTAA Super have been negotiating the establishment of a \$35m Bioscience Venture Capital Fund (VC Fund) in South Australia.
- 4.3 Cabinet approved in April 2005: "That Bio Innovation SA finalises the negotiations with the MTAA Super to establish the Venture Capital Fund, incorporating the changes to the terms recommended by the Bio Innovation SA Board and the Working Group in the final legal agreements and to resubmit the MTAA Super – Bio Innovation SA Agreement for Cabinet approval".
- 4.4 That Bio Innovation SA and the MTAA Super have reached agreement on the establishment of the VC Fund. This involves that the MTAA Super will register a Venture Capital Limited Partnership (VCLP) and to contract a newly established investment management company in Adelaide, Terra Rossa Capital P/L (TRC), to manage the VC Fund.
- 4.5 Bio Innovation SA is not a party to the VCLP and does not manage, control or have equity in TRC, nor in any investee company and no SA Government funds will be invested in bioscience companies.
- 4.6 The establishment of the VC Fund in South Australia requires no additional resources from the SA Government or Bio Innovation SA.
- 4.7 Bio Innovation SA and the MTAA Super have agreed to enter into a Memorandum of Understanding (MoU) outlining the rights and obligations of both parties in relation to the VC Fund. The approval for Bio Innovation SA to enter into the MoU is sought with this Cabinet Submission.
- 4.8 The MTAA Super has agreed to the terms of the MoU and has agreed to make a public announcement within 10 working days of signing the MoU.

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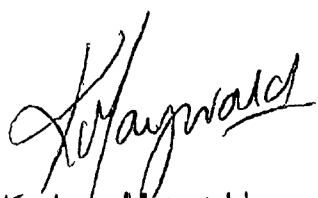
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- 4.9 The Bio Innovation SA Board has reviewed and agreed to the terms of the MoU. The Board is satisfied that the MoU is consistent with the Term Sheet signed by Bio Innovation SA and the MTAA Super and meets the conditions precedent set by Cabinet in April 2005 on recommendation by the Bio Innovation SA Board and the Working Group established by Cabinet.
- 4.10 That Cabinet approves:
 - 4.10.1. Bio Innovation SA to enter into the MoU with the MTAA Super for the establishment of the \$35rn Life Science Venture Capital Fund in South Australia; and
 - 4.10.2. Bio Innovation SA to coordinate a media release and signing ceremony involving the Premier, Minister for Science and Information Economy, Bio Innovation SA and representatives of the MTAA Super as soon as reasonably possible.



Karlene Maywald
MINISTER FOR SCIENCE & INFORMATION ECONOMY

1/1/2006

Attachments:
 Memorandum of Understanding
 Term Sheet

In Cabinet

16 JAN 2006

APPROVED

 PREMIER

1. **Parties**

MTAA Superannuation Fund (MTAA Super) and Bio Innovation SA (or related parties).

2. **Governance**

The Term sheet will be non-binding for both MTAA Super and Bio Innovation SA, and the only legally enforceable obligations that it creates are those relating to confidentiality (Clause 24) and neither party is otherwise bound to the other until a formal, detailed agreement is signed

3. **Nature of investment**

Early stage venture capital investments in life sciences companies in South Australia.

The investment program notionally consists of three phases. An initial 'ramp-up' phase during which a number of existing opportunities will be assessed for investment. These are expected to span pre-seed, seed and early stage investments.

The second phase is the ongoing investment phases. The investment opportunities for this phase are expected to consist chiefly of pre-seed and seed stage investments. The ongoing investment program would extend beyond the initial ramp-up period. Some investments may also be exited during this period.

The third phase is the consolidation and wind down phase and will have a duration of five years. No new investments will be completed during this period. The main activity would be to build the value of remaining portfolio companies, including possibly follow-on investments and complete their exit.

Investments should mainly support the progress of the research discovery to commercialisation. Appropriate uses include proof of principle, prototypes, initial trials, product development, market development and intellectual property (IP) protection. Seed funding for commercialisation of research discoveries includes limited amounts for expenditure on business plan, incorporation, legal and accounting or market studies.

There will be a business case for each investment. It is expected that the product should target a substantial market and the product success should forecast at least a 5x return on invested cash within 3-6 years.

4. Commitment

The commitment by MTAA Super will be for up to \$35 million over ten years, comprising \$17.5 million for the first five years and \$17.5 million for the second five years. This commitment includes the management fee payable to the investment manager.

The VCLP is being established with two consecutive five year investment periods. It is expected that the VCLP will invest up to \$3.5 million per annum, bringing the total investment in the first five year period up to \$17.5 million (including management fee).

There will be an option to continue the program on similar arrangements for a further five years, subject to certain criteria being met.

The commitment of the \$17.5 million for the second five years will be reviewed at the end of the fourth year. The performance of the VCLP will be reviewed biennially by the Trustee of MTAA Super (or its advisors) and the rate of investment may be changed in light of experience.

These figures allow for investment allocations to be made subject to company milestones being achieved, without funds having to be drawn down in that particular year. All investment commitments are subject to the identification and availability of suitable opportunities that meet the investment guidelines.

5. Role of Bio Innovation SA

Through its ordinary operations provide the investment manager with access/introductions to potential investments.

Provide business development services to investee companies in accordance with the organisation's terms of reference / charter / strategic objectives. Such services include but are not limited to facilitating IP protection and evaluation, business introductions, business development, market research.

Establish a business mentoring / entrepreneur in residence program for South Australian companies. This program would assist companies through the provision of senior managers attracted locally, interstate or overseas with management experience at the early stage as well as providing assistance with product development, corporate growth strategies and further capital raising.

Provide grant funding to prospective companies (in accordance with existing rules and processes).

6. Role of MTAA Super

Provision of capital with the sole underlying aim of achieving financial returns through the program:

Develop and approve:

- investment plan, guidelines/criteria, risk controls;
- governance controls and reporting practices;
- valuation policy; and
- appointment of Investment Manager and approval of Investment Committee members.

7. Investment structure

The VCLP will be structured as a venture capital limited partnership (VCLP) under South Australian law. It is referred to throughout as the South Australian Life Science VCLP (SA-LSVCLP) or the VCLP.

8. Return objective

Twenty five per cent net of fund expenses on a portfolio basis. At a fund level, assuming an average holding period of five years, this implies an average multiple of around 3 ½ on underlying investments.

Individual investments would require a significantly higher return hurdle to allow for the high failure rate of early stage venture capital investments.

9. Limited Partner

MTAA Super as the investor will be the Limited Partner and acquire a limited partner's interest in the VCLP.

10. General Partner

The General Partner is a newly formed identity with the sole purpose of acting as general partner of the SA-LSVCLP. The General Partner may in itself be a limited partnership.

11. Investment Manager

The General Partner will appoint an Investment Manager entity called Terra Rossa Capital (TRC) [to be created] as the Investment Manager. TRC would manage the day to day responsibilities of the VCLP and possibly the General Partner. TRC will be owned by one or several members of the Investment Committee, the status of the legal entity will be determined when the legal documents are being drafted and tax advice has been obtained.

The personnel of TRC are expected to be limited to an investment analyst (in the first instance Dr Melissa Brasted), a financial controller (initially a part time position provided by MTAA Super), and executive officer and an Investment Committee of four members acting as consultants or contractors to TRC.

The role of the Investment Manager will be set out in a management agreement between the General Partner and TRC.

In addition, the Investment Manager will be responsible for making investment and divestment decisions (through the Investment Committee), effecting investment decisions, supervising and governing investments, and reporting on investment activities and the portfolio.

The Investment Manager or the General Partner may, in due course, need to obtain an Australian Financial Services License (AFSL), will require a minimum capital reserve and will be structured such that the General Partner is the legal investment decision-maker and the Investment Manager is only providing advice.

The financial controller of the Investment Manager will be responsible for coordinating accounting, custody, compliance and other administrative activities, including being one of the initial responsible persons on any AFSL licence application.

12. Investment Committee

An Investment Committee of four persons will be established by the Investment Manager. The Committee will be responsible for final investment and divestment decisions, which are to require unanimous approval. The Investment Committee will serve a similar role to a company board.

The Investment Committee will be nominated by the Investment Manager for approval by MTAA Super. The Investment Committee will comprise a senior person from Bio Innovation SA and three independent members with relevant industry experience. Initial nominations are Dr. Jurgen Michaelis of Bio Innovation SA with Dr. Stephen Thompson, Dr. Tom Geimer and Mr. Simon Drilling as the three independents.

Members of the committee would be subject to fiduciary duties set out in relevant legislation and would be covered by professional indemnity insurance.

Annual compensation for the Investment Committee will be determined as part of the budget process.

13. Investment process

The Investment Manager will be introduced to potential investment opportunities from within Bio Innovation SA established networks. These potential investees will have been sourced as part of Bio Innovation SA ongoing business development program and the, to be established, business mentoring / entrepreneur in residence program. As part of its ordinary business Bio Innovation SA helps companies prepare to raise venture capital.

The Investment Manager's investment analyst will screen and identify potential investment opportunities and prepare preliminary risk analysis on prospective opportunities (with the co-operation of the potential investee company) to be presented to the Investment Committee.

The Investment Committee will assess the preliminary risk analysis. The presumption is that the Investment Committee would approve preliminary risk analyses that met agreed criteria.

The full risk analysis would contain a thorough analysis of the expected return and risks of the proposal. The full risk analysis would be presented to the Investment Committee for an investment decision.

The investment analyst and the executive officer in conjunction with the Investment Committee will be responsible for monitoring and tracking the process of investees. The investment analyst would also monitor the contribution of Bio Innovation SA provided to the investee companies under the new business mentoring program.

14. Funding limits

Investment in any single venture at the seed stage (i.e. during the seed rounds of investing) will be capped at \$500,000.

Investments that have a clear path to exit and an expectation of exit within three years would have a funding limit of \$1 million. Such investments would have already progressed past the seed stage (for example, into later financing rounds). These are expected to chiefly be identified in the initial eighteen months or be follow-on investments in earlier portfolio companies.

No single investee company would ever receive more than 10% of the VCLP.

The VCLP would ensure that follow-on investment rights of the VCLP could be transferred to MTAA Super. If the VCLP had already committed 10% of the VCLP to a particular investee the Investment Manager may make a recommendation to MTAA Super to consider providing additional follow-on financing.

Funding limits may be reviewed over time in light of experience, particularly in respect of follow-on investments in companies that are progressing well.

15. Operating expenses

Operating expenses will be met through quarterly capital calls against MTAA Super's commitments and through grant payments by Bio Innovation SA.

The base level agreed funding by both parties for TRC for the first \$17.5m tranche of the fund is:

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
MTAA Super	275	275	405	405	405	405	405	405	405	405
Bio Innovation SA	250	300	170	170	170	170	170	170	170	170
Total Commitment	525	575	575	575	575	575	575	575	575	575

Assumptions:

- CPI and Enterprise Bargaining (S&W) have not been factored into these figures.
- MTAA Super Commitment:
 - o Year one: \$255k (base fee) plus \$20 establishment cost;
 - o Year two: base fee plus \$20k shortfall;
 - o Year three onwards: base fee plus \$150k for executive officer
- The MTAA Super cash commitment may be reduced by \$50,000 p.a. if the financial controller is seconded to TRC on a part time basis.

The operating budget for the Investment Manager will be determined annually for a rolling two year basis, with an indicative budget for the second financial year. It is expected that total ongoing expenses for the VCLP will initially be (in current dollar terms) between \$525,000 and \$575,000. This comprises around \$125,000 in 'director fees' for members of the Investment Committee and the remainder would cover the employment of the investment analyst and executive officer, contract consultants and operating expenses. These figures may need to be varied as the number of investments increases.

16. Capital Calls

Commitments to be called down as required by the VCLP on 14 days notice.

17. Distributions and Carried Interest

Capital contributed for investment can only be invested once and all income received by the VCLP must be distributed. Distributions will be made as income is earned.

Carried interest provisions are to be finalised to ensure the alignment of interests and would be structured to ensure continued incentive to key contributors. They however will fall into the following framework:

- a) a consultancy fee payable to Bio Innovation SA equivalent to 4% carried interest and converted by applying a formula agreeable to MTAA Super and Bio Innovation SA;

Bio Innovation SA has to receive SA State Government approval before it receives the consultancy fee/carried interest.

If Bio Innovation SA does not obtain SA State Government approval to receive consultancy fee/carried interest, MTAA Super is not liable to pay the consultancy fee or equivalent carried interest to Bio Innovation SA or any other organisation

- b.) The Investment Manager will be entitled to a carried interest of 15% in the VCLP once the VCLP had returned all of its committed capital. There will be a 10% preferred return for the Limited Partners with a "catch up" mechanism for the Investment Manager. The Investment Manager will have a 10% carried interest in any follow-on investments made by the MTAA Super outside the VCLP.

18. Valuations

Valuation of units will accord with Australian Accounting Standards governing superannuation funds and is expected to be conservative and generally in accord with AVCAL guidelines.

As an early stage program, it is expected investments will be held at cost until either a market valuation event occurs or the investment manager is of a view that the investment value has been impaired.

19. Additional Capital Needs and Rights of Syndication or Sale

MTAA Super may transfer, sell or syndicate its obligations and interests, including follow-on investment rights, to any party with approval from Bio Innovation SA (not to be unreasonably withheld).

20. Term

Variable depending on the pace at which funds are required by the VCLP. Intended initial term will be 10 years including a five year investment phase. Option to extend the program on a similar basis for a further five years and for subsequent periods.

Subject to break events as specified below and provisions for extension.

21. Break events

MTAA Super will have the option to suspend new investment powers by providing two weeks written notice and may terminate this agreement with three months written notice under certain conditions. These conditions are:

- Bio Innovation SA is dissolved and any successor organisation is unable to carry out the functions previously conducted by Bio Innovation SA.
- Bio Innovation SA will be reasonably required to perform certain agreed activities that form the basis of the investment case for this opportunity. If these activities are no longer performed by Bio Innovation SA then the agreement may be terminated. These activities, as outlined in section 5, may be transferred with the consent of MTAA Super.
- The key person from Bio Innovation SA (Dr. Jurgen Michaelis) resigns as CEO of Bio Innovation SA and no suitable successor is found.
- Two of the three independent Investment Committee members become unavailable for such activities through leaving the organisation or a significant change in role and no suitable successor is found.
- Failure to achieve an adequate level of investment over time.
- Valuation of the VCLP (net present value test of distributions plus portfolio holdings against capital contributed) falls below 67% of committed capital.

- Following a Break Event, MTAA Super may elect to continue the management of existing investments under the existing arrangements or may establish a successor management entity.

22. Other Service Providers

Custody, tax and accounting for the VCLP to be arranged by the General Partner in conjunction with MTAA Super.

The Investment Manager will source appropriate legal, tax, accounting and technical advice for the investment due diligence.

23. Governing Documentation

1. VCLP Deed (MTAA responsible for legal costs)
2. Constitution of General Partner (MTAA responsible for legal cost)
3. Constitution of Investment Manager (Investment Manager responsible for legal costs)
4. Management agreement between Investment Manager and General Partner (MTAA responsible for legal costs)
5. Agreement between MTAA Super and Bio Innovation SA (drafted by Crown Solicitor and Bio Innovation SA responsible for costs)

24. Confidentiality

The parties agree to maintain confidentiality about the contents of this term sheet. Any party may disclose information, which would otherwise be confidential to its legal, financial or other professional advisors as well as the members of the SA government without the consent of the other parties. All such parties would be bound to treat this term sheet confidentially.

On final approval by all parties and completion of all documentation Bio Innovation SA and MTAA Super will agree on a joint press release.

Signed for and on behalf of:



MTAA Superannuation

Date: 6 6 5



Bio Innovation SA

Date: 08. 06. 2005

Memorandum of Understanding

**Motor Trades Association of Australia Superannuation Fund Pty
Limited**

And

Bio Innovation SA

Memorandum of Understanding

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Memorandum of Understanding

Date

2006

Parties

1. **Motor Trades Association of Australia Superannuation Fund Pty Limited** ABN 14 008 650 628 of 39 Brisbane Avenue Barton ACT 2600 (**MTAA Super**)
2. **Bio Innovation SA** ABN 82 973 241 837 of Level 15, 33 King William Street, Adelaide SA 5000 (**BISA**)

Recitals

- A MTA Super is a "complying superannuation fund" for the purposes of the *Income Tax Assessment Act 1936* (Cth) and, as such, invests in equity securities for the sole purposes outlined in section 62 of the *Superannuation Industry (Supervision) Act, 1993* (Cth).
- B In accordance with the purposes outlined in Recital A, MTA Super wishes to invest in South Australian bioscience companies through an incorporated limited partnership to be known as "South Australian Life Science Advancement Partnership, LP" (**VCLP**).
- C Terra Rossa Capital Pty Ltd ACN 114 576 742 (**TRC**) is a company that has been incorporated to act as manager of the VCLP.
- D TRC is independent, and not under the management or control, of BISA.
- E BISA is a public corporation incorporated under the *Public Corporations Act 1993* (SA) and *Public Corporations (Bio Innovation SA) Regulations 2001* (SA) which is funded by the South Australian Government and its functions (**BISA Functions**) are limited to fostering the growth and development of the bioscience industry in South Australia by:
- (a) providing business support, including funding grants, to companies or persons involved in, or commencing involvement in, the bioscience industry; and
 - (b) providing funding for bioscience education, information and referral services; and
 - (c) encouraging participation in the development of products and services relating to the bioscience industry to attract and facilitate the formation of major bioscience, pharmaceutical and agribusiness companies.
- F BISA and MTA Super entered into a term sheet for the establishment of the VCLP on 8 June 2005 and wish to enter into this Memorandum of Understanding ("**MOU**") to give effect, to the extent agreed between them, to the terms of such term sheet.
- G This MOU outlines the commitment of both Parties to foster the growth of the South Australian bioscience industry for the benefit of both Parties through the establishment and operation of the VCLP and sets out the basis on which MTA Super will:

Memorandum of Understanding

- (a) as a Limited Partner, invest in the VCLP; and
 - (b) procure the appointment of the Manager, including, in the first instance, TRC,
- and the basis on which BISA will perform the BISA Functions in relation to the VCLP including by:
- (a) having the right, but not obligation, to refer South Australian bioscience companies to the Manager for consideration as to whether the VCLP wishes to invest in those companies; and
 - (b) establishing and maintaining an entrepreneur in residence program for the benefit of South Australian bioscience companies,
- and deals with certain related matters in respect of which the Parties wish to record their agreements.

H This MOU has been submitted by BISA to the Cabinet of the government of the State of South Australia which has approved BISA entering into this MOU and has also approved the transactions contemplated by this MOU.

It is agreed as follows.

1. Preliminary

1.1 Definitions

In this MOU:

Authority means any statutory, public, governmental, semi-governmental, municipal or other public entity.

AFSL means an Australian Financial Services Licence to be granted to TRC pursuant to the *Corporations Act 2001 (Cth)*.

Associate has the meaning described in s. 318 of the *Income Tax Assessment Act 1936 (Cth)*

Business Day means a day other than a Saturday, Sunday or public holiday in South Australia.

Capital Commitment means the amount of up to \$35 million capital which MTAA Super has agreed to invest in the VCLP, including the Management Fee to the Manager, over a period of 10 years comprising 2 tranches of \$17.5 million each. The first tranche to be invested during the first 5 years of the terms of the VCLP and the second tranche, subject to a right of MTAA Super to review its commitment to make such contribution, to be invested during the second 5 years of the term of the VCLP.

Capital Contribution means a capital contribution to and received by the VCLP in accordance with the terms of the Limited Partnership Agreement.

Carried Interest Trust means the trust established by deed of trust between Terra Rossa Capital Pty Ltd ACN 114 576 742 as trustee and Stephen Thompson as Settlor, signed on or about the date of this MOU and called the Terra Rossa Carry Trust Deed, which is entitled to receive distributions through the General Partner of the VCLP.

Memorandum of Understanding

Claim means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising (whether or not presently ascertained, immediate, future or contingent) and includes legal costs on a full indemnity basis.

CPI means the Index prevailing at the time when any relevant calculation is required to be made under this MOU;

CPI Base means the Index at the time this MOU is signed by the Parties;

CPI Escalator means the value calculated in accordance with the formula:

CPI – CPI Base

CPI Base

Director has the meaning set out in the *Public Corporations Act 1993* (SA)

Dispose means assign, transfer, otherwise dispose of or grant or permit or suffer the grant of any legal or equitable interest (either in whole or in part) whether by sale, lease, declaration or creation of a trust or otherwise.

Disqualified Persons means:

- (a) a person, or an Associate of a person, who is an employee, Senior Executive, Executive or Director of BISA at the commencement date of this MOU; or
- (b) a person, or an Associate of a person, who becomes an employee, Senior Executive, Executive or Director of BISA after the commencement date of this MOU.

A person is no longer a Disqualified Person where that person has:

- (a) in the case of an employee, where that person has ceased to be an employee of BISA,
- (b) in the case of a Senior Executive, Executive or Director, where that person has ceased to be a Senior Executive, Executive or Director of BISA for a period of three (3) years, and
- (c) in the case of an Associate, where the person in respect of whom the Associate is an Associate, ceases to be a Disqualified Person.

Encumbrance means any interest or power:

- (a) reserved in, or over any interest in, any asset including any retention of title; or
- (b) created or otherwise arising in, or over any interest in, any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of any debt or other monetary obligation, or the performance of any other obligations and whether existing or agreed to be granted or created.

Executive has the meaning set out in the *Public Corporations Act 1993* (SA)

Fundamental Terms means the provisions of each of clauses 2.2, 4 and 5.

Memorandum of Understanding

General Partner means the general partner for the time being of the VCLP.

Index means the Consumer Price Index (All Groups) (Weighted Average of Eight Capital Cities) published by the Australian Bureau of Statistics or its successors.

Investment Committee means the investment committee of the Manager, referred to in clause 4.4;

Investment Management Agreement means the agreement pursuant to which the Manager is appointed and which is referred to in clause 4.8.

Investment Period means each period of 5 years referred to in the definition of Capital Commitment.

Limited Partnership Agreement means the partnership deed entered into between, or to be entered into between MTAA Super and Salsa Management Partnership, LP on or about the date of this MOU and which is referred to in clause 2.2, 2.3 and 5.5.

Management Fee means the management fee payable by the VCLP to the Manager pursuant to the Investment Management Agreement.

Manager means the person for the time being appointed as Manager to the VCLP under the Investment Management Agreement, and includes TRC as the initial Manager.

Partnership Agreements means the agreements associated with the establishment of the VCLP and includes the Investment Management Agreement, the Limited Partnership Agreement, the SALSA Management Partnership, LP deed, the Carried Interest Trust and this MOU.

Party means each of MTAA Super and BISA in its capacity as a party to this MOU and **Parties** means both of them in that capacity.

Senior Executive has the meaning set out in the *Public Corporations Act 1993* (SA)

Terms defined elsewhere in this MOU bear their defined meanings when used in this MOU.

1.2 Interpretation

- (a) In this MOU, unless it is stated to the contrary;
- (b) A word or phrase not defined in this MOU but defined in the Limited Partnership Agreement shall have the meaning as in the Limited Partnership Agreement;
- (c) the singular includes the plural and conversely;
- (d) a gender includes all genders;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;

Memorandum of Understanding

- (g) a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or annexure to, this agreement;
- (h) a reference to an agreement or document (including this MOU) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this agreement or that other MOU or document;
- (i) a reference to **writing** includes any method of representing or reproducing words, figures, drawings, or symbols in a visible form but excludes any communication using electronic mail;
- (j) a reference to a Party to this MOU or another agreement or document includes the Party's successors, permitted substitutes and permitted assigns (and, where applicable, the Party's legal personal representatives);
- (k) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (l) a reference to conduct includes, an omission, statement or undertaking, whether or not in writing;
- (m) a reference to an **agreement** includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;
- (n) a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (o) a reference to **dollars** and **\$** is to Australian currency;
- (p) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (q) the meaning of general words is not limited by specific examples introduced by **including**, or **for example**, or similar expressions;
- (r) references to **agree**, **approve** or **consent** are references to agreement, approval or consent (as the case may be) in writing; and
- (s) nothing in this MOU is to be interpreted against a Party solely on the ground that the Party put forward this MOU or any part of it.

1.3 Headings

Headings do not affect the interpretation of this MOU.

1.4 Schedules and annexures

Schedules and annexures form part of this MOU.

Memorandum of Understanding

2. Role of MTAA Super

2.1 Establishment and Contribution

MTAA Super will:

- (a) as soon as practical after the execution of this MOU establish the VCLP as an incorporated limited partnership under the *Partnership Act 1891 (SA)*.
- (b) as soon as practical after the establishment of the VCLP apply to the PDF Registration Board for, and use its best endeavours to procure registration of the VCLP as a "venture capital limited partnership" under the *Venture Capital Act 2002 (Cth)*; and
- (c) fund the establishment of the VCLP and the General Partner and related documentation, and through the VCLP and/or MTAA Super's agent develop with the Manager:
 - (i) an investment plan;
 - (ii) governance controls and reporting practices;
 - (iii) a valuation policy; and
 - (iv) criteria for approval of members of the Investment Committee,the matters referred to in clauses 2.1(c)(i) to (iv) to be reflected in the Limited Partnership Agreement and/or the Investment Management Agreement;
- (d) fund the preparation, negotiation and finalisation of:
 - (i) the Limited Partnership Agreement for the VCLP;
 - (ii) the incorporated limited partnership deed in respect of the General Partner;
 - (iii) the constitution of the controlling entity of the General Partner, and
 - (iv) the Investment Management Agreement.
- (e) ensure that the VCLP is exempt from the requirement to hold an AFSL for the financial services it provides, including by entry into an agreement for the purposes of section 911A(2)(b) of the Corporations Act or fund and procure the appointment of the VCLP as an authorised representative of TRC in respect of all of the financial services covered by TRC's AFSL; and
- (f) contribute the Capital Commitment to the VCLP in accordance with the terms of the Limited Partnership Agreement.

2.2 Terms of Commitment

The terms and conditions upon which MTAA Super must contribute the Capital Commitment:

Memorandum of Understanding

- (a) will be for a period commencing from the date of registration of the VCLP for a period of up to 15 years (including investment and divestment periods); and
- (b) will be set out more fully in the Limited Partnership Agreement.

2.3 Limited Partnership Agreement

MTAA Super agrees to negotiate in good faith with the General Partner and to use its best endeavours to enter into the Limited Partnership Agreement as soon as practical after the execution of this MOU.

2.4 Limitation of Liability

(a) Capacity as trustee

Subject to clause 2.4(e) MTAA Super is bound by this MOU only in its capacity as trustee of MTAA Superannuation Fund ("**the Fund**") and in no other capacity.

(b) Rights of other Parties

Subject to clause 2.4(e), the rights of other Parties under or in respect of this MOU (whether express or implied by applicable law or otherwise) are not exercisable against MTAA Super other than in its capacity as trustee of the Fund.

(c) Enforcement

Subject to clause 2.4(e), MTAA Super is not liable to pay or satisfy, and no Party is entitled to enforce against MTAA Super, any damages suffered by or amounts owing to the Party, which result from a breach or non-performance of an obligation of MTAA Super under or in respect of this MOU (whether express or implied by applicable law or otherwise) except to the extent that MTAA Super is entitled to be indemnified in its capacity as trustee of the Fund in respect of that obligation and those damages and amounts are recoverable by MTAA Super under that indemnity.

(d) Winding Up

Subject to clause 2.4(e), if a Party does not recover all damages suffered and amounts owing to it as a result of a breach or non-performance of any obligation of MTAA Super under or in respect of this MOU (whether express or implied by applicable law or otherwise), the Party may not seek to recover the shortfall by applying to have MTAA Super wound up.

(e) Exceptions

The limitations in clauses 2.4(a) to (d) do not apply in the case of any fraud or dishonesty by MTAA Super under or in respect of the terms of its appointment as trustee of the Fund or any failure by MTAA Super intentionally, or recklessly to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that MTAA Super, as trustee of the Fund, is required to exercise, and in those circumstances MTAA Super will also be liable in its personal capacity.

Memorandum of Understanding

(f) **Warranties**

MTAA Super warrants to BISA that:

- (i) it has the necessary authority and power to enter into and perform its obligations under this MOU; and
- (ii) the entry into and performance of this MOU by MTAA Super does not constitute a breach of any obligation (including but not limited to, any statutory, contractual or fiduciary obligation) under any agreement or undertaking by which MTAA Super is bound.

3. **Role of BISA**

3.1 **BISA's Role**

In its exercise of the BISA Functions of fostering the growth and development of the bioscience industry in South Australia but subject to any limitations at law or under the charter of BISA on the scope of BISA's authorised activities, BISA agrees to use its best endeavours to:

- (a) provide the Manager with access and introductions to potential investments in South Australian bioscience companies;
- (b) support South Australian bioscience companies, which, in BISA's sole and absolute discretion, may include companies in which the VCLP has invested (**Investee Companies**);
- (c) provide, within the limits of the BISA Functions, business development services comprising at least the following:
 - (i) facilitating intellectual property protection and evaluation;
 - (ii) business introductions;
 - (iii) business development;
 - (iv) market research; and
 - (v) granting funding to South Australian bioscience companies in accordance with existing BISA rules and processes for such funding,

which, in BISA's sole and absolute discretion, may include such services to Investee Companies.

3.2 **Business mentoring program**

- (a) In its exercise of the BISA Functions of fostering the growth and development of the bioscience industry in South Australia but subject to any limitations at law or under the charter of BISA on the scope of BISA's authorised activities, BISA will, within 12 months of the date of execution of this MOU by the Parties, establish a business mentoring/entrepreneur in residence program for South Australian bioscience companies.

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- (b) Subject to any limitations at law or under the charter of BISA on the scope of BISA's authorised activities, the program will include:
 - (i) assisting South Australian bioscience companies with management experience at the early stage of their business development;
 - (ii) using senior managers attracted locally, interstate and overseas by BISA to assist in the management of South Australian bioscience companies; and
 - (iii) providing assistance to South Australian bioscience companies with product development, corporate growth strategies and further capital raising.

3.3 Scope of Role

BISA must:

- (a) perform its obligations referred to in clauses 3.1 and 3.2 during the same period that the VCLP pays the Management Fee to the Manager;
- (b) use its best endeavours to ensure that during that period its level of recurrent funding from the Government of South Australia is not materially reduced in real dollar terms below that applicable as at the date of this MOU; and
- (c) use its best endeavours to ensure that during that period the resources available to it in order to perform the BISA Functions are not materially reduced below those available to it as at the date of this MOU.

3.4 Limitation of Liability

- (a) Notwithstanding anything to the contrary contained in this MOU, MTAA Super acknowledges and agrees that:
 - (i) investment in bioscience companies (including investment of Capital Contribution in Investee Companies) is a high risk investment, the risk of which is assumed solely and exclusively by MTAA Super; and
 - (ii) in performing its obligations referred to in clauses 3.1 and 3.2 BISA may not be able to achieve any outcomes that foster the growth and development of the bioscience industry in South Australia, including of any Investee Companies.
- (b) MTAA Super:
 - (i) irrevocably waives and releases BISA, its related bodies corporate (as defined in the Corporations Act) and the Crown in right of South Australia and their respective employees, officers, agents and contractors from and against any and all Claims of MTAA Super for damages of any nature whatever arising from or out of any failure by BISA to comply with the provisions of clauses 3.1 to 3.3 and agrees that, in the event of such failure, its rights and remedies are limited to the discretionary right of specific performance or its rights pursuant to clause 7; and

Memorandum of Understanding

- (ii) warrants and undertakes to and in favour of BISA that it will not directly or indirectly assist any Investee Company in any way whatever to make or prosecute any Claim against BISA in any way in relation to the performance by BISA of the BISA Functions.
- (c) For the purposes only of clause 3.4(b)(i) BISA acts as the agent or trustee of its related bodies corporate (as defined in the Corporations Act) and the Crown in right of South Australia and its and their respective employees, officers, agents and contractors from time to time and all of those persons are or are deemed to be Parties to this MOU.
- (d) The provisions of this clause 3.4 survive the expiry or termination for whatever reason of this MOU.

3.5 Warranties

BISA warrants to MTAA Super that:

- (a) it has the necessary authority and power to enter into and perform its obligations under this MOU; and
- (b) the entry into and performance of this MOU by BISA does not constitute a breach of any obligation (including but not limited to, any statutory, contractual or fiduciary obligation) under any agreement or undertaking by which BISA is bound.

3.6 Directors

BISA undertakes to MTAA Super to use its best endeavours to ensure that the Directors of BISA (including Dr Jurgen Michaelis) comply with their obligations under the *Public Corporations Act 1993 (SA)* and the *Public Corporations (Bio-Innovations) Regulations 2001*.

4. Role of Manager

4.1 Appointment, Retirement and Removal

- (a) MTAA Super must ensure that TRC is appointed as the initial Manager of the VCLP pursuant to the Limited Partnership Agreement.
- (b) The Manager may retire on not less than 6 months written notice given to the General Partner and MTAA Super.
- (c) MTAA Super may remove the Manager from office by not less than 6 months written notice given to the Manager at any time after the fourth anniversary of the Manager's appointment as such.

4.2 Responsibilities

The Manager will, under delegation from the General Partner, manage the VCLP including:

- (a) manage the day to day responsibilities of the VCLP;
- (b) be responsible (through the Investment Committee) for making investment and divestment decisions;

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- (c) effect investment decisions;
- (d) supervise and govern investments; and
- (e) report on investment activities and the portfolio.

4.3 Management and Control of BISA

TRC will not be under the management or control of BISA.

4.4 Investment Committee

- (a) The Manager will establish an Investment Committee comprising 4 persons.
- (b) The Investment Committee will comprise:
 - (i) until BISA elects by written notice given to the Manager not to nominate a member of the Investment Committee, a senior nominee of BISA and 3 other members (not being nominees of BISA) with relevant industry experience; and
 - (ii) if BISA elects by written notice given to the Manager not to nominate a member of the Investment Committee, 4 members (not being nominees of BISA) with relevant industry experience.
- (c) BISA agrees that Dr. Jurgen Michaelis will be the initial representative of BISA on the Investment Committee.
- (d) The other initial members of the Investment Committee shall be Dr Stephen Thompson, Dr Tom Geimer and Simon Drilling.
- (e) BISA agrees that Dr. Jurgen Michaelis will be eligible to receive a consulting fee of \$50,000 per annum from the Manager for sitting on the Investment Committee and that, subject to clause 4.4(h), this payment is the only remuneration of Dr Jurgen Michaelis from the Manager, the VCLP, any Investee Company of the VCLP, the General Partner or MTAA Super.
- (f) Each of the members of the Investment Committee other than Dr Jurgen Michaelis will be eligible to receive a consulting fee of \$25,000 per annum from the Manager for sitting on the Investment Committee.
- (g) The consulting fees referred to in clauses 4.4(e) and (f) will escalate annually in accordance with the CPI Escalator on each anniversary of the date this MOU is signed by the Parties.
- (h) Any variation to the consulting fees of Dr. Jurgen Michaelis (whilst an employee of BISA and other than pursuant to clause 4.4(g)) or the remuneration of any employee of BISA paid or to be paid by or on behalf of the Manager, the VCLP, any Investee Company of the VCLP, the General Partner or MTAA Super will require the written approval of the South Australian Minister for Science and Information Economy.
- (i) The Investment Committee must act unanimously.

4.5 Manager's operating expenses

- (a) The Manager's operating expenses will be met through:

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- (i) payment of the Management Fee by the VCLP to the Manager (which, in turn, will be met by the VCLP making calls on MTAA Super in respect of the Capital Commitment); and
 - (ii) grant payments by BISA to the Manager.
- (b) The Parties acknowledge that certain actions and expenses will need to be taken and incurred in and in relation to the establishment of the Manager prior to the commencement of the funding period of 10 years (**Setup Phase**) referred to in clause 4.6 and the Parties agree that:
- (i) BISA will grant to the Manager an amount not exceeding \$250,000 to meet expenses in the Setup Phase which are related to the establishment of TRC and obtaining an AFSL;
 - (ii) payments of any fees to the Investment Committee members are not permitted from grant payments by BISA in the Setup Phase;
 - (iii) the amount granted by BISA to the Manager will be deducted from BISA's agreed level of funding of the VCLP for year 1, as reflected in clause 4.6;
 - (iv) MTAA Super will provide, through its agent, in kind support to TRC to assist it in the implementation of operational procedures required for the grant of an AFSL to TRC including the provision of financial assistance in the amount of \$50,000 at the time when the Manager has been issued an AFSL to cover the AFSL provisions to carry at all times a minimum surplus of liquid funds; and
 - (v) any such in kind support provided by MTAA Super to the Manager will be in addition to, and will not be deducted from, MTAA Super's agreed level of funding of the VCLP for year 1, as reflected in clause 4.6.

4.6 Operating budget

- (a) The base level of agreed funding for operating expenses of the Manager for the first 10 years from the date of its establishment shall be paid by the VCLP and BISA as follows:

Year (from commencement date of MOU)	BISA per annum	VCLP per annum
1	\$250,000	\$275,000
2	\$300,000	\$275,000
3	\$170,000	\$405,000
4	\$170,000	\$405,000
5	\$170,000	\$405,000
6	\$170,000	\$405,000
7	\$170,000	\$405,000
8	\$170,000	\$405,000
9	\$170,000	\$405,000
10	\$170,000	\$405,000

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- (b) The Parties agree that:
 - (i) such base level agreed funding is their best estimate of the base level of funding required for the operating expenses of the Manager for the first 10 years from the date of its establishment;
 - (ii) such base level agreed funding is a budget which may require adjustment against the actual operating expenses of the Manager from time to time;
 - (iii) BISA's contribution to such base level agreed funding is a fixed contribution which is only subject to adjustment pursuant to clause 4.(c)(i); and
 - (iv) any upward adjustment in such base level agreed funding against the actual operating expenses of the Manager from time to time will be borne by the VCLP.
- (c) For the purpose of calculating such base level agreed funding it has been assumed that:
 - (i) the contributions of the VCLP and BISA shall be increased in accordance with the CPI Escalator. The relevant funding will be proportionately adjusted from time to time to reflect any such applicable increases;
 - (ii) MTAA Super will second a financial controller for the VCLP to the Manager on a part-time basis (and at no cost to the Manager); and
 - (iii) the aggregate fees for the members of the Investment Committee are \$125,000 per annum in year 1.

4.7 Agreement

The terms and conditions upon which the Manager is appointed as the Manager of the VCLP (including the appointment, composition and operation of the Investment Committee and the agreed base level funding for the VCLP and the matters referred to in clauses 2.1(c)(i) to (iv)):

- (a) are the responsibility of the VCLP and not BISA; and
- (b) will be set out more fully in the Investment Management Agreement.

4.8 investment Management Agreement

MTAA Super agrees to use its best endeavours to ensure that the VCLP and General Partner negotiate in good faith with the Manager and use their respective best endeavours to enter into the Investment Management Agreement as soon as practical after the execution of this MOU.

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5. Distributions and Investment Profits

5.1 Capital

Capital Commitment will be called and invested in Investee Companies, to pay outgoings of the VCLP or paid to the Manager as Management Fee.

5.2 Distributions

All income received by the VCLP from investments in Investee Companies must be distributed in accordance with the terms of the Limited Partnership Agreement which terms shall reflect a provision that an amount equal to 15% of the investment profits of the VCLP is payable to the General Partner for the benefit of the Limited Partner of the General Partner, assuming that there are sufficient investment profits to make all distributions and all performance hurdles have been satisfied, as provided for in the Limited Partnership Agreement.

5.3 Consultancy Fee

- (a) The Limited Partnership Agreement will include a term to the effect that in consideration of the obligations undertaken and the payments made by BISA pursuant to the terms of this MOU, the VCLP will pay to BISA a consultancy fee equal to 4% of the investment profits of the VCLP, assuming that there are sufficient investment profits to make all distributions and all performance hurdles have been satisfied, as provided for in the Limited Partnership Agreement.
- (b) Payment of the consultancy fee referred to in clause 5.3(a) is conditional on BISA providing written evidence to the General Partner that BISA has obtained the approval of the South Australian Government.

5.4 Acknowledgements

BISA acknowledges that:

- (a) The Carried Interest Trust will reflect a term which provides that any Disqualified Person will not, have any beneficial interest in any securities (whether absolute, contingent, in expectancy, or otherwise), or be a director, (both as defined in the Corporations Act) of the Manager or in any assets of the Carried Interest Trust; and
- (b) the relevant Partnership Agreements will reflect a term which provides that remuneration of any Disqualified Person paid or to be paid by or on behalf of the Manager, the VCLP, any Investee Company of the VCLP, the General Partner or MTAA Super will require the written approval of the South Australian Minister for Science and Information Economy.

5.5 Agreement

MTAA Super must ensure that the provisions of clauses 5.1 to 5.3 are reflected in the Limited Partnership Agreement.

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6. Term

Subject to earlier termination by operation of law or pursuant to clause 7, this MOU commences on the date that it is executed by the Parties to it and expires on the expiry of the Limited Partnership Agreement.

7. Re-evaluation Events

7.1 Events

- (a) MTAA Super and BISA have the rights set out in clauses 7.2 and 7.3, respectively if any of the following events occurs:
- (i) BISA is dissolved and its successor organisation (if any) is unable to carry out the BISA Functions previously carried out by BISA;
 - (ii) BISA materially ceases to perform the BISA Functions as required by clause 3.3, unless the BISA Functions have been transferred to another entity with MTAA Super's consent (such consent not to be unreasonably withheld);
 - (iii) BISA's key executive (Dr. Jurgen Michaelis) resigns as CEO of BISA and no successor approved by MTAA Super (such approval not to be unreasonably withheld) is found within 6 months of such resignation;
 - (iv) two of the 3 Investment Committee members (not being a nominee of BISA) become unavailable to serve as committee members and no successors approved by MTAA Super (such approval not to be unreasonably withheld) are found within 3 months of such unavailability;
- (b) MTAA Super and BISA have the rights set out set out in clauses 7.2 and 7.3, respectively if, at any time after the fourth anniversary of the establishment of the VCLP, MTAA Super gives the VCLP and BISA (or, if BISA has at the relevant time ceased to perform the BISA Functions, the South Australian Minister for Science and Information Economy (or his or her successor) written notice of the exercise of its rights under clause 7.2.

7.2 MTAA Super Rights

- (a) If any of the events referred to in clause 7.1(a) occurs or if MTAA Super has given notice pursuant to clause 7.1(b), MTAA Super may (within 20 Business Days of the relevant event occurring or the giving of that notice, as applicable):
- (i) pursuant to the provisions of the Limited Partnership Agreement, by written notice given in accordance with clause 7.2(c)(i) suspend the right of the VCLP to make further investments in proposed Investee Companies; or

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- (ii) pursuant to the provisions of the Limited Partnership Agreement, by written notice given in accordance with clause 7.2(c)(ii) terminate the VCLP.
- (b) If MTAA Super suspends the right of the VCLP to make further investments in proposed Investee Companies pursuant to clause 7.2(a)(i), BISA acknowledges and agrees that the General Partner may:
 - (i) within a further 20 Business Days
 - (ii) on behalf of the VCLP; and
 - (iii) pursuant to the Investment Management Agreement;by written notice given in accordance with clause 7.2(c)(iii) terminate the Investment Management Agreement .
- (c) Any notice given:
 - (i) by MTAA Super to suspend the right of the VCLP to make further investments in proposed Investee Companies pursuant to clause 7.2(a)(i):
 - (A) must be given to the VCLP and BISA (or, if BISA has at the relevant time ceased to perform the BISA Functions, the South Australian Minister for Science and Information Economy (or his or her successor)); and
 - (B) takes effect on the date specified in the notice, being a date not less than 10 Business Days after the date of the notice;
 - (ii) by MTAA Super to terminate the VCLP pursuant to clause 7.2(a)(ii):
 - (A) must be given to the VCLP and BISA (or, if BISA has at the relevant time ceased to perform the BISA Functions, the South Australian Minister for Science and Information Economy (or his or her successor)); and
 - (B) takes effect on the date specified in the notice, being a date not less than 120 Business Days after the date of the notice; and
 - (iii) by the General Partner to terminate the Investment Management Agreement pursuant to clause 7.2(b):
 - (A) must be given to BISA (or, if BISA has at the relevant time ceased to perform the BISA Functions, the South Australian Minister for Science and Information Economy (or his or her successor)); and
 - (B) takes effect on the date specified in the notice, being a date not less than 120 Business Days after the date of the notice.

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7.3 BISA Rights

- (a) If any written notice referred to in clause 7.2(a) or (b) (**7.2 Notice**) is given:
 - (i) BISA may within 60 Business Days of the relevant 7.2 Notice being given, suspend its obligations under clause **3** by not less than 10 Business Days written notice given to MTAA Super and the Manager;
 - (ii) BISA may within 60 Business Days of the relevant 7.2 Notice being given, terminate the grant deed between BISA and the Manager by written notice given to MTAA Super and the Manager and BISA's notice will take effect:
 - (A) if the relevant 7.2 Notice was a notice given under clause 7.2(a)(i), on the date specified in BISA's notice, being a date not less than 120 Business Days after the date of that 7.2 Notice;
 - (B) if the relevant 7.2 Notice was a notice given under clause 7.2(a)(ii), on the date being the earlier of the date of termination of the VCLP consequent upon that 7.2 Notice and the date being 120 Business Days after the date of that 7.2 Notice; or
 - (C) if the relevant 7.2 Notice was a notice given under clause 7.2(b), on the date being the earlier of the date of termination of the Investment Management Agreement consequent upon that 7.2 Notice and the date being 120 Business Days after the date of that 7.2 Notice.
- (b) If any of the events referred to in clause 7.1(a)(i), (ii) or (iii) occurs, BISA will inform MTAA Super in writing within 10 Business Days of it becoming aware of the occurrence of the relevant event.

8. Announcements

8.1 Announcements

Neither Party may make any public announcement regarding the terms of this MOU nor the transactions contemplated by it without obtaining the prior written approval of the other Party (such approval not to be unreasonably withheld). Nothing in this clause **8.1** limits disclosure of the terms of this MOU or transactions contemplated by it to the extent required by law or to advisers or agents of the relevant Party.

8.2 Joint Announcement

The Parties agree to use their best endeavours to agree upon a joint public announcement regarding the transactions contemplated by this MOU, within 10 Business Days of the Parties' execution of this MOU.

9. Conditional

9.1 Conditional

The obligations of BISA under clause 3 and the rights and obligations of the Parties under clause 5.2 are subject to and conditional upon the following conditions (**Conditions**) being met:

- (a) the coming into force and effect of the Limited Partnership Agreement;
- (b) the coming into force and effect of the Investment Management Agreement;
- (c) the coming into force and effect of an agreement between the General Partner and BISA in relation to the consultancy fee referred to in clause 5.3, upon terms acceptable to BISA in its sole and absolute discretion;
- (d) the coming into force and effect of the incorporated limited partnership agreement in respect of the General Partner;
- (e) the establishment of the Carried Interest Trust;
- (f) the appointment of the Investment Committee as contemplated by the provisions of clause 7;
- (g) Dr Jurgen Michaelis undertaking to MTAA Super that he will not have any beneficial interest in any securities (whether absolute, contingent, in expectancy, or otherwise), or be a director, (both as defined in the Corporations Act) of the Manager or in any assets of the Carried Interest Trust during the period of his employment by BISA and for a period of 3 years after ceasing to be employed by BISA;
- (h) the grant to TRC of the AFSL;
- (i) the VCLP being exempt from the requirement to hold an AFSL in respect of the financial services provided by it or being appointed as an authorised representative of TRC in respect of all of the financial services covered by TRC's AFSL; and
- (j) the registration of the VCLP as a "venture capital limited partnership" under the *Venture Capital Act 2002* (Cth),

upon terms consistent, as regards the agreements referred to in clauses 9.1(a) to (d) and the Carried Interest Trust, with the Fundamental Terms of this MOU.

9.2 Copies

- (a) MTAA Super must provide to BISA a certified true copy of each of the agreements referred to in clauses 9.1(a) to (d) within 10 Business Days of execution of those agreements by the parties to them to enable BISA to determine whether the Conditions have been met as regards each of those agreements; and
- (b) The Manager must provide to MTAA Super and BISA a certified true copy of the Carried Interest Trust within 10 Business Days of execution of that agreement by the parties to it to enable MTAA Super and BISA to determine whether the Conditions have been met as regards the Carried Interest Trust.

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9.3 Waiver

The Conditions are stated for the benefit of both Parties and are only waived if waived by both Parties.

9.4 Date for Meeting

The Parties undertake to use their respective best endeavours to ensure that the Conditions are met on or before 30 June 2006, or such later date from time to time agreed upon in writing by the Parties.

9.5 If Not Met

If the Conditions are not met on or before 30 June 2006, or a later date agreed pursuant to clause 9.4 then this agreement will automatically terminate and neither Party will have any Claim against the other pursuant to this MOU other than:

- (a) for any antecedent breach of this MOU; or
- (b) pursuant to any provision of this MOU which is expressed to survive the termination of this MOU.

10. Notices

10.1 Manner of giving

Any notice given under this MOU must be in writing and signed by or for the sender.

10.2 Manner of delivery

Notices must be delivered by post, hand or fax to the relevant address below:

- (a) to MTAA Super 39 Brisbane Avenue
BARTON ACT 2600

Attention: Mr Michael Delaney
Director, Principal Executive
Officer & Secretary
Fax: 02 6273 2738

- (b) to BISA: Level 15
33 King William Street
ADELAIDE SA 5000

Attention: Dr Jurgen Michaelis
Chief Executive
Fax: 08 8217 6416

10.3 When delivered

- (a) Notices will be taken to be duly given:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or

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7 Business Days after the date of posting (if posted to an address in another country); and

- (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error.
- (b) If the result under clause 10.3(a) is that a notice would be taken to be given on a day that is not a Business Day in the place to which the notice is sent, then it will be taken to have been given on the next Business Day in that place.

11. General Provisions

11.1 Agreement

This MOU is intended to be legally binding on the Parties to it.

11.2 Amendment

No amendment or variation of this MOU is valid or binding on a Party unless made in writing executed by all Parties.

11.3 Assignment

- (a) The rights and obligations of each Party under this MOU are personal.
- (b) They cannot be Disposed of, affected by any Encumbrance or otherwise dealt with and no Party may attempt, or purport, to do so without the prior written consent of the other Party.

11.4 No waiver

- (a) No failure to exercise nor any delay in exercising any right, power or remedy by a Party operates as a waiver.
- (b) A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A waiver is not valid or binding on the Party granting that waiver unless made in writing.

11.5 Further assurances

Each Party agrees to do all things and sign all documents necessary or desirable to give full effect to the provisions of this MOU and the transactions contemplated by it.

11.6 No merger

- (a) The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this MOU.
- (b) They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

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11.7 Costs and stamp duty

- (a) Each Party must bear its own costs arising out of the negotiation, preparation and execution of this MOU.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this MOU and any instrument executed under this MOU must be borne by MTAA Super.
- (c) MTAA Super must indemnify BISA on demand against any liability for that stamp duty.

11.8 Governing law and jurisdiction

- (a) This MOU is governed by the laws of South Australia.
- (b) Each Party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this MOU.

11.9 Counterparts

- (a) This MOU may be executed in any number of counterparts.
- (b) All counterparts when exchanged will be taken to constitute one document.

11.10 Relationship

- (a) The relationship between the Parties is that of independent contractors.
- (b) The Parties are not partners, joint venturers or principal and agent.

11.11 MOU and Partnership Agreements

- (a) The Parties acknowledge that this MOU is one of the Partnership Agreements and agree that, to the extent of any inconsistency between the Partnership Agreements (other than this MOU) and this MOU:
 - (i) Subject to clause 11.11(a)(ii) below, the Partnership Agreements (other than this MOU) will prevail, and
 - (ii) Where the inconsistency relates to a Fundamental Term of this MOU, the Fundamental Terms of this MOU will prevail.
- (b) MTAA Super undertakes to ensure that the VCLP is established and each of the Partnership Agreements is entered into on terms consistent with the Fundamental Terms of this MOU.
- (c) MTAA Super undertakes to ensure that no Partnership Agreement is amended at any time during the term of this MOU in any manner whatever which is inconsistent with any of the Fundamental Terms of this MOU, unless BISA's prior written approval has been obtained to that amendment.

Memorandum of Understanding

Executed in Adelaide.

**Executed by Motor Trades Association of Australia
Superannuation Fund Pty Limited** in accordance with
section 127(1) of the Corporations Act, 2001

Director

Director/secretary

Executed by Bio Innovation SA

Director

Director/secretary