

# Participants Agreement

CRC for Low Carbon Living

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CRC for Low Carbon Living Limited (**Company**)

The parties listed in Schedule 2 (**Participants**)

# Participants Agreement - CRC for Low Carbon Living

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# Details

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## Date

## Parties

Name	CRC for Low Carbon Living Limited
ACN	156 259 193
Short form name	<b>the Company</b>
Notice details	CRC for Low Carbon Living Limited Level 2, Tyree Energy Technologies Building The University of New South Wales UNSW Sydney NSW 2052 Attention : The Chief Executive Officer

Name	<b>The entities named and described in item 1 of Schedule 2 of this agreement,</b> being the present participants in the Centre
Short form name	<b>Participants</b>

## Background

- A The Commonwealth of Australia, by the provision of financial assistance under a program known as the Cooperative Research Centres Program, wishes to enhance scientific and technological capabilities and support linkages between researchers, and between researchers and end-users of the research.
- B The objective of the Cooperative Research Centres Program is to deliver significant economic, environmental and social benefits to Australia by supporting end-user driven research partnerships between publicly funded researchers and end-users to address clearly articulated, major challenges that require medium to long-term collaborative efforts.
- C The Parties wish to establish a research collaboration to be known by the name set out in item 1 of the Centre Details (**Centre**).
- D The Centre will be operated by the Company.
- E Contemporaneously with this agreement, the Company will enter an agreement with the Commonwealth by which the Company will be partially funded by the Commonwealth (under the Cooperative Research Centres Program) to contribute toward the operation of the Centre.
- F As a necessary precondition of the Commonwealth funding arrangement described in paragraph E, the Parties have agreed between themselves that the Activities are to be regulated on the terms and conditions set out in this agreement.

# Agreed terms

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## Part A Introduction

### 1. Defined terms and interpretation

#### 1.1 Definitions

In this agreement:

**Activities** means the activities identified in Schedule 3, and includes the Projects.

**Activity Payment** has the meaning set out in clause 9.1.

**Advisor** means:

- (a) the financial or legal advisors of a Party; and
- (b) the respective officers and employees of those financial or legal advisors.

**Advisory Committee** has the same meaning as in the Constitution.

**Agreement Material** has the same meaning as in the Commonwealth Agreement.

**Annual Budget** means the annual budget for the Centre prepared and approved under clause 9.1.

**Applicable Jurisdiction** means the jurisdiction specified in item 10 of the Centre Details.

**Asset** means an item of real or personal property, including a capital item, but does not include Intellectual Property.

**Australian Research Institution Participants** means those Participants specified in item 2 of Schedule 2.

**Background IP** means, in relation to a Project:

- (a) the Intellectual Property specified in the Project Details that a Project Party has agreed to contribute as Background IP to the Project; and
- (b) any other Intellectual Property that the Project Party has offered to contribute as Background IP for the Project and has been agreed in writing by all Project Parties as being accepted as Background IP for the Project,

and, for the avoidance of doubt, does not include any Centre IP but does include any Improvements to Background IP.

**Budget** has the same meaning as Budget in the Commonwealth Agreement and includes any Budget which might be substituted for it in accordance with the Commonwealth Agreement.

**Business Day** means, in relation to the doing of any action in a place, a weekday other than a public holiday or bank holiday in that place.

**Business Hours** means from 9.00am to 5.00pm on any Business Day.

**Centre** means the research collaboration operated by the Company referred to in paragraph C of the Background.

**Centre Account** has the same meaning as 'Account' in the Commonwealth Agreement.

**Centre Confidential Information** means Confidential Information generated as a result of the Activities.

**Centre Details** means the details specified in Schedule 1.

**Centre Field** means the field of research specified in item 4 of the Centre Details.

**Centre Funds** means the money comprised in the Centre Account including the cash Contributions (including the Commonwealth Funding), cash contributions to the Centre received from third parties and interest on the Centre Account, but not including any proceeds derived from the Commercialisation of Intellectual Property.

**Centre IP** means:

- (a) Project IP; and
- (b) Non-Project Centre IP.

**Centre Objectives** means the objectives of the Participants for the Centre as set out in clause 5.1.

**Centre Resources** means the non-cash resources made available for use by the Parties in carrying out the Activities, including the non-cash Contributions and any non-cash resources procured from third parties.

**Commencement Date** means the date specified in item 3 of the Centre Details.

**Commercialisation Expenses** means expenses incurred by the Company or a Utilisation Party in carrying out Utilisation of Centre IP pursuant to clause 24 (not including costs attributed to time spent by its employees) including:

- (a) government fees, taxes (other than income and withholding taxes), duties, charges or imposts paid or payable in relation to Commercialisation Income;
- (b) costs of registering or otherwise protecting the Centre IP, including patent attorney fees;
- (c) legal expenses incurred in relation to Commercialising Centre IP;
- (d) relevant travel, insurance, packaging or transportation costs;
- (e) costs of seeking licensees of the Centre IP or other Parties to be involved in Commercialisation of Centre IP; and
- (f) any other out-of-pocket expenses incurred by the Company in carrying out Commercialisation of Centre IP.

**Commercialisation Income** means all royalties, licence fees, and other monetary proceeds (including monetary proceeds from the use or disposal of any non-monetary assets) from Utilisation but excluding any such proceeds derived from use in accordance with clause 23.15(b).

**Commercialise**, in relation to Intellectual Property, means to:

- (a) manufacture, sell, hire or otherwise exploit a product or process, that uses or incorporates part or all of that Intellectual Property; or
- (b) provide a service (which may include *inter alia* research or education services), incorporating that Intellectual Property; or
- (c) license any third party to do any of those things; or
- (d) otherwise license or assign the Intellectual Property,

regardless of whether any revenue is generated or intended to be generated. **Commercialisation** has a corresponding meaning.

**Commonwealth** means the Commonwealth of Australia as represented by the Department of Innovation, Industry, Science and Research or such successor Commonwealth Government department or agency that administers the Commonwealth Agreement.

**Commonwealth Agreement** means the agreement referred to in paragraph E of the Background.

**Commonwealth Confidential Information** means the Confidential Information of the Commonwealth, including the information designated as confidential under the Commonwealth Agreement.

**Commonwealth Funding** means the financial assistance to be provided by the Commonwealth to the Company under the Commonwealth Agreement for expenditure on the Activities.

**Company** means the company specified in item 2 of Schedule 1.

**Confidential Information** means all information that is not in the public domain that is by its nature confidential or that has been designated as confidential by the disclosing party, and includes all trade secrets, know-how, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written, or oral, visible or invisible).

**Constitution** means the constitution of the Company.

**Contribution**, in relation to a Party, means all of the money, Assets, Specified Personnel, facilities and services to be contributed by the Party to the Centre, as set out in Schedule 5, but does not include any Intellectual Property.

**Coordinator** means, for each Project, the Project Party nominated in accordance with clause 24.3 who will lead the Utilisation of any Project IP on behalf of the Project Participants for the duration of the Project.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**CRC Indicia** has the same meaning as in the Commonwealth Agreement.

**CRC Program** means the program referred to in paragraph A of the Background.

**CRC Program Objective** means the objective listed in paragraph B of the Background.

**Deliverables** means the required deliverables for a Project as described in the Project Plan.

**Draft Utilisation Plan** means a draft version of a Utilisation Plan.

**End-user** has the same meaning as in the Commonwealth Agreement.

**Essential Participants** has the same meaning as in the Commonwealth Agreement, and includes any new Essential Participant admitted to the Centre in accordance with clause 30. At the Relevant Date, the Essential Participants are identified in item 1 of Schedule 2.

**Financial Year** has the same meaning as in the Commonwealth Agreement.

**Funding Period** has the same meaning as in the Commonwealth Agreement.

**Governing Board** means the board of directors of the Company.

**Head of Expenditure** has the same meaning as in the Commonwealth Agreement.

**Improvements** means a modification, enhancement or improvement of IP such that the improved IP cannot be used without infringing the Intellectual Property rights in the underlying IP.

**Initial Projects** means the Projects that are specified in item 9 of the Centre Details.

**Intellectual Property** or **IP** includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patents), plant varieties, trade marks (including service marks), designs, circuit layouts, all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields and any right to have confidential information kept confidential, but does not include Moral Rights or rights of performers.

**Member** has the same meaning as in the Constitution.

**Milestones** means the milestones for a Project as set out in the Project Plan.



**Moral Rights** has the same meaning as in the *Copyright Act 1968* (Cth).

**Net Commercialisation Income** means Commercialisation Income for a period in relation to particular Centre IP less payments or reimbursements of Commercialisation Expenses pursuant to clause 24.9 for that period for that Centre IP.

**Nominated Commonwealth Agreement Clauses** means the clauses of the Commonwealth Agreement specified in item 5 of the Centre Details.

**Non-Project Centre IP** means Intellectual Property developed by the Parties in the course of carrying out the Activities but excludes:

- (a) Project IP;
- (b) Background IP; and
- (c) the Intellectual Property in the Agreement Material.

**Non-Project Participant** means, with respect to each Project, each of the Participants who are not Project Participants.

**Other Participant** means a participant in the Centre who is not an Essential Participant.

**Participant** means those persons or bodies (other than the Company) who are Essential Participants or Other Participants who have agreed to support the Activities and provide Contributions to the Centre. A Participant includes a person or body who becomes a participant in the Centre and party to this agreement in accordance with clause 30.

**Party** means a party to this agreement.

**Party Confidential Information** means any information of a Party, not including Centre Confidential Information:

- (a) treated by that Party as confidential; and
- (b) disclosed by that Party to another Party, or of which another Party becomes aware, whether before or after the date of this agreement.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Project** means a discrete, time-bounded research, training or Utilisation activity or series of activities to be carried out under clause 17 by some or all of the Parties or third parties and that has been recognised as a 'Project' by the Company agreeing to Project Details (being a Third Party Project Agreement in the case of third party participation) in accordance with this agreement.

**Project Budget** means the budget for a Project as set out in the Project Plan including any variations to that budget as agreed by the Project Parties in writing.

**Project Commencement Date** means the date on which a Project is to commence as set out in the Project Plan.

**Project Completion Date** means the date on which a Project is to be completed as set out in the Project Plan.

**Project Details** means the details applicable for a Project as agreed in writing by all Project Parties, including the issues contained in Schedule 4, as amended by the Project Parties from time to time. In the case of a Project including one or more third parties as Project Participants, the Project Details means the details contained in the respective Third Party Project Agreement.

**Project Funds** means the money to be paid to the Responsible Participants, for conducting the Project and may include Commonwealth Funds received by the Company.

**Project IP** means Intellectual Property developed in the course of carrying out a Project, other than an Improvement of any Background IP.

**Project Leader** means the person appointed under clause 17 to act as a leader of a Project.

**Project Objectives** means the objectives for a Project as set out in the Project Plan.

**Project Participants** means, with respect to a Project, the Project Parties other than the Company.

**Project Parties** means the participants in a Project including the Company.

**Project Plan** means the plan for carrying out a Project as set out in the Project Details including any variations to that plan as agreed by the Project Parties in writing.

**Project Shares** means, with respect to a Project, the proportional entitlement of a Project Party as specified in the Project Details, as varied pursuant to clause 23.2.

**Quarter** means a three month period ending on 31 March, 30 June, 30 September or 31 December during the Term.

**Relevant Date** means 1 July 2013.

**Research Advisory Committee** has the same meaning as in the Constitution.

**Responsible Participants** mean, with respect to a Project, the Project Participants specified in the Project Details who are responsible for carrying out specified research, education, training or Utilisation under the Project.

**Rules** means the constitution, enacting legislation and its provisions, or any other form of provisions or policy statements governing the organisation and operation of a Party.

**Shortfall** has the same meaning as in the Commonwealth Agreement.

**Special Board Resolution** means a resolution of the Governing Board requiring approval of 75% of the directors able to attend and vote.

**Special Majority Issues** means the Company issues listed in item 6 of the Centre Details.

**Specified Division** means, in relation to a Responsible Participant, the division, department or faculty of that Responsible Participant specified in the Project Details.

**Specified Personnel** means the personnel of a Party allocated to the Centre or to a Project as part of that Party's Contribution.

**Term** means the term of this agreement ascertained in accordance with clause 2.

**Third Party Project Agreement** means an agreement between the Company and one or more third parties (and possibly also one or more Participants) setting out the terms upon which a Project will be funded and conducted.

**Tied-Contribution** means a Contribution which is subject to conditions imposed by a Participant as identified in Schedule 5.

**Use Field** means, with respect to a Project, the purpose for which each Project Participant may use the Project IP as specified in the Project Details but does not include Commercialisation.

**Use Field Conditions** means any conditions relevant to a Use Field specified in the Project Details.

**Utilisation Plan** means, with respect to particular Centre IP, a plan specifying the general approach to be adopted by the Utilisation Party with respect to Utilisation of that Centre IP, subject to any obligations of confidentiality owed to third parties, including:

- (a) objectives and strategies;

- (b) target markets;
- (c) resources to be utilised; and
- (d) risks and risk management strategies.

**Utilisation** means the technology transfer and take-up and use of Centre IP by End-users and includes Commercialisation. **Utilise** has a corresponding meaning.

**Utilisation Party** means the person determined/appointed by the Project Parties in accordance with clause 24.1(a) to undertake the Utilisation of Project IP.

**Valuation Principles** means the principles specified in item 11 of the Centre Details for valuation of non-cash Contributions to Projects.

## 1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to 'A\$', '\$A', 'dollar' or '\$' is to Australian currency;
- (f) a reference to a Party to a document (including this agreement) includes the Party's executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (j) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this agreement or any part of it;
- (k) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (l) headings are for ease of reference only and do not effect interpretation.

## 2. Term of this agreement

### 2.1 Condition precedent

Nothing in this agreement will have any force or effect until:

- (a) the Company is formed; and
- (b) the Commonwealth Agreement is executed by the Company and the Commonwealth.

To the extent that the fulfilment of these conditions require or would be assisted by conduct of a Party, that Party must use all reasonable endeavours to ensure that the condition is fulfilled.

## **2.2 Term**

This agreement will commence on the earlier of the Commencement Date or the fulfilment of the conditions precedent specified in clause 2.1 and will remain in force until one of the following occurs:

- (a) the Parties by unanimous written agreement terminate this agreement;
- (b) following the retirement or expulsion of a Party under clause 31, only one Party remains as a party to this agreement;
- (c) the Commonwealth Agreement is terminated pursuant to the terms of that agreement; or
- (d) the Company fails to receive the Commonwealth Funding or an instalment of the Commonwealth Funding other than through a temporary or unintended failure.

## **2.3 Extension of Term**

Notwithstanding the occurrence of one or more of the events in clause 2.2 (other than in clauses 2.2(a) and (b)), the Parties may by written agreement determine that this agreement will continue upon the terms specified in that written agreement.

## **2.4 Review**

The Parties will conduct a review during the second last year of the Funding Period to consider the operation of the Centre following the expiry of the Commonwealth Agreement, including whether this agreement should be terminated, whether the Company should be wound up following the completion of all obligations of the Company under the Commonwealth Agreement and any other matters requiring resolution at that point.

# **3. Relationship to other agreements**

## **3.1 Relationship to the Commonwealth Agreement**

Nothing in this agreement will reduce or otherwise affect the obligations of the Company under the Commonwealth Agreement. In the event of any inconsistency between this agreement and the Commonwealth Agreement:

- (a) the Commonwealth Agreement will prevail to the extent of any inconsistency if such inconsistency would mean that the Company would be in breach of its obligations under the Commonwealth Agreement; and
- (b) otherwise this agreement shall prevail.

## **3.2 Company authority to vary the Commonwealth Agreement**

The Company must not:

- (a) waive any of its rights or benefits under the Commonwealth Agreement; or
- (b) agree with the Commonwealth to a variation of the Nominated Commonwealth Agreement Clauses,

without:

- (i) Special Board Resolution of the Governing Board approving the variation; and/or
- (ii) if the matters specified in clauses 3.2(a) or (b) are Special Majority Issues, in compliance with clause 4.7.

## **3.3 Relationship to the Constitution**

In the event of any inconsistency between this agreement and the Constitution this agreement will prevail and the Parties that are Members will use their reasonable efforts to remove the inconsistency from the Constitution.

### **3.4 Relationship to the Project Details**

In the event of any inconsistency between this agreement and the Project Details, this agreement will prevail and the Parties will use their reasonable efforts to remove the inconsistency from the Project Details, subject in the case of a Third Party Project Agreement to any necessary consent of third parties to the Third Party Project Agreement.

## **Part B The Company**

### **4. The Company**

#### **4.1 Role of Company**

The Company will operate the Centre in accordance with the Commonwealth Agreement, this agreement and the Constitution. The Company will be responsible for the overall management and governance of the Centre.

#### **4.2 Governance**

The Company and the Governing Board must manage and govern the Centre and ensure that the Activities are at all times carried out in accordance with the Commonwealth Agreement. This clause 4.2 is not intended to limit the ways in which the Company may participate in the Centre.

#### **4.3 Company objects and powers**

The objects of the Company will correspond with the Centre Objectives. The Company will only exercise its powers to carry out such objects and do things that are incidental or convenient to such exercise of powers.

#### **4.4 Company Constitution**

- (a) The Constitution may only be amended by a resolution of the Members in accordance with the Corporations Act, provided that any amendment to the Constitution that would be inconsistent with this agreement requires the prior written agreement of all Members.
- (b) The Parties must ensure that the Constitution is consistent with the obligations under clauses 4 and 5.1 of the Commonwealth Agreement and otherwise allows the Company to meet its obligations under the Commonwealth Agreement.

#### **4.5 Management of the Company**

- (a) The Company will be managed by the Governing Board in accordance with the Constitution.
- (b) The Parties must ensure that:
  - (i) the chairperson of the Governing Board is independent of each Essential Participant and Other Participant and the management of the Centre and is free of any business or other relationship that could materially interfere, or could reasonably be perceived to materially interfere with the exercise of their unfettered and independent judgement;
  - (ii) the Governing Board is comprised of a majority of persons who are independent of the Research Participants; and
  - (iii) the chairperson and chief executive officer of the Company are not the same individual.

#### **4.6 Membership of Company**

A Participant is only a Member where so admitted under the Constitution. The Company and the Members agree to promptly admit as a Member any Participant that is not a Member but has requested to be admitted.

#### **4.7 Special majority approval of Company members**

The Company must not do, or commit to do, any of the Special Majority Issues without a resolution passed by, or written consent given by, members of the Company who would together hold more than 75% of the votes in the event of a poll.

#### **4.8 Other consents required**

Clause 4.7 does not limit or prevail over any other consent or approval required under the Corporations Act, the Commonwealth Agreement or the Constitution.

## **Part C General principles**

### **5. Centre Objectives**

#### **5.1 Objectives**

The Company is established as a not-for-profit co-operative research centre to promote the CRC Program Objective by undertaking scientific research and development to achieve low-carbon living in Australia and to pursue world class research and training relevant to the Centre Field including by the following means:

- (a) promoting a managed and cooperative approach to research and education in the Centre Field so as to maximise the benefits from that research and education;
- (b) carrying out education activities in the Centre Field for students and for the professional development of persons working in the Centre Field;
- (c) ensuring that the Members and other Participants with their differing disciplines and backgrounds will, through their participation in the Centre, add value to each other so that the performance of the Centre will be greater than that of each Member and other Participants acting independently;
- (d) increasing the skills of persons already working in the Centre Field and training and equipping new postgraduate and other students with skills and attributes to continue being productive in the Centre Field;
- (e) promoting the CRC Program Objective;
- (f) providing government and industry with the tools necessary to overcome identified market failure barriers which are preventing the adoption of cost effective low carbon products and services;
- (g) unlocking opportunities for low cost carbon reductions in the built environment leading to reduced built environment carbon emissions and the adoption of new government policies and industry business models that set Australia on the pathway for achieving greenhouse gas emissions reduction targets in the sector;
- (h) utilising Centre IP in such a manner as to ensure that the maximum benefit accrues to Australia, including Australian industry, the Australian environment and the Australian economy generally; and
- (i) acting as a trustee of Centre IP and Commercialisation Income in accordance with the Participants Agreement.

#### **5.2 Interpretation**

In the interpretation of a provision of this agreement, a construction that would promote the Centre Objectives will be preferred to a construction that would not promote the Centre Objectives.

## **6. Major promises**

### **6.1 Mutual promises**

Each Party agrees:

- (a) to diligently conduct its part of the Activities and observe and perform its respective obligations and commitments set out in this agreement and the Constitution;
- (b) to carry out its part of the Activities to a reasonable standard, and in doing so, actively promote both the Centre Objectives and the CRC Program Objective and raise the profile of the CRC Program;
- (c) to provide its Contributions to the Centre in accordance with the terms of this agreement and Project Details to which it is a party (including Third Party Project Agreements);
- (d) to apply the Centre Funds and Centre Resources only for the purpose of carrying out the Activities in accordance with this agreement and Project Details to which it is a party (including Third Party Project Agreements);
- (e) not unreasonably delay any action, approval, direction, determination or decision which is required of it in relation to the Centre;
- (f) use reasonable efforts to ensure that its directors, officers, employees, agents, contractors, students and other representatives involved in any way with the Centre give full force and effect to the provisions of this agreement including the other provisions of this clause 6;
- (g) that all Activities will be carried out by or through the Company; and
- (h) to act reasonably and in good faith in performing its obligations under this agreement.

### **6.2 Participant promises**

Without limiting any other obligation of a Party under this agreement each Participant agrees to:

- (a) cooperate with and provide to the Company any information about its Contributions and Activities reasonably required by the Company;
- (b) cooperate with the Company in relation to the Company's obligations under clause 6 of the Commonwealth Agreement regarding changes to the Essential Participants;
- (c) cooperate with the Company in relation to the Company's obligations under clause 7 of the Commonwealth Agreement regarding:
  - (i) notification of any Shortfall;
  - (ii) making good any Shortfall; and
  - (iii) reporting on any details of other government funding.
- (d) cooperate with the Company by providing information necessary to enable the Company to fulfil its obligations to the Commonwealth in accordance with clause 12 of the Commonwealth Agreement; and
- (e) cooperate with the Company in relation to the Company's obligations under clause 13 of the Commonwealth Agreement to commission and report on any review, audit, evaluation or survey under that clause.

### **6.3 Independent Activities**

Nothing in this agreement will prevent a Party from conducting research or other activities independently of the Centre, provided that it obtains any necessary consent to use Background IP (other than its own), Centre IP or Confidential Information (other than its own) from the relevant entity or entities which owns or controls the relevant material, as part of that research or other activities.

## **7. Relationship of the Parties**

### **7.1 General**

The Parties agree that:

- (a) the rights, duties, obligations and liabilities of the Parties in relation to the Centre shall in every case, be several and not joint or joint and several;
- (b) in relation to the Activities, they do not carry on business in common with a view to joint profit and do not receive income jointly;
- (c) except for the trust described in clause 23.1, nothing contained in this agreement constitutes any of them as agent, partner or trustee of any other of them, or creates any agency, partnership or trust for any purpose whatsoever; and
- (d) except as otherwise specifically provided in this agreement, a Party does not have any authority or power to act for, or to create or assume any responsibility or obligation on behalf of, any other Party.

### **7.2 Variation Agent**

Each Participant other than those specified in item 7 of the Centre Details authorises the Company to negotiate and sign for and on its behalf documents that have the purpose of:

- (a) varying Project Details and Third Party Project Agreements for Projects in which that Participant is a party;
- (b) admitting new Essential Participants or Other Participants in accordance with clause 30;
- (c) rectifying an error in this agreement; or
- (d) varying this agreement in accordance with clause 29.1,

so as to bind that Participant provided that:

- (e) the Governing Board has approved the variation;
- (f) the variation does not require the Participant to increase its Contribution; and
- (g) the variation does not have a material adverse impact upon the Participant including any increase in liability.

## **Part D Centre resources**

## **8. Contributions**

### **8.1 Obligation**

- (a) Each Participant agrees to pay to the Company the cash component of its respective Contributions for the purpose of pursuing the Activities and to apply to the Activities the non-cash component of its respective Contributions, as specified in this agreement and any relevant Project Details (including any Third Party Project Agreement).
- (b) Any cash Contribution not paid by a Participant when due in accordance with this agreement is to be treated as a debt due to the Company and payable upon demand.
- (c) The Company must ensure that all Tied-Contributions are allocated to the Activities in accordance with the terms and conditions attaching to that Tied-Contribution as identified in Schedule 5.
- (d) Subject to the provisions of the Commonwealth Agreement, the Governing Board may agree with a Participant to vary the timing or the amount of, reschedule the payment of, or postpone the payment of the Contributions to be made by that Participant.



## **8.2 Timing**

Subject to clause 8.1(d), each Participant must pay to the Company the cash component (including any Tied-Contribution for allocation in accordance with clause 8.1(c)) of its respective annual Contributions by equal quarterly instalments in advance and within 30 days of receipt of an invoice from the Company.

# **9. Budgeting**

## **9.1 Annual Budget**

Prior to commencement of the 2013/2014 Financial Year and prior to the commencement of each Financial Year thereafter the Company shall prepare an Annual Budget conforming to the Budget and setting out the financial requirements for the carrying out of the Activities for that year, including, to the extent then known:

- (a) each Party's Contribution for the year (including cash and non-cash components);
- (b) cash and non-cash Contributions to the Centre to be procured from third parties;
- (c) the allocation of Centre Funds and Centre Resources to Projects and other Activities;
- (d) the allocation of Centre Funds and Centre Resources to Heads of Expenditure;
- (e) the portion of the Centre Funds (**Activity Payment**) and the Centre Resources to be made available, for the purpose of carrying out the Activities, to:
  - (i) each Participant; and
  - (ii) any third parties;
- (f) the portion of the Centre Funds and the Centre Resources to be used by the Company for the purpose of carrying out the Activities; and
- (g) the proposed allocation of Centre Funds to be paid to the Company for its operating expenses in accordance with clause 12.1(h).

## **9.2 Circulation of Annual Budget**

The Company must provide a copy of each Annual Budget to all Participants promptly after the Annual Budget is approved.

## **9.3 Forward forecasts**

At the time of preparing the Annual Budget, the Company shall also prepare indicative budget forecasts for the two Financial Years following the Financial Year to which the Annual Budget relates and circulate those indicative budget forecasts to the Participants.

# **10. Specified Personnel**

## **10.1 Make available**

Each Party agrees to make its Specified Personnel available to the Company as set out in Schedule 5 and the Commonwealth Agreement. The Governing Board will allocate the Specified Personnel to the operation of the Centre and/or individual Projects with the agreement of the relevant Participants.

## **10.2 Terms of employment**

Specified Personnel of each Participant will remain subject to the terms and conditions of employment of that Participant and the Specified Personnel will be replaced on reasonable request by the Company in accordance with clause 14 of the Commonwealth Agreement.

### **10.3 Centre IP**

Each Party must procure that Centre IP created by any of its Specified Personnel will be owned and dealt with according to the provisions of this agreement.

### **10.4 Withdrawal**

A Participant may withdraw any of its Specified Personnel upon 30 days' notice to the Company provided it provides replacements for such personnel who are acceptable to the Company, acting reasonably. The Company may withdraw any of its Specified Personnel upon 30 days' notice to the Participants. A Participant or the Company may give shorter notice if it is unable to provide 30 days' notice as a consequence of Specified Personnel resigning or taking extended leave, provided that an acceptable replacement will commence work within the notice period, or a reasonable period thereafter.

## **11. Assets**

### **11.1 Application of clause**

This clause 11 applies to an Asset:

- (a) included as a part of a Contribution by a Participant to the Activities and identified in the Project Details;
- (b) acquired by a Participant in whole or in part from the Activity Payment made to that Participant;
- (c) acquired by the Company from the Centre Funds; or
- (d) forming part of the Centre Resources made available to a Participant for the purposes of carrying out the Activities.

### **11.2 Acquisition of Assets**

The Participants must not use the Commonwealth Funding for capital works or for the purchase, construction, renovation or extension of buildings and facilities.

### **11.3 Ownership**

Unless otherwise agreed between the Parties, an Asset will remain vested in the Party having title to the Asset (**Asset Owner**).

### **11.4 Obligations of Asset Owner**

For the Term, the Asset Owner:

- (a) must make the Asset available for use by the Company or any Project Party as and when reasonably required;
- (b) must not sell, hire, charge, mortgage, pledge or otherwise encumber the Asset in any way which would prejudice the availability of the Asset from use in the Activities; and
- (c) is responsible for insurance, maintenance and, if required, repair and replacement of the Asset, and any other costs and liabilities associated with the Asset.

### **11.5 Costs**

The Company may, at its discretion, treat the costs mentioned in clause 11.4(c), or part of them, as an additional Contribution by the Asset Owner.

## **Part E Centre accounting and reporting**

### **12. Financial management**

#### **12.1 Company obligations**

The Company shall:

- (a) establish and operate the Centre Account;
- (b) pay the Commonwealth Funding into the Centre Account;
- (c) liaise with, report to and meet any other accounting and financial requirements of the Commonwealth under the Commonwealth Agreement, in order to secure instalments of the Commonwealth Funding in a timely fashion;
- (d) seek and accept from each Participant the cash component of its Contribution;
- (e) seek and accept any money to be procured from third parties contributing to the Activities;
- (f) pay the amounts received under clauses 12.1(d) and (e) into the Centre Account;
- (g) draw on the Centre Account to make Activity Payments; and
- (h) draw on the Centre Account to meet the operating costs of the Company, including:
  - (i) the costs incurred by the Company associated with the protection of Centre IP as described in clause 23.12;
  - (ii) the costs incurred by the Company associated with Utilising Centre IP, including legal and other professional fees; and
  - (iii) the costs of remuneration of the Governing Board, the Company's chief executive officer and the Company's other employees.

#### **12.2 Company not agent**

Except as expressly permitted under clause 7.2 and clause 29.1, the Company shall not be taken to be an agent for any of the Participants.

#### **12.3 No authority**

Nothing in this agreement shall be taken to in any way authorise or permit the Company or a Participant to incur any liabilities or undertake any obligations on behalf of, or in the names of, any of the other Participants except as specifically authorised in this agreement or, in the case of the respective Project Participants, any Project Details to which it is a party (including any Third Party Project Agreement).

### **13. Accounting**

#### **13.1 Participant accounts**

Each Participant shall be responsible for keeping separate financial accounts which shall record:

- (a) the cash component of its Contribution;
- (b) the Activity Payments made to it by the Company;
- (c) all expenditure incurred by the Participant from its Activity Payments in carrying out the Activities; and
- (d) any royalties or licence fees paid to it by the Company.

#### **13.2 Company accounts**

The Company shall keep separate financial accounts which shall record:

- (a) receipt of the Commonwealth's payments of the Commonwealth Funding to the Company;
- (b) the cash component of each Participant's Contribution received;
- (c) the cash component received from third parties contributing to the Activities;
- (d) the Company's payments of Centre Funds to the Participants and third parties;
- (e) withdrawals from the Centre Account under clause 12.1(h);
- (f) Commercialisation Income and Commercialisation Expenses; and
- (g) any other income of or expenditure by the Company.

### **13.3 Provision of information by Participants**

Each Participant must provide to the Company, within 21 days of a written request from the Company:

- (a) all necessary information from the accounts referred to in clause 13.1 or (if applicable to the Participant) clause 19.5, for the Company to:
  - (i) comply with the financial reporting requirements contained in the Commonwealth Agreement;
  - (ii) report to the Participants as required under this agreement; or
  - (iii) conduct its operations in accordance with best practice principles of governance; and
- (b) any other information reasonably requested by the Company relating to the Projects and any other Activities involving the Participant including that required to meet the reporting and monitoring requirements in clauses 12 and 13 of the Commonwealth Agreement.

### **13.4 Accounting for non-cash Contributions**

Each Participant is responsible for keeping separate documentation that records each non-cash Contribution and it must provide such documentation to the Company if reasonably requested to do so by the Company.

## **14. Reporting by Company**

### **14.1 Reporting on Activities**

The Company must, within 120 days of the end of each Financial Year, provide a written report to each Participant on the Activities conducted in that Financial Year, including information regarding:

- (a) entry into Projects and major agreements;
- (b) progress in relation to the Company's strategic plan and operational plan;
- (c) likely or actual achievement of any Milestones and Deliverables that are material to the fulfilment of the Centre Objectives;
- (d) progress on research and development activities, including Projects; and
- (e) progress on Utilisation of Centre IP.

### **14.2 Reports**

Without limitation to its obligations under the Corporations Act, the Company must:

- (a) within 30 days of approval by the Board, provide a written report to each Participant on the financial position of the Company, including:
  - (i) the income of and expenditure by the Company during the Quarter;

- (ii) its assets and liabilities as at the end of the Quarter;
  - (iii) cash flow statement; and
  - (iv) cash Contributions paid and owing by the Participant; and
- (b) within 60 days of approval by the Board, after the end of each Financial Year, provide a written report to each Participant on non-cash Contributions made and owed by the Participants.

#### **14.3 Other reporting**

Subject to the consent of the Commonwealth and any obligations of confidentiality or privacy owed by the Company or any members of the Governing Board, the Company must as soon as they are available provide to each Participant a copy of:

- (a) all reports provided to the Commonwealth other than the information provided in accordance with clause 14.2 or normal correspondence between the Company and the Commonwealth; and
- (b) any notices, other than normal correspondence, the Company receives from the Commonwealth.

#### **14.4 Notification of critical events**

The Company must, as soon as reasonably practicable, but in any event within 14 days of becoming aware, give written notice to each Participant should any of the following occur:

- (a) any litigation threatened or commenced against the Company;
- (b) any notification from any government agency of breach or alleged breach of any legal obligation;
- (c) any substantial dispute between the Company and any Participant;
- (d) any substantial dispute between the Company and any third party;
- (e) the receipt by the Company of an application to a court to wind up the Company;
- (f) the Company becomes aware that a Participant is in default of its material obligations under this agreement (including a failure to pay its cash Contributions); or
- (g) any proposal or determination by the Commonwealth to reduce, suspend or terminate its funding of the Centre.

#### **14.5 Confidentiality and privacy**

- (a) A Participant may make a written request to the Company seeking access to the Company records to the extent necessary for that Participant to verify matters pertaining to its own taxation affairs.
- (b) Subject to any obligations of confidentiality and privacy owed by the Company, upon receiving a request by a Participant under clause 14.5(a), the Company shall as soon as reasonably practicable:
  - (i) provide to the Participant, at the cost of the Participant, a copy of the relevant records; and/or
  - (ii) allow the Participant to attend the Company's registered office and inspect the relevant Company records at a mutually agreeable time.

## **15. Reporting by the Participants**

### **15.1 Breach of this agreement**

The Participants must, within 5 Business Days of becoming aware of a breach or suspected breach of this agreement that would affect the Company's ability to comply with its obligations under the Commonwealth Agreement, provide such notice and information to the Company so that the Company can:

- (a) provide notice to the Commonwealth of that breach or suspected breach;
- (b) provide all information reasonably required by the Commonwealth in relation to the breach or suspected breach;
- (c) keep the Commonwealth informed of any action it takes, including action requiring remedy of the breach; and
- (d) provide notice to the Commonwealth once the breach is remedied, or if not remedied upon the matter being resolved.

## **Part F Project provisions**

## **16. Background IP**

### **16.1 Contribution of Background IP for General Activities**

Each Party may make its Background IP available for Activities that relate to purposes not directly related to the conduct of a Project:

- (a) in accordance with this clause 16; and
- (b) on such other terms agreed in writing between the Company and the Party providing the Background IP.

### **16.2 Contribution of Background IP to Project**

Each Project Participant will make its Background IP available to the Project:

- (a) as specified in the applicable Project Details; and
- (b) in accordance with:
  - (i) this clause 16; and
  - (ii) any written agreement between the Company and the Project Participant that offers to provide that Background IP subsequent to the Project Details being agreed.

### **16.3 Warranty**

Each Project Participant represents and warrants to the other Project Parties that:

- (a) at the date it makes Background IP available to the relevant Project, to its actual knowledge or belief, without the need to make additional enquiries, conduct searches or seek legal or patent opinion, it is the owner of, or is otherwise entitled to provide, the Background IP which it makes available for the Project;
- (b) except to the extent:
  - (i) disclosed in the Project Details; or
  - (ii) in the case of any Background IP not specified in the Project Details, notified in writing to the other Project Parties at the time of offering such Background IP,

the Participant has not entered any agreement regarding, or otherwise dealt with, that Background IP that is inconsistent with the rights granted to the other Project Parties as described in the Project Details or this clause 16; and

- (c) it will not enter any agreement in relation to or otherwise deal with that Background IP in a manner that restricts the exercise of the rights granted to the other Project Parties as described in the Project Details or this clause 16.

#### **16.4 Licence for Project use**

Each Project Participant in a Project grants to the other Project Parties a non-exclusive, royalty-free, worldwide licence to use the Project Participant's Background IP made available to that Project during the term of the Project for the purposes of carrying out the Project, subject to any restrictions on its use:

- (a) specified in the Project Details; or
- (b) in the case of any Background IP not specified in the Project Details, notified in writing to the other Project Parties at the time of offering such Background IP.

#### **16.5 Licence for general use**

If a Party makes available its Background IP in accordance with clause 16.1, that Party may, but is under no obligation to do so, grant to the other Parties an irrevocable, non-exclusive, royalty-free, worldwide licence to use the Party's Background IP during the Term for the purposes of carrying out Activities that relate to purposes not directly related to the conduct of a Project, subject to any restrictions on its use:

- (a) specified in the Project Details; or,
- (b) in the case of any Background IP not specified in the Project Details, notified in writing to the other Project Parties at the time of offering such Background IP.

#### **16.6 Licence for Utilisation**

- (a) If the Utilisation Party requires for the purposes of Utilisation of Project IP a licence to use Background IP that was licensed in accordance with clause 16.4 or 16.5, the Utilisation Party must notify the Participant contributing the Background IP in writing.
- (b) Subject to clause 16.6(c), if a Participant has received a notice in accordance with clause 16.6(a) that Participant will grant a licence to the Utilisation Party, subject to any prior agreement to the contrary as specified in the relevant Project Details, on reasonable terms to be agreed by the Participant and the Utilisation Party, to use the Participant's Background IP for the purposes of Utilising Project IP from the Project (including the right to sub-license) provided that:
  - (i) the Project IP has been developed using that Background IP in accordance with this agreement and, where applicable, the relevant Project Details; and
  - (ii) that Background IP is required for the Utilisation of such Project IP,subject to any restrictions on its use specified or notified in accordance with clause 16.4. For the avoidance of doubt, no Participant is compelled to license its Background IP to the Utilisation Party if reasonable terms cannot be agreed.
- (c) Without limiting this clause 16, if a Participant makes its Background IP available for the purpose of carrying out of a Project, for general operation of the Centre, or for the Utilisation of Project IP contemplated by this clause 16, the terms on which it does so must include, among other things, provisions relating to the ownership and use of any improvements to that Background IP resulting from the use thereof in accordance with those licences.

## **16.7 Acknowledgment**

Subject to the rights granted in this clause 16, an applicable Project Agreement or a Third Party Project Agreement, the Parties acknowledge and agree that a Party retains the right to control and use its Background IP and that ownership of the Background IP does not change. The Background IP owner may continue to use its Background IP freely (provided that the use is not inconsistent with the terms of this agreement, Project Details or any Third Party Project Agreement).

## **16.8 Register**

The Company shall maintain a register recording all Background IP under this agreement, including any encumbrances or restrictions on its use specified or notified in accordance with clauses 16.4 and 16.5.

## **16.9 Infringement of Background IP**

- (a) The Parties agree that they will take all necessary steps to give each other Party notice of any of the following events as soon as is reasonably practicable after the event comes to their attention:
  - (i) infringement or threats of infringement of Background IP;
  - (ii) challenges to the validity of Background IP; or
  - (iii) use or disclosure, or threatened use or disclosure, of Confidential Information relating to Background IP.
- (b) Where one Party reasonably suspects that an event described in clause 16.9(a) has occurred, the Party may request any other Party or Parties to provide information and non-financial assistance as is reasonably necessary to assist in determining whether or not an event described in clause 16.9(a) has occurred.
- (c) For the avoidance of doubt, nothing in clause 16.9(b) will be taken as requiring a Party to expend funds in relation to litigation or the protection of another Party's Background IP.

## **17. Projects**

### **17.1 Activities through Projects**

The Activities may be carried out in part through discrete Projects.

### **17.2 Research Activities**

All Activities involving research will be carried out through Projects.

### **17.3 Determined by Company**

- (a) Subject to the Commonwealth Agreement, the Projects to be carried out:
  - (i) will be determined from time to time by the Governing Board following consideration of advice from the Research Advisory Committee; and
  - (ii) must not commence until all applicable approvals have been obtained from the Governing Board and applicable ethics committees.
- (b) The Governing Board will allocate resources of the Company to Projects taking into consideration individual Project Participant's Contributions over the Term.

### **17.4 Project Plan**

In relation to every proposed Project other than the Initial Projects, the proposed Project Participants must submit to the Company a draft Project Plan, with such plan to specify details of the following matters with respect to the Project:

- (a) the Project Leader and any other Specified Personnel;



- (b) the Project Commencement Date and Project Completion Date;
- (c) the Project objectives;
- (d) the proposed strategy to be followed;
- (e) potential outcomes, including the contribution to outputs and milestones specified in Schedule 2 of the Commonwealth Agreement;
- (f) Project Milestones;
- (g) Project Deliverables;
- (h) a Project budget;
- (i) contributions to be made by third parties;
- (j) resource requirements, including Contributions, Background IP and Centre Funds;
- (k) student requirements (if any);
- (l) required expenditure on new Assets (if any);
- (m) an analysis of Project risk; and
- (n) an analysis of the likely opportunities for Utilisation of potential Project outcomes.

#### **17.5 Selection of Project Participants**

- (a) Subject to this agreement and the Commonwealth Agreement, selection of Project Participants to participate in a Project (other than the Initial Projects) is a decision for the Governing Board in its absolute discretion.
- (b) Subject to obligations of confidentiality the Company:
  - (i) will keep the Australian Research Institution Participants reasonably informed as to opportunities to participate in Projects; and
  - (ii) will provide feedback to a Participant where the Governing Board determines not to carry out a potential Project proposed by a Participant.
- (c) For the avoidance of doubt, the Company will be a Project Party to each Project.

#### **17.6 Initial Projects**

The Parties acknowledge that Project Details concerning the Initial Projects (if any) will be agreed and entered into contemporaneously with this agreement (including Third Party Project Agreements in the event of third party participation).

#### **17.7 Project Documents**

The Participants acknowledge that the Company will require:

- (a) that Project Details be agreed in writing by all Project Parties;
- (b) that the Project Details specify any fields or territories of exclusivity to be granted to a Project Participant (or third party if applicable) for the Utilisation of Project IP, which must:
  - (i) fairly reflect the capacity of the grantee at the commencement of the Project to fully Commercialise the Project IP;
  - (ii) not unduly restrict the Company from Commercialising the Project IP in other fields or territories; and
  - (iii) be consistent with the other requirements of this agreement; and

- (c) without limitation to clause 17.7(a), in the case of each Project which includes third parties as Project Participants, that a Third Party Project Agreement be executed by all Project Parties.

## **17.8 Project Details**

- (a) In the case of each Project which does not include third parties as Project Participants, the Project Details must include as a minimum the issues listed in Schedule 4 and must be signed by a duly authorised representative of each Project Party.
- (b) For the avoidance of doubt, each Project which does not include third parties as Project Participants is governed by the Project Details and the terms of this agreement.

## **17.9 Third Party Project Agreements**

The Participants that will be parties to a Third Party Project Agreement must use their reasonable efforts to ensure that the Third Party Project Agreement:

- (a) addresses the issues listed in Schedule 4;
- (b) contains provisions that are consistent with this agreement;
- (c) specifies any fields or territories of exclusivity granted to any third party for the Utilisation of the Project IP, which must:
  - (i) fairly reflect the capacity of any third party at the commencement of the Third Party Project Agreement to fully Commercialise the Project IP; and
  - (ii) not unduly restrict the Company from Commercialising the Project IP in other fields or territories;
- (d) may be subsequently amended with the agreement of all Project Parties; and
- (e) contains insurance policy obligations on any third party commensurate with the scope of work and risks involved in the Project.

## **17.10 Third party Project Participants**

Without limitation to clause 17.9(b), for the avoidance of doubt the rights and obligations applicable to Project Participants under this agreement do not apply to third party Project Participants except to the extent that such third parties have entered a Third Party Project Agreement containing corresponding rights and obligations.

# **18. Project Funds and other Contributions to Projects**

## **18.1 Project Funds**

- (a) Subject to clause 18.1(c), the Company must pay the Project Funds to the Responsible Participants for the Project in accordance with the Project Details and clause 8.1(c).
- (b) The Company:
  - (i) may withhold Project Funds if any Milestones have not been achieved or Deliverables have not been provided by their required dates; and
  - (ii) must release the withheld Project Funds once the Responsible Participants have achieved the missed Milestones or provided the required Deliverables as the case requires.
- (c) If a Project Participant has not paid a cash Contribution that is due to the Company in accordance with this agreement or the Project Details, the Company is relieved from its obligation to pay to the Responsible Participants that part of the Project Funds corresponding to those unpaid cash Contributions while they remain unpaid. The

obligations of the Responsible Participants to carry out the Project will be reduced to the extent of any Project Funds withheld pursuant to this clause 18.1(c).

## **18.2 Contributions to Projects**

- (a) The Governing Board will determine the allocation of Centre Funds and Centre Resources to each Project, provided that Tied-Contributions are always allocated in accordance with clause 8.1(c).
- (b) The Governing Board will allocate to each Project Party to the extent relevant and in accordance with clause 8.1(c):
  - 1. a nominal amount of Centre Funds which will be treated as that Project Party's cash contribution to the Project; and
  - 2. Centre Resources which will be drawn from that Project Party's non-cash Contribution and used for the Project,

which must be specified in the respective Project Details. For the avoidance of doubt, there is no requirement except if required under clause 8.1(c) for a Participant's cash Contributions during any Financial Year to be allocated to Projects in the same Financial Year.

- (c) Subject to clause 8.1(c), where the Governing Board determines that additional Centre Funds and Centre Resources should be made available to a Project, the Company will discuss such additional contributions with the Project Participants and, upon the Project Parties agreeing any adjustment to the Project Shares, the additional Centre Funds and Centre Resources will be allocated to the Project.
- (d) A Project Party may, with the consent of the other Project Parties, provide cash or in-kind resources for the Project beyond those specified in the Project Details and in that case Project Shares will be adjusted as agreed by the Project Parties.
- (e) Each Project Participant must make its non-cash Contributions which have been allocated by the Governing Board to a Project available for the Project at the times and in the manner specified in the Project Details.
- (f) The Company must make any non-cash Contributions of the Company, which have been allocated by the Governing Board to a Project, available for the Project at the times and in the manner specified in the Project Details.
- (g) The valuation of non-cash Contributions made or allocated to a Project for the purposes of this agreement must be in accordance with the Valuation Principles and must exclude the value of Intellectual Property contributions.

## **18.3 Use of Project Funds and other Contributions to Projects**

The Responsible Participants may use the Project Funds and other Contributions provided to or by them:

- (a) for the purposes of the Project only; and
- (b) in accordance with the Project Plan.

## **19. Project management and reporting**

### **19.1 Project Leader**

Each Project shall be managed by a Project Leader. The Project Party that employs the Project Leader must use its reasonable efforts to ensure that the Project Leader:

- (a) uses his or her reasonable efforts to ensure the Project is conducted:
  - (i) in accordance with the Project Plan;

- (ii) so as to achieve the Milestones and Project Objectives; and
- (iii) so as to provide the Deliverables;
- (b) manages the day to day conduct of the Project;
- (c) provides scientific leadership to the Project;
- (d) is responsible for administration of all Project personnel including any students; and
- (e) maintains financial records and research and technical records as directed by the Company.

## **19.2 Carrying out the Project**

The Responsible Participants for a Project must carry out the Project:

- (a) in accordance with the Project Plan, including the Project Budget;
- (b) to a professional standard;
- (c) so as to do all things reasonably necessary or desirable to achieve the Project Objectives;
- (d) so as far as is practicable to achieve the Milestones by their required dates;
- (e) so as to provide the Deliverables by their required dates; and
- (f) in accordance with the Project Leader's reasonable directions.

## **19.3 Project reporting**

A Project Participant that employs the Project Leader must:

- (a) immediately report to the Company:
  - (i) any substantial deviation from the Project Plan; and
  - (ii) any matter which the Project Leader considers will, or may, affect the ability of the Project to meet the Project Objectives, satisfy any Milestones, provide any Deliverables or be completed within the Project Budget, including any failure to provide Contributions;
- (b) provide three monthly reports to the Company on:
  - (i) progress with the Project and its scientific advances, outcomes, key achievements, Deliverables and Milestones;
  - (ii) any matter which the Project Leader considers will, or may, affect the ability of the Project to meet the Project Objectives, satisfy any Milestones, provide any Deliverables or be completed within the Project Budget, including any failure to provide Contributions;
  - (iii) any significant difficulties encountered during the Project and measures taken or plans to resolve them;
  - (iv) any Centre IP created (including a description of the Centre IP, when it was created and by whom); and
  - (v) the Background IP used in the Project.

## **19.4 Parties reporting to the Project Leader**

- (a) The Project Parties acknowledge that a Project Participant employing the Project Leader will require information on the status and results of the Project from time to time in order to fulfil its obligations under this agreement.
- (b) Each Project Party agrees to provide such information in a timely fashion when requested by the Project Leader.

## 19.5 Separate Project financial accounts

Each Project Participant must keep separate financial accounts which must record:

- (a) any non-cash Contributions it makes to Projects under clause 18.2(e);
- (b) any payments of Project Funds made to it by the Company under clause 18.1(a);
- (c) all expenditure incurred by the Project Participant from Project Funds in carrying out the Project; and
- (d) any other expenditure associated with its carrying out the Project.

## 19.6 Divisional limitation

Notwithstanding any other provision of this agreement, the Parties acknowledge that the obligations of each Responsible Participant under this agreement to carry out any Project are limited to using the resources of the Specified Division of that Responsible Participant.

# 20. Withdrawal and expulsion from Projects

## 20.1 Withdrawal from Projects

- (a) A Project Participant may withdraw from the Project by giving three months notice to each other Project Party.
- (b) If a Project Participant withdraws from the Project the remaining Project Parties must meet for the purpose of agreeing on whether or not to continue the Project or agreeing to a variation of the Project and the terms to which that continuation would be subject.
- (c) A Project Participant may not withdraw from a Project without the agreement of the other Project Parties if it would result in the Project Parties being in breach of any agreement with a third party.

## 20.2 Expulsion from Projects

- (a) A Project Participant may be expelled from the Project by notice from the Company if Due Cause exists in relation to that Project Participant and remains unremedied after thirty (30) days following notice to that Project Participant.
- (b) For the purposes of clause 20.2(a), **Due Cause** means:
  - (i) failure to make Contributions when required by the Project Details;
  - (ii) unauthorised use or Utilisation of Centre IP or Background IP;
  - (iii) any other material breach of this agreement in relation to the Project or of the Project Details;
  - (iv) change or proposed change to personnel that is likely to adversely affect the Project;
  - (v) failure to remedy a Conflict in relation to the Project under clause 48 to the satisfaction of the Company;
  - (vi) change in the direct or indirect beneficial ownership or control of the Project Participant in question that would affect its ability to comply with its obligations under this agreement;
  - (vii) disposal of whole or any part of the Project Participant's assets, operations or business other than in the ordinary course of business;
  - (viii) ceasing to carry on business;
  - (ix) insolvency;

- (x) steps taken by a mortgagee to take possession or dispose of the whole or any part of the Project Participant's assets, operations or business;
  - (xi) steps taken to enter into any arrangement between the Project Participant and its creditors other than in the ordinary course of business;
  - (xii) steps taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person, concerning the whole or any part of the Party's assets, operations or business;
  - (xiii) appointment of an investigator to investigate its affairs; or
  - (xiv) assignment of its rights or obligations under this agreement other than in accordance with clause 53.2 (assignment).
- (c) If a Project Participant is expelled from the Project in accordance with clause 20.2(a), the remaining Project Parties:
- (i) must meet as soon as is reasonably convenient; and
  - (ii) must agree to:
    - (A) continue the Project in accordance with the Project Details without the expelled Project Participant;
    - (B) discontinue the Project; or
    - (C) agree to a variation of the Project Details and continue the Project in accordance with the varied Project Details.

### **20.3 Consequences of withdrawal or expulsion from Project**

- (a) If a Project Participant withdraws or is expelled from the Project, the Project Participant will, from the date of effect of the withdrawal or expulsion:
- (i) cease to be a Project Party;
  - (ii) retain any rights to a beneficial interest in the Project IP and a share of the Net Commercialisation Income with respect to such Project IP, subject to future variation to its Project Share pursuant to the Project Details;
  - (iii) subject to clauses 20.3(b), 20.3(c) and 20.3(a)(ii), relinquish all rights with respect to the Project and the Project IP;
  - (iv) deliver to the Company copies of all Project IP, together with copies of any books and records of the Project, which are in the Project Participant's possession or control; and
  - (v) subject to clauses 20.3(b) and 20.3(c), be relieved of its obligations to make Contributions to the Project, to carry out, report on or manage the Project, or otherwise participate in the Project.
- (b) If a Project Participant withdraws or is expelled from a Project, the Company will, from the date of effect of the withdrawal or expulsion, grant to that Project Participant a non-exclusive royalty free right to use the Project IP, arising out of the Project which is in existence at the date of the Project Participant's withdrawal or expulsion, for internal research, teaching and educational purposes, provided that the Project Participant has made all the Participant's Contributions to the Centre which are due and payable at the date of the Project Participant's withdrawal or expulsion from the Project.
- (c) The withdrawal or expulsion of any Project Participant from the Project:
- (i) will not affect:

- (A) the enforceability of any obligations of that Project Participant, but only to the extent that those obligations have accrued as at the date of the withdrawal or expulsion;
  - (B) rights against that Project Participant accrued at that time or arising as a result of the withdrawal or expulsion; or
  - (C) any obligation upon the Project Participant to make available its Background IP under clause 16;
- (ii) will not relieve that Project Participant of the obligations imposed upon it under this agreement other than as specified in clause 20.3(a)(v); and
  - (iii) subject to clauses 20.1(b) and 20.2(c), will not relieve the remaining Project Parties of their obligations under this agreement with respect to the Project and they shall continue to carry out the Project and perform the terms of this agreement with respect to the Project.

## **21. Variation to Projects**

- (a) Any variation to a Project, including to Milestones or Deliverables, must be agreed in writing by the Company and all Project Participants.
- (b) A Project Participant will not be compensated for any work performed in relation to a variation that has not been authorised in accordance with this clause.

## **22. Termination of Projects**

### **22.1 Termination of Projects by the Company**

The Company may terminate a Project upon 30 days written notice to the Project Participants if:

- (a) a Milestone is not achieved by the date by which it was required to be achieved and remains not achieved after 30 days following a notice from the Company to the Project Participants (or longer period of time specified by the Company in the notice);
- (b) a Deliverable has not been provided by the date by which it was required to be provided and remains not provided after 30 days following a notice from the Company to the Project Participants (or longer period of time specified by the Company in the notice); or
- (c) in the reasonable opinion of the Company, the Project Objectives are unlikely to be achieved and remain unlikely to be achieved after 30 days following a notice from the Company to the Project Participants of such opinion,

provided that:

- (i) if required by the Commonwealth Agreement, the Commonwealth has been informed of the proposed termination and does not object to the termination of the Project; and
- (ii) if the Project is subject to a Third Party Project Agreement, any such termination by the Company is in accordance with the terms of the Third Party Project Agreement.

### **22.2 Consequences of termination**

- (a) If the Project is terminated pursuant to clause 22.1(c) (regarding likelihood of achievement of Project Objectives), then the Company must, subject to having sufficient Centre Funds, reimburse each Project Participant for its reasonable expenses necessarily incurred as a result of the early termination (if any), including for example payment of any fee or allowance legally committed under a student agreement. The total amount paid to

each Project Participant is not to exceed the balance of the Project Funds that would have been paid to that Project Participant if there had been no early termination.

- (b) If there are insufficient Centre Funds to reimburse all expenses, each Project Participant will be reimbursed out of the Centre Funds on a pro rata basis according to their respective Contributions to the Project at the date of Termination.
- (c) The Company must advise the Participants of the termination of any Project.
- (d) Termination of a Project for any reason will be without prejudice to the continuing enforceability of any rights or obligations of the Project Parties accrued at the time of termination.

### **22.3 Termination of Participants Agreement**

All Projects will terminate if this agreement is terminated for whatever reason.

## **Part G Centre outputs**

### **23. Centre IP**

#### **23.1 Ownership of Project IP**

- (a) Upon its creation, Project IP will be owned as follows:
  - (i) the Company will be the owner of the legal interest in the Project IP;
  - (ii) the beneficial interest in the Project IP will be owned by:
    - (A) the Project Participants; and
    - (B) the Company,as tenants in common in the Project Shares specified in the Project Details for the relevant Project (or in equal shares for all Project Parties if shares are not specified in the Project Details), as varied pursuant to clause 23.2, and
  - (iii) the Company will hold the interest of each Project Participant in the Project IP on trust.
- (b) The Company's Project Share for each Project must reflect the Commonwealth's proportional Contribution to the Project and any other resources applied to the Project by the Company. Unless otherwise specified in the Project Details or recalculated under clause 23.2, the Commonwealth's proportional Contribution for a Project will be taken to be 27%.
- (c) The Parties acknowledge and agree that, subject to any applicable Project Details and a Project Party's right to use Project IP pursuant to clauses 23.14 or 23.15, Project IP will be treated by the Project Parties as Confidential Information between the Project Parties and will not be disclosed to a Non-Project Participant.

#### **23.2 Variations to Project Shares**

If, at the end of a Financial Year, a Project Participant has failed to make available to the Centre a Contribution which has been allocated to a Project by the Governing Board, the Governing Board may, if it deems appropriate, adjust the Project Share of the defaulting Project Participant as at 1 July of the following Financial Year and the adjusted Project Share will apply to that following Financial Year. In adjusting any Project Share of a Project Participant under this clause, the Governing Board will determine the proportion that the unavailable Contribution bears to the total Contributions made by or allocated to Project Participants up to the most recent 30 June. The Board will value non-cash contributions in accordance with clause 18.2(g). For the avoidance of doubt, the Company's Project Share will not be adjusted under this clause.



### **23.3 Non-Project Centre IP**

By executing this agreement, the Participants assign to the Company all of their right, title and interest in all Non-Project Centre IP.

### **23.4 Vesting of ownership**

The Parties must co-operate with each other Party and promptly do all acts and things and execute all documents which may be necessary for the purpose of vesting ownership of the legal and beneficial interest in the Centre IP as required under this agreement.

### **23.5 Dealing with Non-Project Centre IP**

Unless authorised under this agreement or any applicable Project Details, no Participant may deal with, Commercialise, dispose of or encumber any interest which it might hold in Non-Project Centre IP, without the written consent of the Company.

### **23.6 Use of Non-Project Centre IP by Participants**

A Participant wishing to use Non-Project Centre IP for any purpose, whether for research or otherwise must obtain a licence from the Company covering such use. The grant of any such licence will be at the Company's absolute discretion and must include provisions governing ownership and Utilisation of further Intellectual Property developed from such use. If the proposed use of Non-Project Centre IP relates to the Activities or furthers one or more of the Centre Objectives then the Company will not unreasonably withhold its consent to such use.

### **23.7 Decision to protect**

- (a) Subject to any relevant Project Details, the Company must decide whether any outcomes from the Activities warrant pursuing patent protection, or other forms of Intellectual Property protection, and if it does, in which countries protection should be sought.
- (b) If the Company determines that an outcome from a Project does not warrant pursuing patent protection, or other form of Intellectual Property protection, the Company shall notify the relevant Project Participants and any Project Participant may, subject to any relevant Project Details and approval by the Company, apply for, maintain and prosecute any form of Intellectual Property protection:
  - (i) in the Company's name; and
  - (ii) at the Project Participant's cost,provided that the Project Participant:
  - (iii) complies with the requirements of clause 23.9; and
  - (iv) provides the Company with the all necessary information so that the Company can comply with the requirements of clause 23.10.
- (c) The Governing Board may, at its absolute discretion, discontinue the Intellectual Property protection of outcomes from Activities. In this event, the Company shall notify the relevant Project Participants and any Project Participant may continue the Intellectual Property protection:
  - (i) in the Company's name;
  - (ii) at the Project Participant's cost,provided that the Project Participant:
  - (iii) complies with the requirements of clause 23.9;
  - (iv) provides the Company with all the necessary information so that the Company can comply with the requirements of clause 23.10; and

- (v) has received the Company's approval for continuing the Intellectual Property protection, such approval not to be unreasonably withheld.

### **23.8 Apply for protection**

Subject to clauses 23.7(b) and 23.7(c) and unless otherwise agreed by the Company, the Company is to apply for, maintain and prosecute any form of Intellectual Property protection decided on under clause 23.7.

### **23.9 Registration in Company name**

For the avoidance of doubt, if patenting or other registrable forms of Intellectual Property protection of Centre IP is pursued, such registration:

- (a) is to be in the Company's name; and
- (b) where required, will identify:
  - (i) the inventors of the Centre IP; and
  - (ii) the beneficial owners of the Centre IP.

### **23.10 IP register**

The Company must maintain an IP register recording Centre IP notified to the Company, containing at least the following details:

- (a) date of entry on register;
- (b) description of Centre IP;
- (c) identity of the inventor and the Party that developed the Centre IP; and
- (d) details of any agreements made by the Company with Participants or with third parties in relation to disclosure or use of the Centre IP.

### **23.11 Notice of infringement**

The Participants agree that they will take all necessary steps to give the Company notice of any of the following events as soon as is reasonably practicable after the event comes to their attention:

- (a) infringement or threats of infringement of Centre IP;
- (b) challenges to the validity of Centre IP; or
- (c) use or disclosure, or threatened use or disclosure, of Confidential Information relating to Centre IP,

and each Party agrees to give the Company all assistance which it may reasonably require in order to protect the Centre IP (but only if the Company pays the Participant providing the assistance for all reasonable costs and expenses of doing so).

### **23.12 Costs of protection**

The Centre Account may be drawn upon by the Company to meet all costs associated with applying for, maintaining and prosecuting patent or any other form of Intellectual Property protection associated with Centre IP (including any action for infringement of the Centre IP) and the application, maintenance and prosecution of any actions which may be associated with any such Intellectual Property and such drawings shall be taken to be expenses incurred in the performance of the Activities.

### **23.13 Dealing with Centre IP**

Each Participant:

- (a) must respond to a request from the Company to provide information in its possession regarding Centre IP that has been developed by the Participant or is under development by

the Participant, provided that the provision of information does not prejudice the Participant's ability to protect the Centre IP;

- (b) must use its reasonable efforts to ensure that itself and its employees, agents, contractors, students under their supervision or other persons participating in the Project:
  - (i) identify Centre IP generated or developed by them;
  - (ii) promptly communicate details of
    - (A) Project IP to the Project Leader; and
    - (B) Non-Project Centre IP to the Company; and
  - (iii) not prejudice protection of Centre IP;
- (c) must not use, Commercialise, dispose of, encumber or otherwise deal with or enter any agreement in relation to any interest that it might hold in Centre IP, except as authorised in this agreement and any relevant Project Details; and
- (d) must not seek to revoke any appointment of the Company as trustee of that Participant's interest in the Project IP except in accordance with clause 25.1.

#### **23.14 Company's right to use Centre IP**

- (a) Subject to any Project Details the Company may at all times:
  - (i) Utilise the Centre IP as a Utilisation Party in accordance with clause 24;
  - (ii) licence a Utilisation Party to Utilise the Centre IP in accordance with clause 24;
  - (iii) use the Centre IP for the research, training and education purposes of the Centre; and/or
  - (iv) license any Participant or any other person to use the Centre IP for the research, training and education purposes of the Centre,but must not use or license the Centre IP for any other research, training and education purpose except with the written consent of all relevant Project Participants.
- (b) Following the expiry of each Project, and subject to any relevant Project Details, the Company may use all Project IP, including the right to Utilise the Project IP.

#### **23.15 Project Participants' right to use Project IP**

Subject to this agreement, each Project Participant has a non-exclusive royalty-free right to use the Project IP (excluding the right to sublicense other than to their wholly owned subsidiaries):

- (a) for the purpose of undertaking the Project in accordance with this agreement and the relevant Project Details;
- (b) for internal purposes, including research, public policy development, education and teaching (including training, grant-funded research and the teaching of fee-paying students); and
- (c) following completion or termination of the Project, for Commercialisation within the fields and territory identified in the relevant Project Details, subject to any limitations specified in this agreement or the relevant Project Details,

provided that for the duration of the Project the Project Participant (and their wholly owned subsidiaries):

- (i) maintains the confidentiality of Confidential Information;

- (ii) exercises such rights in a manner that is consistent with the nature of the Activities, the purpose of the Commonwealth Funding and is undertaken in accordance with the Utilisation Plan; and
- (iii) does not prejudice the Company or a Utilisation Party's ability to:
  - (A) protect the Project IP;
  - (B) use the Project IP to achieve the Centre Objectives; or
  - (C) maximise the commercial return from any Project IP that has significant commercial potential.

### **23.16 Improvements**

- (a) Any Intellectual Property in any Improvements made by a Participant during the term of the Project which directly arise from the exercise of the licence granted under clause 23.15(b) will be owned by that Participant.
- (b) The Participant:
  - (i) must notify the Company of any Improvements to any Centre IP as soon as practicable after that Improvement is created;
  - (ii) grants to each of the other Project Parties a perpetual, irrevocable, royalty-free, non-exclusive licence to use the Improvement to any Centre IP and the Intellectual Property in those Improvements for the Project, other than Commercialisation; and
  - (iii) grants to the Company a perpetual, irrevocable, royalty-free, non-exclusive licence to use the Improvements to any Centre IP and the Intellectual Property in those Improvements for the Activities, other than Commercialisation.

### **23.17 Publication and disclosure**

Subject to any Third Party Project Agreement and unless authorised under clause 45, each Party must not publish or disclose to any third party any Centre Confidential Information.

### **23.18 Access to Centre IP on wind up of Company**

Upon notice given to Participants by the Company of proposed wind-up of the Company any Participant shall be entitled to request a licence or assignment to Utilise any specific Centre IP which has not been Commercialised, on commercial terms. The Company must give reasonable consideration to such request while giving due weight to the interests of other Participants and any relevant third party, as well as to all laws relating to the wind-up of companies of its type, with a view to resolution of the issue prior to wind-up.

## **24. Utilisation of Project IP**

### **24.1 Utilisation**

- (a) The Project Parties shall determine which of:
  - (i) the Project Parties;
  - (ii) any persons not connected with the Project including other Participants; or
  - (iii) a related Party of the Company (as defined in the Corporations Act),or any combination of them, will undertake Utilisation of Project IP (**Utilisation Party**). Any agreement reached by the Project Parties regarding the appointment of the Utilisation Party shall be specified in the Project Details.
- (b) Subject to the rights granted under clause 23.15, only the Utilisation Party shall Utilise the Project IP for the duration of the Project. The Utilisation Party has a non-exclusive,

royalty-free right to use the Project IP (excluding the right to sublicense other than to their wholly owned subsidiaries) in accordance with this clause 24.

- (c) The Company shall grant licences to the Utilisation Party as necessary to enable the Utilisation Party to Utilise the Project IP.
- (d) The Parties agree that the Utilisation of Project IP by the Utilisation Party must:
  - (i) comply with all of the Company's obligations under the Commonwealth Agreement regarding Utilisation;
  - (ii) comply with all obligations under this agreement and any applicable Project Details regarding Utilisation (including the applicable Utilisation Plan and any additional obligations agreed specifically for that Project);
  - (iii) comply with the licence granted under clause 24.1(c) and any licence granted to the Utilisation Party for the use of Background IP; and
  - (iv) endeavour to achieve the Centre Objectives,and that the Utilisation Party must not agree to terms with counter parties to Commercialisation transactions that are not on an arm's length basis.

## **24.2 Commercialisation Income**

- (a) The Project Parties must specify in the Project Details an arrangement for monitoring, receiving and sharing Commercialisation Income.
- (b) Subject to clause 24.9, if the Company receives any Commercialisation Income, it shall hold all such Commercialisation Income with respect to Project IP on trust for the Project Participants as tenants in common in proportion to their respective Project Shares, provided that the Company holds and retains its proportionate share of the Commercialisation Income in its own right and not on trust for the other Project Participants.
- (c) It is acknowledged by the parties that SA Water's entitlement to receive Commercialisation Income will be conditional on SA Water obtaining the South Australian Treasurer's approval pursuant to Section 27 of the *Public Corporations Act 1993* (SA). If approval is not granted within 90 days of the entry into a Project Details, SA Water agrees to provide to the Company any Commercialisation Income that SA Water would be entitled to receive under the Project Details.

## **24.3 Protocol prior to Utilisation**

- (a) Before the Utilisation Party Utilises any Project IP, the Project Parties must nominate a Project Party (who may or may not be the Utilisation Party, or one of them) to be the Coordinator who must comply with the following procedure:
  - (i) the Coordinator must provide to each Project Party a Draft Utilisation Plan with respect to the Project IP;
  - (ii) each Project Party may, within 14 days after receipt of the Draft Utilisation Plan, provide comments to the Coordinator on the Draft Utilisation Plan and the Coordinator must endeavour to discuss such comments with the respective Project Parties;
  - (iii) following the consultation process described in paragraphs (i) and (ii), if the Utilisation Party wishes to proceed with Utilisation, the Coordinator must provide to each Project Party a Utilisation Plan with respect to the Project IP;
  - (iv) the Coordinator must obtain confirmation that each Project Party has received each Utilisation Plan and each Project Party must promptly provide such confirmation;

- (v) each Project Party may, within 14 days after receipt of the Utilisation Plan, (the **Notice Period**) advise the Coordinator in writing if it:
  - (A) objects to the Utilisation Plan but does not wish to withdraw from involvement in the Utilisation; or
  - (B) objects to the Utilisation Plan and wishes to withdraw from involvement in the Utilisation; and
- (vi) if a Project Participant advises the Coordinator within the Notice Period that it objects to the Utilisation Plan and wishes to withdraw from involvement in the Utilisation then:
  - (A) its risk position will be as specified in the Project Details; and
  - (B) its rights to a share of Net Commercialisation Income will be as specified in the Project Details.
- (b) After completion of the process described in this clause 24.3, the Utilisation Party may commence Utilisation of the Project IP in accordance with the Utilisation Plan.
- (c) For the avoidance of doubt, the Company shall be entitled to replace the Coordinator on 30 days notice if the Governing Board determines such action is in the best interests of the Centre or Participants.

#### **24.4 Protocol after Utilisation commences**

After commencing Utilisation of any Project IP:

- (a) the Utilisation Party must provide a progress report to the Project Parties every 6 months with respect to Utilisation of the Project IP as against the Utilisation Plan;
- (b) the Coordinator may amend the Utilisation Plan from time to time at its absolute discretion, provided that the Coordinator must notify the Project Parties of any substantial amendments prior to the amendments being made; and
- (c) within 30 days following notification of any substantial amendments to the Utilisation Plan, a Project Party may provide written notice to the Coordinator that it objects to the amendments to the Utilisation Plan and elects to withdraw from involvement in the Utilisation, in which case:
  - (i) its risk position will be as specified in the Project Details; and
  - (ii) its rights to a share of Net Commercialisation Income will be as specified in the Project Details.

#### **24.5 Commercialisation Income - Non-Project Centre IP**

If the Company receives any Commercialisation Income from the Commercialisation of Non-Project Centre IP it may retain it for its own purposes.

#### **24.6 Company obligation**

The Company shall ensure that the Company's Commercialisation of Centre IP complies with this agreement and the Commonwealth Agreement.

#### **24.7 No veto power**

For the avoidance of doubt, no Participant or any other person involved in a Project has the power to veto a decision of the Company regarding Utilisation of Non-Project Centre IP.

#### **24.8 Commercialisation records**

The Company and each Project Participant must keep written records of:

- (a) all Commercialisation Income it receives; and

- (b) all Commercialisation Expenses it incurs.

## **24.9 Commercialisation Expenses**

Without limiting clause 27.8, the Participants agree that the Company may use the Commercialisation Income with respect to particular Project IP to pay reasonable Commercialisation Expenses or reimburse the Company or a Utilisation Party for previously incurred reasonable Commercialisation Expenses with respect to that Project IP. For the avoidance of doubt, the Participants acknowledge that the Company may in any Financial Year use Commercialisation Income received that Financial Year to reimburse Commercialisation Expenses with respect to that Project IP incurred in previous Financial Years. Any Commercialisation Expenses relating to various Project IP may be apportioned between the various Project IP by the Company for the purposes of this clause 24.9.

## **24.10 Payment of Net Commercialisation Income**

By 31 August each year, or as soon as otherwise practicable, the Company must remit to each Project Participant its share of Net Commercialisation Income received by the Company with respect to the respective Project IP for the previous Financial Year corresponding to Project Shares as at 1 July that year, subject to any adjustments pursuant to clauses 24.3 or 24.4.

## **24.11 Survival**

This clause 24 survives expiration or earlier termination of this agreement.

# **25. End of trustee appointment**

## **25.1 Removal**

The Project Participants may, by notification in writing to the Company signed by all of them, without the consent of the Company revoke the appointment of the Company as trustee with respect to specified Project IP for which the Project Participants have beneficial ownership rights. Following such revocation:

- (a) all other rights and obligations of the Company in relation to the Project IP survive; and
- (b) the Company must sign and execute all documents necessary or convenient to vest the Project IP and the Commercialisation Income and Commercialisation Expenses with respect to the Project IP:
  - (i) in a new trustee appointed by the Project Participants; or
  - (ii) if directed by the Project Participants, in the Project Participants that are beneficially entitled to it.

## **25.2 Resignation**

The Company may retire as trustee with respect to specified Project IP by giving at least 6 months notice in writing to the Project Participants. On resignation as trustee the Company must sign and execute all documents necessary or convenient to vest the Commercialisation Income and/or the Project IP in the Project Participants that are beneficially entitled to it.

## **25.3 Survival**

Any trust in relation to Project IP and the provisions of this clause 25 survive termination of this agreement, provided that following termination any Project Participant may revoke a trust with respect to specified Project IP for which it has beneficial ownership rights.

# **26. Moral rights**

- (a) Upon the reasonable request of a Project Party each Project Party will use its reasonable efforts to obtain from its respective employees (including Specified Personnel), agents, sub-contractors and students under their supervision consent to the Specified Acts

(whether occurring before or after the consent is given) in relation to their Moral Rights that may be reasonably necessary for the Project or for Utilisation of the Project IP.

- (b) For the purposes of clause 26(a), “Specified Acts” means any of the following types of acts or omissions:
- (i) using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising or exploiting all or any part of the Centre IP or Background IP with or without attribution of authorship; and
  - (ii) using the Centre IP or Background IP in a different context to that originally envisaged,
- but does not include falsely attributing authorship.

## Part H Allocation of risk

### 27. Indemnities

#### 27.1 Mutual Indemnity

Subject to clauses 27.2, 27.3, 27.4 and 27.5, each Party (**the indemnifying Party**) irrevocably and unconditionally indemnifies and agrees to keep indemnified each of the other Parties and their respective directors, officers, employees, agents and contractors (**the indemnified Party**) from and against any and all liability, loss, harm, damage, cost or expense (including legal fees on a full indemnity basis and net of any GST input tax credits to which those indemnified are entitled) howsoever arising that those indemnified may suffer, incur or sustain as a result of:

- (a) any breach of this agreement (including material breach of any warranty given under this agreement) by the indemnifying Party;
- (b) any unlawful or negligent act or omission by the indemnifying Party or any of its directors, officers, employees, agents or contractors arising in connection with the Centre; or
- (c) the exercise by the indemnifying Party of any rights granted to it in relation to the Centre IP or Background IP.

#### 27.2 Company indemnity

In addition to any indemnity provided by the Company under clause 27.1, and subject to clauses 27.3, 27.4 and 27.5, the Company irrevocably and unconditionally indemnifies and agrees to keep indemnified each of the Participants and their respective directors, officers, employees, students, agents and contractors (**those indemnified**) from and against any and all liability, loss, harm, damage, cost or expense (including legal fees on a full indemnity basis and net of any GST input tax credits to which those indemnified are entitled) howsoever arising that those indemnified may suffer, incur or sustain as a result of any breach of the Commonwealth Agreement by the Company.

#### 27.3 Reduction of indemnity

The indemnities given by an indemnifying Party pursuant to clause 27.1 and the Company under clause 27.2 shall be reduced proportionately to the extent that the liability, loss, harm, damage, cost or expense referred to in clauses 27.1 and 27.2 was caused or contributed to by:

- (a) any breach of this agreement (including material breach of any warranty given under this agreement) by the indemnified Party;
- (b) any unlawful or negligent act or omission by the indemnified Party or any of its directors, officers, employees, students, agents or contractors; or



- (c) a breach by the indemnified Party of any rights granted to it in relation to the Centre IP or Background IP; or
- (d) any failure of those indemnified to take reasonable efforts to mitigate the effects of the relevant breach of this agreement or negligent act or omission.

#### **27.4 Commonwealth exception**

If a Party is a Department or Agency of the Commonwealth Government of Australia, it is excluded from the obligation under clause 27.1 to indemnify any other Party. This clause 27.4 does not exclude or reduce the liability of, or benefit to, the Commonwealth that may arise by operation of the common law or breach of statute.

#### **27.5 Consequential losses**

To the extent permitted by law, no Party to this agreement is liable or will be liable to those indemnified, whether under clauses 27.1, 27.2 or any other provision of this agreement), under contract, tort (including the law of negligence) or otherwise, for any loss of profits, loss of expectation of income or profits, loss of a chance or opportunity, or for any other special, indirect or consequential loss or damages in connection with or arising under or pursuant to this agreement.

#### **27.6 Notification of acts**

Each of those indemnified under clauses 27.1 and 27.2 must promptly notify every indemnifying Party of any event or circumstance that may reasonably give rise to those indemnified relying upon the indemnities in clauses 27.1 and 27.2.

#### **27.7 Survival**

The indemnities provided under clauses 27.1 and 27.2 are a continuing obligation, separate and independent of each Party's other obligations and shall survive the expiration or, where relevant, earlier termination of this agreement and will continue to apply (both as a right and as an obligation) to any Party who is expelled or retires from the Centre.

#### **27.8 Indemnity of the Company as trustee**

The Company is entitled to be indemnified out of the assets of a particular trust created by, or pursuant to, this agreement for any liability incurred by the Company as trustee of that particular trust (other than for breach of fiduciary duty, breach of trust, fraud or negligence). This entitlement survives the termination of this agreement.

### **28. Insurance**

#### **28.1 Obligation to insure**

- (a) Subject to clause 28.2, each Party must have and maintain for the term the following with an insurance company authorised by the Australian Prudential Regulation Authority (APRA) or as otherwise approved by the Commonwealth:
  - (i) workers' compensation insurance for an amount required by the relevant State or Territory legislation;
  - (ii) public liability insurance for \$10,000,000 (ten million dollars) or more per claim; and
  - (iii) professional indemnity insurance for \$1,000,000 (one million dollars) or more per claim.

#### **28.2 Act as own insurer or insure with other companies**

A Participant may:

- (a) act as its own insurer; or

- (b) be insured with an insurer that is not authorised by APRA,  
provided that it receives the consent of the Company, with such consent not to be unreasonably withheld. Where a Participant is a State Government, the Company's consent is not required to permit that Participant to self-insure or insure with another insurer under this clause.

### **28.3 Evidence of insurance**

Within 10 Business Days of a request, each Participant must provide the Company with a certificate of currency of its relevant insurance policies as requested by the Company from time to time.

## **Part I Changes**

### **29. Amendments**

#### **29.1 Variation**

Without limitation to clause 7.2 (except that clause 7.2(g) will not apply), the Essential Participants may, from time to time, by a resolution or with the written consent of the Essential Participants at that time by a majority not less than 75% (seventy-five per cent) (each Essential Participant having one vote) agree to amend this agreement, provided that:

- (a) the amendment does not operate to the material disadvantage of a specific Essential Participant that has not agreed to the amendment (as opposed to the disadvantage of all Essential Participants); and
- (b) the amendment does not operate to the material disadvantage only of some or all of the Other Participants.

Each agreement or understanding varying this agreement shall be recorded in writing, signed by the Company and any Participant who has not authorised the Company to be its variation agent pursuant to clause 7.2, and shall attach the resolution or the written consent signed by the required majority of the Essential Participants. Each Party agrees to the amendment of this agreement in compliance with this clause 29.1.

#### **29.2 Commonwealth approval**

Any changes to this agreement that require the prior approval of the Commonwealth under the Commonwealth Agreement being changes which:

- (a) are or may be inconsistent with the Commonwealth Agreement;
- (b) affect the Company's ability to comply with any of its obligations under the Commonwealth Agreement; or
- (c) changes the Essential Participants from those listed in Schedule 5 of the Commonwealth Agreement (including the retirement or expulsion from the Centre under clause 31 of this agreement),

must not be made without such prior written approval of the Commonwealth.

#### **29.3 Notice of variations**

The Parties must provide the Commonwealth with:

- (a) a copy of any proposed alteration or variation described in clause 29.2 within 10 Business Days of the proposed alteration or variation; and
- (b) a copy of any alteration or variation described in clause 29.2 within 10 Business Days of execution of the amendment or variation.

## 30. Variation to status of Participant and Admission of new Participants

### 30.A1 Variation to status of Participant

Subject to the provisions of the Commonwealth Agreement, at the written request of a Participant, the Governing Board may at any time agree to vary the Participant's status in the Centre from that of an Essential Participant to an Other Participant. Where an Essential Participant wishes to change its status to one of an Other Participant, clauses 30.1(b) and 30.2 will apply.

### 30.1 Admission

Subject to the Commonwealth Agreement:

- (a) on the recommendation of the Governing Board, and after consultation with existing Participants in the relevant "Sector" (as defined in the Constitution), the Essential Participants may, from time to time, by a resolution of the Essential Participants at that time by a majority not less than that specified in item 8 of the Centre Details (each Essential Participant having one vote):
  - (i) decide to admit any person to be an Essential Participant in the Centre; and
  - (ii) set the terms of the new Essential Participant's admission; and
- (b) the Governing Board may, after consultation with existing Participants in the relevant "Sector" (as defined in the Constitution), from time to time, by a resolution of the Governing Board at that time by a majority not less than that specified in item 8 of the Centre Details (each member of the Governing Board having one vote):
  - (i) decide to admit any organisation to be an Other Participant of the Centre; and
  - (ii) set the terms of the Other Participant's admission.

### 30.2 Deed of accession

On the admission of any new Participant to the Centre, the new Participant will be required by deed signed by the Company, the new party and any Party who has not authorised the Company to be its variation agent pursuant to clause 7.2 to acknowledge the receipt of a copy of this agreement and to confirm and agree to be bound by the provisions of this agreement, as if the new party was a signatory to this agreement.

### 30.3 Membership of Company

On the admission of any new Party to this agreement, the Parties which are Members of the Company agree to admit the new Party to membership of the Company in accordance with clause 4.6 and the Constitution if requested by the new Party.

## 31. Retirement and expulsion from the Centre

### 31.1 Retirement and expulsion from the Centre

- (a) This clause 31.1 is subject to the Commonwealth Agreement.
- (b) A Participant may retire from the Centre by giving 12 months' notice to each other Party.
- (c) A Participant (the **Defaulting Participant**) may be expelled from the Centre by the resolution of at least 75% of all Essential Participants (excluding the Defaulting Participant if an Essential Participant) at that time (each Essential Participant having one vote), provided Due Cause has arisen with respect to the Defaulting Participant and remains unremedied after thirty (30) days following notice to the Defaulting Participant.
- (d) Where the Company has reason to believe that a Participant (the **Defaulting Participant**):

- (i) has become insolvent, bankrupt or is subject to the appointment of a mortgagee, a receiver or manager or an investigator to investigate its affairs;
- (ii) is involved with the making of any arrangement or composition for the benefit of creditors; or
- (iii) is the subject of winding up proceedings,

the Company must issue the Participant a written notice stating:

- (iv) the reason for the notice; and
  - (v) that the Participant has 30 days to challenge the notice or be expelled from the Centre.
- (e) Where the Company issues a notice under clause 31.1(d), unless the Participant provides reasonable evidence that the Company is mistaken, or that the reason for the notice no longer exists, upon the expiry of 30 days the Participant will be expelled from the Centre.

### **31.2 Due Cause**

- (a) For the purposes of clause 31.1, Due Cause means:
- (b) failure to make Contributions when required by this agreement or Project Details (including a Third Party Project Agreement) unless otherwise agreed by the Governing Board or the Project Parties (as the case may be);
- (c) unauthorised disclosure of Confidential Information;
- (d) unauthorised publication of information or material;
- (e) unauthorised use or Utilisation of Centre IP or Background IP;
- (f) proposed changes to Specified Personnel that are contrary to the Commonwealth Agreement and likely to adversely affect the Centre's performance with respect to the Centre Objectives;
- (g) any other material breach of this agreement or Project Details (including a Third Party Project Agreement);
- (h) assignment of its rights or obligation under this agreement other than in accordance with clause 53.2; or
- (i) such other matters as the Essential Participants (other than the Party to be expelled if an Essential Participant) may by decision of at least 75% of them reasonably and properly declare to be a due cause.

### **31.3 Consequences**

- (a) If a Party is expelled or retires from the Centre, the Party:
  - (i) will cease to be a Party to this agreement;
  - (ii) retains any rights it has, under Project Details to which it is a party, to beneficial ownership of Project IP that exists on the date of the Party's expulsion or retirement and a share of Net Commercialisation Income with respect to such Project IP, subject to the provisions of such Project Details;
  - (iii) relinquishes all rights under this agreement other than those specified in clause 31.3(a)(ii);
  - (iv) will, if a Member, cease to be a Member;
  - (v) will cease to be a Project Party with respect to any Project, except any Project for which a Third Party Project Agreement is in force and to which it remains a party in which case it remains a party in accordance with its terms; and

- (vi) will be relieved of its obligation to make further Contributions, other than Contributions required to be made under any Third Party Project Agreement in force to which it remains a Party.
- (b) The retirement or expulsion of any Party from the Centre:
  - (i) will not affect the enforceability of any other obligations of that Party accrued at that time or rights against that Party accrued at that time;
  - (ii) will not relieve the Party of the obligations imposed upon it under this clause 31 and clauses 6.2(b) (Provision of information to Company), 16 (Background IP), 23 (Centre IP), 24 (Utilisation), 27 (Indemnities), 32 (Effect of termination), 34 (IP in Agreement Material under Commonwealth Agreement), 35 (Commonwealth Confidential Information), 38 (Safe and ethical research), 40 (Privacy), 42 (Audit and access) and 45 (Confidential Information); and
  - (iii) will not relieve the remaining Parties of their obligations under this agreement and they shall continue to carry on the Activities and perform the terms of this agreement between them.

## **32. Effect of termination**

### **32.1 Expiration**

Unless the Parties otherwise agree, this agreement will terminate upon expiration of the Term in accordance with clause 2.

### **32.2 Accrued rights and obligations**

Termination of this agreement for any reason will be without prejudice to the continuing enforceability of any rights or obligations of the Parties accrued at the time of termination.

### **32.3 Centre IP**

Notwithstanding the termination of this agreement, unless the Parties agree otherwise (including pursuant to clause 25.1), ownership of Centre IP will not change.

## **33. Continuing obligations**

Unless agreed otherwise by the Parties, on the termination of this agreement the Parties and any former Parties shall continue to be bound by the obligations under clauses 6.2(b) (Provision of information to Company), 23 (Centre IP), 24 (Utilisation of Project IP), 25 (End of trustee appointment), 27 (Indemnities), 28 (Insurance), 31 (Retirement and expulsion), 34 (IP in Agreement Material under Commonwealth Agreement), 35 (Commonwealth Confidential Information), 38 (Safe and ethical research), 40 (Privacy), 42 (Audit and access) and 45 (Confidential Information) (to the extent that these obligations are applicable to them).

## **Part J Commonwealth Agreement obligations and liabilities**

### **34. IP in Agreement Material under Commonwealth Agreement**

#### **34.1 Participant acknowledgment**

Each Participant acknowledges and agrees that:

- (a) the Intellectual Property in the Agreement Material does not vest in the Commonwealth unless the Commonwealth has rights to such Agreement Material as a result of being a Participant; and

- (b) the licence granted by the Company to the Commonwealth under clause 17.1(b) of the Commonwealth Agreement applies in relation to any material provided by a Participant to the Company under this agreement which would constitute Agreement Material.

### **34.2 Utilisation**

Each Participant acknowledges and agrees that:

- (a) any Utilisation of the Agreement Material must:
  - (i) maximise the national benefits accruing to Australia;
  - (ii) be consistent with the CRC Program Objective; and
  - (iii) be consistent with the Commonwealth Agreement; and
- (b) if at any time, the Commonwealth is of the reasonable view that the Utilisation of the Agreement Material by the Participant, including by any third party, is not consistent with clause 34.2(a), the Company at the request of the Commonwealth may, by notice at its sole and unfettered discretion:
  - (i) to the extent that a Participant's actions resulted in such request, require the Participant to pay to the Company or the Commonwealth (as the Company may direct) the amount that the Company is required to pay to the Commonwealth in accordance with clause 17.1(g) of the Commonwealth Agreement;
  - (ii) reduce, suspend or terminate the payments to the Participant or in relation to a Participant being an amount that the Commonwealth elects not to pay to the Company under clause 27 of the Commonwealth Agreement; or
  - (iii) exercise any other right that the Commonwealth elects to exercise under the Commonwealth Agreement.

### **34.3 Procedures for publication of Agreement Material**

Subject to clause 44, each Participant must at all times during the Funding Period have in place and adhere to documented procedures to ensure that, before any Agreement Material is published or disclosed to any person other than the Commonwealth, a Participant or the Company, consideration is given to the potential prejudice to the subsistence or Utilisation of any Agreement Material, including the possibility that publication or disclosure might preclude the grant of a patent or cause the loss of Agreement Material. Nothing in this clause 34 prevents a Participant from publishing Agreement Material where the Participant has a statutory obligation to do so.

## **35. Commonwealth Confidential Information**

### **35.1 Prohibition on disclosure**

Subject to clause 35.4, the Participants must not, without the prior written consent of the Commonwealth, disclose any Commonwealth Confidential Information to a third party.

### **35.2 Conditions of approval**

In giving written consent to use or disclose Commonwealth Confidential Information, the Commonwealth may impose such conditions as it thinks fit. The Participants must comply with any term or condition imposed by the Commonwealth.

### **35.3 Advisors and third parties**

The Commonwealth or the Company may at any time require the Participants to use reasonable endeavours to arrange for:

- (a) its Advisors;
- (b) its Personnel and other employees and subcontractors involved in the Activities; or

- (c) any other third party, to whom Commonwealth Confidential Information may be disclosed pursuant to clause 35.4(a) or clause 35.4(b),

to give a written undertaking relating to the use and non-disclosure of the Commonwealth Confidential Information in the form approved by the Commonwealth.

#### **35.4 Exceptions to obligations**

The obligations on the Participants under clause 35.1 will not be taken to have been breached to the extent that the Commonwealth Confidential Information:

- (a) is disclosed by a party to its Advisors or employees solely in order to comply with obligations, or to exercise rights, under this agreement or the Commonwealth Agreement;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of activities related to this agreement or the Commonwealth Agreement;
- (c) is disclosed by the Commonwealth to the responsible Minister;
- (d) is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the Commonwealth within the Department, or with another Commonwealth agency, where this serves the Commonwealth's legitimate interests;
- (f) is disclosed by the Commonwealth to the Auditor-General, Ombudsman or Privacy Commissioner;
- (g) is required by law to be disclosed; or
- (h) is in the public domain otherwise than due to a breach of this agreement.

#### **35.5 Obligation on disclosure**

Where a Participant discloses Commonwealth Confidential Information to another person:

- (a) pursuant to clauses 35.4(a), (b) or (e), the disclosing party must:
  - (i) notify the receiving person that the information is Commonwealth Confidential Information; and
  - (ii) not provide the information unless the receiving person agrees to keep the information confidential, including the receiving person giving the Commonwealth a legally binding undertaking to that effect in the form approved by the Commonwealth; or
- (b) pursuant to clauses 35.4(c) and (d), the disclosing party must notify the receiving party that the information is Commonwealth Confidential Information.

#### **35.6 Period of confidentiality**

The obligations under this clause 35 continue, notwithstanding the expiry or termination of this agreement:

- (a) in relation to an item of information described in Commonwealth Agreement, for the period set out in the Commonwealth Agreement in respect of that item; and
- (b) in relation to any information which the parties agree in writing after the date of the Commonwealth Agreement is to constitute Commonwealth Confidential Information for the purposes of the Commonwealth Agreement and this agreement, for the period agreed by the parties in writing in respect of that information.

### **35.7 No reduction in privacy obligations**

Nothing in this agreement derogates from any obligation which either party may have under the *Privacy Act 1988* (Cth) as amended from time to time, in relation to the protection of Personal Information or information that is protected by the *Census and Statistics Act 1905* (Cth), or any other Act, regulation or other legislative instrument requiring secrecy or confidentiality in dealing with information.

### **35.8 Return of information**

At the request of the Commonwealth or the Company or on the expiry or termination this agreement, each Participant must promptly return all of the Commonwealth's physical and written records containing Commonwealth Confidential Information, and all documentation relating to that Commonwealth Confidential Information (including copies), to the Commonwealth in a form reasonably requested by the Commonwealth. Alternatively, if requested by the Commonwealth, the Participant must destroy such items in the manner specified by the Commonwealth and promptly certify to the Commonwealth in writing that it has done so.

### **35.9 No limitation**

Nothing in this clause limits a Participant's obligations under clause 40 or clause 41.

## **36. Relationship with Commonwealth**

Each Participant must not, by virtue of this agreement:

- (a) be or for any purpose be deemed to be, an employee, partner or agent of the Commonwealth; or
- (b) represent itself, and must ensure that its officers, employees, partners, agents or subcontractors do not represent themselves, as being an officer, employee, partners or agent of the Commonwealth.

## **37. Compliance with law and policy**

### **37.1 Agreement to comply with law**

Each Participant and the Company must in carrying out this agreement, comply with the provisions of any relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or local authority.

### **37.2 Acknowledgment of effect of Criminal Code etc.**

Each Participant acknowledges that:

- (a) Chapter 7 of the Criminal Code provides for offences which attract substantial penalties, including theft of Commonwealth property and other property offences, obtaining property or financial advantage by deception, offences involving fraudulent conduct, bribery, forgery and falsification of documents;
- (b) it is aware that giving false or misleading information is a serious offence under the Criminal Code;
- (c) the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this Contract (other than a person to whom the Participant is authorised to publish or disclose that fact or document) may be an offence under section 70 of the *Crimes Act 1914*, punishment for which may be a maximum of two years imprisonment;
- (d) in respect of data, including Personal Information, held in connection with this agreement, any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of the data stored in any computer in the course of performing this



agreement is an offence under Part 10.7 of the Criminal Code which may attract a substantial penalty, including imprisonment;

- (e) it is aware of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets; and
- (f) it is aware of its obligation under the *Charter of The United Nations Act 1945* and the Charter of United National (Anti-Terrorism Measures) Regulations 2002.

### **37.3 Obligations relating to officers etc.**

Each Participant undertakes with respect to any officer, employee, agent or subcontractor who will have access to documents, materials or information within the meaning of section 79 of the *Crimes Act 1914* that prior to having access the officer, employee, agent or subcontractor will first be required by the Participant to provide the Participant with an acknowledgment that the officer, employee, agent or subcontractor is aware of the provisions of the section.

### **37.4 Other legislation**

Each Participant must:

- (a) comply with its obligations, if any, under the Equal Opportunity for Women in the Workplace Act 1999;
- (b) in its dealings with its employees, have due regard to Commonwealth policies on employment and obligations under relevant occupational health and safety laws.

## **38. Safe and ethical research**

### **38.1 Compliance with codes**

When research in Australia is conducted on or involving humans or animals, each Participant, in relation to any such research conducted by the Participant for the Centre, must ensure that the research complies with, and that it observes, all relevant ethics codes and guidelines adopted by the National Health and Medical Research Council, the Office of the Gene Technology Regulator and all other relevant regulatory agencies operating in Australian and any place in which the research is being conducted being codes and guidelines in force from time to time during the Term, including requirements to obtain prior approval in writing (including from any relevant ethics committee) that the research to be undertaken is so compliant.

### **38.2 Assistance to Commonwealth**

Each Participant must assist the Company to comply with clause 30.18 of the Commonwealth Agreement.

### **38.3 Ionising radiation**

When conducting research in Australia which involves the use of ionising radiation, each Participant must ensure that persons performing procedures involving ionising radiation are appropriately trained and hold a relevant current licence from the appropriate State authority.

### **38.4 Evidence of compliance**

Whenever reasonably required by the Company or the Commonwealth, each Participant must promptly furnish to the Company or the Commonwealth written evidence of compliance with the requirements of this clause.

## **39. Responsible conduct of research**

- (a) Each Participant must ensure that research conducted by the Participant on behalf of the Centre conforms with the principles outlined in the following and their successor documents:

- (i) the NHMRC/ARC/UA Australian Code for the Responsible Conduct of Research (2007); and
  - (ii) if applicable, the NHMRC/ARC/AVCC National Statement on Ethical Conduct in Human Research (2007).
- (b) Each Participant must:
- (i) promote the responsible conduct of research;
  - (ii) maintain high standards of responsible research;
  - (iii) report research responsibly;
  - (iv) respect all research participants;
  - (v) respect animals used in research;
  - (vi) respect the environment; and
  - (vii) report research misconduct.
- (c) Each Participant must ensure that it has in place procedures for dealing with instances of suspected or alleged research misconduct, consistent with the documents at clause 39(a).

## **40. Privacy**

### **40.1 Agreement to comply with privacy law**

Each Participant agrees to comply with its obligations, if any, under:

- (a) the *Privacy Act 1988* (Cth); and
- (b) a privacy law of a State or Territory,  
**(Privacy Legislation).**

### **40.2 Procedures**

Subject to clause 40.1, where a Participant has no obligations under the Privacy Legislation, that Participant agrees to ensure that it has procedures in place to deal with Personal Information received, created or held by it for the purposes of this agreement which comply at a minimum with the National Privacy Principles under the *Privacy Act 1988* (Cth).

### **40.3 Obligations**

Each Participant agrees:

- (a) to use Personal Information received, created or held by it for the purposes of this agreement only to fulfil its obligations under this agreement;
- (b) to ensure that any person whom it allows to access Personal Information which is received, created or held by the Participant for the purposes of this agreement is made aware of, and undertakes in writing, to comply with the requirements of this clause 40;
- (c) to ensure that any subcontract made by it in connection with this agreement contains enforceable obligations requiring the subcontractor to comply with the obligations in this clause, as if the subcontractor were the Participant; and
- (d) to cooperate with reasonable requests or inquiries made by the Federal Privacy Commissioner or the Commonwealth in relation to the management of Personal Information by it in connection with this agreement.

## **Part K Other matters**

### **41. Records and access**

#### **41.1 Maintenance of records**

Each Participant must:

- (a) keep and require its subcontractors to keep adequate books and records, in accordance with applicable Australian accounting standards, in sufficient detail to enable:
  - (i) all receipts and payments related to the Activities to be identified and reported in accordance with the Commonwealth Agreement and this agreement; and
  - (ii) the amounts payable by the Commonwealth under the Commonwealth Agreement to be determined; and
- (b) retain and require its subcontractors to retain for a period 7 years after the termination of this agreement, all books and records relating to the Activities or deliver them to the Company or other person as directed by the Company.

### **42. Audit and access**

#### **42.1 Right to conduct audits**

The Commonwealth or a representative may conduct audits relevant to the performance of the Participant's obligations under this agreement. Audits may be conducted of:

- (a) the Assets;
- (b) the Participants' operational practices and procedures as they relate to this agreement or the Commonwealth Agreement;
- (c) the accuracy of the Participants' invoices and reports;
- (d) the Participants' compliance with its confidentiality and privacy obligations under this agreement;
- (e) Material (including books and records) in the possession of the Participant relevant to the Activities or this agreement; and
- (f) any other matters determined by the Commonwealth to be relevant to the Activities or this agreement.

#### **42.2 Access by the Commonwealth**

- (a) Each Participant acknowledges and agrees that the Commonwealth or the Company at the request of the Commonwealth may, at reasonable times and on giving reasonable notice to the Participants, and subject to the Participant's reasonable requirements relating to occupational health and safety and confidentiality:
  - (i) access the premises of the Participants to the extent relevant to the performance of this agreement;
  - (ii) require the provision by the Participants, its employees, agents or subcontractors of records and information in a data format and storage medium accessible by the Commonwealth by use of the Commonwealth's existing computer hardware and software;
  - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Participants, its employees, agents or subcontractors to the extent relevant to the performance of this agreement; and

- (iv) require assistance in respect of any inquiry into or concerning the Activities or this agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department of Innovation, Industry, Science and Research), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) The Participants must provide access to their computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under this clause 42, and provide the Commonwealth with any reasonable assistance requested by the Commonwealth to use that hardware and software.

#### **42.3 Conduct of audit and access**

The Company and each Participant acknowledge that, and must use all reasonable endeavours to ensure that, the Commonwealth, in accordance with its obligations under clause 25.3 of the Commonwealth Agreement, does not:

- (a) unreasonably delay or disrupt in any material respect a Participant's performance of their obligations under this agreement; or
- (b) unreasonably delay or disrupt in any material respect a Participant's business, when the Commonwealth:
- (c) exercises its right to perform audits pursuant to clause 42.1; and/or
- (d) exercises any of its general rights granted by clause 42.2.

#### **42.4 Costs**

Unless otherwise agreed in writing, the Participants and the Commonwealth must bear their own costs of any reviews and/or audits.

#### **42.5 Auditor-General and Privacy Commissioner**

The rights of the Commonwealth under clause 42.2(a)(i) to 42.2(a)(iii) apply equally to the Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions or powers.

#### **42.6 Participants to comply with Auditor-General's requirements**

The Participants must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Privacy Commissioner's or his or her delegate's requirements, notified under clause 42.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, or his or her respective delegate.

#### **42.7 No reduction in responsibility**

The requirement for, and participation in, audits does not in any way reduce the Participants' responsibility to perform its obligations in accordance with this agreement.

#### **42.8 Subcontractor requirements**

The Participants must ensure that any subcontract entered into for the purpose of this agreement contains an equivalent clause granting the rights specified in this clause 42.

#### **42.9 No restriction**

Nothing in this agreement reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Commonwealth under this agreement are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.

## 42.10 Survival

This clause 42 applies for the Funding Period and for a period of seven years from the expiry or termination of this agreement.

## 43. Student involvement

Participants who have enrolled students who are involved in the Activities, or who have students under their supervision, acknowledge and agree that:

- (a) they must ensure that those students comply with clause 45 (Confidential Information);
- (b) they must ensure that Centre IP developed by the student is owned in accordance with clause 23 (Centre IP), provided that the student will own the copyright in his or her thesis;
- (c) they must ensure that Agreement Material developed by the student is owned in accordance with clause 34.1(a);
- (d) the only restrictions on publishing a student's thesis will be those reasonably necessary to protect Party Confidential Information, Background IP, Centre IP or Centre Confidential Information, provided that nothing in this agreement will prohibit a copy of a student's completed thesis being placed in the student's university library. The Company may, acting reasonably, require the relevant university to arrange for a relevant student's thesis to be placed under restricted access in the University's library for a period not exceeding 12 months;
- (e) the Company will not inhibit the right of a student to have his or her thesis examined, but an examiner may be required to sign a confidentiality agreement to protect Confidential Information; and
- (f) before a student becomes involved in any Activities, the Company may require that the student and the institution in which the student is enrolled enter into a written agreement, in a form approved by the Company, setting out the terms on which the student is involved in the Activities, which shall be consistent with the principles in this clause 43.

## 44. Publications

### 44.1 Publication of information or material

The Parties acknowledge that the dissemination of knowledge is an important function of the Centre. Nonetheless, the Parties shall not publish any information or material arising from the Activities except in accordance with this clause 44.

### 44.2 Publication by the Company

Subject to clause 45, the Company may publish information or material arising from the Activities if, following consultation with all relevant Project Participants, it determines that the benefits of publication, having regard to the Centre Objectives, outweigh any potential loss of commercially valuable Intellectual Property rights or other potential disadvantage for the Company or the Centre.

### 44.3 Request for permission

- (a) Prior to any submission for publication, a Participant wishing to publish information or material arising from the Activities (**Requesting Party**) must forward a request in writing to the Company, seeking permission to publish the information or material, and specifying in the request any Centre IP or Centre Confidential Information contained or referred to in the proposed publication and identifying any Project from which the information or material has been derived.

- (b) For the avoidance of doubt, 'publish' in this clause 44.3 includes, but is not limited to, a submission of any article, poster, abstract, or oral presentation to third parties where such third parties are not all bound by an applicable Third Party Project Agreement.

#### **44.4 Notification**

- (a) Within 14 days of receipt of a request under clause 44.3, the Company must give notice of the request to each relevant Project Party, and within 14 days of that notice each of those Project Parties must advise the Company if they do not approve publication on the grounds that Commercialisation or Background IP would be prejudiced.
- (b) The Company will give due consideration to Project Participant advice obtained under clause 44.4(a) and must then notify the Requesting Party of its decision as to publication of the relevant information or materials within 42 days of receipt of the request. The Company's permission may be subject to any conditions that the Company may reasonably impose, including a requirement that the publication comply with any relevant provisions of the Commonwealth Agreement, and include acknowledgments of:
  - (i) the Centre's role in and contribution to the creation of the information or material in the publication; and
  - (ii) the Requesting Party's affiliation with the Centre.

#### **44.5 Grant of permission**

- (a) If the Company determines that the benefits of the Requesting Party's publication, having regard to the Centre Objectives, outweigh the potential loss of commercially valuable Intellectual Property rights or other potential disadvantage for the Company or the Centre, then the Company will notify the Requesting Party in writing that permission to publish has been granted, and notify the other Parties to that effect.
- (b) In the event that the Company has not replied to the Requesting Party within 42 days of the request then the Requesting Party shall be entitled to give notice to the Company that permission to publish will be deemed to have been received if no contrary response is received from the Company within a further 7 days.

#### **44.6 Declining permission**

If the Company determines (acting reasonably) that the benefits of publication, having regard to the Centre Objectives, do not outweigh the potential loss of commercially valuable Intellectual Property rights or other potential disadvantage for the Company or the Centre, then the Company will notify the Requesting Party to that effect, giving reasons for the decision, and either:

- (a) require alterations to the publication so that it does not disclose information affecting the commercially valuable Intellectual Property rights; or
- (b) if altering the publication is impractical, delay publication for a stipulated period as determined by the Governing Board, but not exceeding:
  - (i) 12 months from the date of the request in the case of a student thesis; and
  - (ii) 18 months from the date of the request in the case of a any other publication.

#### **44.7 Party Confidential Information**

Notwithstanding the other provisions of this clause 44, no Party may publish any information or material containing Party Confidential Information of a Party unless authorised by that Party or unless an exception in clause 45.3 applies.

#### **44.8 Recognition**

- (a) Subject always to clause 47, each Participant must ensure that any publication which it makes pursuant to this clause 44 acknowledges the contributions (if any) made by other Participants and the support of the Commonwealth and the Company:

- (i) unless directed otherwise by a Participant to be acknowledged or by the Commonwealth or the Company (as the case requires); and
- (ii) provided that a Participant may not use the logo of any other Party without the prior written consent of that Party.

## **45. Confidential Information**

### **45.1 Obligation**

Except as otherwise provided in this clause 45, each Party must keep confidential and not disclose any Confidential Information. For the avoidance of doubt this agreement, but excluding any Project Details, does not constitute Confidential Information.

### **45.2 Permitted use and disclosure**

Each Party may:

- (a) use Confidential Information only for the purposes of this agreement;
- (b) if the Party is the Company, use and disclose Centre Confidential Information as required at its discretion for the purposes of this agreement or otherwise for the purposes of the Centre Objectives;
- (c) disclose Confidential Information to its:
  - (i) employees;
  - (ii) directors and officers; and
  - (iii) legal, financial or other professional advisorswho have a need to know for the purposes of this agreement (and only to the extent that each has a need to know), provided the disclosure is made subject to an obligation of confidentiality in accordance with clause 45.6;
- (d) use and disclose Confidential Information where authorised under Project Details;
- (e) disclose Confidential Information to the extent required by law; and
- (f) each Party may disclose Confidential Information to its responsible Minister or in response to a requirement by a House or a Committee of the Parliament.

### **45.3 Exceptions**

- (a) The obligations imposed on a Party by this clause 45 will not apply to Confidential Information which:
  - (i) prior to disclosure is in the public domain or subsequent to disclosure to the Party becomes part of the public domain other than as a result of an unauthorised act or failure to act by that Party;
  - (ii) is received by a Party from a third Party without any obligation to hold in confidence and which has not been obtained by that third Party directly or indirectly from any Party;
  - (iii) is independently developed by an employee or officer of the Party owing the obligation of confidentiality while having no knowledge of the Confidential Information;
  - (iv) in the case of Party Confidential Information, the Party claiming confidentiality has agreed may be disclosed by that other Party; or
  - (v) in the case of Centre Confidential Information, the Company has agreed may be disclosed by that other Party.

- (b) A Party is not obliged to maintain the confidentiality of its own Party Confidential Information.

#### **45.4 Onus**

The receiving Party has the onus of showing that any of the above exceptions apply.

#### **45.5 Combination of information**

A combination of information will not be taken to be in the public domain merely because it contains information in the public domain.

#### **45.6 Employees**

Each Party must use its reasonable efforts to ensure that:

- (a) its respective employees, directors, officers and advisors who participate in the Activities or acquire access to Confidential Information, must comply with the obligation of confidentiality under this clause 45 as though Parties to this agreement; and
- (b) any of the above mentioned employees, directors, officers and advisors who cease to be employees, directors, officers or advisors must continue to be bound by such obligations of confidentiality.

#### **45.7 Survival**

The obligations of confidentiality imposed on a Party will survive termination of this agreement or the Party's expulsion or retirement from the Centre.

### **46. Public announcements**

- (a) The Company is principally responsible for making public announcements about the Centre and a Participant must not make any public announcement in relation to the Centre or this agreement without obtaining the Company's approval, except if required by law or a regulatory body (including a relevant stock exchange), in which case the Participant required to make an announcement must, to the extent practicable, first consult with and take into account the reasonable requirements of the Company and any effected Participant.
- (b) Subject to clauses 45 and 46(a), nothing in this clause 46 will be deemed to prevent a Participant from engaging in public discourse on any matter unrelated to the Centre or this agreement which affects a Participant's interests.

### **47. Use of Party's name & CRC Indicia**

#### **47.1 Use of Party's name**

A Party must not use the name or logo of any other Party without the prior written consent of that other Party.

#### **47.2 Sub-licence to use CRC Indicia**

- (a) The Company grants each Participant a non-exclusive licence to use the CRC Indicia, during the Funding Period, subject to any reasonable conditions required by the Commonwealth (as notified by the Company to the Participants).
- (b) Unless otherwise agreed in writing with the Company, during the Funding Period, each Participant must ensure that all publications and publicity by the Participant use the CRC Indicia prominently, in any manner specified by the Commonwealth (as notified by the Company to the Participants), from time to time.
- (c) Unless otherwise agreed in writing with the Company:



- (i) at the end of the Funding Period, each Participant must cease using the CRC Indicia; or
  - (ii) at the time that a Participant is expelled or retires from the Centre, that Participant must cease using the CRC Indicia.
- (d) During the Term, each Participant must ensure that all publications (including reprints, and despite whether published by the Participant or other persons), promotional and advertising materials, public announcements, events and activities in relation to the Activities, or any products, processes or inventions developed as a result, acknowledge the financial and other support received from the Commonwealth:
- (i) through reference to this support and the CRC Program;
  - (ii) through prominent display of the CRC Indicia; and
  - (iii) by reference to any acknowledgement required by the Commonwealth (as notified by the Company to the Participants from time to time).

## 48. Conflicts

### 48.1 Definition of Conflict

For the purposes of this clause 48, **Conflict** means any matter, circumstance, interest, or activity affecting a Party (including the officers, employees, agents and subcontractors of the Party) which may impair the ability of the Party (**Affected Party**) to carry out its part of the Activities diligently and independently in accordance with this agreement.

### 48.2 Warranty

- (a) Each Party warrants to the other Parties that, to the best of its knowledge after making diligent enquiries, at the date of signing this agreement no material Conflict exists or is expected to arise in the performance of that Party's obligations under this agreement.
- (b) For the avoidance of doubt, any Conflict declared by a Participant is not material where researchers in the Participant organisation conduct research in competition with the Centre if:
  - (i) those researchers are not part of the Centre; and
  - (ii) the researchers have not received Confidential Information related to the Centre.

### 48.3 Dealing with Conflict

If, a material Conflict arises, or appears likely to arise, the Affected Party agrees to:

- (a) notify the other relevant Parties immediately;
- (b) subject to any obligations to maintain confidentiality, make full disclosure of all relevant information relating to the Conflict to the other relevant Parties; and
- (c) take such steps as the Company may reasonably require to resolve or otherwise deal with the Conflict.

### 48.4 Register of Conflicts

The Company will maintain a register of Conflicts disclosed under this agreement.

## 49. Dispute resolution

### 49.1 No arbitration or court proceedings

If a dispute arises out of this agreement, including any question regarding its existence, validity or termination (**Dispute**), a Party must comply with this clause 49 before starting arbitration or court proceedings (except proceedings for interlocutory relief).

## **49.2 Notification**

A Party claiming a Dispute has arisen must give the other Parties to the Dispute notice setting out details of the Dispute.

## **49.3 Parties to resolve Dispute**

During the 14 days after a notice is given under clause 49.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable efforts to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, they must:

- (a) if the Dispute relates to a matter of valuation, refer the Dispute to a valuer in accordance with clause (b); or
- (b) refer the Dispute to a mediator.

## **49.4 Independent valuation**

If the Dispute relates to a matter of valuation the Dispute will be determined by a valuer agreed by the Parties involved in the Dispute or otherwise appointed by the President or acting President of the Institute of Chartered Accountants in Australia.

## **49.5 Appointment of mediator**

If the Parties to the Dispute cannot agree on a mediator within seven days after a request under clause 49.3, the chairman of LEADR (Association of Dispute Resolvers) or the chairman's nominee will appoint a mediator.

## **49.6 Role of mediator**

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a Party to the Dispute except if the Party agrees in writing.

## **49.7 Confidentiality**

Any information or documents disclosed by a Party under this clause 49:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

## **49.8 Costs**

Each Party to a Dispute must pay its own costs of complying with this clause 49. The Parties to the Dispute must equally pay the costs of any mediator.

## **49.9 Termination of process**

A Party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 49.1 to 49.3. Clauses 49.7 and 49.8 survive termination of the dispute resolution process.

# **50. GST**

## **50.1 Meaning of words**

In this clause 50:

- (a) **GST exclusive consideration** means the consideration payable or to be provided for a Supply, but for the application of this clause 50;
- (b) **Recipient** means a Party to whom a Supply is made;
- (c) **Supply** means a supply made under or in connection with this agreement;
- (d) **Supplier** means a Party making a Supply; and
- (e) words or expressions that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 50.

## 50.2 Presumption

Any consideration to be paid or provided for a Supply, unless specifically described in this agreement as 'GST-inclusive', does not include an amount on account of GST.

## 50.3 Gross-up

Despite any other provision in this agreement if a Supplier makes a Supply on which GST is imposed (not being a Supply the consideration for which is specifically described in this agreement as 'GST-inclusive'):

- (a) the GST-exclusive consideration for that Supply, is increased by, and the Recipient must also pay to the Supplier, an amount equal to the GST-exclusive consideration multiplied by the prevailing rate of GST; and
- (b) the amount by which the GST-exclusive consideration is increased under clause 50.3(a) must be paid to the Supplier by the Recipient without set-off, deduction or requirement for demand, at the same time as the GST-exclusive consideration is payable or to be provided.

## 50.4 Reimbursement or indemnification

If a payment to a Party under this agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that Party, then the payment will be reduced by the amount of any input tax credit to which that Party is entitled for that loss, cost or expense.

## 50.5 Tax invoices

A Recipient need not make a payment for a taxable Supply until the Supplier has given the Recipient a tax invoice for the Supply to which the payment relates.

# 51. Force majeure

## 51.1 Definition

- (a) In this clause 51, a **Force Majeure Event** affecting a Party means, subject to clause 51.1(b), anything outside that Party's reasonable control including, but not limited to, fire, storm, flood, earthquake, explosion, war, invasion, rebellion, sabotage, epidemic, labour dispute, labour shortage and failure or delay in transportation and act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including but not limited to, subcontractors, customers, governments or government agencies).
- (b) If a Party to this agreement is a government agency it will not be within the reasonable control of that Party merely because that Party is part of the government that has the legal capacity to perform an act or omission that may otherwise constitute a Force Majeure Event.

## 51.2 Suspension of obligation

Where a Party is unable, wholly or in part, by reason of a Force Majeure Event, to carry out any obligation under this agreement (other than an obligation to pay money), and that Party:

- (a) gives the Company prompt notice of that Force Majeure Event including reasonable particulars, and, in so far as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- (b) uses all possible diligence to remove that force majeure as quickly as possible,

that obligation is suspended so far as it is affected by the Force Majeure Event during the continuance of that Force Majeure Event and that Party will be allowed a reasonable extension of time to perform its obligations.

### **51.3 Parties to meet**

If, after 30 days, the Force Majeure Event has not ceased, the Company and the Party affected by the Force Majeure Event will meet in good faith to discuss the situation and endeavour to achieve a mutually satisfactory resolution.

### **51.4 Exceptions**

Nothing in this clause 51:

- (a) affects any obligation to pay money; or
- (b) requires the settlement of strikes, lockouts or other labour disputes or claims or demands on terms contrary to the Rules or policies of the Party affected.

## **52. Notices and other communications**

### **52.1 Service of notices**

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the General Details, as varied by any Notice given by the recipient to the sender.

### **52.2 Effective on receipt**

A Notice given in accordance with clause 52.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## **53. General**

### **53.1 Approvals and consents**

Except where this agreement expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this agreement.

### **53.2 Assignment**

No Party may assign or attempt to assign or otherwise transfer or encumber any right or obligation arising out of this agreement except with the written consent of the other Parties.

### **53.3 Sub-contracting**

A Party shall not sub-contract the performance of a substantial part of the Activities of the Centre, except with the prior approval of the Company, such approval not to be unreasonably withheld.

### **53.4 Costs**

Each Party must pay its own costs of negotiating, preparing and executing this agreement.

### **53.5 Survival**

The continuing obligations described in clause 33 are independent and survive termination of this agreement. Any other term by its nature intended to survive termination of this agreement survives termination of this agreement.

### **53.6 Counterparts**

This agreement may be executed in counterparts. All executed counterparts constitute one document.

### **53.7 No merger**

The rights and obligations of the Parties under this agreement do not merge on completion of any transaction contemplated by this agreement.

### **53.8 Entire agreement**

With the exception of the Constitution and the Project Details, this agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

### **53.9 Precedence of documents**

In the event of any inconsistency between any part of:

- (a) the terms and conditions contained in clauses 1 to 53.14 of this agreement;
- (b) a Schedule;
- (c) a Project Details; or
- (d) any other attachment or annexure to this Agreement,

then the document which is higher in the list takes precedence to the extent of any inconsistency.

### **53.10 Further action**

Each Party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.

### **53.11 Severability**

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the terms of this agreement continue in force.

### **53.12 Waiver**

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

### **53.13 Governing law and jurisdiction**

This agreement is governed by the law of the Applicable Jurisdiction and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Applicable Jurisdiction.

### **53.14 UN Convention**

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this agreement.

# Schedule 1 - Centre Details

Item	Issue	Clause Ref	Details
1.	Name of the CRC	Background C	Cooperative Research Centre for Low Carbon Living
2.	Name of Company	Clause 1.1	CRC for Low Carbon Living Limited, ACN 156 259 193
3.	Commencement Date	Clause 2	1 <sup>st</sup> July 2012.
4.	Centre Field	Clause 5.1	The field of research for the Company is:  Scientific research to develop mitigation strategies for carbon pollution associated with construction and activities within the built environment to be undertaken for the broader benefit of the Australian public.
5.	Nominated Commonwealth Agreement Clauses	Clause 3.2	Those clauses listed in schedule 6 of the Commonwealth Agreement.
6.	Special Majority Issues	Clause 4.7	<p>(a) <b>(Establishment of Utilisation company)</b> Establishment or acquisition of a controlling interest in an entity to Commercialise Centre IP.</p> <p>(b) <b>(New Directors)</b> Appoint a Director (except as permitted by the Participants Agreement).</p> <p>(c) <b>(Remuneration of Directors)</b> Increase the remuneration payable to Directors.</p> <p>(d) <b>(Financial assistance)</b> Provide a loan or other financial assistance to a Director or his or her associates or vary the terms of any loan or other financial assistance previously provided to a Director or his or her associates.</p> <p>(e) <b>(Winding up)</b> Take a step to dissolve or wind up the Company.</p> <p>(f) <b>(Change in nature of Business)</b> Carrying on activities that are inconsistent with the Company's objectives.</p> <p>(g) <b>(Overseas presence)</b> the registration or recognition as a body corporate in any place outside Australia.</p> <p>(h) <b>(Company type)</b> Change the type of the Company.</p>
7.	Variation Agent	Clause 7.2	The University of Melbourne, CSIRO, University of South Australia, NSW Technical and Further Education Commission - Sydney Institute, The Commonwealth of Australia as represented by the Department of Infrastructure and Transport.

8.	Majority required to admit new Participant	Clause 30.1	<p>To admit new Essential Participant: 75% of Essential Participants.</p> <p>To admit Other Participant: majority of Governing Board.</p>
9.	Initial Projects	Clause 17.6	<p>The Projects that are the subject of Project Details (including Third Party Project Agreements if there are third parties participating) entered into contemporaneously with this agreement are:</p> <p>None.</p>
10.	Applicable Jurisdiction	Clause 53.13	New South Wales.
11.	Valuation Principles	Clause 18.2(g)	<p>Contributions will be valued in accordance with the following formula:</p> $VC = A + B + C$ <p>where:</p> <p><b>VC</b> is the value of a Participant's Contribution;</p> <p><b>A</b> is the total value of full time equivalent (FTE) in-kind staff, calculated on the basis of the following FTE staff values (covering salary, direct salary on-costs, direct and indirect support costs of research):</p> <ul style="list-style-type: none"> <li>• Program Leader/Senior Manager: \$420,000</li> <li>• Key Researcher/Manager/Project/Theme Leader: \$280,000</li> <li>• Researcher/Professional: \$220,000; and</li> <li>• Other (support staff – technical, administrative etc): \$180,000.</li> </ul> <p>The FTE values above are those specified as at the Commencement Date in the Australian Government's published Guidelines for the CRC Program, and will be adjusted annually by the Company in line with future changes to the Guidelines. In the event that the Commonwealth does not publish an update to the Guidelines before the beginning of a future Financial Year then the Company will adjust the values applying to such new Financial Year according to the Consumer Price Index (or future replacement measure) published by the Australian Bureau of</p>

			<p>Statistics.</p> <p><b>B</b> is the realistic value of non-staff in-kind contributions, which shall be agreed between the Centre and the Participant and approved by the Governing Board (access to large capital items provided as non-staff in-kind contributions must be valued proportionally to the usage by the Centre and based on the running costs and depreciation of the capital item); and</p> <p><b>C</b> is the cash contribution in Australian dollars calculated by reference to the applicable exchange rate published by the Reserve Bank of Australia for the day on which such cash was received by the Company.</p> <p>If any part of this formula is unenforceable or indeterminable the remainder of the formula applies.</p>
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# Schedule 2 - Participants

## 1. Participants to this agreement

Name	ABN	Status at Relevant Date (Essential Participant (EP) or Other Participant (OP))	Participant representative	Participant's address for notice
AECOM Australia Pty Ltd	20 093 846 925	EP	Lester Partridge	Level 21, 420 George Street, Sydney, NSW, 2000 Phone: (02) 8934 0635 Fax: (02) 8934 0001 Email: lester.partridge@aecom.com
Ash Development Association of Australia	79 053 753 772	OP	The Chief Executive Officer	Level 1, Suite 2, 336 Keira Street, Wollongong, NSW, 2500 (PO Box 1194, Wollongong, NSW, 2500) Phone: (02) 4225 8466 Fax: (02) 4228 1777 Email: cheidrich@hbmgroup.com.au
Aurecon Australia Pty Ltd	54 005 139 873	OP	The Chief Executive Officer	Level 12, 60 Albert Road South Melbourne Victoria 3205 Phone: (03) 8683 1333 Fax: 03 8683 1444 Email:
Australasian Slag Association	98 481 250 549	OP	The Chief Executive Officer	Level 1, Suite 2, 336 Keira Street, Wollongong, NSW 2500 (PO BOX 1194, Wollongong, NSW 2500) Phone: (02) 4225 8466 Fax: (02) 4228 1777 Email: cheidrich@hbmgroup.com.au
Australian Window Association Inc	<u>55 055 039 944</u>	OP	Executive Director	First Floor, 71 Ridge St, Gordon, NSW 2072 Phone: (02) 9498 2768 Fax: (02) 9498 3816 Email: Tracey.Gramlick@awa.org.au

BCI Media Group Pty Ltd	23 098 928 959	OP	Dr. Matthias Krups Chairman & CEO	24 Molong St, North Curl Curl, NSW 2099 Phone: (02) 9939 5988 Fax: (02) 9939 5988 Email: mkrups@optusnet.com.au
BlueScope Steel Limited	16 000 011 058	EP	Dr. Troy Coyle	BlueScope Steel Research PO Box 202, Port Kembla, NSW 2505 Phone: (02) 4275 6108 Fax: (not applicable – use email) Email: troy.coyle@bluescopesteel.com
Brookfield Multiplex Constructions Pty Limited	70 107 007 527	EP	Professor Dennis Else Group General Manager, Sustainability, Safety and Health	Brookfield Multiplex Australasia, Level 22, 135 King St, Sydney, NSW 2000 Phone: (02) 9322 2097 Fax: (02) 9322 2001 Email: dennis.else@brookfieldmultiplex.com
Building Commission	54 503 799 763	OP	Robert Enker Manager Building Innovation & Sustainability Regulatory Development Division	Goods Shed North, 733 Bourke Street, Docklands VIC 3008 (PO Box 536, Melbourne VIC 3001) Phone: (03) 9618 9440 Fax: (03) 9618 9840 Email: renker@buildingcommission.com.au
Chromasun Pty Ltd	80 130 851 553	EP	Dr Peter Le Lievre	1050 N 5th St, Suite A San Jose CA 95112 USA Phone: +1 650 521 6872 Fax: +1 408 287 2889 Email: peter@chromasun.com
City of Fremantle	74 680 272 485	OP	Chief Executive Officer	Town Hall Centre 8 William Street, Fremantle WA 6160 (PO Box 807, Fremantle WA 6959) Telephone: (08) 9432 9999 Fax: (08) 9430 4634 Email: ceo@fremantle.wa.gov.au
City of Greater Geraldton	55 907 677 173	OP	Tony Brun, Chief Executive Officer	63 Cathedral Avenue Geraldton WA 6530 Australia (PO Box 101 Geraldton WA 6531)

				Phone (08) 9956 6601 Fax: (08) 9956 6674 Email: tonyb@cgg.wa.gov.au
The Council of the City of Sydney	22 636 550 790	OP	The Chief Operating Officer	Town Hall House, 456 Kent Street, Sydney NSW 2000 (GPO Box 1591, Sydney NSW 2001) Phone: (02) 9246 7370 Fax: (02) 9265 9350 Email: kwoodbury@cityofsydney.nsw.gov.au
Commonwealth Scientific and Industrial Research Organisation	41 687 119 230	EP	Mr Bruce Fox, Business Development Manager, CSIRO Energy Transformed Flagship	14 Julius Ave, North Ryde NSW 2113 (PO Box 310, North Ryde NSW 1670) Phone: (02) 9490 5037 Fax: (02) 9490 8212 Email :bruce.fox@csiro.au
Concordia University representing Smart Net-zero Energy Buildings Research Network	International	OP	Dr. Andreas Athienitis, Scientific Director, Professor and Concordia Research Chair	1455 De Maisonneuve Blvd. W.Montreal, QC H3G 1M8, Canada Phone: +1 514 2670913 Fax: +1 514 8487965 Email: aathieni@encs.concordia.ca
Consult Australia	25 064 052 615	OP	The Chief Executive Officer	Level 6, 50 Clarence St, Sydney NSW 2000 (GPO Box 56, Sydney NSW 2001) Phone: (02) 9922 4711 Fax: (02) 9957 2484 Email: Megan@consultaustralia.com.au
CSR Limited	90 000 001 276	OP	GM Innovation & Market Development	CSR Building Products, Trinita 3, 39 Delhi Rd, North Ryde 2113 Phone: (02) 9235 8320 Fax: (02) 8362 9010 Email: RThompson@csr.com.au
Curtin University of Technology, a body corporate established under the Curtin University of Technology Act 1966	99 143 842 569	EP	Mr Charles Thorn, Director Research and Development	Office of Research and Development, Level 1, Building 100 – Chancellory, Bentley Campus, GPO Box U1987 Perth, WA 6845 Phone: (08) 9266 9062 Fax: (08) 92663048 Email: c.thorn@curtin.edu.au
The Commonwealth of Australia as represented by the	50 182 626 845	OP	Gene McGlynn Assistant Secretary, Building and Government Energy Efficiency Branch	2 Constitution Ave, Canberra ACT 2600 (GPO Box 854, Canberra ACT 2601)

Department of Climate Change and Energy Efficiency				Phone: (02) 6159 6919 Fax: (use email) Email: gene.mcglynn@climatechange.gov.au
The Commonwealth of Australia as represented by the Department of Infrastructure and Transport	86 267 354 017	OP	Ms Dorte Ekelund, Executive Director, Major Cities Unit	GPO Box 594, Canberra ACT 2601  Phone: (02) 6274 7111 Fax: (02) 6274 2505 Email: Dorte.Ekelund@infrastructure.gov.au
The State of New South Wales represented by the Department of Planning and Infrastructure	38 755 709 681	OP	Mr Fraser Thomas Fraser.Thomas@planning.nsw.gov.au	23-33 Bridge Street, Sydney NSW 2000 (GPO Box 39, Sydney NSW 2001) Phone: (02) 9228 6111 Fax: (02) 9228 6455 Email:
Urban Renewal Authority	86 832 349 553	OP	Phil Donaldson	Urban Renewal Authority, Level 9 West, Riverside Centre, North Terrace Adelaide SA 5000 Phone: (08) 8207 1300 Fax (08) 8207 1301 Email: phil.donaldson@sa.gov.au
Minister for Sustainability, Environment and Conservation for and on behalf of the Crown in right of the State of South Australia (represented by the Department of Environment and Natural Resources)	36 702 093 234	OP	David Finlay Director, Sustainability and Climate Change	Department of Environment and Natural Resources, GPO Box 1047, Adelaide SA 5001) Phone: (08) 8226 0445 Fax: (08) 8204 1133 Email: David.Finlay@sa.gov.au
Hassell Ltd	24 007 711 435	OP	Brett Pollard Principal	GPO Box 5487, Sydney NSW 2001 Phone: (02) 9101 2192 Fax: (use email) Email: bpollard@hassellstudio.com
Housing Industry Association Limited	99 004 631 752	OP	Shane Goodwin Managing Director	79 Constitution Avenue, Campbell ACT 2612 Phone: (02) 6245 1300 Fax: (02) 6257 5658

				Email: s.goodwin@hia.com.au
BuildingSMART Australasia Incorporated	96 021 754 479	OP	Dr John Mitchell, Chairman	2 Dind Street, Milsons Point, NSW 2061 Phone: 0410 318 131 Fax: (use email instead) Email: john.mitchell@buildingSMART.org.au
Landcom	79 268 260 688	OP	The Managing Director	Level 2, 330 Church Street Parramatta NSW 2150 (PO Box 237, Parramatta 2124) Phone: (02) 9841 8600 Fax: (02) 9841 8688 Email:
Master Builders Australia Limited	68 137 130 182	OP	The Chief Executive Officer	Level 1, 16 Bentham Street Yarralumla ACT 2600 (PO Box 7170, Yarralumla ACT 2600) Phone: (02) 6202 8888 Fax: (02) 6202 8877 Email: ceo@masterbuilders.com.au
Nova Deko Pty Ltd	99 121 837 143	EP	Mr Jim Dickson Managing Director	241 Monier Road, Darra Qld 4076 (PO Box 17, Sumner Park Qld 4074) Phone: (07) 3376 6055 Fax: (07) 3376 6866 Email: jim@novadeko.com.au
Office of Environment and Heritage	30 841 387 271	OP	Mr Tom Grosskopf Deputy Chief Executive, Environment and Heritage Policy and Programs	Office of Environment and Heritage, Department of Premier and Cabinet, Level 14, 59-61 Goulburn Street, Sydney (PO Box A290, Sydney South, NSW 1232) Phone: (02) 9995 6306 Fax: (02) 9995 6398 Email: Jennifer.stace@environment.nsw.gov.au
South Australia Water Corporation	69 336 525 019	OP	John Howard Head of Water, Quality and Environment	Address: SA Water House, 250 Victoria Square, Tarndanyangga, Adelaide SA 5000 Phone: 0418 837 904 Fax: (08) 7424 1066 Email:

				John.howard@sawater.com.au
Standards Australia Limited	85 087 326 690	OP	The Chief Executive Officer	Level 10, 20 Bridge Street, Sydney NSW 2000 (GPO Box 476, Sydney NSW 2001) Phone: (02) 9237 6007 Fax: (02) 9237 6050 Email: Colin.Blair@standards.org.au
Suntech R&D Australia Pty Ltd	69 109 221 258	EP	Renate Egan, Managing Director	82 Bay St, Botany NSW 2019 Phone: (02) 9316 6811 Fax: (02) 9666 4079 Email: renete.egan@suntech-power.com.au
Swinburne University of Technology a body politic and corporate under the Swinburne University of Technology Act 2010 (Vic) of John Street, Hawthorn, Victoria	13 628 586 699	EP	The Deputy Vice-Chancellor (Research and Development)	Address: John St, Hawthorn, Vic 3122 Phone: (03) 9214 5223 Fax: (03) 9214 2567 email: hcamp@swin.edu.au
Sydney Coastal Councils Group Inc.	39 638 876 538	OP	Geoff Withycombe Executive Officer	Level 14, 456 Kent Street, SYDNEY NSW 2001 Phone: (02) 9246 7326 Fax: (02) 9265 9660 Email: geoff@sydneycoastalcouncils.com.au
Sydney Water Corporation	49 776 225 038	EP	Nicola Nelson, Program Manager, Science & Technology, Sustainability Division	Level 10, 1 Smith St Parramatta NSW 2124 Phone: (02) 8849 5986 Fax: (02) 8849 3102 Email: nicola.nelson@sydneywater.com.au
TAFE NSW – Sydney Institute	98 375 029 590	OP	Tina Renshaw R/Associate Director Organisational Capability	PO Box 707, Broadway NSW 2007 Phone: (02) 9217 4717 Fax: (02) 9217 4023 Email: Tina.Renshaw@tafensw.edu.au
The Royal Australian Institute of Architects	72 000 023 012	OP	The Company Secretary	Address: Level 3, 60 Collins St, Melbourne, Vic 3000 Phone: (03) 8620 3877 Fax: (03) 8620 3864 Email: Richard.Barton@architecture.

				com.au
Tongji University	International	OP	Prof Fengting Li, Associate Dean, College of Environmental Science and Engineering, UNEP TONGJI Institute of Environment for Sustainable Development	Siping Rd 1239, Shanghai, 200092, China Phone: +86 21 65983302 Fax: +86 21 65985059 Email: fengting@tongji.edu.cn
University of Melbourne  a body politic and corporate established in 1853 and constituted under the Melbourne University Act 2009 (Vic) of Grattan Street, Parkville, Victoria 3010.	84 002 705 224	EP	Dr Tania Bezzobs, Director - Melbourne Research	Level 5, Alan Gilbert Building Carlton VIC 3010 Telephone: (03) 8344 2039 Fax: (not applicable - use email) Email: tania.bezzobs@unimelb.edu.a u
University of New South Wales a body corporate established by the University of New South Wales Act 1989 and located at Anzac Parade, Kensington, New South Wales	57 195 873 179	EP	The Director Grants Management Office	Level 3, Rupert Myers Building UNSW, Sydney, NSW 2052 Phone: (02) 9395 7230 Fax: (02) 9395 7238 Email: mygrants.gmo@unsw.edu.au
University of South Australia	37 191 313 308	EP	Dr Tracey Swift, Director Research & Innovation Services	Mawson Lakes Campus, GPO Box 2471, Adelaide, SA 5001 Phone: (08) 8302 3471 Fax: (08) 8302 3921 Email: rchdirector@unisa.edu.au
Woodhead Pty Ltd	61 007 747 748	OP	Mr Karl Traeger, Principal	Address: 26 Chesser Street, Adelaide, SA, 5000 Phone: (08) 8223 5013 Fax: (08) 8232 0028 Email: ktraeger@woodhead.com.au

## 2. Australian Research Institution Participants

The Australian Research Institution Participants are as follows:

Name	ABN
Commonwealth Scientific and Industrial Research Organisation (CSIRO)	41 687 119 230
Curtin University of Technology a body corporate established under <i>the Curtin University of Technology Act 1966</i>	99 143 842 569
Swinburne University of Technology a body politic and corporate under the <i>Swinburne University of Technology Act 2010 (Vic)</i> of John Street, Hawthorn, Victoria	13 628 586 699
TAFE NSW - Sydney Institute	98 375 029 590
University of Melbourne a body politic and corporate established in 1853 and constituted under the <i>Melbourne University Act 2009 (Vic)</i> of Grattan Street, Parkville, Victoria 3010.	84 002 705 224
University of New South Wales a body corporate established by the <i>University of New South Wales Act 1989</i> and located at Anzac Parade, Kensington, New South Wales	57 195 873 179
University of South Australia	37 191 313 308



## Schedule 3 - Activities

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The Activities are those specified in the Commonwealth Agreement at Schedule 2, as amended from time to time. The Company will provide each Participant with a copy of the Commonwealth Agreement following its execution and will keep Participants fully informed in the event that any variation to the Activities is agreed with the Commonwealth.

# Schedule 4 - Template Project Details

Item	Issue	Clause Ref	Details
1.	Project Name		[Specify name of Project.]
2.	Project Participants	1.1	[Specify the Project Participants.]
3.	Responsible Participants	1.1, 18, 19	[Specify the Responsible Participant(s).]
4.	Specified Division	19.6	[Specify the division, department or faculty of each Responsible Participant (if applicable).]
5.	Project Funds	18	[Specify which Project Participants the Company will pay the Project Funds to, and in what amounts.]
6.	Contributions to Project	18.2	<ul style="list-style-type: none"> <li>[Specify allocation of Centre Funds for each Project Participant]</li> <li>[Specify additional cash or in-kind resources to be contributed by a Project Participant and the terms upon which that additional contribution is made.]</li> </ul>
7.	Background IP	16	<p>[Specify for all Background IP which a Project Party will make available to the Project:</p> <ul style="list-style-type: none"> <li>a description of the Background IP;</li> <li>terms on which the Background IP is made available; and</li> <li>any exceptions to the representations and warranties that each Project Participant will be taken to have made in accordance with clause 16.3.]</li> </ul>
8.	Project Shares	23.1	[Specify the Project Shares to be allocated to the Company and each Project Participant.]
9.	Utilisation and Commercialisation after the end of the Project	17.7, 17.9, 23.15	<ul style="list-style-type: none"> <li>Utilisation: [Specify any fields or territories of exclusivity to be granted to the Utilisation Party/Third Party for the Utilisation of Project IP]</li> <li>Commercialisation after the end of the Project: [Specify the fields and territories in which a Project Participant can undertake Commercialisation following the expiry of the Project.]</li> </ul>
10.	Utilisation Party	24.1	[Specify the Utilisation Party or Parties.]
11.	Use Field	1.1, 23.15	[Specify the purpose for which each Project Participant may use the Project IP (excluding Commercialisation).]
12.	Use Field Conditions	1.1, 23.15	[Specify any conditions applicable to the Use Field.]

13.	Commercialisation Income	24.2	<i>[Specify arrangement for monitoring, receiving and sharing Commercialisation Income.]</i>
14.	Risk position where withdrawal from involvement in Utilisation	24.3,24.4	<i>[State the position applying to a Project Participant in the event they withdraw from a Project, for example the withdrawing Project Participant might be required to indemnify the other Project Participants in respect of the Utilisation of Project IP.]</i>
15.	Rights to Net Commercialisation Income where withdrawal from involvement in Commercialisation	24.3, 24.4	<i>[This column may be used to state whether or not a Project Participant's rights to a share of Net Commercialisation Income will reduce if they withdraw from Commercialisation, and if so by how much or by what formula. Your approach to whether income rights reduce may depend on whether and to what extent risk has reduced under item 14 (otherwise there may appear to be an incentive to withdraw). For example, if a broad indemnity is granted in item 14, it may be reasonable to state that the share is to reduce to nil or by some large % with respect to the particular Project IP. You may wish to have a different position for withdrawals under clause 24.3 compared to withdrawals under clause 24.4.]</i>
16.	Assets	11.1(a)	<i>[If applicable, specify any Assets included as part of a Participant's Contribution.]</i>
17.	No authority	12.3	<i>[If applicable, specify how the rights and obligations under this clause 12.3 are altered by the Project Parties.]</i>
18.	Confidential information	23.1(c), 45.2	<i>[If applicable, specify how the rights and obligations under this clause 23.1(c) are altered by the Project Parties.]</i>
19.	No dealing with Non-Project Centre IP	23.5	<i>[If applicable, specify how the rights and obligations under this clause 23.5 are altered by the Project Parties.]</i>
20.	Protection of outcomes	23.7	<i>[If applicable, specify how the rights and obligations under this clause 23.7 are altered by the Project Parties.]</i>
21.	Restrictions on Company's right to use Centre IP	23.14	<i>[If applicable, specify how the rights and obligations under this clause 23.14 are altered by the Project Parties.]</i>
22.	Project Plan	17.4	<i>[A Project Plan should include as a minimum the details specified in clause 17.4.]</i>
23.	Signature block		<i>[All Project Participants and Company to sign.]</i>