

THIS AGREEMENT is made the ____ day of _____ 201__

DEFENCE CRC Project Agreement

Party Details

This Project Agreement consists of the attached Project Plan and the attached Project Terms.

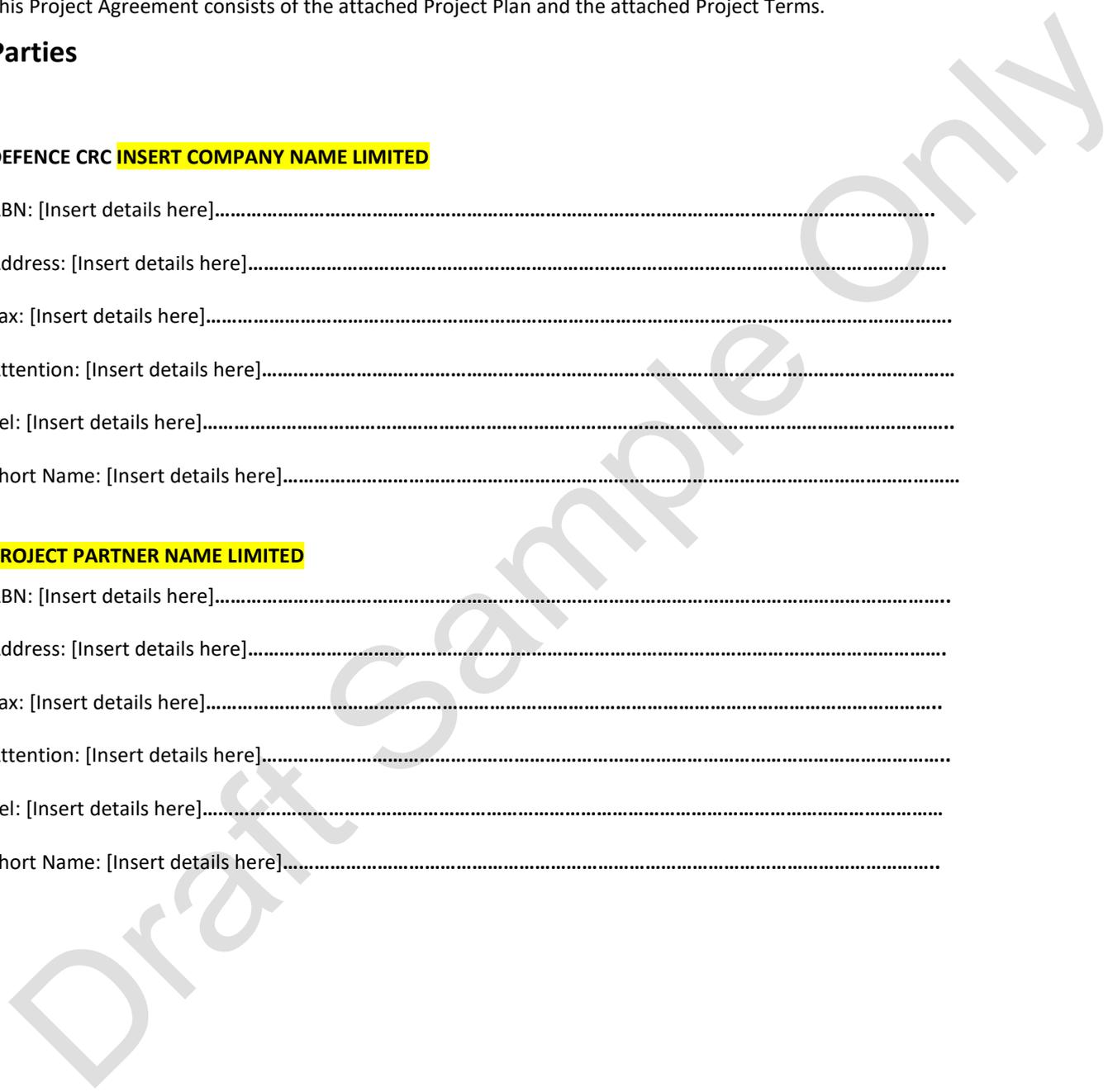
Parties

DEFENCE CRC INSERT COMPANY NAME LIMITED

ABN: [Insert details here].....
Address: [Insert details here].....
Fax: [Insert details here].....
Attention: [Insert details here].....
Tel: [Insert details here].....
Short Name: [Insert details here].....

PROJECT PARTNER NAME LIMITED

ABN: [Insert details here].....
Address: [Insert details here].....
Fax: [Insert details here].....
Attention: [Insert details here].....
Tel: [Insert details here].....
Short Name: [Insert details here].....



EXECUTED BY THE PARTIES AS AN AGREEMENT (Comprising the Project Plan and the Project Terms)

EXECUTED by DEFENCE CRC Insert Company Name

(ABN 98 624 711 011) in accordance with
Section 127 of the *Corporations Act 2001*

Signature of Director ←

Print Name

Date

Signature of Director/Company Secretary
(Delete as applicable) ←

Print Name

Date

EXECUTED by [insert] (ABN [insert]) by an authorised
representative in the presence of

Signature of witness ←

Print Name

Date

Signature of authorised representative ←

Print Name

Date

EXECUTED by [insert] (ABN [insert]) by an authorised
representative in the presence of

Signature of witness ←

Print Name

Date

Signature of authorised representative ←

Print Name

Date

DEFENCE CRC Project Plan

Unless separately defined, terms used in this Project Plan will have the meaning set out in the Project Terms.

(Note: Item numbers are referenced in the Project Terms and so numbering must be retained)

1. PROJECT SUMMARY

Project Number		Project Leader	
Project Name			
Commencement Date		Completion Date	
Project Aim: (30 words max.)			
Project Summary (less than 700 words)			
<p>Goals and Objectives of Defence CRC Name of Recipient to be addressed</p> <p>Need and relevance to research priority areas</p> <p>Hypothesis or Research Questions</p> <p>Methodology / Approach</p> <p>Anticipated Outcomes</p>			

2. PROJECT PARTICIPANTS, RESPONSIBLE PARTICIPANTS AND PROJECT CONTRIBUTIONS

Project Participant (including Specified Division)	Defence CRC Participant: Industry (I), Research (R), Non-Participant (NP)	Responsible Participant Y/N	Contribution Amount	
			Cash	Non-cash / In-kind (value)
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
			\$	\$
Total			\$	\$

Defence CRC Funds	Up to: \$
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1. PROJECT OBJECTIVES

(1 para)

- *To include the 'Goals and Objectives' of Defence CRC that the Project is intended to achieve*

2. POTENTIAL OUTPUTS, OUTCOMES AND IMPACT (< 1 page)

- *The potential game-changing capabilities and technologies likely to arise from the Project*
- *Benefits to Defence and Defence industry, the commercial potential of the expected outputs, and any spill-over benefits to Australian industry or government*

Demonstrated End User Support (100 words)

3. METHODOLOGY (2 pages)

- *The methodology to be applied to achieve the outcomes and adoption of the new technologies*

4. PROJECT BUDGET

[Note: All research is to be conducted on a fee-for-service basis. The fees payable to Research Participants that are universities are to reflect the rates under the terms of their DSP Deed, and for other Research Participants will be rates consistent with those that apply under the DSP Program.]

Budget Justification (< ½ page)

- *Include how Defence CRC Recipient Name Funds will be used*

5. RESOURCE REQUIREMENTS

FTE in-kind Contributions

Non-staff in-kind Contributions (infrastructure support for Defence CRC Recipient Name funded staff):

Other in-kind Contributions (for use of equipment, laboratories, etc.):

Contributions from DST Group:

Contributions to be made by Third Parties:

Specified Personnel

Assets

The following Assets will be purchased for the purposes of the Project (if any):

- *Include details of any Assets, how they are to be paid for, who will own them, and where they are to be located or if not applicable, insert N/A*

6. POTENTIAL FOR RESEARCH TO BECOME CLASSIFIED OR FACE EXPORT CONTROL LIMITS

- *If identified as significant a separate management plan will need to be provided*

7. ANALYSIS OF RISKS TO PROJECT ACHIEVEMENT (< ½ page)

Potential to be surpassed by events (< 200 words)

- *Analysis of project competitors, project differentiation and novelty*

8. INTELLECTUAL PROPERTY OVERVIEW

(100 words)

9. **BACKGROUND IP**

Description	Owner of Background IP	Name of party making the Background IP available (if not owner)	Terms of Licence / Restrictions on use of Background IP (unless detailed below licence at clauses 3.3 and 3.4 of the Project Terms will apply)

Licence to use Background IP for use of Project IP for Defence Purposes (clause 3.5)

- *If licence agreed, insert details*

Requirement for consent of Industry Participant(s) to the sublicensing of its Background IP to Specified Commercial Competitors for Defence Purposes (clause 11.5)

Industry Participant	Description of Background IP	Consent required Y/N	Specified Commercial Competitors

10. **PROJECT IP & COMMERCIALISATION**

Defence ownership of Project IP (clause 9.2)

- *Is Defence to own Project IP*

Project IP Owner(s) (clause 9.3):

- *If more than one, detail ownership shares*

Strategy for Protection of Project IP (clause 9.7)

Industry Project IP Owners' Use Field and Use Field Conditions (clause 12.1)

Name of Industry Project IP Owner	Use Field	Use Field Conditions

Rights of other Project Participants to use Project IP (if any) (clauses 10.2(b) and 10.3(b))

Requirement for consent of Industry Participant(s) to the sublicensing of Project IP to Specified Commercial Competitors for Defence Purposes (clause 11.5)

Industry Participant	Description of Project IP	Consent required Y/N	Specified Commercial Competitors

Other Commercialisation rights, and rights to use Project IP pursuant to a sublicense of Defence’s rights to use Project IP for Defence Purposes (clause 12.2) - if applicable

Commercialisation Plan (clause 12.3)

- *plan for the approach to be adopted to the commercialisation of Project IP*

11. EDUCATION / TRAINING OPPORTUNITIES

- *Including how the Project will contribute to capacity and capability building in the Australian defence industry and related industry and research sectors*

Student Requirements (clause 18)

- *students involved in the Project, including where they are enrolled, their degree course, supervisors etc*

12. MILESTONES, DELIVERABLES & PERFORMANCE INDICATORS

Milestones, Deliverables and Milestone Payments (clause 4.1)

Milestone No:	Milestone Details & Deliverables	Milestone Payment
Milestone 1		
Milestone 2		
Milestone 3		
Milestone 4		
Milestone 5		
Milestone 6		
Milestone 7		
Milestone 8		

Performance Indicators

- *criteria on which performance will be assessed during the course of Project reviews*

13. INSURANCE (clause 15)

- *Include details of workers' compensation insurance, public liability insurance, professional indemnity insurance, product liability insurance*

14. NATIONAL SECURITY REQUIREMENTS (clause 5.2(g))

15. **OTHER**

Have Project Deed Polls (confidentiality agreements/IP assignment) been completed for all staff and students involved in the Project?

Have Moral Rights Waiver forms been completed for all project personnel for this Project?

Have the appropriate approvals (ethics, access to Defence facilities, security clearances) been sought and granted for this Project?

16. **SPECIAL CONDITIONS (clause 1.3)**

- *e.g. go/no-go decisions, success conditions, trials reliance etc, payment of project funds*

Draft Sample Only

BACKGROUND

- A. Defence provides Commonwealth funding under a program known as the *Defence Cooperative Research Centres Program (Defence CRC Program)* which aims to develop next generation technologies to deliver game-changing capabilities critical to defence and national security.
- B. Defence is responsible for the Defence CRC Program which is administered by the Department on behalf of Defence.
- C. The Defence CRC has been established under the Defence CRC Program and is operated by the Company.
- D. The Company has entered into the Funding Agreement with the Department pursuant to which Program Funds have been made available to the Company to conduct certain activities, including the Project.
- E. Some or all of the Project Participants are Participants in the Defence CRC.
- F. All approvals for the conduct of the Project have been obtained from the Board.
- G. The Parties enter this Agreement to set out the terms and conditions which will apply to the conduct of the Project.

NOW IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Account means the bank account that the Company is required to establish pursuant to the Funding Agreement.

Advisers means:

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

Advisory Panel means the Defence CRC Program Advisory Panel, the Defence CRC Scientific and Engineering Advisory Panel, together with any other advisory panel established by Defence for the purposes of the Defence CRC Program.

Agreement means the agreement consisting of:

- (c) the 'Party Details' that detail the Parties and their execution of the Agreement;
- (d) the **Project Plan**; and
- (e) these **Project Terms**,

including the Schedules and Annexures to such documents, and any amendment agreed to in writing by the Parties.

Asset means an item of real or personal property, but does not include Intellectual Property Rights.

Background IP means:

- (a) the IPR specified in Item 11 of the Project Plan that a Party has agreed to contribute as Background IP to the Project; and
- (b) any other IPR that a Party has offered to contribute as Background IP for the Project and has been agreed in writing by all Parties **as being accepted as Background IP for the Project**,

but does not include any Project IP.

Board means the board of directors of the Company.

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

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

Commencement Date means the commencement date for the Project specified in Item 1 of the Project Plan.

Commercialisation Plan means the plan specifying the approach to be adopted with respect to the Commercialisation of Project IP as set out in Item 12 of the Project Plan.

Commercialise in relation to IPR, means 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 the IPR, or licensing of any third party to do any of those things, or otherwise licensing or assigning the IPR, regardless of whether any revenue is generated or intended to be generated. **Commercialisation** has a corresponding meaning.

Commonwealth means the Commonwealth of Australia.

Company means the Defence CRC (Insert Defence CRC Company Name (Insert ABN)).

Completion Date means the completion date for the Project specified in Item 1 of the Project Plan.

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

Constitution means the constitution of the Company.

Defence means the Commonwealth of Australia as represented by the Department of Defence.

Defence CRC Indicia means the terms "Defence CRC", "Defence CRC Projects", "Defence Cooperative Research Centre", the Defence CRC logo and the Defence CRC Program logo and any additional items specified by the Commonwealth from time to time.

Defence CRC Program has the meaning set out in paragraph A of the Background.

Defence CRC Program Advisory Panel means the advisory panel of that name established by Defence for the purposes of the Defence CRC Program.

Defence CRC Scientific and Engineering Advisory Panel means the advisory panel of that name established by Defence for the purposes of the Defence CRC Program.

Defence CRC (Name) means the research collaboration operated by the Company known as the **Defence CRC Company Name**.

Defence CRC Confidential Information means Confidential Information generated as a result of the activities of Defence CRC.

Defence CRC Funds means the money comprised in the Account including the Program Funds, any cash contributions to the Defence CRC received from Participants and third parties, and interest on the Account.

Defence CRC Objectives means the objects of the Defence CRC as set out in the Constitution.

Defence Purposes means 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:

- (a) scientific, technical or applied research and development activities;
- (b) studies, analysis and investigation in relation to current and future technology and capability (including the technology developed under project agreements);
- (c) assessment, investigation and development of options to meet Defence's capability needs and operational requirements;
- (d) development and definition of functional and performance requirements to support the procurement of technology or capability; and
- (e) the provision by third party contractors of goods or services to or for Defence.

Defence Purposes does not include Commercialisation of IPR by Defence in return for a royalty or other commercial return (subject to clause 12.3).

Deliverables means the required deliverables for the Project as described in Item 14 of the Project Plan.

Department means the Commonwealth as represented by the Department of Industry, Innovation and Science (and includes its successors that administer the Defence CRC Program).

Funding Agreement means the agreement dated 26 March 2018 between the Department and the Company as further described in paragraph D of the Background.

Guidelines means the Guidelines for the Defence CRC Program issued by Defence, together with any other guidelines issued by Defence from time to time in relation to the Defence CRC Program and its administration.

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

Industry Participant means an industry entity that has been admitted as a Participant in the Defence CRC and entered into a Participant Agreement. The Industry Participants participating in the Project are identified in Item 2 of the Project Plan.

Intellectual Property Rights or IPR means all intellectual property rights, including:

- (a) copyright, all rights in relation to inventions (including patents), trade marks (including service marks and goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts, domain names and any right to have confidential information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered.

Milestone Payment means a payment of Project Funds due on completion of a particular Milestone, as detailed in Item 14 of the Project Plan.

Milestones means the milestones for the Project as set out in Item 14 of the Project Plan.

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

National Security Requirements means the national security requirements that apply to the conduct of the Project and its outputs as set out in Item 16 of the Project Plan.

Non-Defence Purposes means any purposes other than Defence Purposes.

Non-Participant means a Project Participant that is not a Participant in the Defence CRC. The Non-Participants participating in the Project (if any) are identified in Item 2 of the Project Plan.

Participant Agreement means an agreement with the Company under which a party becomes a Participant in the Defence CRC.

Participants means Industry Participants and Research Participants.

Parties means the parties to this Agreement, being the persons detailed in the 'Party Details' to which these Project Terms are attached, and **Party** means one of them.

Party Confidential Information means any information of a Party, not including Defence CRC Confidential Information:

- (a) treated by that Party as confidential; and
- (b) disclosed by that Party to another Party, or of which another Party becomes aware, whether before or after the date of this Agreement; and
- (c) in the case of the Company for the purposes of this Agreement, includes any Confidential Information disclosed to the Company by the Department, Defence or a third party, which in turn has been disclosed to a Project Participant by the Company.

Performance Indicators means the performance indicators set out in Item 14 of the Project Plan.

Personnel means the personnel, including employees, officers, agents, contractors, consultants and professional advisers of a Party allocated to or otherwise involved in the Project, and includes Specified Personnel.

Program Funds means funding under the Defence CRC Program made available to the Company under the Funding Agreement.

Project means the project described in the Project Plan.

Project Budget means the budget for the Project as set out in Item 6 of the Project Plan including any variations to that budget as agreed by the Parties in writing.

Project Contribution means a contribution to the Project (whether money, Assets, Personnel, facilities or services but not including IPR) to be contributed by a Party to the Project as set out in Item 2 of the Project Plan and detailed in the Project Budget.

Project Funds means the Program Funds and any other money to be paid to the Responsible Participants for conducting the Project as set out in the Project Budget.

Project IP means Intellectual Property Rights developed in the course of carrying out the Project.

Project IP Owner means the party or parties detailed in Item 12 of the Project Plan.

Project Leader means the person appointed to act as a leader of the Project, as detailed in Item 1 of the Project Plan.

Project Objectives means the objectives for the Project as set out in Item 3 of the Project Plan.

Project Participants means the Parties other than the Company.

Project Plan means the plan for the conduct of the Project attached to these Project Terms.

Project Terms means these clauses 1 to 28 (inclusive).

R&D Tax Incentive is established by Division 355 of the *Income Tax Assessment Act 1997* with functions relating to its administration included in the *Industry Research and Development Act 1986* (Cth).

Research Participant means a research entity that has been admitted as a Participant in the Defence CRC and entered into a Participant Agreement. The Research Participants participating in the Project are set out in Item 2 of the Project Plan.

Responsible Participants means the Project Participants specified in Item 2 of the Project Plan who are responsible for carrying out specified research, education, training or Commercialisation activities under the Project.

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

Special Conditions means the special conditions set out in Item 18 of the Project Plan which are to prevail over every other term of this Agreement in accordance with clause 1.3.

Specified Commercial Competitors means the commercial competitors of an Industry Participant specified in Item 11 and/or Item 12 of the Project Plan.

Specified Division means, in relation to a Responsible Participant, the division, department or faculty of that Responsible Participant specified in Item 2 of the Project Plan.

Specified Personnel means the Personnel of the Company or a Project Participant that are identified as Specified Personnel in Item 7 of the Project Plan.

Term means the term of this Agreement as further detailed in clause 2.

1.2

Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, Schedule or Annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to 'A\$', '\$A', 'dollar' or '\$' is to Australian currency;
- (f) a reference to a party to a document (including this Agreement) includes the party's executors, administrators, successors and permitted assigns and substitutes;

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- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (j) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it;
- (k) the liabilities of the Parties are not joint nor joint and several, but are several liabilities and obligations;
- (l) 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
- (m) headings are for ease of reference only and do not affect interpretation.

1.3 Priority

If there is any inconsistency between the documents and provisions that make up this Agreement (including the Schedules and Annexures), then the item appearing first in the list below will prevail over the lower placed items to the extent of the inconsistency:

- (a) the Special Conditions;
- (b) the clauses of these Project Terms;
- (c) the Project Plan (excluding the Special Conditions); and
- (d) the Schedules and the Annexures.

1.4 Approved Subcontractors

- (e) The Company authorises [insert] to engage [insert, if applicable] as sub-contractors ("Approved Subcontractors") to deliver the Project.
- (f) Any reference to a Project Participant, Industry Participant, Research Participant or Responsible Participant in this Agreement other than where it refers to [insert] is a reference to an Approved Subcontractor. The rights and obligations of those Project Participants, Industry Participants, Research Participants or Responsible Participants are managed through [insert] as the Party to this Agreement.
- (g) [insert] intends to enter into subcontractor agreements with the Approved Subcontractors and the Company authorises [insert] to sub-licence its rights and obligations in this Agreement through to the Approved Subcontractors.
- (h) [insert] responsible for subcontractors, plus step in rights, plus provide copy of subcontracts to Company.

- (i) The terms of the subcontracts must first be agreed with the Company and not varied thereafter without the written consent of the Company, such consent not to be unreasonably withheld or delayed.

2. TERM OF AGREEMENT

This Agreement and the Project commences on the Commencement Date and will continue until the later of the Completion Date or the date on which a Party discharges all its obligations under this Agreement with respect to the Project, subject to earlier termination in accordance with clause 8 (Term).

3. BACKGROUND IP

3.1 Making available

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

- (a) as specified in the Project Plan; and
- (b) in accordance with:
 - (i) this clause 3; and
 - (ii) any written agreement between the Parties subsequent to the Project Plan being agreed.

3.2 Warranty

Each Party represents and warrants to the other Parties that:

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

the Party has not entered any agreement regarding that Background IP, or otherwise dealt with that Background IP in any manner, that is inconsistent with the rights granted to the other Parties as described in the Project Plan and this clause 3; and

- (c) it will not, without the written consent of the other Parties, enter any agreement in relation to or otherwise deal with that Background IP in a manner that restricts the exercise of the rights granted to the other Parties as described in the Project Plan and this clause 3.

3.3 Licence for Project use

Each Party grants to the other Parties an irrevocable, non-exclusive, royalty-free, worldwide licence to use the Party's Background IP made available to the Project for the purposes of carrying out the Project during the Term, subject to any restrictions on its use:

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

The licence granted under this clause includes a right to sublicense for the purposes of carrying out the Project unless otherwise specified in the restrictions referred to in clauses 3.3(a) and 3.3(b).

3.4 Licence for Commercialisation

Where Project IP has been developed using the Background IP of a Project Participant in accordance with this Agreement and that Background IP is essential to enable or facilitate the Commercialisation of the Project IP, the Project Participant that has made the Background IP available hereby grants to **[insert]** a licence (including the right to sublicense) to use that Background IP to enable the Project IP to be Commercialised.

3.5 Licence for Defence Purposes

- (a) Notwithstanding clause 3.4 but subject to clause 11.5, hereof and clause 16.3(e) of the Funding Agreement nothing will limit or restrict Defence's rights to use the Project IP for Defence Purposes.
- (b) Where Project IP has been developed using the Background IP of a Project Participant in accordance with this Agreement and that Background IP is essential to enable or facilitate the proper functioning, use and full enjoyment of the Project IP for Defence Purposes, the Project Participant that has made the Background IP available:
 - (i) grants to the Company a licence (including the right to sublicense, but subject to clause 11.5 hereof and clause 16.3(e) of the Funding Agreement) to use that Background IP to enable the Project IP to be used for Defence Purposes on the terms set out in Item 11 of the Project Plan (to the extent that the terms of the licence to use the Background IP have been agreed at the Commencement Date and set out in Item 11 of the Project Plan); or
 - (ii) if not so agreed and set out in Item 11 of the Project Plan, will negotiate with the Company in good faith and agree the terms of a licence to the Company to use that Background IP to enable the Project IP to be used for Defence Purposes (including the right to sublicense, but subject to clause 11.5), and if not agreed within a reasonable time, the terms of the licence will be determined by an

independent expert in accordance with clause 24.4.

- (c) For the purposes of the licence grant under clause 3.5(b), the Company is acting in the capacity as agent of Defence.

3.6 Acknowledgement

Subject to the rights granted in this clause 3, the Parties acknowledge and agree that a Party retains the right to control and use its Background IP and that ownership of the Background IP does not change. The Background IP owner may continue to use its Background IP freely (provided that the use is not inconsistent with the terms of this Agreement).

3.7 Register

- (a) The Company will maintain a register recording all Background IP made available under this Agreement, including any encumbrances or restrictions on its use specified or notified in accordance with clause 3.3.
- (b) Each Project Participant will maintain a register recording all Background IP it makes available under this Agreement, including any encumbrances or restrictions on its use specified or notified in accordance with clause 3.3.

3.8 Infringement of Background IP

The Parties agree that they will take all reasonably necessary steps to give each other prompt notice of any infringement of Background IP which comes to their attention.

3.9 Licence for the Commonwealth

Without limitation to clause 3.5, if a Project Participant makes its Background IP available under this Agreement, that Project Participant grants to the Company an irrevocable right to grant to the Commonwealth a perpetual, non-exclusive, irrevocable, worldwide sublicense (including the right for the Commonwealth to sublicense) to use such Background IP in accordance with clause 16.3(h)(i) of the Funding Agreement (clause 16.3(h)(i) is referenced at Annexure 1 to these Project Terms).

4. PROJECT FUNDS AND PROJECT CONTRIBUTIONS

4.1 Project Funds

- (a) The Company will pay the Project Funds to **[insert]** in Milestone Payments on achievement of the applicable Milestone in accordance with the Project Plan and with the written approval of the Company, **[insert]** must disperse the Project Funds to the relevant Responsible Participants entitled thereto in accordance with the Project Budget.
- (b) The Company:
 - (iii) may withhold Project Funds if any Milestones have not been achieved or Deliverables have not been provided by their required dates; and

- (iv) will release the withheld Project Funds once the Responsible Participants have achieved the missed Milestones or provided the required Deliverables (as the case requires).

4.2 Project Contributions

- (a) Each Project Participant must pay its cash Project Contributions to the Company at the times and in the manner specified in the Project Plan.
- (b) Each Project Participant must make its non-cash Project Contributions available for the Project at the times and in the manner specified in the Project Plan.
- (c) The Company must make its non-cash Project Contributions available for the Project at the times and in the manner specified in the Project Plan.

4.3 Use of Project Funds and other Project Contributions

The Responsible Participants may use the Project Funds and any Project Contributions provided to them for the Project:

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

4.4 What Project Funds cannot be used for

A Project Participant must not spend the Project 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 Company in writing;
- (c) for any activities for which the Project Participant has previously been funded, or is 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 the Project Participant for the costs associated with existing staff or other resources committed by the Project Participant to the Project as in-kind contributions under this Agreement;
- (e) to pay the Project 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.

4.5 Assets

Where an Asset is acquired in whole or in part using Program Funds as detailed in Item 7 of the Project Plan, the owner of the Asset must hold, maintain, make available and otherwise deal with the Asset in a manner which does not prevent the Company from complying with its obligations under clause 15 of the Funding Agreement with respect to such

Asset.

5. PROJECT MANAGEMENT AND REPORTING

5.1 Project Leader

The Project will be managed by the Project Leader. The Party that employs the Project Leader must use its best efforts to ensure that the Project Leader:

- (a) uses his or her reasonable efforts to ensure the Project is conducted:
 - (i) in accordance with the Project Plan;
 - (ii) so as to achieve the Milestones and Project Objectives;
 - (iii) so as to provide the Deliverables; and
 - (iv) so as to meet the Performance Indicators;
- (b) manages the day to day conduct of the Project;
- (c) provides scientific leadership to the Project;
- (d) is responsible for project administration of all Project personnel including any students; and
- (e) maintains accurate and complete financial records and research and technical records, and in such form as may be directed by the Company.

5.2 Carrying out the Project

The Responsible Participants must carry out the Project:

- (a) in accordance with this Agreement (including the Project Plan and the Project Budget);
- (b) to a professional standard;
- (c) using the Specified Personnel (if any);
- (d) so as to do all things reasonably necessary or desirable to achieve the Project Objectives;
- (e) so as to achieve the Milestones by their required dates;
- (f) so as to provide the Deliverables by their required dates;
- (g) in compliance with the National Security Requirements and any other provisions and restrictions on the use of defence related material such as the export controls applicable to defence and dual-use goods;
- (h) so as to meet the Performance Indicators;
- (i) in accordance with the Project Leader's reasonable directions; and
- (j) in accordance with all applicable law.

5.3 Project reporting

The Project Participant that employs the Project Leader must:

- (a) immediately report to the Company:

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

5.4 Parties reporting to the Project Leader

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

5.5 Separate Project financial accounts

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

- (a) any Project Contributions it makes under clause 4.2;
- (b) any payments of Project Funds made to it by the Company under clause 4.1;
- (c) all expenditure incurred by the Project Participant from Project Funds in carrying out the Project; and
- (d) any other expenditure associated with its carrying out the Project.

5.6 Company reporting obligations to Department and Defence

The Project Participants will cooperate with the Company and provide such information and assistance as requested by the Company to enable the Company to comply with its reporting obligations to the Department and Defence under the Funding Agreement, as well as in relation to any evaluation of the Defence CRC and the Defence CRC Program.

5.7 Reporting obligations to Advisory Panels

The Parties will cooperate with, and provide all reasonable assistance to, the Advisory Panels for the purposes of the conduct of any reviews and evaluations of the Project and the Defence CRC Program.

5.8 Divisional limitation

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

5.9 Changes in security classification

The Company acknowledges that the security classification of the Project may change over time necessitating changes to the Project Plan, Project Budget or both, (including the time for achievement of Milestones, provision of Deliverables and meeting the Performance Indicators). In which case:

- a) the Company will not unreasonably withhold or delay its consent to any necessitated change to the Project Plan, Project Budget or both; and
- b) *[insert]*, provided it uses its reasonable endeavours to keep all such changes to a minimum will not be liable for any delays or cost increases incurred as a result of the adoption of those changes.

6. WITHDRAWAL AND EXPULSION FROM PROJECT

6.1 Withdrawal from Project

- (a) Subject to clause 6.1(c), a Project Participant may withdraw from the Project by giving six (6) months' written notice to each other Party.
- (b) If a Project Participant withdraws from the Project the remaining Parties must agree on whether or not to continue the Project or a variation of the Project and the terms to which that continuation would be subject.
- (c) A Project Participant may not withdraw from the Project without the agreement of the other Parties if it would result in the Company being in breach of the Funding Agreement or any other agreement with a third party.

6.2 Expulsion from Project

- (a) A Project Participant may be expelled from the Project by notice from the Company if Due Cause exists in relation to the Project Participant and remains unremedied after 21 days following notice to that Project Participant.

- (b) For the purposes of clause 6.2(a), **Due Cause** means any of:
- (i) failure to make Project Contributions when required by this Agreement;
 - (ii) unauthorised use or Commercialisation of Project IP or Background IP;
 - (iii) a breach of this Agreement that puts the Company in breach of the Funding Agreement or the Guidelines;
 - (iv) a breach of the Project Participant's Participant Agreement;
 - (v) a breach of the National Security Requirements;
 - (vi) any other material breach of this Agreement in relation to the Project;
 - (vii) change or proposed change to Personnel that is likely to adversely affect the Project which is not appropriately addressed in a timely fashion;
 - (viii) failure to remedy a 'Conflict' in relation to the Project in accordance with clause 23 to the satisfaction of the Company;
 - (ix) change in the direct or indirect beneficial ownership or control of the Project Participant that would affect its ability to comply with its obligations under this Agreement;
 - (x) disposal of whole or any part of the Project Participant's assets, operations or business other than in the ordinary course of business, where such disposal would affect its ability to comply with its obligations under this Agreement;
 - (xi) ceasing to carry on business;
 - (xii) insolvency;
 - (xiii) steps taken by a mortgagee to take possession or dispose of the whole or any part of the Project Participant's assets, operations or business;
 - (xiv) steps taken to enter into any arrangement between the Project Participant and its creditors other than in the ordinary course of business where such arrangement would affect its ability to comply with its obligations under this Agreement;
 - (xv) steps taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person, concerning the whole or any part of the Project Participant's assets, operations or business;
 - (xvi) an adverse finding of an investigator appointed to investigate its affairs; or
 - (xvii) assignment of its rights or obligations under this Agreement other than in accordance with clause 28.2.
- 6.3 Consequences of withdrawal or expulsion from Project**
- (a) If a Project Participant withdraws or is expelled from the Project, the Project Participant will from the date of effect of the withdrawal or expulsion:
- (i) cease to be a Party;
 - (ii) subject to clause 6.3(b):
 - (A) relinquish all rights with respect to the Project and the Project IP (including all rights to use Background IP of another Party under clauses 3.3 and 3.4, and Project IP under the licences granted in clauses 10.2 and 12); and
 - (B) be relieved of its obligations to make Project Contributions, to carry out, report on or manage the Project, or otherwise participate in the Project.
- (b) The withdrawal or expulsion of a Project Participant from the Project:
- (i) will not affect:
 - (A) the enforceability of any obligations of that Project Participant;
 - (B) rights against that Project Participant accrued at that time or arising as a result of the withdrawal or expulsion;
 - (C) any obligation upon the Project Participant to make available its Background IP in accordance with clause 3; or
 - (D) licences to the Project Participant's Background IP granted or to be granted under clause 3;

- (ii) will not relieve the Project Participant of the obligations imposed upon it under this Agreement other than as specified in clause 6.3(a)(ii)(B); and
- (iii) subject to clause 6.1(b), will not relieve the remaining Parties of their obligations under this Agreement and they will continue to carry out the Project in accordance with the terms of this Agreement.

6.4 Defence rights and licences

For the avoidance of doubt, the rights and licences granted or to be granted to Defence and the Commonwealth under clauses 3.5 and 3.9 (in relation to Background IP), clause 11 (use of Project IP for Defence Purposes), and clause 12.3 (loss of Commercialisation rights) will continue and endure notwithstanding that any Project Participant withdraws or has been expelled from the Project.

7. VARIATION TO PROJECT

Subject to any variation mechanism that may be set out in the Project Plan:

- (a) any significant variation to the Project, including variations to Project scope, Milestones or Deliverables, dealings with IPR, or cost, must be agreed in writing by the Company and all Project Participants; and
- (b) a Project Participant will not be compensated for any work performed in relation to a variation that has not been authorised in accordance with this clause unless otherwise agreed by the Company (in its sole discretion).

8. TERMINATION OF PROJECT & AGREEMENT

8.1 Termination generally

The Project and this Agreement will terminate immediately:

- (a) if the Parties by unanimous written resolution agree to terminate the Project and this Agreement;
- (b) where pursuant to clause 6 all but one of the Parties has withdrawn or been expelled from the Project and this Agreement; and
- (c) as provided in clause 8.4.

8.2 Termination by the Company

The Company may terminate the Project and this Agreement upon 30 days written notice to the Project Participants, if:

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

date by which it was required to be provided and remains not provided after 30 days following a notice from the Company to the Project Participants (or longer period of time specified by the Company in the notice);

- (c) following a review of the Defence CRC or the Project by or on behalf of Defence, Defence determines that the Project no longer meets the requirements of the Funding Agreement; or
- (d) in the reasonable opinion of the Company, the Project Objectives are unlikely to be achieved and remain unlikely to be achieved after 30 days following a notice from the Company to the Project Participants of such opinion,

provided that if required by the Funding Agreement, Defence has been informed of the proposed termination and does not object to the termination of the Project.

8.3 Consequences of termination

- (a) If the Project is terminated pursuant to clauses 8.2(c) or 8.2(d), then the Company must, subject to having sufficient Defence CRC Funds, reimburse each Project Participant for its reasonable expenses necessarily incurred as a result of the early termination (if any), provided that the total amount paid to each Project Participant is not to exceed the balance of the Project Funds that would have been paid to that Project Participant if there had been no early termination.
- (b) If there are insufficient Defence CRC Funds to reimburse all expenses, each Project Participant will be reimbursed out of the Defence CRC Funds on a pro rata basis according to its respective Project Contributions at the date of termination.
- (c) Termination of the Project for any reason will be without prejudice to the continuing enforceability of any rights or obligations of the Parties accrued at the time of termination.

8.4 Termination of Funding Agreement

The Project and this Agreement will automatically terminate if the Funding Agreement:

- (a) is terminated for any reason; or
- (b) is reduced in scope in such way as materially impacts on the Project, as determined by the Board and notified by the Company to the Project Participants.

8.5 Ceasing to be a Participant

If a Project Participant ceases to be a Participant prior to the end of the Term, then except to the extent that the Project Participant is in default under its Participant Agreement or under this Agreement (in which case the Board in its absolute discretion will determine the consequences for the Project Participant under this Agreement), the Project Participant will continue to participate in the Project and be bound by this Agreement.

8.6 Defence rights and licences

For the avoidance of doubt, the rights and licences granted to Defence and the Commonwealth under clauses 3.5 and 3.9 (in relation to Background IP), clause 11 (use of Project IP for Defence Purposes), and clause 12.3 (loss of Commercialisation rights) will continue and endure notwithstanding the termination of the Project or this Agreement.

9. PROJECT IP

9.1 Suitability of Project IP for Defence Purposes

The Project Participants must use their best endeavours to ensure that any Project IP is wherever possible suitable for Defence Purposes.

9.2 Defence Ownership

- (a) The Parties acknowledge that in accordance with the Funding Agreement:
 - (i) following approval by the Board of the proposal for the Project, the Company was required to provide a copy of the Project proposal to Defence; and
 - (ii) where Defence determined that there were compelling reasons for Defence ownership, Defence had the right to require that the Project IP must vest in Defence.
- (b) Notwithstanding any other provision of this Agreement, where Item 12 of the Project Plan states that Defence is to own the Project IP, then each Party agrees that all Intellectual Property Rights in the Project IP will vest in Defence on creation, and that for the purposes of this clause 9.2(b), the Company is acting in the capacity as agent of Defence.

9.3 Ownership of Project IP

Subject to clause 9.2 and the licences to use and/or Commercialise the Project IP granted pursuant to this Agreement (including clauses 9.13, 10, 11 and 12), Project IP will vest upon creation in the Project IP Owners detailed in Item 12 of the Project Plan (and where there is more than one Project IP Owner, as tenants in common in the shares detailed in Item 12 of the Project Plan (or if not so detailed, in equal shares)).

9.4 Vesting of ownership

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

9.5 Dealing with Project IP

Subject to clauses 10 and 12, [insert] prior to the expiration of 10 years from the Commencement Date may not deal with, dispose of or encumber the Project IP, without the written consent of the Company, such consent not to be unreasonably withheld or delayed.

9.6 Use of Project IP

A Project Participant wishing to use Project IP for any purpose, whether for research or otherwise, not authorised under clauses 10 or 12, must obtain a licence from the Project IP Owners covering such use. The grant of any such licence will further require the prior approval of the Company (not to be unreasonably withheld), and must include provisions consistent with the terms of this Agreement.

9.7 Decision to protect

Subject to Item 12 of the Project Plan and this clause 9.7, the Project IP Owners and the Company will decide whether any outcomes from the Project warrant pursuing patent protection, or other forms of Intellectual Property Rights protection, and if so, in which countries protection should be sought. The Parties acknowledge and agree that there may be circumstances where the most appropriate form of protection for Intellectual Property is for it to be maintained as confidential information; and no Party shall unreasonably withhold or delay its consent to such a form of protection being adopted. Notwithstanding the foregoing, the Company may insist that Intellectual Property Rights protection be sought, despite any determination of the Project IP Owners to the contrary. In that event, the Company must meet the costs of that protection and that protection will be in the Project IP Owners' names.

9.8 Apply for protection

Unless otherwise agreed, the Project IP Owners are to apply for, maintain and prosecute any form of Intellectual Property Rights protection decided on under clause 9.7 at their own cost.

9.9 Registration

If patenting or other registrable forms of Intellectual Property Rights protection of Project IP is pursued in accordance with clause 9.7, such registration:

- a) is to be in the Project IP Owners' names;
- b) where required, will identify the inventors of the Project IP; and
- c) must not be discontinued or abandoned without the prior written consent of:
 - (i) the Company; or
 - (ii) if the Company has been wound up or deregistered, Defence, and for the purposes of this clause 9.9c(ii), the Company is acting in the capacity as agent of Defence.

9.10 IP Register

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

- (a) date of entry on register;
- (b) description of Project IP;
- (c) description of the Background IP and any other IPR used in the development of the Project IP;

- (d) identity of the inventor and the Party that developed the Project IP;
- (e) date of invention;
- (f) evidence of invention; and
- (g) details of any agreements made by the Company as permitted by this Agreement with Participants, Project Participants or with third parties in relation to disclosure or use of the Project IP.

9.11 Notice of Infringement

The Project Participants must give the Company and the Project IP Owners prompt notice of any infringement of Project IP which comes to their attention and each Project Participant agrees to give the Company and the Project IP Owners all assistance which may be reasonably required in order to protect the Project IP (but only if the Company or the Project IP Owners, as applicable, pay the Project Participant providing the assistance for all reasonable costs and expenses of doing so).

9.12 Dealing with Project IP

Each Project Participant:

- (a) must respond to a request from the Company to provide information in its possession regarding Project IP that has been developed by or on behalf of the Project Participant or is under development by or on behalf of the Project Participant;
- (b) must use its reasonable efforts to ensure that itself and its employees, agents, contractors, students under its supervision or other persons participating in the Project:
 - (i) identify Project IP generated or developed by them;
 - (ii) promptly communicate details of Project IP to the Project Leader; and
 - (iii) do not prejudice protection of Project IP; and
- (c) must not use, Commercialise, dispose of, encumber or otherwise deal with or enter any agreement in relation to any interest that it might hold in Project IP, except as authorised in this Agreement.

9.13 Company's right to use Project IP

The Company may at all times:

- (a) use the Project IP for the research, training and education purposes of the Defence CRC; and
- (b) license any Participant, Project Participant or any other person to use the Project IP for the research, training and education purposes of the Defence CRC.

9.14 Publication and disclosure

Unless authorised expressly under this Agreement (including in the Project Plan or under clause 20), a Party must not publish or disclose to any third party any Defence CRC Confidential Information.

10. PROJECT PARTICIPANTS' RIGHT TO USE PROJECT IP

10.1 Other Industry Participants and Research Participants

Subject to clause 10.3, each Project Participant that is an Industry Participant but not a Project IP Owner, or that is a Research Participant (**Other Project Participant**):

- (a) has a non-exclusive royalty-free right to use the Project IP (excluding the right to sublicense) for:
 - (i) the purpose of undertaking the Project in accordance with this Agreement; and
 - (i) the Other Project Participant's internal research, education and teaching purposes other than Commercialisation; and
- (b) where expressly stated in Item 12 of the Project Plan, such additional rights to use the Project IP as also set out in Item 12 of the Project Plan.

10.2 Non-Participants

Subject to clause 10.3, each Project Participant that is a Non-Participant:

- (a) has a non-exclusive royalty-free right to use the Project IP (excluding the right to sublicense) for the purpose of undertaking the Project in accordance with this Agreement; and
- (b) where expressly stated in Item 12 of the Project Plan, such additional rights to use the Project IP as also set out in Item 12 of the Project Plan.

10.3 Conditions on use rights

The rights to use Project IP detailed in clauses 10.1, and 10.2 are subject to the relevant Project Participant:

- (a) maintaining the confidentiality of Confidential Information; and
- (b) not prejudicing:
 - (i) the use of the Project IP for Defence Purposes in accordance with clause 11;
 - (ii) the National Security Requirements; and
 - (iii) the protection of the Project IP in accordance with clauses 9.7 to 9.9 (inclusive).

10.4 Improvements

- (a) Any Intellectual Property Rights in any Improvements made by a Project Participant arising from the exercise of the rights or licences under clauses 10.1, or 10.2 (as the case may be) will be owned by **[insert]**.
- (b) The Project Participant must notify the Company and **[insert]** of any Improvements as soon as practicable after that

Improvement is created and do all things and execute all instruments necessary or desirable to give effect to clause 10.4 (a).

(c) **[insert]:**

- (i) grants to the Company a perpetual, irrevocable, royalty-free, non-exclusive licence to use the Improvements and the Intellectual Property Rights in the Improvements for the activities of the Defence CRC; and
- (ii) grants to the Company a perpetual, irrevocable, royalty-free, non-exclusive, worldwide licence (including the right to sublicense but subject to clause 11.5) to use the Improvements and the Intellectual Property Rights in the Improvements for Defence Purposes (and for the purposes of this clause 10.4(b)(ii), the Company is acting in the capacity as agent of Defence).

10.5 Reporting by Project Participants

Each Project Participant must provide written reports to the Company regarding its use of the Project IP, at such times and containing such details as requested by the Company from time to time.

11. DEFENCE PURPOSES

11.1 No limitation on Defence Purposes

Subject only to clause 11.5, nothing in this Agreement will limit or restrict the use of the Project IP by or on behalf of Defence for Defence Purposes.

11.2 Grant of licence for Defence Purposes

Each Project IP Owner grants to the Company a perpetual, irrevocable, royalty-free, non-exclusive, worldwide licence (including the right to sublicense but subject to clause 11.5) to use the Project IP for Defence Purposes. For the purposes of this clause 11.2, the Company is acting in the capacity as agent of Defence.

11.3 Company role

The Company may only exploit the Project IP for Defence Purposes as directed by Defence.

11.4 Defence's discretion to determine Defence Purposes

Subject to clause 11.5, Defence will have the absolute discretion to determine the parties (which may or may not be the Company, Project Participants or third parties) that are to be granted a sublicense of Defence's licence to use the Project IP, Improvements, and Background IP of a Party and the Intellectual Property Rights contained therein for Defence Purposes.

11.5 Sublicensing of Background IP and Project IP to Specified Commercial Competitors

- (a) If expressly stated that consent is required, and the identity of the Industry Participant's

Specified Commercial Competitors are specified, in:

- (i) Item 11 of the Project Plan in relation to an Industry Participant's Background IP (or a part); or
- (ii) Item 12 of the Project Plan in relation to Project IP (or a part),

then a sublicense to use:

- (iii) such Industry Participant's Background IP for the purposes of Defence's use of the Project IP for Defence Purposes; or
- (iv) the Project IP for Defence Purposes,

(as the case may be) may only be granted by the Company or Defence to the Specified Commercial Competitors with that Industry Participant's prior written consent, not to be unreasonably withheld or delayed.

- (b) Where Item 11 or Item 12 of the Project Plan does not so state that an Industry Participant's consent is required, the Company or Defence will have the right to sublicense the Background IP for the purposes of Defence's use of the Project IP for Defence Purposes and to sublicense the Project IP for Defence Purposes, without restriction unless clause 16.3(e) of the Funding Agreement applies.

- (c) An Industry Participant that is entitled to and does withhold its consent in accordance with clause 11.5(a) will not have any right to prevent Defence's use of the Project IP for Defence Purposes, provided that the Company and Defence do not grant a sublicense to use the Industry Participant's Background IP or to use the Project IP to the Specified Commercial Competitors of that Industry Participant.

11.6 Warranty

Each Party represents and warrants that the use of the Party's Background IP, Project IP, and Improvements by Defence for Defence Purposes in accordance with this clause 11 will not infringe the IPR of any person.

11.7 Not for commercial return

The licences granted to Defence to use the Project IP for Defence Purposes do not include a right to exploit the Project IP in return for a royalty or other commercial return (subject to clause 12.3).

11.8 Licence for the Commonwealth

Without limitation to this clause 11, each Project IP Owner grants to the Company an irrevocable right to grant to the Commonwealth a perpetual, non-exclusive, irrevocable, worldwide sublicense (including the right for the Commonwealth to sublicense) to use the Project IP in accordance with clause 16.3(h)(i) of the Funding Agreement (clause 16.3(h)(i) is referenced at Annexure 1 to these Project Terms).

12. COMMERCIALISATION OF PROJECT IP

12.1 Conditions on Commercialisation

The Commercialisation of Project IP must:

- (a) comply with the terms of the Commercialisation Plan;
- (b) maximise the national benefits accruing to Australia, including the Australian defence industry;
- (c) be consistent with the objectives of the Defence CRC Program;
- (d) comply with all applicable Australian and international export controls, and counter-proliferation and counter-terrorism regulations; and
- (e) be consistent with this Agreement, including the National Security Requirements.

12.2 For the purposes of clause 12.1(b), the maximum national benefits accruing to Australia will be deemed to have been delivered where the IPR in Project IP 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 IPR occurs in a country other than Australia (to the extent permitted by the terms of this Agreement), the IPR must be Commercialised or utilised in such a way that substantial national benefits will accrue to Australia.

12.3 Loss of Commercialisation rights

- a) A Party (**Commercialising Party**) that has been granted the rights to Commercialise Project IP (or has such rights per force of its ownership of the Project IP) will immediately forfeit its ownership of the Project IP and all Commercialisation rights with respect to such Project IP if it is subject to a Default Event.
- b) For the purposes of clause 12.3a), **Default Event** means any of:
 - (i) a breach by the Commercialising Party of its Participant Agreement that results in its expulsion from the Defence CRC;
 - (ii) a breach by the Commercialising Party of the National Security Requirements;
 - (iii) the Commercialising Party is subject to any of the events set out in clauses 6.2(b)(ix)(xvi) (inclusive); or
 - (iv) the Commercialising Party:
 - fails to Commercialise the Project IP (so as to meet the minimum requirements of the Commercialisation Plan) within two (2) years of the grant of Commercialisation rights or the completion of the Project (whichever is later); and

- (v) following a meeting with the Company, or if the Company has been wound up or deregistered, with Defence, to review the proposed Commercialisation of the Project IP and to develop strategies to facilitate Commercialisation by the Commercialising Party (and the Commercialising Party must attend such a meeting at the Company's or Defence's request), the Commercialising Party fails to Commercialise the Project IP within a further twelve (12) month period thereafter.

- c) If a Commercialising Party is subject to a Default Event:
 - (i) the Commercialising Party's ownership of the Project IP and/or its Commercialisation rights with respect to the Project IP will transfer to the Company or, if the Company is the Commercialising Party in default or has been wound up or deregistered, then to Defence;
 - (ii) the Company or Defence (as applicable) will be entitled to Commercialise the forfeited Project IP 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;
 - (iii) the Commercialising Party hereby appoints an officer of the Company or the Commonwealth (as the case may be) as its power of attorney to execute all documents required to effect the transfer of the Project IP and the Commercialisation rights; and
 - (iv) the loss of Commercialisation rights by the Commercialising Party will not affect the rights granted to any other Party in relation to the Project IP or its Commercialisation in accordance with this Agreement.
- d) Without limitation to this clause 12.3, if within four (4) years of the completion of the Project, no Party has been granted or requested to be granted rights to Commercialise Project IP (or any part), Defence will be entitled to Commercialise such Project IP at its absolute discretion without having to account to any Party for any revenue arising from such Commercialisation or otherwise.
- e) For the purposes of the grant of rights and enabling Defence to exercise its rights under this clause 12.3 in circumstances where the Company has been wound up or deregistered, the Company is acting in the capacity as agent of Defence.

12.4 Commercialisation revenues

A Party is entitled to retain all revenues it receives from its Commercialisation of the Project IP in accordance with this Agreement.

13. MORAL RIGHTS

Each Party represents and warrants that the use of Project IP, and the Party's Background IP and Improvements, and the IPR contained therein by another party in accordance with this Agreement (including by Defence for Defence Purposes) will not infringe the Moral Rights of any person.

14. INDEMNITIES

14.1 Mutual Indemnity

Subject to clauses 14.2, 14.3 and 14.4, each Party (**the indemnifying Party**) will at all times indemnify, hold harmless and defend each of the other Parties and their respective directors, officers, employees, students engaged in the Project, agents and contractors (**those indemnified**) from and against any and all liability, loss, harm, damage, cost or expense (including loss of or damage to property, personal injury or death, and legal costs and expenses on a full indemnity basis and net of any GST input tax credits to which those indemnified are entitled) howsoever arising that those indemnified may suffer, incur or sustain as a result of:

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

14.2 Reduction of indemnity

The indemnities given by an indemnifying Party pursuant to clause 14.1 will be reduced proportionately to the extent that the liability, loss, harm, damage, cost or expense referred to in clause 14.1 was caused or contributed to by:

- (a) any breach of this Agreement (including material breach of any warranty given under this Agreement) by any of those indemnified;
- (b) any unlawful or negligent act or omission by any of those indemnified arising in connection with the Project;
- (c) the exercise by any of those indemnified of any rights granted to them in relation to the Project IP or Background IP; or
- (d) the exercise by those indemnified of any Commercialisation rights granted to those indemnified pursuant to this Agreement.

14.3 Commonwealth and State exception

If the Commonwealth, or a State or Territory of Australia is a Party it is excluded from the obligation under clause 14.1 to indemnify any other Party. This clause 14.3 does not exclude or reduce the liability of, or benefit to, the Commonwealth or the State or Territory of Australia that may arise by operation of the common law or breach of statute.

14.4 Consequential losses

Nothing in clause 14.1 will render a Party liable for any special, indirect or consequential loss or damages (including loss of income or profits, and loss of expectation of income or profits) arising under or pursuant to this Agreement.

14.5 Notification of acts

Each of those indemnified under clause 14.1 must promptly notify every indemnifying Party of any event or circumstance that may reasonably give rise to those indemnified relying upon the indemnities in clause 14.1.

14.6 Survival

The indemnities provided under clause 14.1 are a continuing obligation, separate and independent of each Party's other obligations and will survive the expiration or, where relevant, earlier termination of this Agreement and will continue to apply (both as a right and as an obligation) to any Party who withdraws or is expelled from the Project.

15. INSURANCE

15.1 Obligation to insure

- (a) Each Project Participant must effect and maintain adequate insurance that a prudent person participating in the Project would maintain, to cover its participation in the Project, and as a minimum the insurances set out in Item 15 of the Project Plan. Such insurance must cover loss or damage the Project Participant may suffer or any liability the Project Participant may incur in connection with its participation in the Project, and must include adequate run-off cover after this Agreement has expired or terminated with respect to the Project Participant.
- (b) Without limitation to clause 15.1(a), with respect to a Project Participant's Commercialisation of Project IP, such Project Participant must effect and maintain adequate insurance that a prudent person Commercialising the Project IP would maintain to cover its Commercialisation of the Project IP, including public liability insurance and product liability insurance, and as a minimum the insurances set out in Item 15 of the Project Plan. Such insurance must cover loss or damage the Project Participant may suffer or any liability the Project Participant may incur in connection with its Commercialisation of the Project IP, and must include adequate run-off cover after this Agreement has expired or terminated with respect to the Project Participant.

15.2 Act as own insurer

A Project Participant may act as its own insurer provided that it receives the consent of the Company.

15.3 Evidence of insurance

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

16. AMENDMENTS

- (a) No agreement or understanding varying this Agreement will be legally binding unless it is in writing signed by all the Parties.
- (b) The Project Participants further acknowledge that certain amendments to this Agreement may require the Company to seek the prior written approval of the Department or Defence.

17. FUNDING AGREEMENT OBLIGATIONS AND LIABILITIES

To the extent that such provisions are applicable to the conduct of the Project, each Party agrees to comply with the Funding Agreement obligations referred to in clause 6.5 of the Funding Agreement (subject to the necessary changes). Such provisions of the Funding Agreement are referenced in Annexure 1 to these Project Terms. Notwithstanding clause 1.3, if there is any inconsistency between the clauses of the Funding Agreement referenced in Annexure 1 and any other terms and conditions of this Agreement, the clauses of the Funding Agreement referenced in Annexure 1 will prevail to the extent of the inconsistency.

18. STUDENT INVOLVEMENT

If a Project Participant has enrolled students or is supervising students that are involved in the Project (as detailed in Item 13 of the Project Plan), the Project Participant acknowledges and agrees that:

- (a) it must ensure that those students comply with clause 20 (Confidential Information);
- (b) it must ensure that Project IP developed by the student is owned in accordance with clause 9 (Project IP), provided that the student will own the copyright in his or her thesis;
- (c) publication of a student's thesis will be subject to the terms of clause 19;
- (d) the Company will not inhibit the right of a student to have his or her thesis examined, but an examiner may be required to sign a confidentiality agreement to protect Confidential Information; and
- (e) before a student becomes involved in the Project, the Company may require that the student and the institution in which the student is enrolled enter into a written agreement, in a form approved by the Company, setting out the terms on which the student is involved in the Project, which will be consistent with the principles in this

clause 18.

19. PUBLICATIONS

19.1 Acknowledgement and Obligation

The Parties acknowledge that a key objective of the Defence CRC Program is to generate outcomes for Defence Purposes, and that in determining whether Project IP is to be published, priority will be given to such objective. In some circumstances, publication of information may result in the release of Confidential Information, adversely affect national security interests, or jeopardise the rights to protect, use and Commercialise Project IP. Accordingly, the Parties must not, and must ensure that their Personnel do not, publish information or material arising from the Project (including permitting the publication of any student theses arising from the Project) except in accordance with this clause 19.

19.2 Request for permission

At least 30 days prior to any submission for publication, a Project Participant wishing to publish information or material arising from the Project (**Requesting Party**) must forward a request in writing to the Company and the Project IP Owners, seeking permission to publish the information or material, and specifying in the request any Project IP, the Defence CRC Confidential Information or security classified information contained or referred to in the proposed publication.

19.3 Notification of decision

The Company, after consultation with the Project IP Owners (and possibly Defence), must notify the Requesting Party of the decision as to publication of the relevant information or materials within 30 days of receipt of a request. Permission may be subject to any conditions that the Company may reasonably impose, including a requirement that the publication comply with any relevant provisions of the Funding Agreement, and include acknowledgments of:

- (a) The Defence CRC role in and contribution to the creation of the information or material in the publication; and
- (b) the Requesting Party's affiliation with The Defence CRC.

19.4 Delaying publication or declining permission to publish

If the Company, after consultation with the Project IP Owners (and possibly Defence), and having regards to the Defence CRC Objectives, decides that the benefits of publication do not outweigh the potential loss of valuable Intellectual Property Rights or other potential disadvantage for the Company, The Defence CRC (Insert Full Company Name) or the Project IP Owners, or that publication might prejudice Australia's national security interests, then the Company will notify the Requesting Party to that effect, giving reasons for the decision, and either:

- (a) suggest alterations to the publication so that it does not disclose information affecting the valuable Intellectual Property Rights, cause potential disadvantage for the Company, the Defence CRC or the Project IP Owners, or prejudice Australia's

- national security interests; or
- (b) if altering the publication is impractical:
 - (i) delay publication for a stipulated period as determined by the Board (but not exceeding 12 months from the date of the request in the case of a student thesis, provided that if the relevant concern cannot be addressed by the end of the 12 month period, the Company may decline permission for publication); or
 - (ii) in cases where publication may prejudice Australia's national security interests, the Company may decline permission for publication.

19.5 Party Confidential Information

Notwithstanding the other provisions of this clause 19, no Party may publish any information or material containing Party Confidential Information of a Party unless authorised by that Party or unless an exception in clause 20.3 applies.

19.6 Recognition

Subject always to clause 22, each Project Participant must ensure that any publication which it makes pursuant to this clause 19 acknowledges the contributions made by Project Participants and the support of the Commonwealth and the Company:

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

20. CONFIDENTIAL INFORMATION

20.1 Obligation

Except as otherwise provided in this clause 20, each Party must keep confidential and not disclose any Confidential Information (including Defence CRC Confidential Information).

20.2 Permitted use and disclosure

Each Party may:

- (a) use Confidential Information only for the purposes of this Agreement;
- (b) if the Party is the Company, use and disclose the Defence CRC Confidential Information as required at its discretion for the purposes of this Agreement or otherwise for the purposes of the the Defence CRC Objectives;
- (c) disclose Confidential Information to its:
 - (i) employees;
 - (ii) directors and officers;
 - (iii) Advisers;
 - (iv) students; and

- (v) consultants, who have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know), provided the disclosure is made subject to an obligation of confidentiality in accordance with clause 20.6;

- (d) use and disclose Confidential Information where authorised under this Agreement;
- (e) disclose Confidential Information to the extent required by law; and
- (f) if the Party is the Commonwealth, or a State or Territory of Australia, disclose Confidential Information to its responsible Minister or in response to a request by a House or a Committee of the Parliament.

20.3 Exceptions

- (a) The obligations imposed on a Party by this clause 20 will not apply to Confidential Information which:
 - (i) prior to disclosure is in the public domain or subsequent to disclosure to the Party becomes part of the public domain other than as a result of an unauthorised act or failure to act by that Party;
 - (ii) is received by the Party from a third party without any obligation to hold in confidence and which has not been obtained by that third party directly or indirectly from any Party;
 - (iii) is independently developed by an employee or officer of the Party owing the obligation of confidentiality while having no knowledge of the Confidential Information;
 - (iv) in the case of Party Confidential Information, the Party claiming confidentiality has agreed may be disclosed by that other Party; or
 - (v) in the case of Defence CRC Confidential Information, the Company has agreed may be disclosed by that other Party.
- (b) A Party is not obliged to maintain the confidentiality of its own Party Confidential Information.

20.4 Onus

The receiving Party has the onus of showing that any of the exceptions in clause 20.3 apply.

20.5 Combination of information

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

20.6 Employees

Each Party must use its reasonable efforts to
Party Details 23

ensure that:

- (a) its respective employees, directors, officers, Advisers, students and consultants who participate in the Project or acquire access to Confidential Information, must comply with the obligation of confidentiality under this clause 20 as though parties to this Agreement; and
- (b) any of the above mentioned employees, directors, officers, Advisers, students and consultants who cease to be employees, directors, officers, Advisers, students and consultants must continue to be bound by such obligations of confidentiality.

20.7 Survival

The obligations of confidentiality imposed on a Party will survive termination of this Agreement or the Party's expulsion or withdrawal from the Project.

21. PUBLIC ANNOUNCEMENTS

The Company is principally responsible for making public announcements about the Defence CRC, and a Project Participant must not make any public announcement in relation to the Defence CRC or this Agreement without obtaining the Company's approval, except if required by law or a regulatory body (including a relevant stock exchange), in which case the Project Participant must, to the extent practicable, first consult with and take into account the reasonable requirements of the Company and each other Project Participant.

22. USE OF PARTY'S NAME & ACKNOWLEDGEMENT

22.1 Use of Party's name

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

22.2 Acknowledgement

Each Project Participant must ensure that all publications (including reprints), promotional and advertising materials, public announcements, events and activities in relation to the Project, or any products, processes or inventions developed as a result, whether published by the Project Participant or on its behalf, acknowledge the financial and other support received from the Commonwealth and Defence:

- (a) through reference to this support and the Defence CRC Program;
- (b) through prominent display of the Defence CRC Indicia (and the Company grants each Project Participant a non-exclusive licence to use the Defence CRC Indicia for such purposes during the Term and for as long as the Project Participant remains a Participant, subject to any reasonable conditions required by the Commonwealth (as notified by the Company to the Project Participants)); and
- (c) by reference to any acknowledgement required by the Commonwealth (as notified

by the Company to the Project Participants from time to time).

23. CONFLICTS

23.1 Definition of Conflict

For the purposes of this clause 23, 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 a Party (including the officers, employees, agents and subcontractors of the Party) (**Affected Party**) which may or may appear to impair:
 - (i) the ability of the Affected Party to carry out its part of the Project diligently and independently in accordance with this Agreement; or
 - (ii) the ability of the Company to meet its obligations under the Funding Agreement fairly and independently.
- (c) Without limitation to this clause 23.1, the Affected Party will have a Conflict if:
 - (i) it enters an agreement to receive funding or to be paid for activities or services connected with any aspect of research related to the Conflict; or
 - (ii) the Affected Party has in the last five (5) years prior to the Commencement Date received funding or has been paid for activities or services connected with any aspect of research related to this Agreement, from 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.pmdtcc.state.gov/em_bargoed_countries/index.html).

23.2 Warranty

- (a) Each Party warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement (and again when signing any extension or renewal of this Agreement) no Conflict exists or is likely to arise in the performance of that Party's obligations under this Agreement.
- (b) For the avoidance of doubt, any Conflict declared by a Project Participant is not material where researchers in the Project Participant organisation conduct research in competition with the Project if:

- (i) those researchers are not part of the Project; and
- (ii) the researchers have not received Confidential Information related to the Project.

23.3 Dealing with Conflict

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

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

23.4 Register of Conflicts

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

24. DISPUTE RESOLUTION

24.1 No arbitration or court proceedings

If a dispute arises out of this Agreement (**Dispute**), a Party must comply with this clause 24 before starting arbitration or court proceedings (except proceedings for interlocutory relief).

24.2 Notification

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

24.3 Parties to resolve Dispute

During the 30 days after a notice is given under clause 24.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable efforts to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, they must either:

- (a) if the Agreement requires the Dispute be determined by an independent expert or relates to a matter of valuation, comply with clause 24.4; or
- (b) refer the Dispute to a mediator if one of them requests.

24.4 Independent expert and valuer determination

Where this Agreement provides for a Dispute between the Parties to be determined by an independent expert or relates to a matter of valuation (**IE&V Dispute**), the IE&V Dispute will be resolved as follows:

- (a) the Parties to the IE&V Dispute will jointly appoint the expert or valuer (as the case may be), or failing agreement, a Party may request:
 - (i) the President or acting President of the Licensing Executives Society of Australia and New Zealand to appoint the independent expert; or

- (ii) the President or acting President of the Institute of Chartered Accountants in Australia to appoint the valuer;

- (b) the Parties to the IE&V Dispute will cooperate with and assist the expert or valuer, and will provide to the expert or valuer all information that the expert or valuer may request to enable the IE&V Dispute to be determined. A Party may provide such information in written or verbal form in its discretion. The expert or valuer may inform him/herself of any matter the expert or valuer requires to properly make a determination. The expert or valuer will have regard to the provisions of this Agreement in making the determination;
- (c) the expert or valuer will not be required to observe any rules of natural justice. The expert or valuer will be acting as an expert and not as an arbitrator. In the absence of manifest error, the determination of the expert or valuer with respect to the IE&V Dispute will be final and binding on the Parties to the IE&V Dispute; and
- (d) the costs of:

- (i) the expert will be paid by the Parties to the IE&V Dispute in the proportion that the expert considers reasonable, having regard to the respective positions of the Parties on the matter immediately before the IE&V Dispute was referred to the expert, and during the determination; and
- (ii) the valuer will be paid equally by the Parties to the IE&V Dispute.

24.5 Appointment of mediator

If the Parties cannot agree on a mediator within seven days after a request under clause 24.3(b), the chair of the Resolution Institute, Australia (formerly LEADR) or the chair's nominee will appoint a mediator.

24.6 Role of mediator

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

24.7 Confidentiality

Any information or documents disclosed by a Party under this clause 24:

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

24.8 Costs

Without limitation to clause 24.4(d), each Party to a Dispute must pay its own costs of complying with this clause 24.

24.9 Termination of process

A Party to a Dispute may terminate the dispute resolution process by giving notice to each other Party to the Dispute after it has complied with clauses 24.1 to 24.4. Clauses 24.7 and 24.8 survive termination of the dispute resolution process.

25. GST AND R&D TAX INCENTIVE

25.1 Meaning of words

In this clause 25:

- (a) **GST exclusive consideration** means the consideration payable or to be provided for a Supply, but for the application of this clause 25;
- (b) **Recipient** means a Party to whom a Supply is made;
- (c) **Supply** means a supply made under or in connection with this Agreement;
- (d) **Supplier** means a Party making a Supply; and
- (e) words or expressions that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 25.

25.2 Presumption

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

25.3 Gross-up

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

- (a) the GST-exclusive consideration for that Supply, is increased by, and the Recipient must also pay to the Supplier, an amount equal to the GST-exclusive consideration multiplied by the prevailing rate of GST; and
- (b) the amount by which the GST-exclusive consideration is increased under clause 25.3(a) must be paid to the Supplier by the Recipient without set-off, deduction or requirement for demand, at the same time as the GST-exclusive consideration is payable or to be provided.

25.4 Reimbursement or indemnification

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

25.5 Tax invoices

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

25.6 R&D Tax Incentive

To assist certain Participants to claim the R&D Tax Incentive, the Company agrees that it will, in conjunction with relevant parties:

- (a) expend (or allocate) contributions on (or to) R&D activities, as defined under subdivision 355B section 355-20 of the *Income Tax Assessment Act 1997*;
- (b) inform parties that are R&D entities, as defined under section 355-35 of the *Income Tax Assessment Act 1997*, of R&D activities conducted during an income year; and
- (c) report to parties that are R&D entities a ratio for working out how the contributions of those parties are to be apportioned between:
 - (i) core R&D activities (as defined under section 355-25 of the *Income Tax Assessment Act 1997*) and;
 - (ii) supporting R&D activities (as defined under section 355-30 of the *Income Tax Assessment Act 1997*).

26. FORCE MAJEURE

26.1 Definition

- (a) In this clause 26, a **Force Majeure Event** affecting a Party means, subject to clause 26.1(b), anything outside that Party's reasonable control including, but not limited to, fire, storm, flood, earthquake, explosion, war, invasion, rebellion, sabotage, epidemic, labour dispute, labour shortage and failure or delay in transportation and act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including but not limited to, subcontractors, customers, governments or government agencies).
- (b) If a Party to this Agreement is a government agency it will not be within the reasonable control of that Party merely because that Party is part of the government that has the legal capacity to perform an act or omission that may otherwise constitute a Force Majeure Event.

26.2 Suspension of obligation

Where a Party is unable, wholly or in part, by reason of a Force Majeure Event, to carry out any obligation under this Agreement, and that Party:

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

that obligation is suspended so far as it is affected

by the Force Majeure Event during the continuance of that Force Majeure Event and that Party will be allowed a reasonable extension of time to perform its obligations.

26.3 Parties to meet

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

26.4 Exceptions

Nothing in this clause 26:

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

27. NOTICES AND OTHER COMMUNICATIONS

27.1 Service of notices

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

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post, facsimile or email (provided that a Notice of termination sent by email must be immediately confirmed by Notice by hand or prepaid post) to the recipient's address set out in the 'Party Details' at the front of this Agreement, as varied by any Notice given by the recipient to the sender.

27.2 Effective on receipt

A Notice given in accordance with clause 27.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice; and
- (d) if sent by email transmission, on delivery of a read receipt from the receiver or, if no read receipt is delivered, one Business Day after the notice has been sent by email, and the sender will keep a record of the notice and the date on which it was sent,

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

28. GENERAL

28.1 Approvals and consents

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

28.2 Assignment

Except where this Agreement expressly states otherwise, no Party may assign or attempt to assign or otherwise transfer or encumber any right or obligation arising out of this Agreement except with the written consent of the other Parties. Nothing in this clause 28.2 will limit or restrict the transfer or assignment of Intellectual Property Rights as contemplated in clauses 9.4 and 12.3.

28.3 Sub-contracting

A Project Participant will not sub-contract the performance of a substantial part of the Project, except with the prior written approval of the Company.

28.4 Costs

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

28.5 Survival

Any term of this Agreement that by its nature is intended to survive termination of this Agreement survives termination of this Agreement. Without limitation to the foregoing, the following clauses will survive the termination of this Agreement: clauses 3.2, 3.4, 3.5, 3.6, 3.9, 5.6, 5.7, 6.3, 6.4, 8.3, 8.6, 9, 10, 11, 12, 14, 15, 17, 19, 20, 22, 24, 27, 28.2, 28.12 and this clause 28.5.

28.6 Counterparts

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

28.7 No merger

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

28.8 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.

28.9 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.

28.10 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.

28.11 Waiver

A Party does not waive a right, power or remedy if it

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

28.12 Governing law and jurisdiction

This Agreement is governed by the laws 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 and of the Commonwealth of Australia.

Draft Sample Only

ANNEXURE 1

Extract from Funding Agreement

Noting that the Funding Agreement has previously been separately provided to each of the Parties, the following clauses of the Funding Agreement are expressly referenced:

Clause 14.4 (Department may request replacement of Personnel)

Clause 16.3 (Intellectual Property Rights in Agreement Material) [as amended]

Clause 19.2 (Insurance for Projects)

Clause 21 (Confidentiality)

Clause 22 (Work health and safety)

Clause 23 (Protection of personal information)

Clause 24 (Conflict of interest)

Clause 25 (Books and records)

Clause 26 (Audit and access)

Clause 29 (Survival)

Clause 31.14 (Relationship)

Clause 31.16 (False or misleading information)

Clause 31.17 (Safe and ethical research)

Clause 31.18 (Responsible conduct of research)

Clause 31.19 (Defence interests)

Clause 31.20 (Treatment of national security matters)

Clause 31.21 (Changes to national security classification)

Clause 31.22 (Controlled Content Register)]