

# Department of Industry, Innovation and Science

Defence CRC Funding Agreement [insert number]

[insert Defence CRC Title]

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Commonwealth of Australia as represented by the Department of  
Industry Innovation and Science (**Commonwealth**)

[insert Company name] (**Recipient**)

Release Version 2 (May 2018)

NB: This is an example standard grant agreement intended for use with the Defence CRC Program. The Commonwealth reserves the option to amend or adjust the form of the grant agreement.

# Details

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Date

\_\_\_\_/\_\_\_\_/\_\_\_\_  
*day month year*

## Parties

Name The Commonwealth of Australia as represented by the  
Department of Industry, Innovation and Science

Short form name **Commonwealth**  
ABN 74 599 608 295

Name **[insert name of Recipient]**

Short form name **Recipient**  
ABN **[insert Recipient's ABN]**

## Background

- A This Agreement is made pursuant to the Defence Cooperative Research Centres Program (the **Program**). The Program forms part of the Next Generation Technologies Fund (NGTF) announced as part of the [2016 Defence Industry Policy Statement](#) and aims to develop next generation technologies to deliver game-changing capabilities critical to defence and national security.
- B Defence provides Commonwealth funding under the Program. The Program is administered by the Department (defined in this Agreement as the Department of Industry, Innovation and Science (DIIS)) on behalf of Defence.
- C The Commonwealth provides the Funds under the Program to support the Activities of the **[name of Defence CRC]**. The Funds are provided to the Recipient, also referred to as the Defence CRC company in the Guidelines and constituted by its corporate constitution, to operate, govern and manage the Defence CRC to address the NGTF Priorities and to achieve the Goals and Objectives as outlined in Schedule 2.
- D The Recipient will enter into Participant Agreements with Participants which set out the terms under which the Participants will contribute to the Activities of the Defence CRC and be eligible to apply to participate in Projects of the Defence CRC.
- E The Commonwealth is required by law to ensure accountability for the Funds and accordingly the Recipient is required to be accountable for all Funds received.
- F The Commonwealth has agreed to provide the Funds to the Recipient for the purposes of the Activities, subject to the terms and conditions of this Agreement.
- G The Recipient accepts the Funds for the purposes of the Activities, and subject to the terms and conditions of this Agreement.

# Funding Agreement

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# Agreed terms

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## Part 1 – Activities and Funds

### 1. Definitions and interpretation

#### 1.1 Defined terms

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

<b>Accounting Standards</b>	the standards of that name maintained by the Australian Accounting Standards Board (created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.
<b>Activities</b>	eligible activities of the Defence CRC that are directed towards the achievement of the Goals and Objectives and substantially to be conducted as detailed in Schedule 2.
<b>Activity Plan</b>	a plan to be provided in accordance with clause 12 and Schedule 3.
<b>Advisers</b>	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
<b>Agreed Terms</b>	clauses 1 to 31 of this Agreement, which set out terms and conditions agreed by the parties.
<b>Agreement</b>	this funding agreement between the Commonwealth and the Recipient, as varied from time to time in accordance with clause 31.4, and includes its Schedules and any attachments.
<b>Agreement Material</b>	any Material created on or following the Commencement Date, for the purpose of or as a result of the Recipient performing the Activities and its obligations under this Agreement.
<b>Agreement Period</b>	the period from the Commencement Date to the End Date.
<b>Annual Participant Fee</b>	the annual fee to be paid by each Participant to the Recipient in order to participate in the Defence CRC.
<b>Annual Report</b>	a Report to be provided in accordance with clause 12 and item 2 of Schedule 3.
<b>Asset</b>	any item of tangible property purchased, leased, created or otherwise brought into existence either wholly or in part with use of the Funds, but does not include Agreement Material.
<b>Budget</b>	the budget set out in Schedule 5, as varied from time to time in accordance with this Agreement.

<b>Business Day</b>	a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the Notice is received.
<b>Chair</b>	the person appointed by the Minister from time to time as the chair of the Defence CRC Board.
<b>Change of Control</b>	<p>with respect to a party, occurs where a person obtains, or ceases to have:</p> <ul style="list-style-type: none"> <li>(a) the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the votes that may be cast at a general meeting of the party;</li> <li>(b) the ability to dispose or exercise control over the disposal of more than 50% of the shares in the party;</li> <li>(c) the ability to appoint or remove a majority of the directors of the party;</li> <li>(d) the ability to exercise or control the exercise of the casting of a majority of the votes at the meeting of the board of directors of the party; or</li> <li>(e) other means, direct or indirect, of controlling the decision making and financial and operating policies of the party.</li> </ul>
<b>Chief Executive Officer</b>	the person appointed as the Chief Executive Officer of the Defence CRC (whether known as Chief Executive Officer or another title such as director or manager) and who is independent of, and has no financial interest in, the Participants.
<b>Chief Scientist and Engineer</b>	the person appointed as the Chief Scientist and Engineer of the Defence CRC and who is independent of, and has no financial interest in, the Participants.
<b>Commencement Date</b>	the date on which this Agreement commences, as specified in item 6 of Schedule 1.
<b>Commercialisation</b>	technology transfer and take-up and use of research Outputs, including for commercial purposes which includes the manufacture, sale, hire or other exploitation of a product or process, or the provision of a service, incorporating Agreement Material, or licensing of any third party to do any of those things, or otherwise licensing or assigning Agreement Material.
<b>Commonwealth</b>	the Commonwealth as specified in item 1 of Schedule 1.
<b>Commonwealth Material</b>	any Material provided to the Recipient by the Department or Defence, including the Material (if any) specified in item 13 of Schedule 1.

<b>Confidential Information</b>	information that is by its nature confidential and: <ul style="list-style-type: none"> <li>(a) is designated by a party as confidential and is described in item 17 of Schedule 1; or</li> <li>(b) a party knows or ought to know is confidential,</li> </ul> but does not include: <ul style="list-style-type: none"> <li>(c) information that is or becomes public knowledge otherwise than by breach of this Agreement or any other confidentiality obligation.</li> </ul>
<b>Constitution</b>	the corporate constitution of the Recipient.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Defence</b>	the Department of Defence and its successors that are responsible for the Program and administer the Program with the Department.
<b>Defence CRC</b>	the Defence Cooperative Research Centre identified at Background C, being the collaboration between the Recipient and the Participants to undertake the Activities.
<b>Defence CRC Advisory Panels</b>	the Defence CRC Program Advisory Panel and the Defence CRC Scientific and Engineering Advisory Panel.
<b>Defence CRC Board</b>	the board of the Recipient, being the natural persons (a majority of whom should be independent of the Participants) with general industry experience and management expertise and skills who must employ good practice in the governance and management of the Defence CRC.
<b>Defence CRC Contributions</b>	the contributions to be made to the Defence CRC comprising: <ul style="list-style-type: none"> <li>(a) the Annual Participant Fees;</li> <li>(b) the Project Contributions; and</li> <li>(c) any Third Party Contributions.</li> </ul> To the extent known at the Commencement Date, the Defence CRC Contributions are specified in Schedule 5.
<b>Defence CRC Indicia</b>	the terms "Defence CRC", "Defence CRC Projects", "Defence Cooperative Research Centre", the Defence CRC logo and the Program logo and any additional items specified by the Commonwealth from time to time.
<b>Defence CRC Program Advisory Panel</b>	the Defence CRC Program Advisory Panel established by Defence pursuant to the Guidelines consisting of the Chair, the chairs of each other Defence Cooperative Research Centre established under the Program, and Defence's Chief Defence Scientist.

<b>Defence CRC Scientific and Engineering Advisory Panel</b>	the Defence CRC Scientific and Engineering Advisory Panel established by Defence pursuant to the Guidelines consisting of the Commonwealth's Chief Defence Scientist, the Chief Scientist and Engineer in the Defence CRC and the persons holding the position of 'Chief Scientist and Engineer' in each other Defence Cooperative Research Centre established under the Program.
<b>Defence Purposes</b>	<p>any purpose within the power of the Commonwealth with respect to the defence of the Commonwealth, and includes activities for the purposes of peacekeeping and emergency aid to the civil community, (including involving, or for the benefit of, a foreign government (or foreign government agency) with whom the Commonwealth collaborates) and purposes that are necessary or incidental to any of those purposes. Without limiting this definition, Defence Purposes includes:</p> <ul style="list-style-type: none"> <li>(a) scientific, technical or applied research and development activities;</li> <li>(b) studies, analysis and investigation in relation to current and future technology and capability (including the technology developed under Project Agreements);</li> <li>(c) assessment, investigation and development of options to meet Defence's capability needs and operational requirements;</li> <li>(d) development and definition of functional and performance requirements to support the procurement of technology or capability; and</li> <li>(e) the provision by third party contractors of goods or services to or for Defence.</li> </ul> <p>Defence Purposes does not include Commercialisation of Intellectual Property Rights by Defence in return for a royalty or other commercial return (except to the extent permitted under clause 16.3(o)).</p>
<b>Defence Representative</b>	the person(s) initially identified in item 3 of Schedule 1, or their replacement(s) as notified by the Department to the Recipient in writing from time to time.
<b>Department</b>	the Department of Industry, Innovation and Science and its successors that administer the Program.
<b>Department Representative</b>	the person(s) identified in item 3 of Schedule 1.
<b>End Date</b>	the date on which this Agreement will end (unless terminated earlier), as specified in item 7 of Schedule 1.
<b>Financial Year</b>	the Australian financial year beginning 1 July and ending 30 June.
<b>Formation Plan</b>	the plan prepared by the Chair for the formation of the Defence CRC in accordance with the Guidelines and approved by the Minister.



<b>Founding Participants</b>	an entity listed in Schedule 6 that has agreed to be a Participant at the establishment of the Defence CRC.
<b>Funding Period</b>	the period specified as such in Schedule 4; however, the Funding Period ends if this Agreement is terminated earlier.
<b>Funds</b>	the amounts payable by the Commonwealth under this Agreement as specified in Schedule 4 and any interest earned on those amounts.
<b>Goals and Objectives</b>	the goals and objectives for the Defence CRC set out in Schedule 2.
<b>Guidelines</b>	the Guidelines for the Program listed under item 8 of Schedule 1, and any other guidelines issued by the Department or Defence from time to time in relation to the Program and its administration.
<b>Industry Entity</b>	a company incorporated in Australia, excluding Australian Publicly Funded Research Organisations or other entities incorporated in Australia that conduct research and development.
<b>Industry Participant</b>	an Industry Entity that has entered into an Industry Participant Agreement.
<b>Industry Participant Agreement</b>	a Participant Agreement between the Recipient and an Industry Participant.
<b>Intellectual Property Rights</b>	<p>all intellectual property rights, including:</p> <ul style="list-style-type: none"> <li>(a) copyright, patents, trade marks (including goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts, domain names and any right to have confidential information kept confidential;</li> <li>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and</li> <li>(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,</li> </ul> <p>whether or not such rights are registered or capable of being registered.</p>
<b>Law</b>	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
<b>Material</b>	includes property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

<b>Milestone</b>	a stage of completion of the Activities as set out in Schedule 2.
<b>Minimum Defence CRC Contributions</b>	the minimum Defence CRC Contributions which are to be received by the Recipient during a Financial Year as specified in Schedule 5.
<b>Minister</b>	the Minister for Defence Industry or such other similar or equivalent ministerial role within Defence, from time to time.
<b>Moral Rights</b>	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
<b>Next Generation Technologies Fund or NGTF</b>	the Next Generation Technologies Fund described in the 2016 <i>Defence Industry Policy Statement</i> .
<b>NGTF Priorities</b>	the research and development priority areas for the Next Generation Technologies Fund that the Defence CRC is to address as set out in Schedule 2.
<b>Notice</b>	a notice, demand, consent, approval or communication issued under this Agreement.
<b>Other Financial Assistance</b>	the financial assistance received by the Recipient or a Participant as set out in clause 7.5.
<b>Outcomes</b>	the outcomes from the Activities.
<b>Outputs</b>	the end products of the Activities, which may include products, publications, patents, prototypes and student completions.
<b>Participants</b>	the persons, bodies or organisations, other than the Recipient, who have agreed to support and participate in the Defence CRC, and are signatories to a Participant Agreement.
<b>Participant Agreement</b>	a contractual arrangement entered into by the Recipient and a Participant under which the Participant will contribute to the Activities of the Defence CRC and be eligible to apply to participate in Projects of the Defence CRC that is reasonably acceptable to the Commonwealth and aligned with the template document available at <a href="https://www.business.gov.au/assistance/defence-cooperative-research-centres-program">https://www.business.gov.au/assistance/defence-cooperative-research-centres-program</a> .
<b>Personnel</b>	in relation to a party, any employee, officer, agent, or professional adviser of that party, and in the case of the Recipient, of any subcontractor.
<b>Pre-existing Material</b>	Material owned by a party before execution of this Agreement, including any Material specified in item 14 of Schedule 1.
<b>Privacy Act</b>	<i>Privacy Act 1988</i> (Cth) as amended from time to time.
<b>Program</b>	the program referred to in item 5 of Schedule 1.

<b>Project</b>	a discrete, time-bounded research, training or Commercialisation activity or series of activities that align with the Goals and Objectives to be carried out under a Project Agreement as part of the Activities.
<b>Project Agreement</b>	a legally binding contract between the Recipient and participants in a Project that is reasonably acceptable to the Commonwealth and aligned with the template document available at <a href="https://www.business.gov.au/assistance/defence-cooperative-research-centres-program">https://www.business.gov.au/assistance/defence-cooperative-research-centres-program</a> .
<b>Project Contributions</b>	the cash, personnel, facilities and services to be provided by Participants or third parties to a Project of the Defence CRC from their own resources.
<b>Publicly Funded Research Organisation or PFRO</b>	all higher education providers listed at Table A and Table B of the <i>Higher Education Support Act 2003</i> (Cth) as well as corporate Commonwealth entities, and state and territory government departments or agencies which undertake publicly funded research.
<b>Quarter</b>	a period of 3 months or, where the context necessitates, part or multiples of that period, ending on 31 March, 30 June, 30 September or 31 December.
<b>R&amp;D Tax Incentive</b>	is established by Division 355 of the <i>Income Tax Assessment Act 1997</i> with functions relating to its administration included in the <i>Industry Research and Development Act 1986</i> (Cth).
<b>Recipient</b>	the incorporated company, also referred to as the Defence CRC company in the Guidelines, established to govern and manage the Defence CRC as specified in item 2 of Schedule 1.
<b>Recipient Representative</b>	the person identified in item 4 of Schedule 1 or their replacement(s), as notified by the recipient to the Department in writing from time to time.
<b>Reports</b>	the reports to be provided under clause 12.2.
<b>Research Participant</b>	an Australian Publicly Funded Research Organisation or other entity incorporated in Australia that conducts research and development that has entered into a Research Participant Agreement.
<b>Research Participant Agreement</b>	a Participant Agreement between the Recipient and a Research Participant.
<b>Resolution Institute</b>	the dispute resolution association with that name and the Australian Business Number 69 008 651 232.
<b>Schedules</b>	the schedules to this Agreement.
<b>Shortfall</b>	any deficit in the total Defence CRC Contributions received by the Recipient during a Financial Year and the Minimum Defence CRC Contributions which should have been received by the Recipient during that Financial Year as specified in Schedule 5.
<b>SME</b>	a small to medium sized business which employs up to 200 staff.

<b>Specified Personnel</b>	the Personnel (if any) specified in item 12 of Schedule 1.
<b>Third Party Contributions</b>	cash and in-kind contributions provided by a person, body or organisation other than the Recipient or a Participant, which is immediately available for use by the Defence CRC for the Activities, but does not include the Funds or anticipated future earnings.
<b>Third Party Material</b>	Material owned by a third party that is: <ul style="list-style-type: none"> <li>(a) included, embodied in or attached to the Agreement Material; or</li> <li>(b) used in undertaking the Activities.</li> </ul>
<b>WHS Act</b>	the <i>Work Health and Safety Act 2011</i> (Cth) and any corresponding WHS law as defined in that Act.
<b>WHS Laws</b>	the WHS Act, regulations made under the WHS Act and any Code of Practice approved for the purpose of the WHS Act.

## 1.2 Interpretation

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

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or Schedule is to a clause or paragraph of, or schedule to, this Agreement;
- (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 time is to Canberra, Australia time;
- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) 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;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

- (m) 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;
- (n) 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
- (o) headings are for ease of reference only and do not affect interpretation.

### **1.3 Completion of Schedules**

To the extent that the parties have not completed items in a Schedule, unless otherwise stated in the Schedule, those items will be taken to be 'not applicable' for the purpose of this Agreement.

## **2. Priority of documents**

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

- (a) Agreed Terms;
- (b) Schedules;
- (c) any attachments to the Schedules;
- (d) Guidelines; and
- (e) documents incorporated by reference in this Agreement.

## **3. Duration of Agreement**

This Agreement begins on the Commencement Date and continues until the End Date unless terminated in accordance with clause 28 or when the Recipient has completed all of the reporting obligations to the Commonwealth, whichever is the later.

## **4. Activities**

### **4.1 Undertaking the Activities**

- (a) The Recipient, in collaboration with the Participants, must:
  - (i) undertake the Activities to achieve the Goals and Objectives;
  - (ii) undertake the Activities diligently, effectively, to a high professional standard and in accordance with:
    - (A) all applicable Laws;
    - (B) any Guidelines specified in item 8 of Schedule 1; and
    - (C) any Defence or Department policies and specific requirements set out in item 9 of Schedule 1;
  - (iii) complete the Activities within the Agreement Period; and
  - (iv) meet the due dates for the Milestones, as specified in Schedule 2.
- (b) All Activities that are conducted through Projects must:
  - (i) be aligned with the NGTF Priorities and be directed towards the achievement of the Goals and Objectives;
  - (ii) be conducted on the basis of research provided on a fee-for-service basis;

- (iii) be the subject of a Project proposal developed in consultation with the Defence CRC Scientific and Engineering Advisory Panel and address all matters required by the Guidelines;
- (iv) be approved by the Defence CRC Board and must only be approved where the Project aligns with the Goals and Objectives; and
- (v) following approval by the Defence CRC Board under clause 4.1(b)(iv), be promptly notified to the Defence Representative and in any event prior to the Project Agreement for the Project being entered into by the relevant parties, in order that Defence may determine whether:
  - (A) it has any security concerns with the proposed Project (including the application of a national security classification to any aspect of the Project), in which case the procedure in clause 31.21(b) will be followed; or
  - (B) there are compelling reasons for Defence ownership of the Intellectual Property Rights in the Agreement Material arising from the Project in accordance with clause 16.4.
- (c) The Department will take into consideration any delays in respect to Defence making a determination under Clause 4.1(b)(v) when assessing compliance with Milestones specified in Schedule 2.

#### **4.2 Acknowledgement of support**

The Recipient must, and must ensure that Participants, in all:

- (a) publications (including reprints, and despite whether published by the Recipient or other persons) that are a result of the Activities;
- (b) products, processes or inventions developed as a result of the Activities; and
- (c) promotional and advertising materials, public announcements, events and activities relating to the Activities;

acknowledge the financial and other support received from the Commonwealth:

- (d) through reference to the Program;
- (e) through prominent display of the Defence CRC Indicia; and
- (f) by reference to any acknowledgement specified in item 10 of Schedule 1 or as otherwise approved by the Department prior to its use.

#### **4.3 Warranties**

The Recipient represents and warrants that:

- (a) it has the right to enter into this Agreement;
- (b) it and its subcontractors and Personnel, including its Specified Personnel, have the necessary experience, skill, knowledge, expertise and competence to undertake the Activities and (where appropriate) will hold such licences, permits or registrations as are required under any State, Territory or Commonwealth legislation to undertake the Activities, and are fit and proper people;
- (c) if relevant and applicable, it is compliant with the *Workplace Gender Equality Act 2012* (Cth) (WGE Act) and that:

- (i) if it becomes non-compliant with the WGE Act during the Agreement Period, the Recipient must notify the Department as soon as practicable;
- (ii) if the Agreement Period exceeds 18 months, the Recipient must provide a current letter of compliance under the WGE Act within 18 months from the Commencement Date and following this, annually to the Department; and
- (iii) compliance with the WGE Act does not relieve the Recipient from its responsibility to comply with its other obligations under this Agreement.

## 5. Management and governance

### 5.1 Governance

The Recipient must ensure that:

- (a) the Recipient is and remains throughout the Funding Period a company limited by guarantee incorporated in Australia;
- (b) the Recipient operates the Defence CRC and conducts the Activities in accordance with Schedule 2;
- (c) the Defence CRC Board manages and governs the Defence CRC;
- (d) the Activities are at all times carried out in accordance with this Agreement; and
- (e) at all times the Defence CRC Board operates the Defence CRC to the same fiduciary and good governance standards that apply to incorporated bodies under Australian law.

This clause 5.1 does not limit the ways in which the Recipient may participate in the Defence CRC.

### 5.2 In the event the Recipient is unable to meet obligations

The Recipient must notify the Department immediately upon becoming aware of any circumstances that are likely to adversely affect the Recipient's ability to comply with the terms of this Agreement, in particular its solvency or ability to ensure that the Activities are carried out in accordance with this Agreement. The giving of Notice by the Recipient pursuant to this clause 5.2, will not, in any way, limit the obligations of the Recipient under this Agreement or excuse the Recipient in any way from the performance of those obligations.

### 5.3 Constitution to be consistent with obligations under this Agreement

The Recipient must:

- (a) ensure that its Constitution is in a form that is reasonably acceptable to the Commonwealth and aligned with the template document available at <https://www.business.gov.au/assistance/defence-cooperative-research-centres-program>;
- (b) ensure that its Constitution is at all times consistent with the obligations under clauses 4, 5.1, 5.4, 5.5 and 5.6 and otherwise allows it to meet its obligations under this Agreement;
- (c) ensure no variation or alteration is made to any arrangement described in clause 5.3(a) that is, or may be, inconsistent with this Agreement without the prior written consent of the Department; and
- (d) provide the Department with a copy of any proposed alteration or variation described under clause 5.3(c) within 10 Business Days of completion of the change.

### 5.4 Members of Recipient

The Recipient must ensure that at all times:



- (a) the members of the Recipient are not less than 3 and not more than 12;
- (b) Defence is a member of the Recipient for the Agreement Period, unless the Recipient is notified in writing by the Defence Representative that Defence does not wish to be a member; Defence will be entitled to resign as a member of the Recipient at any time at its discretion;
- (c) the members of the Recipient include at least:
  - (i) one Industry Participant; and
  - (ii) one Research Participant,
 in addition to Defence (subject to clause 5.4(a)); and
- (d) each member of the Recipient has equal voting rights in the Recipient for so long as Defence is a member of the Recipient.

## 5.5 Chair

- (a) The Minister will in consultation with Defence and the Defence CRC board appoint the Chair of the Defence CRC Board who:
  - (i) will act independent of the Participants and is independent of the management of the Defence CRC and is free of any business or other relationship that could materially interfere with, or could reasonably be perceived to materially interfere with, the exercise of their unfettered and independent judgment; and
  - (ii) will hold office until such time as replaced by the Minister.
- (b) The Recipient must take all steps necessary to give effect to the appointment of the Chair under clause 5.5(a), and not do or omit to do anything which would prevent, limit or restrict the appointment of the Chair under clause 5.5(a).

## 5.6 Defence CRC Board

Without limitation to clause 5.5, the Recipient must:

- (a) ensure the appointment by the Recipient's members of appropriate persons to the Defence CRC Board, which should comprise a majority of members who are independent of the Participants;
- (b) ensure that the Chief Executive Officer is not a member of the Defence CRC Board (unless acting in that position temporarily);
- (c) subject to clause 5.6(d) below, use its best efforts to ensure that each of the Defence CRC Board members is a fit and proper person for the relevant position at the date of appointment and for the duration of their appointment, including as specified below:
  - (i) the person is appointed according to skills based criteria relevant to the Activities and to the achievement of the Goals and Objectives;
  - (ii) the person must not have been convicted of an offence under a law of the Commonwealth or of a State or Territory;
  - (iii) the person must not have been bankrupt, applied to take the benefit of a law for the benefit of bankrupt or insolvent debtors, compounded with his or her creditors or assigned his or her remuneration for the benefit of creditors;
  - (iv) the person must not have been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*;



- (v) the person is of sufficiently good fame and character that association with the Commonwealth would not bring the Commonwealth into disrepute; and
  - (vi) the public is likely to have confidence in the person's reputation and suitability to be involved in an organisation that is receiving public monies; and
- (d) if it becomes aware that a member of the Defence CRC Board is no longer a fit and proper person as specified under this clause 5.6, promptly notify the Department and remove the person from the relevant position in accordance with clauses 14.3 and 14.4.

## **5.7 Chief Executive Officer**

- (a) The Recipient will consult with the Defence Representative in relation to the appointment, removal and replacement of the Chief Executive Officer from time to time, and will take the Defence Representative's views into consideration.
- (b) Without limitation to clauses 5.6(b) and 5.7(a), the Recipient must ensure that the Chief Executive Officer is a fit and proper person and otherwise satisfies the requirements for the Defence CRC Board members under clause 5.6(c).

## **5.8 Chief Scientist and Engineer**

- (a) The Recipient must appoint a Chief Scientist and Engineer within 60 days of the Commencement Date.
- (b) The Recipient is responsible for:
  - (i) deciding whether to employ a particular Defence Australian Public Service (APS) employee as the Chief Scientist and Engineer; and
  - (ii) managing the performance of a Defence APS employee employed as per clause 5.8(b)(i).
- (c) Defence provides no guarantees in relation to the performance of work by a Defence APS employee appointed to the Chief Scientist and Engineer position.
- (d) Where Defence notifies the Recipient that an appropriate researcher from Defence is available for the position of Chief Scientist and Engineer, the Recipient is to give preference to that Defence employee. Unless otherwise agreed by Defence and the Recipient, a Defence employee engaged as the Chief Scientist and Engineer will be seconded to the Recipient by Defence on standard Defence terms for such an arrangement.
- (e) Should a Defence APS employee be selected for the position of Chief Scientist and Engineer, Schedule 7 will apply.

# **6. Participant obligations**

## **6.1 Participants**

The Recipient must ensure that:

- (a) all Participants are either:
  - (i) an Australian Industry Entity; or
  - (ii) an Australian Publicly Funded Research Organisation or other entity incorporated in Australia that conducts research and development;
- (b) it has among the Participants, at least:
  - (i) one Australian Industry Entity; and

- (ii) one Australian Publicly Funded Research Organisation or other entity incorporated in Australia that conducts research and development;
- (c) all Research Participants that are universities have entered into a 'Defence Science Partnering Deed' with Defence under the 'Defence Science Partnerships' program and, without limitation, have agreed to apply the on-cost arrangements set out in that deed.

## **6.2 Founding Participants**

The Participants at the Commencement Date that have agreed to be the Founding Participants are listed in Schedule 6.

## **6.3 Change of Participants**

Subject to clauses 6.1 and 6.4 and any other obligations under this Agreement, the Recipient may change the Participants during the Agreement Period and must notify the Department of any change within 14 days of the change.

## **6.4 Change of Participants affecting the Defence CRC's viability or capacity**

- (a) The Recipient must notify the Department at least 60 days prior to any proposed change of a Participant if the change will or may affect the Defence CRC's viability or capacity to undertake the Activities and achieve the Milestones.
- (b) If after receiving a Notice under clause 6.2 or clause 6.4(a), the Department is reasonably satisfied that the change or proposed change (as the case may be) of a Participant is likely to impact on the Defence CRC's viability or capacity to undertake the Activities or achieve the Milestones, the Department, at its sole discretion and on 10 Business Days' Notice to the Recipient, may, without limiting any of its other rights under this Agreement, reduce or suspend payment of the Funds until the Department is satisfied that a suitable substitute or replacement Participant is proposed.

## **6.5 Participant Agreements and Project Agreements**

- (a) The Recipient must ensure that:
  - (i) it enters into a Participant Agreement with each Participant; and
  - (ii) all Projects are conducted under the terms and conditions of a Project Agreement entered into by the Recipient and each party involved in the Project.
- (b) The Participant Agreement will require a Participant to:
  - (i) pay the Annual Participant Fee to the Recipient as further detailed in Schedule 5;
  - (ii) support and act in accordance with the Constitution (non-members of the Recipient) and be bound by the Constitution (members of the Recipient);
  - (iii) agree that Projects in which it participates will be governed by the terms and conditions of a Project Agreement in accordance with clauses 6.5(a)(ii) and 6.5(c);
  - (iv) provide in-kind Project Contributions when participating in a Project;
  - (v) cooperate with and provide to the Recipient any information about the Activities reasonably required by the Recipient in order for the Recipient to meet its reporting obligations under this Agreement;
  - (vi) cooperate with and provide to the Recipient, Defence and the Department any information and assistance reasonably required by any of them in relation to any evaluation of the Defence CRC and the Program; and
  - (vii) comply with obligations contained in:

- (A) Clause 14.4 (Department may request replacement of Personnel);
  - (B) Clause 16.3 (Intellectual Property Rights in Agreement Material);
  - (C) Clause 24 (Conflict of interest);
  - (D) Clause 31.19 (Defence interests); and
  - (E) Clause 31.20 (Treatment of national security matters).
- (c) The Project Agreement will require a Participant and each other party participating in a Project to:
- (i) comply with obligations set out in clauses 6.5(b)(iv) to (vii) (inclusive);
  - (ii) comply with obligations consistent with those contained in:
    - (A) Clause 19.2 (Insurance for Projects);
    - (B) Clause 21 (Confidentiality);
    - (C) Clause 22 (Work health and safety);
    - (D) Clause 23 (Protection of personal information);
    - (E) Clause 24 (Conflict of interest);
    - (F) Clause 25 (Books and records);
    - (G) Clause 26 (Audit and access);
    - (H) Clause 29 (Survival);
    - (I) Clause 31.14 (Relationship);
    - (J) Clause 31.16 (False or misleading information);
    - (K) Clause 31.17 (Safe and ethical research);
    - (L) Clause 31.18 (Responsible conduct of research);
    - (M) Clause 31.21 (Changes to national security classification); and
    - (N) Clause 31.22 (Controlled Content Register).
  - (iii) make reasonable endeavours to enforce any rights the Department may have in a Project Agreement, including but not limited to those rights arising as a result of clause 6.5(c)(i) and 6.5(c)(ii), where directed to do so by the Department.
- (d) The Recipient must ensure that:
- (i) no variation or alteration is made to any arrangement described in this clause 6.5 that is, or may be, inconsistent with this Agreement without the prior written consent of the Department; and
  - (ii) provide the Department with a copy of any proposed alteration or variation described under clause 6.5(d)(i) within 10 Business Days of completion of the change.

## 6.6 Breach of the Participant Agreement or Project Agreement

The Recipient must, within 5 Business Days of becoming aware of a breach or suspected breach of a Participants Agreement or a Project Agreement that would affect the Recipient's ability to comply with its obligations under this Agreement:

- (a) provide Notice to the Department of that breach or suspected breach;

- (b) provide all information reasonably required by the Department in relation to the breach or suspected breach; and
- (c) identify to the Department the steps the Recipient intends to take to remedy the matter; and

the Recipient must:

- (d) keep the Department informed of any action it takes to remedy the breach within 5 Business Days of such action being taken; and
- (e) provide Notice to the Department once the breach is remedied within 5 Business Days thereof.

## **7. Contributions**

### **7.1 Defence CRC Contributions**

Each Financial Year the Recipient must procure:

- (a) the Annual Participant Fees;
- (b) the Project Contributions; and
- (b) any Third Party Contributions,

(together these are the Defence CRC Contributions) specified in Schedule 5 for that Financial Year.

### **7.2 Shortfall in Defence CRC Contributions**

- (a) The Recipient must notify the Department, as part of each Report provided to the Department under clause 12, of any Shortfall in the Defence CRC Contributions, as specified in Schedule 5, for the corresponding Financial Year. The notification of any Shortfall in a Report must include the following:
  - (i) the amount and value of the Shortfall;
  - (ii) the reasons for the Shortfall;
  - (iii) any remedial action proposed or undertaken; and
  - (iv) any impact the Shortfall is expected to have on the current or future capacity of the Recipient to undertake the Activities and/or meet its obligations under this Agreement.
- (b) The Department will not require notification under this clause 7.2 or issue a Notice under clause 7.3, unless the Shortfall is, pro rata for the relevant reporting period, equal to or greater than 10% of the Minimum Defence CRC Contributions.

### **7.3 Recipient to make good any Shortfall in Defence CRC Contributions**

- (a) Where the Recipient is required to provide notification of a Shortfall under clause 7.2 the Department may, by Notice, require the Recipient to make good the Shortfall and/or take other remedial action and to report on any matters specified in the Notice within the period specified in the Notice (or if not specified within 10 Business Days). The Recipient must comply with any such Notice issued by the Department within the time period specified.
- (b) If the Recipient is unable to obtain Defence CRC Contributions to make good the Shortfall and/or does not take other remedial action as specified in the Notice to the Department's satisfaction within the period specified in the Notice, or does not report on any matters

specified in the Notice, the Department may in its absolute discretion, and without limiting any of its other rights under this Agreement or at law, reduce the total amount of Funds by all or a part of the value of the Shortfall.

- (c) Nothing in this clause 7.3 affects the Department's rights under clause 28.

## **7.4 Calculation of Shortfall**

When calculating the total amount of a Shortfall under clause 7.3, the value of any staff in-kind contributions will be calculated as specified in Schedule 5.

## **7.5 Other government funding**

- (a) The Recipient must give the Department full details of any financial assistance in connection with the Activities, which the Recipient or a Participant receives from another Commonwealth, State or Territory government source or agency after the Commencement Date (Other Financial Assistance), including the amount and source of the financial assistance and the name of the program under which it was provided, within 30 days of the Recipient receiving notice that the Other Financial Assistance has been approved.
- (b) The Department may reduce, suspend or defer the Funds as set out in Schedule 4 in the event the Recipient or a Participant receives Other Financial Assistance, but only to the extent that this financial assistance duplicates the Funds.

# **8. Funds**

## **8.1 Payment**

Subject to:

- (a) clauses 8.2, 28.1 and 28.2;
- (b) sufficient funding being available for the Program; and
- (c) the Recipient complying with this Agreement,

the Department will pay the Funds to the Recipient as set out in Schedule 4.

## **8.2 Recipient Created Tax Invoice**

The Recipient agrees to allow the Department to issue it with a Recipient Created Tax Invoice (RCTI) for any taxable supplies it makes in relation to the Activities.

The Recipient agrees not to issue tax invoices in respect of any taxable supplies.

The Recipient acknowledges that where it is registered for Goods and Services Tax (GST) it will notify the Department if it subsequently ceases to be registered for GST.

GST means a tax that is payable under GST law as defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

## **8.3 Due date for payment**

Unless otherwise specified in Schedule 4, the Department must make payment of a correctly rendered invoice within 30 days after receiving the invoice.

## **8.4 Incorrect invoices, under/over payment**

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Recipient, as the case may be.

## **8.5 Taxes**

The Recipient must pay all:

- (a) stamp duty (including penalties and interest) assessed or payable in respect of this Agreement and the Activities; and
- (b) subject to clause 9, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

## 9. GST and R&D Tax Incentive

### 9.1 Construction

In this clause 9 words and expressions which are not defined in this Agreement but which have a defined meaning in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (GST Law) have the same meaning as in the GST Law.

### 9.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

### 9.3 Payment of GST

If GST is payable by a supplier on any supply made under this Agreement, the recipient of the supply will pay to the supplier an amount equal to the GST payable on the supply, in addition to and at the same time that the consideration for the supply is to be provided under this Agreement.

### 9.4 R&D Tax Incentive

To assist certain Participants to claim the R&D Tax Incentive, the Defence CRC must expend (or allocate) contributions from Participants on (or to) R&D activities, as defined under subdivision 355B section 355-20 of the *Income Tax Assessment Act 1997* and maintain records of the date when such expenditure on which R&D activities occurred.

## 10. Use of Funds

### 10.1 What Funds can be used for

- (a) The Recipient must spend the Funds only for the purposes of undertaking the Activities.
- (b) The Recipient must spend the Funds and Defence CRC Contributions only in accordance with the Budget.
- (c) Subject to clause 10.1(d) the Recipient may vary the Budget by re-allocating expenditure between heads of expenditure specified in the Budget.
- (d) Any variation under clause 10.1(c) which increases or decreases the amount allocated to a head of expenditure by more than 10% cannot be made without the Department's prior written approval.

### 10.2 What Funds cannot be used for

The Recipient must not spend the Funds:

- (a) for capital works or for the purchase or construction of facilities such as buildings or laboratories;
- (b) for renovation or extension of buildings and facilities unless approved by the Department in writing;
- (c) for any activities for which the Participants have previously been funded, or are currently being funded by the Australian Government or a State or Territory government either directly or indirectly through any other funding scheme;

- (d) to reimburse a Participant for the costs associated with existing staff or other resources committed by the Participant to the Activities as in-kind contributions;
- (e) to pay a Participant for the indirect support costs of research in relation to cash-funded staff located in their organisation; or
- (f) for the indirect support costs of research conducted overseas.

### 10.3 When Funds cannot be used

- (a) Without limiting any other right or remedy of the Commonwealth, the Department may by Notice direct the Recipient not to spend Funds if:
  - (i) the Recipient has not completed a Report that was due before the date of notification;
  - (ii) the Recipient has not achieved a Milestone that was due to be achieved before the date of notification; or
  - (iii) the Recipient is otherwise in breach of this Agreement.
- (b) The Recipient must not spend any Funds after it receives Notice from the Department under clause 10.3(a) unless and until the Department notifies the Recipient otherwise.

### 10.4 Bank account

The Recipient must ensure that:

- (a) proper accounting standards and controls are exercised in respect of the Funds and the Defence CRC Contributions;
- (b) all Funds are held in an account (**the Account**) with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia;
- (c) the Account is held in the name of the Recipient, which the Recipient solely controls and which is separate from the Recipient's other operational accounts, for the purpose of accounting for, and administering amounts paid to the Recipient for the Activities;
- (d) the receipt and expenditure of the Funds is identified separately within the Recipient's accounting records so that at all times the Funds are identifiable and ascertainable;
- (e) the Account bears a rate of interest reasonably required by the Department and that any interest on the balance is credited to the Account;
- (f) the Department is notified, prior to the receipt of any Funds, of details sufficient to identify the Account, and on notification from the Department, provide the Department and the authorised deposit-taking institution with an authority for the Department to obtain any details relating to the use of the Account;
- (g) any money forming part of the Funds or Defence CRC Contributions is deposited in the Account; and
- (h) if the Account changes, that it complies with 10.4(c) and (d) above and notify the Department within 7 days of any changes to the Account, providing details of the new account.

### 10.5 No additional Funds

The Department and Defence are not responsible for the provision of additional money to meet any expenditure in excess of the Funds.



## 11. Repayment

### 11.1 During the Agreement Period

The Department is entitled to recover from the Recipient any amount of money which, at any time, in the Department's opinion, has been spent other than in accordance with this Agreement.

### 11.2 At the end of the Agreement Period

After the End Date, the Department is entitled to recover from the Recipient:

- (a) any Funds which have not been spent, or legally committed for expenditure by the Recipient in accordance with this Agreement and payable by the Recipient as a current liability (written evidence of which will be required); and
- (b) the amount of any Funds which, in the Department's opinion, have been spent other than in accordance with this Agreement.

### 11.3 Repayment Notice

- (a) The Department may give the Recipient a Notice requiring the Recipient to repay to the Department (or deal with as specified by the Department) an amount which the Department is entitled to recover under clause 11.1 or 11.2.
- (b) If the Department gives a Notice under clause 11.3(a), the Recipient must repay the amount specified in the Notice in full (or deal with it as specified by the Department) within 30 days of the date of the Notice.

## 12. Monitoring progress

### 12.1 Progress meetings

The Recipient and the Department and/or Defence will meet at the times and in the manner reasonably required by the Department and/or Defence to discuss any issues in relation to this Agreement or the Activities. The Recipient must ensure that the Recipient Representative, and the Department must ensure the Department Representative and/or the Defence Representative (as the case may be), are reasonably available to attend such meetings and answer any queries relating to the Activities raised by a party.

### 12.2 Reporting

Reporting activities under this Agreement will be managed by the Department on behalf of Defence. The Recipient must provide the Department with Reports and Activity Plans in accordance with Schedule 3. The Recipient must comply with any direction issued by the Department which the Department is taken to have issued under clause 12.3.

### 12.3 Contents of Reports

The Department may issue a direction in writing to the Recipient in respect of a Report the Recipient is required to provide under clause 12.2 specifying:

- (a) a format for the Report or Activity Plan;
- (b) information the Recipient is to include in the Report or Activity Plan; and
- (c) the person or persons who are to certify that information contained in a Report is accurate.

For the purposes of clause 12.3, the Department will be taken to have issued a direction in writing concerning a matter referred to in this clause 12.3 if it includes that information in a Guideline or any similar document and that document is available to the Recipient.



## 13. Performance

### 13.1 Reviews of the CRC

- (a) Ad hoc reviews may be undertaken or required by the Commonwealth from time to time, including but not limited to cases where substantial changes to the Activities are proposed, or Milestones are not being met.
- (b) The Commonwealth will bear the cost of any review under clause 13.1, subject to the Recipient meeting its own costs in accordance with the Guidelines.
- (c) The Department may, by Notice, require the Recipient to take actions in relation to the outcomes or recommendations of any review under clause 13.1, or recommendations of the Defence CRC Advisory Panels, in accordance with:
  - (i) the timeframe (if any) specified in the Notice;
  - (ii) any requirements in the Guidelines; or
  - (iii) any reasonable directions of the Department.

### 13.2 Annual Evaluation and other evaluation procedures

Without limiting any of its obligations under this Agreement the Recipient must assist the Commonwealth with and participate in, within the timeframe and in the manner required by the Commonwealth in accordance with the Guidelines:

- (a) an annual evaluation, if required by Defence, of the:
  - (i) performance of the Defence CRC against its Goals and Objectives;
  - (ii) conduct of the Activities; and
  - (iii) Recipient's compliance with this Agreement;
- (b) any surveys, questionnaires and other evaluation procedures related to the performance of the Recipient, the Defence CRC or the Program; and
- (c) the preparation of reports reasonably required under this clause 13.2.

### 13.3 External evaluation

- (a) An external evaluation by an independent panel must be undertaken by each Defence CRC and provided to Defence in the second to last year of the Agreement Period. The Defence CRC Board will propose the independent panel that will conduct the external evaluation for Defence's approval.
- (b) The external evaluation will include an assessment and gap analysis of the Defence CRC's Outcomes and Outputs against its Goals and Objectives. Defence will set the terms of reference for the external evaluation and will issue a template to be used for such purposes.
- (c) The external evaluation may inform the Minister's decision in relation to any request from the Defence CRC for additional funding or an extension to the Agreement Period, as well as any decision in relation to proposals for the transition of the Defence CRC's activities at the end of the Agreement Period.
- (d) The Recipient will bear the cost of the external evaluation under this clause 13.3.

### 13.4 Cooperation

In relation to any review or evaluation under this clause 13, the Recipient must:

- (a) provide all reasonable assistance to;

- (b) respond to all reasonable requests of; and
- (c) provide any information reasonably required by,  
the Department or its authorised representative.

### **13.5 Commonwealth rights**

- (a) If the Recipient does not:
  - (i) meet any of the obligations under this clause 13;
  - (ii) comply with a Notice given under clause 13.1(c) within the specified timeframe;  
or
  - (iii) comply with the Guidelines in relation to a review or evaluation under this clause 13;

to the satisfaction of the Commonwealth, the Commonwealth may at its sole discretion, without limiting any of its other rights under this Agreement or at law, exercise its right to reduce or suspend payment of the Funds, or terminate the Agreement, under clause 28.
- (b) Without limiting any of the Commonwealth's rights arising elsewhere under this Agreement, if the Commonwealth determines, in its sole discretion, whether pursuant to a review or evaluation under this clause 13 or otherwise, that the Recipient is not performing satisfactorily under this Agreement, the Commonwealth may by Notice take any action it considers appropriate, including but not limited to:
  - (i) requiring the Recipient to undergo further reviews;
  - (ii) requiring the Recipient to comply with additional reporting and/or monitoring requirements; or
  - (iii) reducing or suspending payment of the Funds, or terminating the Agreement, under clause 28.

## Part 2 – General requirements

### 14. Subcontractors and Personnel

#### 14.1 Subcontracting

- (a) The Recipient must:
- (i) not subcontract the performance of any of its obligations under this Agreement other than to those entities set out in item 11 of Schedule 1 without the prior written approval of the Department, which will not be unreasonably withheld;
  - (ii) not, in any event, enter into a subcontract under this Agreement with a subcontractor named by the Director of the Workplace Gender Equality Agency in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the WGE Act; and
  - (iii) ensure that any subcontractor approved under this Agreement is contractually required to comply with obligations consistent with those contained in:
    - (A) Clause 14.4 (Department may request replacement of Personnel);
    - (B) Clause 19.2 (Insurance for Projects);
    - (C) Clause 21 (Confidentiality);
    - (D) Clause 22 (Work health and safety);
    - (E) Clause 23 (Protection of personal information);
    - (F) Clause 24 (Conflict of interest);
    - (G) Clause 25 (Books and records);
    - (H) Clause 26 (Audit and access);
    - (I) Clause 29 (Survival);
    - (J) Clause 31.16 (False or misleading information);
    - (K) Clause 31.17 (Safe and ethical research);
    - (L) Clause 31.18 (Responsible conduct of research);
    - (M) Clause 31.19 (Defence interests);
    - (N) Clause 31.20 (Treatment of national security matters);
    - (O) Clause 31.21 (Changes to national security classification); and
    - (P) Clause 31.22 (Controlled Content Register).
- (b) When granting written approval under clause 14.1(a)(i), and without limiting considerations the Department may have regard to, the Department will have regard to whether the proposed subcontractor is a related body corporate (as that term is defined in the *Corporations Act 2001* (Cth)) of the Recipient.
- (c) The Recipient is fully responsible for undertaking the Activities even if the Recipient subcontracts any aspect of the Activities and for the performance of all of the Recipient's obligations under this Agreement.

#### 14.2 Use of Specified Personnel

The Recipient must:

- (a) undertake the Activities or any part of the Activities, with the active involvement of, and using the relevant expertise of, the Specified Personnel or any persons who are appointed to replace them in accordance with clause 14.3(b); and
- (b) ensure that each of the Specified Personnel is aware of and complies with the Recipient's obligations in undertaking the Activities.

### **14.3 If the Specified Personnel are not available**

Where one or more of the Specified Personnel is or will become unable or unwilling to be involved in the Activities, the Recipient must:

- (a) notify the Department in writing immediately of any change to the Specified Personnel; and
- (b) when replacing Specified Personnel, ensure that any such replacement personnel directly involved in the Activities have the time commitment, qualifications and competency to undertake the Activities to the standard required by the Agreement and have similar or better suited expertise and ability to those of the Specified Personnel they are replacing.

### **14.4 Department may request replacement of Personnel**

The Department may at any time request the Recipient to remove from work in respect of this Agreement any of the Specified Personnel or any of the Recipient's subcontractors or Personnel. The Recipient must promptly arrange for the removal of such subcontractors or Personnel, and arrange for a replacement in accordance with the requirements under clause 14.3(b).

## **15. Assets**

### **15.1 Ownership**

Subject to the terms of any lease or other arrangement, the Recipient owns any Asset.

### **15.2 Use and dealings**

- (a) During the Agreement Period, the Recipient must use any Asset only for the purposes of the Activities, or other purposes consistent with the Outcomes.
- (b) During the Agreement Period, the Recipient must:
  - (i) not encumber, dispose or deal with any Asset valued at \$50,000 (excluding GST) or above other than in accordance with this clause 15, without the Department's prior approval;
  - (ii) hold all Assets securely and safeguard them against theft, loss, damage, or unauthorised use and ensure they are adequately insured as described in clause 19;
  - (iii) maintain all Assets in good working order; and
  - (iv) be fully responsible for, and bear all risks relating to, the use or disposal of all Assets.

## **16. Intellectual Property Rights**

### **16.1 Pre-existing Material and Third Party Material**

This clause 16 does not affect the ownership of the Intellectual Property Rights in any Pre-existing Material or Third Party Material.

## 16.2 Third Party Material

- (a) The Recipient must obtain all necessary copyright and other Intellectual Property Rights permissions before making any Third Party Material available for the purpose of this Agreement or the Activities.
- (b) The Recipient must notify the Department and all affected Participants which parts (if any) of the Intellectual Property Rights are Third Party Material and who owns the Intellectual Property Rights in that material.

## 16.3 Intellectual Property Rights in Agreement Material

- (a) The management of Intellectual Property Rights in the Agreement Material will be consistent with the principles of the 'Defence Innovation Hub Intellectual Property Strategy', to:
  - (i) maximise incentives to innovate;
  - (ii) attract investment;
  - (iii) develop leading-edge innovation; and
  - (iv) support sovereign industry capabilities.
- (b) Subject to clause 16.4 (Defence ownership):
  - (i) the Intellectual Property Rights in Agreement Material created in a Project will vest in the Industry Participant(s) in the Project as determined and agreed in the applicable Project Agreement and in accordance with the Guidelines; and
  - (ii) the Intellectual Property Rights in Agreement Material created through Activities other than Projects will vest in the Recipient and/or the Participants on creation, as determined and agreed by those parties.
- (c) Prior to the commencement of a Project through the use of any Funds, the Recipient must ensure that the applicable Project Agreement provides for the grant to Defence, of a perpetual, irrevocable, royalty-free, non-exclusive, worldwide licence (including the right to sublicense), to use any:
  - (i) Agreement Material arising from the Project and Intellectual Property Rights contained therein; and
  - (ii) Pre-existing Material or Third Party Material that is essential to enable or facilitate the proper functioning, use and full enjoyment of the Agreement Material detailed in clause 16.3(c)(i),

for Defence Purposes.

- (d) Subject to clause 16.3(e), Defence will have the absolute discretion to determine the parties (which may or may not be the Recipient, Participants or third parties) that are to be granted a sublicense of Defence's licence to use the Agreement Material, Pre-existing Material and Third Party Material and the Intellectual Property Rights contained therein for Defence Purposes.
- (e) The licence under clause 16.3(c)(ii) will not permit the grant of a sublicense by Defence to any third party to use an Industry Participant's Pre-existing Material without that Industry Participant's prior written consent, not to be unreasonably withheld or delayed, and where such consent may be set out in the applicable Project Agreement or subsequently provided. It is acknowledged that it will be reasonable for an Industry Participant to withhold its consent where the third party to be granted a sublicense is a commercial competitor of the Industry Participant.

- (f) The licence granted to Defence under clause 16.3(c) will continue and endure notwithstanding that any Participant involved in the Project:
  - (i) has been expelled from membership of the Defence CRC by a decision of the Defence CRC Board for breach of its Participant Agreement;
  - (ii) has failed to complete the relevant Project or has withdrawn from the relevant Project before it is completed; or
  - (iii) undergoes a Change of Control which puts it in breach of the Project Agreement or its Participant Agreement or makes it ineligible under the Guidelines.
- (g) The Recipient must in carrying out this Agreement comply with any provisions and restrictions on the use of defence related material such as the export controls applicable to defence and dual-use goods.
- (h) Without limitation to clause 16.3(c) and 16.3(f), to the extent that:
  - (i) the Commonwealth needs to use any of the Agreement Material in connection with this Agreement or the Program, or for any other legitimate carriage of its responsibilities, including but not limited to:
    - (A) the use of Reports provided by the Recipient to the Department, or
    - (B) the exercise of its rights under clause 26;

the Recipient grants to, or must obtain for, the Commonwealth a perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Material; or
  - (ii) the Recipient needs to use any of the Commonwealth Material (excluding the Defence CRC Indicia) for the purpose of performing its obligations under this Agreement, the Commonwealth grants to the Recipient, subject to any conditions, directions or restrictions of the Commonwealth specified in item 13 of Schedule 1, a world-wide, royalty free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate the Commonwealth Material solely for the purpose of undertaking the Activities; or
  - (iii) the Recipient needs to use any of the Defence CRC Indicia for the purposes of clause 4.2, the Commonwealth grants to the Recipient, subject to any conditions, directions or restrictions of the Commonwealth specified in item 13 of Schedule 1, a world-wide, royalty free, non-exclusive, non-transferable licence (not including the right to sublicense, with the exception of the Recipient being able to grant a sublicense to the Participants) to use, reproduce and communicate the Defence CRC Indicia solely for the purposes of undertaking the Activities.
- (i) The licences granted to Defence under clauses 16.3(c), 16.3(f) and 16.3(h)(i) do not include a right to exploit the Agreement Material, Pre-existing Material or Third Party Material for Commercialisation in return for a royalty or other commercial return (subject to clause 16.3(o)).
- (j) The Recipient must, or where the Agreement Material vests in a Participant must ensure that, at all times during the Agreement Period, the Recipient and/or Participant has in place and adheres to documented procedures to ensure that, before any Agreement Material is published or disclosed to any person other than the Commonwealth, a Participant, a Project participant or the Recipient, consideration is given to the potential prejudice to Australia's national security interests or to the subsistence or Commercialisation of the Agreement

Material, including the possibility that publication or disclosure might preclude the grant of a patent or cause the loss of Intellectual Property Rights.

- (k) The Recipient must, or where the Agreement Material vests in a Participant must ensure that, the Recipient and/or Participant use its best endeavours to ensure that:
  - (i) any Intellectual Property Rights in Agreement Material developed as part of the Activities (but not including reports or other such material to be provided to the Department for the Commonwealth's benefit) is wherever possible suitable for Defence Purposes. Subject to the foregoing, the Intellectual Property Rights may be Commercialised or otherwise utilised as provided in this clause 16; and
  - (ii) Commercialisation of Agreement Material (but not including reports or other such Material to be provided to the Department for the Commonwealth's benefit) by Industry Entities.
- (l) The Recipient must, or where the Agreement Material vests in a Participant must ensure that, any Commercialisation of Agreement Material, including by any third party:
  - (i) is consistent with any Milestones, the nature of the Activities, the purpose of the Funds, and the objectives of the Program;
  - (ii) maximises the national benefits accruing to Australia, including the Australian defence industry; and
  - (iii) is consistent with this Agreement.
- (m) For the purposes of clause 16.3(l), the maximum national benefits accruing to Australia will be deemed to have been delivered where the Intellectual Property Rights in Agreement Material are Commercialised or otherwise made available in a way that results in the enhancement or building of Australia's defence industry capabilities. Where there are no opportunities for Commercialisation within Australia and the Commercialisation of the Intellectual Property Rights occurs in a country other than Australia, the Intellectual Property Rights must be Commercialised or utilised in such a way that substantial national benefits will accrue to Australia.
- (n) If at any time, the Commonwealth is of the reasonable view that the Commercialisation of the Agreement Material by the Recipient and/or Participant, and/or a third party, is not consistent with clauses 16.3(k), (l) or (m), the Commonwealth may, by Notice at its sole and unfettered discretion:
  - (i) require the Recipient to repay some or all of the Funds spent Commercialising the Agreement Material;
  - (ii) reduce or suspend payment of the Funds, or terminate the Agreement, under clause 28; or
  - (iii) exercise any other right it may have under this Agreement.
- (o) Without limitation to clause 16.3(n) and prior to the commencement of a Project through the use of any Funds, the Recipient must ensure that the applicable Project Agreement contains an express provision that if the Recipient and/or a Participant and/or a third party (**Commercialising Party**) that has been granted the rights to Commercialise Agreement Material fails to Commercialise the Agreement Material within two (2) years of the grant of rights or the completion of the Project in which the Agreement Material was created (whichever is later), then:
  - (i) the Commercialising Party must meet with the Recipient (or if the Recipient has been wound up or deregistered, with Defence ) to review the proposed



Commercialisation of the Agreement Material and to develop strategies to facilitate Commercialisation by the Commercialising Party;

- (ii) if the Commercialising Party:
  - (A) has failed to Commercialise the Agreement Material within two (2) years of the grant of rights or the completion of the Project in which the Agreement Material was created (whichever is later) and a further twelve (12) month period thereafter; or
  - (B) is at any time subject to any of the events set out in clauses 16.3(f)(i) to (f)(iii) (inclusive),

the Commercialising Party will immediately forfeit any ownership of Agreement Material and all Commercialisation rights which will transfer to the Recipient or, if the Recipient is the Commercialising Party in default or has been wound up or deregistered, then Defence, who will be entitled to Commercialise the forfeited Agreement Material and the forfeited Commercialisation rights at its absolute discretion without having to account to any party for any revenue arising from such Commercialisation or otherwise.

- (p) Without limitation to clause 16.3(n) and prior to the commencement of a Project through the use of any Funds, the Recipient must ensure that the applicable Project Agreement contains an express provision that, if within four (4) years of the completion of the Project, no party has requested to be granted rights to Commercialise the Agreement Material, Defence will be entitled to Commercialise the Agreement Material at its absolute discretion without having to account to any party for any revenue arising from such Commercialisation or otherwise.
- (q) For the purposes of enabling Defence to exercise its rights:
  - (i) under clause 16.3(c) as such rights are further described in this clause 16; and
  - (ii) under clause 16.3(o) or clause 16.3(p) in circumstances where the Recipient has been wound up or deregistered,

and only to the extent necessary to enable Defence to exercise such rights and for no other purpose, the Recipient will be stated in the applicable provisions of the Project Agreement that records Defence's rights under clauses 16.3(c) and 16.3(o) to be acting in the capacity as the agent of Defence.

#### **16.4 Defence Ownership**

Following approval by the Defence CRC Board of the proposal for a Project as detailed in clause 4.1(b), the Recipient will provide a copy of the Project proposal to Defence. Where Defence determines that there are compelling reasons for Defence ownership, Defence by Notice to the Recipient will require that the Intellectual Property Rights in the Agreement Material arising from the Project must vest in Defence (whether on creation or by subsequent assignment, as detailed in the Notice). The Recipient must ensure that the Project Agreement provides for such Defence ownership of the Intellectual Property Rights in the Agreement Material and the Project must not commence through the use of any Funds unless and until a Project Agreement has been executed by the relevant parties conferring ownership of the Intellectual Property Rights in the Agreement Material on Defence.

#### **16.5 Commonwealth Material**

The Commonwealth will provide to the Recipient the Commonwealth Material and the Recipient must ensure that the Commonwealth Material is used strictly in accordance with any conditions or restrictions specified in item 13 of Schedule 1 and any direction by the Commonwealth.



## 17. Moral Rights

**17.1** The Recipient represents and warrants that the use of the Agreement Material, Pre-Existing Material and Third Party Material and the Intellectual Property Rights contained therein for Defence Purposes or other purposes permitted by this Agreement will not infringe the Moral Rights of any person.

## 18. Indemnity

- (a) The Recipient will at all times indemnify, hold harmless and defend the Commonwealth, its officers and employees, including members of the Defence CRC Advisory Panels and any independent experts used by the Defence CRC Advisory Panels (referred to in this clause 18 as "those indemnified") from and against any loss or liability, including:
- (i) loss of, or damage to, property of the Commonwealth;
  - (ii) claims by any person in respect of personal injury or death;
  - (iii) claims by any person in respect of loss of, or damage to, any property; and
  - (iv) costs and expenses including the costs of defending or settling any claim referred to in clause 18(a)(ii) or clause 18(a)(iii),
- arising out of or as a consequence of:
- (v) use or disposal of Assets;
  - (vi) an infringement, or an alleged infringement, of the Intellectual Property Rights of any person, which occurred by reason of an act done by the Commonwealth in relation to any part of the Activities;
  - (vii) any actual, likely or threatened breach of the Recipient's, its Personnel's or subcontractor's obligations relating to Confidential Information or personal information; or
  - (viii) without limiting the preceding paragraphs, any breach of this Agreement by the Recipient, or negligence on the part of the Recipient, its Personnel or subcontractors or wrongful or unlawful act or omission on the part of the Recipient, its Personnel or subcontractors.
- (b) The Recipient's liability to indemnify those indemnified under clause 18(a) will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the loss.

## 19. Insurance

### 19.1 Obligation to maintain insurance

Unless otherwise specified in item 16 of Schedule 1, for as long as any obligations remain under this Agreement and in connection with the Activities, the Recipient must have and maintain:

- (a) workers' compensation insurance for an amount required by the relevant State or Territory legislation;
- (b) public liability insurance for \$20,000,000 (twenty million dollars) or more per claim;
- (c) management liability insurance (or at a minimum, professional indemnity and directors & officers insurance) for \$1,000,000 (one million dollars) or more per claim;

- (d) insurance over any Asset acquired pursuant to clause 15 of this Agreement for its full replacement value; and
- (e) any other insurance required by law or by the Commonwealth (acting reasonably).

## **19.2 Insurance for Projects**

The Recipient must ensure that, for as long as any obligations remain under a Project Agreement, all Participants and other parties participating in the Project, have and maintain:

- (a) workers' compensation insurance for an amount required by the relevant State or Territory legislation;
- (b) public liability insurance for an adequate amount per claim, or occurrence giving rise to a claim, in respect of activities undertaken under the Project Agreement (where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be); and
- (c) any other insurance required by law or by the Commonwealth (acting reasonably).

## **19.3 Certificates of currency**

The Recipient must, on request by the Department, provide current relevant confirmation of insurance documentation from its insurers or insurance brokers certifying that it has insurance as required by clause 19.1.

## **20. Publicity**

The Commonwealth reserves the right to publicise and report on the awarding of the Funds, and may do this by, amongst other means, including the Recipient's name, the amount of Funds and the title and a brief description of the Activities in media releases, general announcements about the Program, annual reports, and in order to fulfil its obligations under the Commonwealth Grants Rules and Guidelines.

## **21. Confidentiality**

### **21.1 Prohibition on disclosure**

- (a) Subject to clause 21.4, the Recipient must not, without the prior written consent of the Department, disclose any Commonwealth Confidential Information to a third party.
- (b) Subject to clause 21.4, the Department and Defence must not, without the prior written consent of the Recipient, disclose any Recipient Confidential Information to a third party.

### **21.2 Conditions of approval**

In giving written consent to use or disclose Department and/or Defence Confidential Information, the Department and/or Defence may impose such conditions as it or they think fit. The Recipient must comply with any term or condition imposed by the Department and/or Defence under this clause 21.2.

### **21.3 Advisers and third parties**

The Department and/or Defence may at any time require the Recipient to arrange for:

- (a) its Advisers;
- (b) its Personnel, other employees and subcontractors, or the Participants or other parties involved in the Activities; or
- (c) any other third party, to whom Department and/or Defence Confidential Information may be disclosed pursuant to clause 21.4(a) or clause 21.4(b),

to give a written undertaking relating to the use and non-disclosure of the Department's and/or Defence's Confidential Information in the form approved by the Department.

#### **21.4 Exceptions to obligations**

The obligations on the Recipient, Defence and the Department under clauses 21.1 or 21.10 will not be taken to have been breached to the extent that Confidential Information of the other party:

- (a) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of activities related to this Agreement;
- (c) is disclosed by the Commonwealth to the responsible Minister;
- (d) is disclosed by the Commonwealth or another Commonwealth government agency, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the Department with another Commonwealth government agency, where this serves the Commonwealth's legitimate interests;
- (f) is shared by Defence within the Department of Defence, or with another Commonwealth government agency, where this serves Defence's legitimate interests;
- (g) is disclosed by the Department or another Commonwealth government agency to the Auditor-General, the Commonwealth Ombudsman or the Australian Information Commissioner;
- (h) is required by Law to be disclosed;
- (i) is shared by the Department to Innovation and Science Australia or its delegates for the purposes of the administration of the R&D Tax Incentive; or
- (j) is in the public domain otherwise than due to a breach of this Agreement.

#### **21.5 Obligation on disclosure**

Where a party discloses Confidential Information of the other party to another person:

- (a) pursuant to clauses 21.4(a), (b) or (e), the disclosing party must:
  - (i) notify the receiving person that the information is Confidential Information; and
  - (ii) not provide the information unless the receiving person agrees to keep the information confidential, including in the case of Department and Defence Confidential Information, the receiving person giving the Department and/or Defence a legally binding undertaking to that effect in the form approved by the Department and/or Defence; or
- (b) pursuant to clauses 21.4(c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information of the other party.

#### **21.6 Additional confidential information**

- (a) Defence, the Department or the Recipient may agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement.
- (b) Where Defence, the Department or the Recipient agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement, this documentation is incorporated into, and becomes part

of this Agreement, on the date by which Defence, the Department or the Recipient have signed this documentation.

## **21.7 Period of confidentiality**

The obligations under this clause 21 continue, notwithstanding the expiry or termination of this Agreement:

- (a) in relation to an item of information described in item 17 of Schedule 1, for the period set out in that Schedule in respect of that item; and
- (b) in relation to any information which the parties agree in writing after the date of this Agreement is to constitute Confidential Information for the purposes of this Agreement, for the period agreed by the parties in writing in respect of that information.

## **21.8 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' as defined in that Act 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.

## **21.9 Return of information**

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

## **21.10 Confidential Agreement Provisions**

Notwithstanding any other provision of this Agreement, the Department may disclose the provisions of this Agreement. However, any provisions of this Agreement that are Confidential Information may only be disclosed in accordance with the Senate Order on Departmental and Agency Agreements, and where such disclosure of Confidential Information is required a statement of reasons for the confidentiality may be included with the disclosure.

# **22. Work health and safety**

## **22.1 General safety obligations**

The Recipient must:

- (a) ensure that the Activities are undertaken in a safe manner;
- (b) ensure that the Participants and their respective Personnel do not, by act or omission, place the Commonwealth in breach of its obligations under the WHS Laws; and
- (c) ensure that the Recipient, the Participants and their respective Personnel, if using or accessing the Commonwealth's premises or facilities, comply with all reasonable instructions, directions, policies and procedures relating to work health and safety in operation at those premises or facilities whether specifically drawn to the attention of the Recipient or might reasonably be inferred from the circumstances.

## 23. Protection of personal information

### 23.1 Definitions

In this clause 23, the terms ‘agency’, ‘Australian Privacy Principle’ (APPs), ‘APP privacy policy’, ‘Australian Privacy Principle Code’ (APP code) and ‘contracted service provider’ have the same meaning as they have in section 6 of the Privacy Act, and ‘personal information’, which also has the meaning it has in section 6 of the Privacy Act, means:

‘information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not’.

### 23.2 Application of this clause

This clause 23 applies only where the Recipient deals with personal information provided to the Recipient by the Department or Defence, for the purpose of, completing the Activities under this Agreement.

### 23.3 Obligations

The Recipient acknowledges that to the extent this clause 23 applies it is a ‘contracted service provider’ and agrees in respect of the Activities under this Agreement to take all necessary measures to ensure that personal information in its possession or control in connection with this Agreement is protected against loss and unauthorised access, use, disclosure or modification.

- (a) The Recipient must, on request from the Department or Defence, provide to the Department:
  - (i) a copy of the Recipient’s and any subcontractor’s APP privacy policy which is compliant with APP 1;
  - (ii) copies of the Recipient’s and any subcontractor’s security and data protection policies upon request by the Department; or
  - (iii) details of the Recipient’s and any subcontractor’s processes and procedures implemented to ensure compliance with the Privacy Act.
- (b) The Recipient agrees in respect of the Activities under this Agreement:
  - (i) to use or disclose personal information obtained by the Recipient from the Department or Defence during the course of the Activities under this Agreement, only for the purposes of this Agreement;
  - (ii) not to do any act or engage in any practice that would breach an APP contained in schedule 1 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that APP;
  - (iii) to carry out and discharge the obligations contained in the APPs as if it were an agency under the Privacy Act;
  - (iv) to notify individuals whose personal information the Recipient holds, that complaints about acts or practices of the Recipient may be investigated by the Privacy Commissioner who has power to award compensation against the Recipient in appropriate circumstances;
  - (v) not to use or disclose personal information or engage in an act or practice that would breach APP 7 (direct marketing) or a registered APP Code which is applicable to the Recipient, unless the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Agreement;

- (vi) to follow any reasonable directions given by the Department to ensure compliance with the Privacy Act;
- (vii) to not transfer or transmit personal information outside of Australia except with the prior written approval of the Department, which will not be unreasonably withheld. In giving its approval the Department may impose such conditions as it thinks fit. The Recipient must comply with any term or condition imposed by the Department under this clause 23.3(b)(vii);
- (viii) to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an APP or a registered APP code which is binding on a party to this Agreement;
- (ix) to immediately notify the Department if the Recipient becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 23, whether by the Recipient or any subcontractor (including any complaints made about acts or practices of the Recipient in connection with personal information);
- (x) to notify the Department of any subpoena, warrant, order, demand or request made by a foreign court or other authority for the disclosure of personal information to which the Privacy Act applies and to not disclose such information without the prior written approval of the Department, which will not be unreasonably withheld. In giving its approval the Department may impose such conditions as it thinks fit. The Recipient must comply with any term or condition imposed by the Department under this clause 23.3(b)(x);
- (xi) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, notified to the Recipient by the Department to the extent that they are not inconsistent with the requirements of this clause 23; and
- (xii) to ensure that any employee of the Recipient who is required to deal with personal information for the purposes of this Agreement is made aware of the obligations of the Recipient set out in this clause 23.

## 23.4 Subcontracts

The Recipient must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Recipient has under this clause 23, including the requirement in relation to subcontracts.

## 23.5 Indemnity

The Recipient agrees to indemnify the Commonwealth in respect of any loss or liability suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Agreement under this clause 23, or a subcontractor under the subcontract provisions referred to in clause 23, or a subcontractor under the subcontract provisions referred to in clause 14.1.

# 24. Conflict of interest

## 24.1 Meaning of Conflict

For the purposes of this clause 24, a **Conflict**:

- (a) may be:
  - (i) real (or actual);

- (ii) apparent (or perceived); or
  - (iii) potential; and
- (b) means any matter, circumstance, interest, or activity affecting the Recipient which may or may appear to impair the ability of the Recipient to carry out its obligations under this Agreement fairly and independently.
- (c) Without limiting the generality of clause 24.1(a) and clause 24.1(b) above, the Recipient will have a Conflict of interest if, in relation to any aspect of research related to the Activities:
- (i) it receives funding from; or
  - (ii) it enters an agreement to be paid for activities or services with,
 

a country (or an entity based in a country) included in the “Countries Policies and Embargoes” list on the USA Department of State’s Directorate of Defence Trade Controls website (see [http://www.pmddtc.state.gov/embargoed\\_countries/index.html](http://www.pmddtc.state.gov/embargoed_countries/index.html)) as amended from time to time.

## 24.2 Warranty

The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement, no Conflict exists or is likely to arise in the performance of its obligations under this Agreement.

## 24.3 Minimising Risk of a Conflict in relation to ITAR embargoed countries and entities

- (a) The Recipient must ensure that, unless the Defence Representative approves in writing, no entity becomes an Involved Party if that Involved Party has, at any time in the five years prior to the Relevant Time, in relation to any aspect of research related to the Activities:
- (i) received funding from; or
  - (ii) entered an agreement to be paid for activities or services with,
 

a country, or an entity based in a country, included in the “Countries Policies and Embargoes” list on the USA Department of State’s Directorate of Defence Trade Controls website (see [http://www.pmddtc.state.gov/embargoed\\_countries/index.html](http://www.pmddtc.state.gov/embargoed_countries/index.html)), as amended from time to time.
- (b) In this clause 24.3:
- (i) an **Involved Party** is an entity that:
    - (A) is a Founding Participant;
    - (B) is invited to, or applies to become a member of the Recipient or a Participant; or
    - (C) is invited to, or seeks to participate in a Project as an entity other than a Participant; and
  - (ii) the **Relevant Time** is:
    - (A) for a Founding Participant—the Commencement Date;



- (B) for an entity invited to, or seeking to become a member of the Recipient or a Participant—the time at which that entity is invited, or applies to become a member of the Recipient or a Participant (as applicable); and
- (C) for an entity invited to, or seeking to participate in a Project other than as a Participant—the time at which that entity is invited to, or seeks to participate in that Project.

## **24.4 Notification of a Conflict**

If, prior to the End Date, a Conflict arises, or appears likely to arise, the Recipient must:

- (a) notify the Department immediately in writing;
- (b) make full disclosure of all relevant information relating to the Conflict; and
- (c) take such steps as the Department requires to resolve or otherwise deal with the Conflict.

## **25. Books and records**

### **25.1 Recipient to keep books and records**

The Recipient must:

- (a) keep and require its subcontractors and the Participants to keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable:
  - (i) all receipts and payments related to the Activities to be identified and reported in accordance with this Agreement; and
  - (ii) the amounts payable by the Department under this Agreement to be determined; and
- (b) retain and require its subcontractors and the Participants to retain for a period of seven years after the expiry or termination of this Agreement, all books and records relating to the Activities.

### **25.2 Costs**

The Recipient must bear its own costs of complying with this clause 25.

### **25.3 Survival**

This clause 25 applies for the Agreement Period and for a period of seven years from the expiry or termination of this Agreement.

## **26. Audit and access**

### **26.1 Right to conduct audits**

For the duration of this Agreement and for a period of seven years following the expiry or termination of this Agreement, the Commonwealth or a representative may conduct audits relevant to the performance of the Recipient's obligations under this Agreement. Audits may be conducted of:

- (a) the Assets;
- (b) the Recipient's operational practices and procedures as they relate to this Agreement;
- (c) the accuracy of the Recipient's invoices and Reports;



- (d) the Recipient's compliance with its confidentiality and privacy obligations under this Agreement;
- (e) Material (including books and records) in the possession of the Recipient relevant to the Activities or this Agreement;
- (f) the Recipient's compliance with all applicable defence export controls including without limitation those listed from time to time on such websites as Defence may maintain with respect to defence export controls; and
- (g) any other matters determined by the Commonwealth to be relevant to the Activities or this Agreement.

## **26.2 Access by the Commonwealth**

- (a) The Commonwealth may, at reasonable times and on giving reasonable Notice to the Recipient, to the extent relevant to the performance of this Agreement:
  - (i) access the premises of the Recipient;
  - (ii) require the provision by the Recipient, its employees, agents or subcontractors or by the Participants, 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 Recipient, its employees, agents or subcontractors or by the Participants; 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), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary Committee.
- (b) The Recipient must provide access to its computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under this clause 26, and provide the Commonwealth with any reasonable assistance requested by the Commonwealth to use that hardware and software.

## **26.3 Conduct of audit and access**

The Commonwealth must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 26.1; and
  - (b) the exercise of the general rights granted by clause 26.2 by the Commonwealth,
- do not unreasonably delay or disrupt in any material respect the Recipient's performance of its obligations under this Agreement or its business.

## **26.4 Costs**

Unless otherwise agreed in writing, each party must bear its own costs of any audits.

## **26.5 Auditor-General and Australian Information Commissioner**

The rights of the Commonwealth under clause 26.2(a)(i) to 26.2(a)(iii) apply equally to the Auditor-General or a delegate of the Auditor-General, or the Australian Information Commissioner or a delegate of the Australian Information Commissioner, for the purpose of performing the Auditor-General's or the Australian Information Commissioner's statutory functions or powers.

## **26.6 Recipient to comply with Auditor-General's requirements**

The Recipient must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Australian Information Commissioner's or his or her delegate's requirements, notified under clause 26.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Australian Information Commissioner, or his or her respective delegate.

## **26.7 No reduction in responsibility**

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

## **26.8 Subcontractor requirements**

The Recipient must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 26.

## **26.9 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 Office of the Australian Information 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 Australian Information Commissioner or a delegate of the Australian Information Commissioner.

Note: The effect of clause 29 of this Agreement is that this clause 26 applies for the Agreement Period and for a period of seven years from the expiry or termination of this Agreement.

## **27. Dispute resolution**

### **27.1 No arbitration or court proceedings**

If a dispute arises in relation to the conduct of this Agreement (**Dispute**), a party must comply with this clause 27 before starting arbitration or court proceedings except proceedings for urgent interlocutory relief. After a party has sought or obtained any urgent interlocutory relief, that party must follow this clause 27.

### **27.2 Notification**

A party claiming a Dispute has arisen must give the other party a Notice setting out details of the Dispute.

### **27.3 Parties to resolve Dispute**

During the 14 days after a Notice is given under clause 27.2 (or longer period if the parties agree in writing), each party must use its reasonable efforts through a meeting of CEOs (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

### **27.4 Appointment of mediator**

If the parties cannot agree on a mediator within seven days after a request under clause 27.3, the chairperson of the Resolution Institute or the chairperson's nominee will appoint a mediator.

### **27.5 Role of mediator and obligations of parties**

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 except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 27.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

## **27.6 Confidentiality**

Any information or documents disclosed by a party under this clause 27:

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

## **27.7 Costs**

Each party must pay its own costs of complying with this clause 27. The parties must equally pay the costs of any mediator.

## **27.8 Termination of process**

A party may terminate the dispute resolution process by giving Notice to the other party after it has complied with clauses 27.1 to 27.5. Clauses 27.6 and 27.7 survive termination of the dispute resolution process.

## **27.9 Breach of this clause**

If a party breaches clauses 27.1 to 27.8, the other party does not have to comply with those clauses in relation to the Dispute.

# **28. Reduction, Suspension and Termination**

## **28.1 Reduction**

Without limiting any other right or remedy of the Department, the Department may reduce the amount of any instalment of the Funds:

- (a) if by the date for payment of an instalment the Recipient has not spent Funds previously paid to the Recipient, by the amount that has not been spent;
- (b) if, in the Department's opinion, Funds have been spent other than in accordance with this Agreement, by the amount that, in the Department's opinion, was spent other than in accordance with this Agreement;
- (c) if the Minimum Defence CRC Contributions due to be provided before the date for payment of the instalment have not been provided; or
- (d) as otherwise provided in this Agreement.

## **28.2 Suspension**

- (a) Without limiting any other right or remedy of the Department, the Department may, in its sole discretion, suspend payment of the Funds (or any part of the Funds) if:
  - (i) any Minimum Defence CRC Contributions due to be provided before the date for payment have not been provided, until those Minimum Defence CRC Contributions have been provided;
  - (ii) the Recipient has not provided a Report due to be provided before the date for payment, until the Report is provided;
  - (iii) a Report provided by the Recipient is not accurate or complete, until an accurate and complete replacement Report is provided;
  - (iv) the Recipient has not achieved a Milestone that was due to be achieved before the date for payment, until the Milestone is achieved;
  - (v) the Recipient has not spent Funds previously paid to the Recipient, until the Recipient has done so;

- (vi) the Department determines that the Recipient holds an excessive balance of Funds as a proportion of its total funds;
  - (vii) the Recipient has not otherwise undertaken the Activities to the satisfaction of the Department, until the Recipient remedies its performance;
  - (viii) the Department determines, acting reasonably and in good faith, that the Recipient is not performing to the satisfaction of the Department; or
  - (ix) as otherwise provided in this Agreement.
- (b) Despite any suspension, the Recipient must continue to perform its obligations under this Agreement.

### **28.3 Termination and reduction for convenience**

- (a) The Commonwealth may terminate or reduce the scope of this Agreement by notice, due to:
- (i) changes in government or national security policy; or
  - (ii) changes to technologies through new information or discoveries resulting in the Activities being unviable; or
  - (iii) a Change of Control of the Recipient which the Commonwealth reasonably believes will negatively affect the Recipient's ability to comply with this Agreement.
- (b) On receipt of a Notice of termination or reduction the Recipient must:
- (i) take all available steps to minimise loss resulting from that termination or reduction and to protect Commonwealth Material and Agreement Material; and
  - (ii) continue to undertake any part of the Activities not affected by the Notice.
- (c) If this Agreement is terminated under this clause 28.3, the Department is liable only for:
- (i) subject to clause 28.6(a)(i), payments under clause 8 in accordance with this Agreement before the effective date of termination; and
  - (ii) subject to clause 28.3(e) and (f) reasonable costs actually incurred by the Recipient and directly attributable to the termination.
- (d) If the scope of the Activities is reduced, the Department's liability to pay the Funds or to provide Commonwealth Material abates in accordance with the reduction in the Activities.
- (e) The Department is not liable to pay compensation under clause 28.3(c)(ii) for an amount which would, in addition to any amounts paid or due, or becoming due, to the Recipient under this Agreement, exceed the total Funds payable under this Agreement.
- (f) The Recipient is not entitled to compensation for loss of prospective profits.

### **28.4 Termination for default**

- (a) Without limiting any other rights or remedies the Department may have against the Recipient arising out of or in connection with this Agreement, the Department may terminate this Agreement effective immediately by giving notice to the Recipient if:
- (i) the Recipient breaches a material provision of this Agreement where that breach is not capable of remedy;
  - (ii) the Recipient breaches any provision of this Agreement and fails to remedy the breach within 14 days after receiving Notice requiring it to do so;

- (iii) following any annual evaluation to be undertaken in accordance with clause 13.2(a), Defence determines, in its sole discretion, that the Recipient has failed to achieve the required Goals and Objectives during the period covered by the annual evaluation;
  - (iv) the Recipient fails to notify the Department of a Conflict (as defined in clause 24.1), or in the opinion of the Department, a Conflict exists which would prevent the Recipient from performing its obligations under this Agreement;
  - (v) the Recipient is unable to obtain Defence CRC Contributions, or obtain them in time to enable completion of the Activities by the End Date;
  - (vi) the Department is satisfied that any statement made in the Formation Plan (if any) is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the provision of the Funds; or
  - (vii) an event specified in clause 28.4(c) happens.
- (b) Without limitation, for the purposes of clause 28.4(a)(i), each of the following constitutes a breach of a material provision:
- (i) breach of warranty under clause 4.3 (Warranties);
  - (ii) a failure to comply with clause 6.6 (Breach of the Participant Agreement or Project Agreement);
  - (iii) breach of clause 10.1, 10.2 or 10.3 (Use of Funds);
  - (iv) a failure to comply with clause 14 (Subcontractors and Personnel);
  - (v) breach of or failure to comply with clause 12 (Monitoring progress);
  - (vi) breach of or failure to comply with clause 13 (Performance);
  - (vii) a failure to comply with clause 16 (Intellectual Property Rights);
  - (viii) a failure to comply with clause 19 (Insurance);
  - (ix) a failure to comply with clause 21 (Confidentiality);
  - (x) a failure to comply with clause 23 (Protection of personal information);
  - (xi) a failure to notify the Department of a Conflict, or where the Recipient is unable or unwilling to resolve or deal with the Conflict as required under clause 24 (Conflict of interest); and
  - (xii) a failure to comply with clause 31.20 (Treatment of national security matters).
- (c) The Recipient must notify the Department immediately if:
- (i) there is any change in the direct or indirect beneficial ownership or control of the Recipient;
  - (ii) the Recipient disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
  - (iii) the Recipient ceases to carry on business;
  - (iv) the Recipient ceases to be able to pay its debts as they become due;
  - (v) proceedings are initiated with a view to obtaining an order for the winding up of the Recipient, or any person convenes a meeting for the purpose of considering or passing any resolution for the winding up of the Recipient;

- (vi) the Recipient applies to come under, the Recipient receives a notice requiring it to show cause why it should not come under, an order has been made for the purpose of placing the Recipient under, or the Recipient otherwise comes under one of the forms of external administration referred to in Chapter 5 of the Corporations Act or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or equivalent provisions in State or Territory legislation in relation to incorporated associations;
- (vii) the Recipient being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors;
- (viii) where the Recipient is a partnership, any step is taken to dissolve that partnership; or
- (ix) anything analogous to an event referred to in clause 28.4(c)(v) – (viii) occurs in relation to the Recipient.

## 28.5 After termination

On termination of this Agreement the Recipient must deal with Commonwealth Material and the Commonwealth's Confidential Information in accordance with this Agreement and otherwise as reasonably directed by the Department.

## 28.6 Commonwealth rights

- (a) Without limiting any of the Commonwealth's other rights or remedies, on termination of this Agreement, the Department:
  - (i) is not obliged to pay to the Recipient any outstanding amount of the Funds, except to the extent that those monies have been legally committed for expenditure by the Recipient in accordance with this Agreement and payable by the Recipient as a current liability (written evidence of which will be required) by the date the Recipient receives the Notice of termination; and
  - (ii) is entitled to recover from the Recipient:
    - (A) any Funds which have not been spent, or legally committed for expenditure by the Recipient in accordance with this Agreement and payable by the Recipient as a current liability (written evidence of which will be required), by the date the Recipient receives the Notice of termination; and
    - (B) the amount of any Funds which, in the Department's opinion, have been spent other than in accordance with this Agreement.
- (b) The Department may give the Recipient a Notice requiring the Recipient to repay to the Department (or deal with as specified by the Department) an amount which the Department is entitled to recover under clause 28.6(a)(ii).
- (c) If the Department gives a Notice under clause 28.6(b), the Recipient must repay the amount specified in the Notice in full (or deal with it as specified by the Department) within 30 days of the date of the Notice.

## 28.7 Termination does not affect accrued rights

Termination of this Agreement does not affect any accrued rights or remedies of a party. Without limitation to the foregoing and the other terms of this Agreement, Defence's rights to use the Agreement Material for Defence Purposes under clause 16.3 will survive the expiry or termination (howsoever caused and for whatever reason) of this Agreement.

## 29. Survival

The following clauses survive the expiry or termination of this Agreement:

- (a) Clause 4.2 (Acknowledgment of support);
- (b) Clause 9 (GST and R&D Tax Incentive);
- (c) Clause 11 (Repayment);
- (d) Clause 12.2 (Reporting);
- (e) Clause 13.2 (Annual Evaluation and other evaluation procedures);
- (f) Clause 16 (Intellectual Property Rights);
- (g) Clause 17 (Moral Rights);
- (h) Clause 18 (Indemnity);
- (i) Clause 19 (Insurance);
- (j) Clause 21 (Confidentiality);
- (k) Clause 23 (Protection of personal information);
- (l) Clause 25 (Books and records);
- (m) Clause 26 (Audit and access) for a period of seven years from the expiry or termination of this Agreement;
- (n) Clause 28.6 (Commonwealth rights);
- (o) Clause 31.2 (Amounts due to Commonwealth); and
- (p) Clause 31.20 (Treatment of national security matters),

together with any provision of this Agreement which expressly or by implication from its nature is intended to survive the expiry or termination of this Agreement.

## 30. Notices and other communications

### 30.1 Service of Notices

A 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 by electronic means (facsimile or email) to the recipient's address for Notices specified in item 18 of Schedule 1, as varied by any Notice given by the recipient to the sender.

### 30.2 Effective on receipt

A Notice given in accordance with clause 30.1 takes effect when it is 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); or
- (c) if sent by email, as provided under sections 14 and 14A of the *Electronic Transactions Act 1999* (Cth);



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

## **31. Miscellaneous**

### **31.1 No security**

The Recipient must not use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of any litigation:

- (a) the Funds;
- (b) this Agreement or any of the Commonwealth's obligations under this Agreement; or
- (c) any Assets or Agreement Material.

### **31.2 Amounts due to Commonwealth**

- (a) Without limiting any other of the Commonwealth's rights or remedies, any amount owed or payable to the Department (including by way of refund), or which the Department is entitled to recover from the Recipient, under this Agreement will be recoverable by the Department as a debt due and payable to the Department by the Recipient.
- (b) The Department may set-off any money due for payment by the Department to the Recipient under this Agreement against any money due for payment by the Recipient to the Department under this Agreement.

### **31.3 Ownership of Agreement**

All copyright and other Intellectual Property Rights contained in this Agreement remain the property of the Commonwealth.

### **31.4 Variation**

No agreement or understanding varying or extending this Agreement is legally binding upon either party unless the agreement or understanding is in writing and signed by both parties.

### **31.5 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.

### **31.6 Assignment and novation**

A party may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the other party.

### **31.7 Costs**

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

### **31.8 Counterparts**

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

### **31.9 No merger**

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



### **31.10 Entire agreement**

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.

### **31.11 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.

### **31.12 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.

### **31.13 Waiver**

Waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

### **31.14 Relationship**

Subject only to clause 16.3(q):

- (a) the parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party; and
- (b) this Agreement does not create a relationship of employment, agency or partnership between the parties.

### **31.15 Governing law and jurisdiction**

This Agreement is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

### **31.16 False or misleading information**

- (a) The Recipient acknowledges that giving false or misleading information to the Commonwealth is a serious offence under section 137.1 of the *Criminal Code Act 1995* (Criminal Code).
- (b) The Recipient must ensure that all Participants and any subcontractor engaged in connection with the Agreement acknowledges the information contained in this clause.

Note: Under section 137 of the Criminal Code giving false or misleading information to a Commonwealth entity is an offence, but only if the Commonwealth entity took reasonable steps to inform the person of the offence.

### **31.17 Safe and ethical research**

When research in Australia is conducted on or involving humans or animals, the Recipient, in relation to any such research conducted by it or any of the Participants, must:

- (a) 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 Australia and any place in which the research is being conducted being codes and guidelines in force from time to time during the Agreement Period, including

requirements to obtain prior approval in writing (including from any relevant ethics committee) that the research to be undertaken is so compliant;

- (b) engage one or several higher education institution(s), or Federal or State research organisation(s), or medical institution(s) with a relevant ethics committee constituted in accordance with the codes and guidelines referred to in clause 31.17(a) to oversee all ethical clearances which may be required under those codes and guidelines;
- (c) when conducting research in Australia which involves the use of ionising radiation, ensure that persons performing procedures involving ionising radiation are appropriately trained and hold a relevant current licence from the appropriate State authority; and
- (d) whenever reasonably required by the Department, promptly furnish to the Department written evidence of compliance with the requirements of this clause.

### **31.18 Responsible conduct of research**

- (a) The Recipient must ensure that research conducted by it and each Participant conforms to 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) The Recipient must ensure that it and each Participant:
  - (i) promotes the responsible conduct of research;
  - (ii) maintains high standards of responsible research;
  - (iii) reports research responsibly;
  - (iv) respects all research participants;
  - (v) respects animals used in research;
  - (vi) respects the environment; and
  - (vii) reports research misconduct.
- (c) The Recipient must have, and must ensure that each Participant has, procedures in place for dealing with instances of suspected or alleged research misconduct which are consistent with the principles referred to at clause 31.18(a).

### **31.19 Defence interests**

Notwithstanding anything in this Agreement, the Commonwealth will not be obliged to do any act or thing where in the sole opinion of the Commonwealth (which will not be obliged to give reasons) that act or thing would prejudice the Commonwealth's defence or national security interests, or prevent the Commonwealth from properly performing its obligations, functions or duties.

### **31.20 Treatment of national security matters**

- (a) The Recipient must, and ensure that the Participants, their employees, officers, agents, students and Advisers must, obtain and comply with any security clearances and accreditations specified by the Department and/or Defence from time to time, including without limitation those required by the “Defence Industry Security Program” and those clearances and accreditations set out in item 19 of Schedule 1.
- (b) Without limitation to clause 31.20(a), if:

- (i) the Department and/or Defence makes information available to the Recipient, and that information bears a security classification; or
- (ii) the Activities or any Project involves information or Material that relates to the Commonwealth's defence or national security interests,

the Recipient must, and must ensure that the Participants, their employees, officers, agents, students and Advisers who have access to the information or Material will comply with all relevant security requirements and procedures as specified by the Department and/or Defence from time to time and without limitation, those required by the "Defence Industry Security Program" and those clearances and accreditations outlined in Item 19 of Schedule 1.

### **31.21 Addressing national security concerns**

- (a) The Department may at any time send a Notice to the Recipient advising that Defence has a security concern in relation to the Activities.
- (b) The Department Representative and/or the Defence Representative will meet with the Recipient Representative within seven (7) days after the Recipient receives the Notice referred to in clause 31.21(a) (or other time frame as agreed between them) to discuss Defence's security concern and whether any aspect of this Agreement or the Activities needs to be modified to address Defence's security concern (for example limitations on publication or dissemination of information, enhanced security requirements, changing Agreement Material ownership, use of Specified Personnel, or use of subcontractors).
- (c) If the parties cannot agree on how Defence's security concern is to be addressed (including agreeing on how this Agreement is to be varied, if necessary), the Department may terminate this Agreement under clause 28.

### **31.22 Controlled Content Register**

- (a) If specified in item 19 of Schedule 1, the Recipient will establish and maintain a Controlled Content Register (**CC Register**) in the form of that item 19 or as otherwise directed by the Department and/or Defence.
- (b) The CC Register is for record management purposes and does not in any way alter or limit the relevant provisions in this Agreement.
- (c) The Recipient will maintain the CC Register in accordance with the procedures set out in this clause 31.22 and as directed by the Department and/or Defence from time to time.
- (d) The Department and/or Defence will regularly inform the Recipient of matters pertinent to the CC Register that arise in relation to the Activities and the Recipient will include those matters in the CC Register.
- (e) The Recipient will provide a copy of the CC Register to the Department and/or Defence:
  - (i) upon request by the Department and/or Defence; and
  - (ii) within thirty (30) days of the expiry or termination of this Agreement.
- (f) If the Department and/or Defence notifies the Recipient of any errors in the CC Register, the Recipient must within seven (7) days:
  - (i) amend the CC Register to the reasonable satisfaction of the Department and/or Defence; and
  - (ii) provide a copy of the amended CC Register to the Department and/or Defence.

# Schedule 1– Agreement Details

Item number	Description	Clause Reference	Details
1.	<b>Commonwealth</b>	<b>1.1</b>	Commonwealth of Australia as represented by the Department of Industry, Innovation and Science  Industry House 10 Binara Street Canberra City ACT 2601  ABN 74 599 608 295
2.	<b>Recipient</b>	<b>1.1</b>	<i>[insert name of Recipient]</i>  <i>[insert place of business street address]</i>  <i>[insert ABN]</i>
3.	<b>Department Representative</b>  <b>Defence Representative</b>	<b>1.1 and 12.1</b>	General Manager Single Business Service Program and CRC Program AusIndustry – Business Services  Chief Science Partnerships and Engagement Division Defence Science and Technology Group
4.	<b>Recipient Representative</b>	<b>1.1 and 12.1</b>	<i>[insert name of Recipient's representative]</i>
5.	<b>Program</b>	<b>1.1</b>	The Defence Cooperative Research Centres Program (Defence CRC Program).
6.	<b>Commencement Date</b>	<b>1.1 and 3</b>	<i>[insert date Agreement is to commence eg, dd/mm/yy]</i>  <i>or date of execution of this Agreement</i>  <i>or on occurrence of a specified event - specify whichever applicable]</i>
7.	<b>End Date</b>	<b>1.1 and 3</b>	<i>[insert date the Agreement is to end eg, dd/mm/yy ]</i>
8.	<b>Guidelines</b>	<b>4.1</b>	The Defence Cooperative Research Centres Program Guidelines, and any related documentation developed to assist the management and administration of the Defence CRC Program, issued by the Defence and as amended from time to time.
9.	<b>Policy and requirements</b>	<b>4.1</b>	<i>[details, including national security policies]</i>
10.	<b>Acknowledgment of support</b>	<b>4.2</b>	Acknowledgement of support must be made in accordance with any relevant guidelines issued by the Commonwealth from time to time, and as amended from time to time.

Item number	Description	Clause Reference	Details
11.	<b>Subcontractors</b>	<b>14.1</b>	[insert business names, place of business and corresponding ABNs of any subcontractors. Otherwise insert 'not applicable']
12.	<b>Specified Personnel</b>	<b>1.1 and 14</b>	[insert names, positions and time commitments of Specified Personnel, such as the Chair, Board Members, CEO, Research Program Leaders]
13.	<b>Commonwealth Material</b>	<b>1.1, 16.3 and 16.4</b>	<ul style="list-style-type: none"> <li>• Defence CRC Indicia:</li> </ul> <p>The license granted to the Recipient and Participants by the Commonwealth under clause 16.3(b)(iii), in so far as it relates to Defence CRC Indicia, is subject to the following conditions, directions or restrictions:</p> <ol style="list-style-type: none"> <li>a) The Recipient must ensure that where it grants a sub-license to the Participants under clause 16.3(b)(iii), that: <ol style="list-style-type: none"> <li>(i) the Participants acknowledge that the Commonwealth owns all rights in the Defence CRC Indicia;</li> <li>(ii) the term of the sublicense ceases on or before the End Date;</li> <li>(iii) the Participants are bound by the same conditions imposed on the Recipient by the Commonwealth;</li> <li>(iv) the sublicense does not include a further right of sublicense;</li> <li>(v) the sublicense is automatically revoked upon termination or expiration of this Agreement.</li> </ol> </li> </ol> <p>The Recipient must cease using the Defence CRC Indicia by the End Date or from the date the Agreement is otherwise terminated, except where acknowledgement of support under clause 4.2(a) or 4.2(b) is required where these publications, products, processes or inventions are not released or developed until after the End Date.</p>
14.	<b>Pre-existing Material</b>	<b>1.1</b>	[specify Commonwealth's and Recipient's pre-existing Material, if any]
15.	<b>Moral Rights – Specified Acts</b>	<b>1.1 and 17</b>	[if the Commonwealth wants to perform additional acts with the Agreement Material other than those listed in clause 17, these should be set out here. Otherwise insert 'not applicable']
16.	<b>Insurance</b>	<b>19</b>	[insert if different to cl 19]

Item number	Description	Clause Reference	Details
17.	<b>Confidential Information</b>	<b>1.1 and 21</b>	<p>[insert each party's Confidential Information (decided by reference to the Department of Finance's Guidance on Confidentiality in Procurement found at: <a href="http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/practice.html">http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/practice.html</a>), including any Agreement provisions or Schedules that are to be kept confidential. The period of confidentiality should be specified for each item. If the parties agree that different items of information are to be confidential for different periods of time, the different periods should be recorded next to each item. An assessment will need to be made by the parties on a case-by-case basis about what is to be included in this item.</p>
18.	<b>Address for Notices</b>	<b>30</b>	<p><b>Commonwealth:</b>  General Manager  Branch Name    GPO Box 2013  Canberra ACT 2601    Industry House  10 Binara Street  Canberra City ACT 2601    Email: <a href="mailto:defencecrcprogram@industry.gov.au">defencecrcprogram@industry.gov.au</a></p> <p><b>Recipient:</b>  [insert name and position of person to receive notices]    [insert physical address]    [insert postal address]    [insert email address]</p>
19.	<b>Controlled Content Register</b>	<b>31.22</b>	<p>[Insert either:  No Controlled Content Register is required.  or  The Recipient will maintain a Controlled Content Register in the following format: [details]</p>

# Schedule 2 – NGTF Priorities, Goals and Objectives

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## 1. NGTF Priorities

[details]

## 2. Goals and Objectives

[details]

## 3. Overview, Outcomes and Impacts (clauses 1.1 and 4.1)

*[Include overview of the Defence CRC, summary of program of work, and the predicted outcomes and impacts. This information to be taken directly, or adapted as necessary, from the Formation Plan.]*

## 4. Compliance Milestones (clauses 1.1, 4.1, 12 and 13)

No.	Milestone	Due Date
C1	Provision of Company Constitution and executed Participant Agreements for founding Participants	Within 90 days of the Commencement Date
C2	Submission of Quarterly Report	Each Quarter in accordance with Guidelines
C3	Submission of Annual Report	Each Financial Year in accordance with Guidelines
C4	Submission of End of Funding Report	With final Annual Report in accordance with Guidelines

## 5. Performance Milestones (clause 1.1 and 4.1(d))

*[Include milestones, for each Research Programme, on the creation or completion of a **key/major** research, commercialisation, education and training, SME engagement, or utilisation output/outcome. As a general principle, it is anticipated that there would be the equivalent of about one milestone per year of funding for each Research Program. There should be a spread of milestones across the funding period, correlating with key steps towards the achievement of objectives for each Research Program. ]*

Research Program No. 1	[Research Program 1 name]	
Milestones		Due date
RP1.1	<i>Insert a milestone on the creation or completion of a <b>key/major</b> research, commercialisation, education and training, SME engagement, or utilisation output/outcome.</i>	
RP1.2	<i>Insert a milestone on the creation or completion of a <b>key/major</b> research, commercialisation, education and training, SME engagement, or utilisation output/outcome.</i>	

RP1.3	<i>Insert a milestone on the creation or completion of a <b>key/major</b> research, commercialisation, education and training, SME engagement, or utilisation output/outcome..</i>	
RP1.4	<i>Insert a milestone on the creation or completion of a <b>key/major</b> research, commercialisation, education and training, SME engagement, or utilisation output/outcome.</i>	
RP1.5	<i>Insert a milestone on the creation or completion of a <b>key/major</b> research, commercialisation, education and training, SME engagement, or utilisation output/outcome.</i>	



# Schedule 3 – Reporting

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## 1. Quarterly Reports

Throughout the Agreement Period, the Recipient must provide to the Department, in accordance with any relevant Guidelines, a quarterly report within 30 days of the end of each Quarter incorporating:

- (a) a progress report, framed against the Activities undertaken in that Quarter, and an evaluation of progress of Projects and towards achieving the Goals and Objectives and due and/or upcoming scheduled Milestones;
- (b) a list of any changes to Recipient and/or Participant structure/ownership/involvement, Agreement Material, key personnel, the Budget, etc., that could affect compliance with this Agreement;
- (c) a cash (not accrual) report in respect of that Quarter indicating all the sources of all cash Defence CRC Contributions for the Activities;
- (d) a report in respect of that Quarter indicating all in-kind (FTE and non-staff in-kind) Defence CRC Contributions for the Activities;
- (e) a cash (not accrual) report in respect of that Quarter on the expenditure of cash for the Activities against each head of expenditure; and
- (f) a declaration by the Recipient certifying the accuracy of the particulars provided under paragraphs (a) to (e), including a statement that the Funds have been expended only for the Activities and otherwise in accordance with this Agreement.

## 2. Annual Reports

Following the end of each Financial Year during the Agreement Period, the Recipient must provide to the Department an Annual Report, in accordance with any relevant Guidelines, which must include, at a minimum:

- (a) an overview, framed against the Goals and Objectives, of the Activities, Milestones and Outcomes achieved, and an evaluation of progress in achieving upcoming, scheduled Milestones;
- (b) a list of any changes to Recipient and/or Participant structure/ownership/involvement, Agreement Material, key personnel, the Budget, etc., that could affect compliance with this Agreement;
- (c) budget details, including grant funds received and other Defence CRC contributions, expenditure and allocation of resources;
- (d) an independent auditor's report on the budget and Account;
- (e) if applicable, an End of Funding Report (see item 4); and
- (f) a declaration by the Recipient certifying the accuracy of the particulars provided under paragraphs (a) to (g), including a statement that the Funds have been expended only for the Activities and otherwise in accordance with this Agreement.

### 3. End of Funding Reporting

Prior to the end of the Agreement Period, the Recipient must report to the Department, in accordance with any Guidelines, on the management strategy to cease operations and the Defence CRC's key highlights and achievements.

### 4. Post-Completion Reporting

The Recipient must prepare and provide to the Department a final report within four months after the end of the Agreement Period in accordance with any Guidelines. An independently audited financial acquittal report will be required with the final report. The financial acquittal report will verify that the Funds were spent in accordance with this Agreement.

### 5. Ad hoc reports

Defence, acting through the Department, may request ad-hoc reports as required by Defence from time to time, and the Recipient must provide such reports at the time and in the manner reasonably required by Defence in relation to any significant developments concerning the Activities or any significant delays or difficulties encountered in undertaking the Activities.

### 6. Compliance visits

The Department may visit the Defence CRC during the Agreement Period to review compliance with this Agreement. The Department may also inspect the records required to be kept under this Agreement. Reasonable notice of any compliance visit will be provided to the Defence CRC.

# Schedule 4 – Funds

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## 1. Funding Period and Total Funds (clause 1.1)

The Funding Period commences [xx Month 20xx] and ends [xx Month 20xx].

The total amount of Funds is [insert Australian dollar amount] (excluding GST). Payment (clauses 1.1 and 8).

## 2. Payment (clauses 1.1 and 8)

An initial payment will be made on execution of the Grant Agreement based on forecast eligible expenditure for the first six months. Subsequent payments will be paid quarterly in advance, based on forecast eligible expenditure and adjusted for unspent amounts from previous payments. Payments are subject to satisfactory progress on the Project and compliance by the Grantee with its obligations under this Agreement.

The Grant will be paid over the following financial years subject to sufficient Program funding being available. The Department is not obliged to make a payment if it would result in the amount paid in a financial year exceeding that financial year's capped amount itemised in this table.

<b>Financial year</b>	<b>\$ capped amount (GST excl)</b>
2018/19 (initial payment)	
2019/20	
2020/21	
2021/22	
2022/23	
2023/24	
2024/25	
<b>Total</b>	

# Schedule 5 – Defence CRC Contributions, Minimum Defence CRC Contributions and Budget

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## 1. Defence CRC Contributions

To the extent known at the Commencement Date, the Defence CRC Contributions are:

- (a) **Annual Participant Fees**  
[details]
- (b) **Project Contributions**  
[details]
- (c) **Third Party Contributions**  
[details]

## 2. Minimum Defence CRC Contributions

The Defence CRC must receive Minimum Defence CRC Contributions for each Financial Year equal to or greater than 20% of the total Funds paid by the Department for the same Financial Year.

## 3. Calculation of value of any staff in-kind contributions

With respect to Participants that are universities, the value of staff in-kind contributions will be determined in accordance with the terms of their Defence Science Partnering Deed under the Defence Science Partnerships program, and for other research Participants, on terms consistent with those that apply under the Defence Science Partnerships program.

## 4. Budget

[Provided budget as an Excel Spreadsheet ].

# Schedule 6– Founding Participants list

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## 1. Founding Participants (clause 1.1 and 6)

[Insert the details of the founding Participants for the purposes of this Agreement, and who are required to perform the role as set out under the table below]

Name	Organisation Type	ABN
Name of Participant organisation (use the organisation’s formal legal name)	Industry or Research	00 000 000 000

# Schedule 7– Chief Scientist and Engineer

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## 1. Managing Conflict of Interest (clause 5.8)

- (a) This Schedule applies if the Recipient appoints a Defence APS employee (**the Employee**) to the position of Chief Scientist and Engineer (**CSE**).
- (b) The parties acknowledge that the Employee will have ongoing obligations of fidelity to both the Commonwealth (as an Australian Public Servant) and to the Recipient (as its employee).
- (c) Each party will:
  - (i) use its reasonable endeavours to avoid providing the Employee with information that it does not wish to be communicated to the other party; and
  - (ii) ensure the Employee does not have responsibility for the day to day management of this Agreement during their tenure as CSE.
- (d) The Commonwealth will ensure that the Employee does not have responsibility for the day to day management of this Agreement on its behalf for six (6) months after the cessation of their tenure as CSE.
- (e) If the Employee ceases to be an Australian Public Servant, but continues to be employed by the Recipient in whatever capacity, the Recipient will ensure that the Employee does not have responsibility for the day to day management of this Agreement on its behalf for six (6) months after the Employee ceases to be an Australian Public Servant.
- (f) Subject to clause (g) below, the Recipient will ensure that the Employee is not appointed to its Board of Directors for the duration of this Agreement and for six (6) months after the conclusion or termination of this Agreement.
- (g) Despite clause (f) above, if at any time during the term of this Agreement the Employee ceases to be an Australian Public Servant the restriction in clause (f) ceases to apply at that time, and instead the Recipient will ensure that the Employee is not appointed to its Board of Directors for six (6) months after the Employee ceases to be an Australian Public Servant.
- (h) Nothing in this Schedule is intended to limit the operation of clause 24 (Conflict of interest) of the Agreement.

# Signing page

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**EXECUTED** as an agreement.

**Signed** for and on behalf of the  
**Commonwealth of Australia as  
represented by the Department of  
Industry, Innovation and Science** by its  
duly authorised delegate in the presence of

\_\_\_\_\_  
Signature of witness



\_\_\_\_\_  
Signature of delegate



\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of delegate (print)

\_\_\_\_\_  
Position of delegate (print)

**Executed** by **[insert name of company]** in  
accordance with section 127 of the  
*Corporations Act 2001* in the presence of

\_\_\_\_\_  
Signature of director



\_\_\_\_\_  
Signature of director/company secretary/sole director  
and sole company secretary  
(Please delete as applicable)



\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary/sole director and  
sole company secretary (print)