

# Partners Agreement

## Cooperative Research Centre

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[insert name of CRC]

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### Parties

[insert name of CRC Entity] Ltd (CRC Entity)

[insert name of each Party] (Partners)

### **IMPORTANT**

**This is an example template document only. It is provided as a possible starting point for a CRC to develop its Partners Agreement, but its use is not mandatory. This document is not intended as legal or taxation advice. Any person intending to make use of this document should seek their own independent legal, financial and taxation advice to ensure that the document meets the circumstances of the user.**

While changes to this template document may be made it should be noted that the CRC Entity, as the Grantee under the Grant Agreement, is responsible for ensuring that the Partners Agreement meets the requirements of both the collaboration and the Commonwealth. More specifically, the CRC Entity must ensure that the Partners Agreement and the CRC Entity constitution, and the obligations to which the Partners are bound under the Partners Agreement, are consistent with a number of clauses in the Grant Agreement (including those listed at Item B of the Grant Details of that Agreement). It is recommended that whichever approach is taken in developing the Partners Agreement, the clauses relating to these obligations are retained without change, or if modified, or if this template is not used, that the clauses addressing these issues are very carefully considered. Clauses in this template agreement relating to those listed at Item B of the Grant Details of the Grant Agreement are flagged in this template in red text purely for ease of identification. Please remove all such red advisory text from this template before finalising the Partners Agreement.

The Partners Agreement(s) contains all of the 'rules' for operating the CRC including IP ownership and management. It also contractually obligates the Partners to the CRC in the absence of them signing the Grant Agreement directly. All Partners must sign a Partners Agreement.

Attention is also drawn to clause 6.2, which authorises the CRC Entity to enter into variations of the Grant Agreement. It is however, open to the parties to take an alternate approach, such as requiring the CRC Entity to obtain written agreement from all or a majority of Partners for a variation to the Grant Agreement. This however, should be balanced against the potential administrative burden on the CRC Entity, and the desirability of allowing Partners to effectively restrict the CRC Entity's ability to enter into variations to the Grant Agreement.

CRCs may encounter issues with getting international Partners to sign a Partners Agreement. This should be factored into planning. CRCs should ensure they are actively talking with all Partners from the start of the process.

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# Assumptions & Notes

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*Whilst this template document may be of benefit to the CRC community, users of this template agreement are strongly encouraged not to assume any particular CRC structure will satisfy the Australian Tax Office (ATO) requirements. Users should seek their own independent advice especially in relation to any taxation implications and the ability of CRC Partners to be eligible for the R&D Tax Incentive.*

- This is a template agreement. It is designed to reflect principles and address issues that would commonly arise with an incorporated CRC structure. Nevertheless each CRC and its Partners must determine to what extent this document fits their circumstances and what (if any) changes are required.
- Footnotes may assist users to understand the implications of various clauses. They should all be deleted before this document is finalised for any particular CRC.
- This agreement should be read in conjunction with the relevant Grant Agreement.
- The CRC Details set out the issues that are likely to vary between CRCs. The template Project Details set out the issues that are likely to vary between Projects. This document does not purport to set a template for operational issues that will vary between CRCs such as IP management protocols and procedures.
- This template Partners Agreement has been prepared on the basis of the following assumptions. Every Partner should satisfy themselves that these assumptions apply to the CRC in which they will be involved. If not, they should seek advice as to what changes (if any) are required to reflect their own objectives and circumstances.

	<b>Issue</b>	<b>Assumptions</b>
1.	Incorporation	The CRC will be incorporated as a company limited by guarantee (the CRC Entity).
2.	Grant Agreement	The Grant Agreement to be used for Round 24 CRCs is published at <a href="http://www.business.gov.au">www.business.gov.au</a> . The only parties to the Grant Agreement are the Commonwealth and the CRC Entity.  There are a number of obligations and liabilities under Item B of the Grant Details in the Grant Agreement that must be imposed on all Partners in the Partners Agreement.
3.	Relationship with the Constitution of the CRC Entity	The Constitution and the Partners Agreement must be consistent. Some Partners of the CRC may not be a member of the CRC Entity. They will want to be assured that changes to the Constitution will not prevail over the rights and obligations set out in this Partners Agreement.
4.	Variation of Partners Agreement	The issues addressed in this Partners Agreement cannot be changed without the consent of all of the Parties to this Partners Agreement.
5.	Timing of execution of documents	The Constitution will need to be signed and the CRC Entity incorporated before this Partners Agreement can be executed. Finalisation of the Grant Agreement is not contingent on finalising the Partners Agreement.

	<b>Issue</b>	<b>Assumptions</b>
6.	Tax status of the CRC Entity	The Partners may intend that the CRC Entity pursue income tax exemption in line with a taxation law.  <i>Note: Partners should seek independent advice regarding eligibility for income tax exemption.</i>
7.	Partner's Contributions	The total commitment by all Partners to make Contributions to the CRC is set out in Schedule 4 of the Grant Agreement and Schedule 5 of this Partners Agreement. <sup>1</sup> The individual Contributions and the obligations under which those Contributions are to be made by each Partner are set out in this Partners Agreement. Details of contributions on a Project basis will be set out in a separate arm's length Project Details (which may take the form of separate agreements if it involves third parties) between the CRC Entity and the respective Partners for that Project.
8.	Voting rights	Contributions by the Partners (to each Project and the CRC generally) will be the basis for determining the voting rights of the members of the CRC Entity for company issues. Voting rights for Partners Agreement issues will be equal for all Partners and the CRC Entity (where it is relevant for the CRC Entity to have a vote).
9.	Project Documentation	Projects only involving Parties to the Partners Agreement will not require a separate discrete set of terms to govern the Project other than the relevant Project Details. In those circumstances the Partners will rely upon the terms set out in this Partners Agreement.  Non-Partners may also be parties to Projects. In those circumstances the CRC Entity will arrange for the non-Partner to sign a separate project agreement that is consistent with the terms in this Partners Agreement that apply to the conduct of Projects.
10.	Partners	The Partners will be those persons or bodies (other than the CRC Entity) who sign the Partners Agreement.
11.	Non-member Partners	Partners entering this Partners Agreement are not required to be members of the CRC Entity, but may be entitled to become members. Partners that are CRC Entity members will have additional rights to non-member Partners, such as the right to participate in voting for the Governing Board.
12.	CRC IP	If the CRC Entity will be pursuing income tax exemption, this may impact CRC IP legal and beneficial ownership options. <sup>2</sup>  If the CRC Entity will not be pursuing income tax exemption, it is open for the Parties to choose between 2 options:  (1) the Partners' entitlement to beneficial interest in IP is determined according to IP created at the Project level (Project IP); or  (2) the Partners' entitlement to beneficial interest in IP is determined on the basis of all IP developed through the CRC (ie, CRC IP).

<sup>1</sup> As the Partners are not parties to the Grant Agreement, for ease of reference the Contributions of the Partners are reproduced in a Schedule to this agreement.

<sup>2</sup> Partners should seek independent advice on whether the ownership of CRC IP by the CRC Entity will affect the CRC Entity's ability to pursue income tax exemption.

	<b>Issue</b>	<b>Assumptions</b>
		<p>In either case the proportion of IP held by a partner should be commensurate with their Contribution to that Project or the whole CRC, as the case may be.</p> <p><i>Note: Each Party should seek their own advice and ruling from the ATO regarding eligibility for R&amp;D Tax Incentive.</i></p>
13.	Background IP	Background IP will be contributed only for the purpose of the undertaking of Projects and not for the general operations of the CRC Entity or general overhead activities. Background IP may only be used for the Utilisation of resulting Project IP where terms are agreed with the Partner owning the background IP.
14.	R&D Tax Incentive	Tax-paying Partners may wish to consider eligibility for the R&D Tax Incentive.
15.	Use of Project IP by Project Partners	Project Partners will wish to use the Project IP for their own internal purposes. The Project Details may provide for further rights. If not, the Project Partners will need to obtain the approval of the CRC Board for such use.
16.	Use of Project IP by other Partners	If IP is determined on a Project basis, Partners who are not parties to a Project will not have access to, or use of, the IP arising from that Project. Partners who were not parties to the Project but wish to use the Project IP for the Activities will need to get approval through the CRC Board.
17.	Utilisation	The CRC Entity will be responsible for determining who Utilises the CRC IP (including Project IP).
18.	Withdrawal from CRC	A Partner may withdraw from the CRC on 12 months' notice (or such other period as agreed by the Parties). <sup>3</sup>
19.	Tax Implications	The CRC Entity and the Partners will obtain tax rulings on whether the documentation prepared for their specific CRC meets their objectives, specifically where the CRC Entity wishes to pursue income tax exemption status or (for a taxable CRC Entity) the CRC Entity's and Partners' eligibility for the R&D Tax Incentive.

<sup>3</sup> Under item B (Grant Details) of the Grant Agreement, the Partners may change during the funding period, with Commonwealth approval, on at least 60 days' notice.

# Details

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Date

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

## Parties

Name [insert name of CRC Entity] Ltd

ABN [insert ABN]

Short form name **the CRC Entity**

Notice details [insert address]

Email address: [insert email address]

Attention: [insert name]

Name **The entities named and described in Schedule 2 of this Agreement,**  
being the present Partners to the CRC

Short form name **Partners**

## Background

- A. The Parties have agreed to establish a research collaboration to be known as the [insert CRC name] (CRC).
- B. The CRC will be operated by [insert CRC Entity name] (the CRC Entity).
- C. The CRC Entity has entered into a Grant Agreement with the Commonwealth under the Cooperative Research Centres Program, by which the CRC Entity will be partially funded by the Commonwealth to contribute toward the operation of the CRC.
- D. As a necessary precondition of the Grant Agreement described in Paragraph C, the Parties have agreed between themselves that the Activities are to be regulated on the terms and conditions set out in this Agreement.

# Agreed terms

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## Part A Introduction

### 1. Definitions and interpretation

#### 1.1 Defined terms

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

<b>Activities</b>	the activities set out in Schedule 3, and includes the Projects.
<b>Agreement</b>	this agreement between the Partners and the CRC Entity, as varied from time to time in accordance with clause 38, and including its Schedules and any attachments.
<b>Agreement Material</b>	means any Material, other than Reporting Material, created or developed by the parties as result of the Activities and includes any Existing Material that is incorporated in or supplied with the Agreement Material
<b>Agreement Period</b>	the period specified in clause 40.1.
<b>Annual Budget</b>	the annual budget for the CRC prepared and approved under clause 7.
<b>Asset</b>	any item of tangible property purchased, leased, created or otherwise brought into existence either wholly or in part with use of the Grant Funds, but does not include Agreement Material.
<b>Budget</b>	the budget set out in Schedule 5.
<b>Business Day</b>	a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the Notice is received.
<b>Chairperson</b>	the person who is the chair of the CRC Board who is independent of, and has no financial interest in, the Partners.
<b>Chief Executive Officer</b>	the person appointed as the Chief Executive Officer of the CRC (whether known as Chief Executive Officer or another title such as director or manager).
<b>Commonwealth</b>	means the Commonwealth of Australia as represented by the Commonwealth entity specified in the Grant Agreement and includes, where relevant, its officers, employees, contractors and agents.



<b>Confidential Information</b>	<p>information that is by its nature confidential and:</p> <p>(a) is designated by a Party as confidential; or</p> <p>(b) a Party knows or ought to know is confidential and is described in item 10 of Schedule 1,</p> <p>but does not include:</p> <p>(c) information that is or becomes public knowledge otherwise than by breach of this Agreement or any other confidentiality obligation.</p>
<b>Contribution</b>	the financial or in-kind contributions to be provided by the Partners to the CRC, from their own resources, for the purposes of undertaking the Activities, as specified in Schedule 5.
<b>Constitution</b>	the constitution of the CRC Entity.
<b>CRC</b>	the Cooperative Research Centre identified at Background A, being the collaboration between the CRC Entity and the Partners to undertake the Activities as determined by the arrangements set out in this Partners Agreement.
<b>CRC Board</b>	the board of the CRC Entity, being the natural persons (a majority of whom should be independent of the Partners) with general industry experience and management expertise and skills who must employ good practice in the governance and management of the CRC.
<b>CRC Branding</b>	includes any Intellectual Property Rights in the terms “CRC”, “CRC Projects”, “CRC-P”, “Cooperative Research Centre”, the Cooperative Research Centres Program logo and any additional items specified by the Commonwealth under the Grant Agreement from time to time.
<b>CRC Details</b>	the details specified in Schedule 1.
<b>CRC Entity</b>	the incorporated company, identified at Background B, established to govern and manage the CRC. Also known as the Grantee in the Grant Agreement.
<b>CRC Field</b>	the field of research specified in item 2 of Schedule 1.
<b>CRC Funds</b>	the money comprised in the Financial Account including the cash Contributions, Grant, cash contributions to the CRC received from third parties, and interest on the CRC Account; but not including any proceeds derived from the commercialisation of Agreement Material.
<b>CRC Objectives</b>	the objectives of the Parties for the CRC as set out at clause 4.
<b>CRC Program</b>	the Cooperative Research Centres Program.
<b>CRC Resources</b>	the non-cash resources made available for use by the Parties in carrying out the Activities, including the non-cash Contributions and non-cash resources procured from third parties.

<b>Commonwealth Funded Activities</b>	<p>Activities of the CRC for which Grant may be used, including:</p> <p>(a) activities relating to research:</p> <p>(i) significant research into matters of significance to the nation, including significant research into Science and Research Priorities and significant research about matters of importance to the development of Growth Sectors;</p> <p>(ii) publication of research mentioned in (i) and employment and take up of the outputs of that research;</p> <p>(b) scholarships, fellowships and stipends for students enrolled in formal education or training programs, and other associated education or training costs for those students;</p> <p>(c) developing and implementing strategies which will directly contribute to the capacity of enterprises to engage in overseas and interstate trade and commerce.</p>
<b>Deliverables</b>	the required deliverables for a Project as described in the Project Plan.
<b>Existing Material</b>	means Material developed independently of this Agreement that is incorporated in or supplied as part of Reporting Material or Activity Material including any Material specified in item 7 of Schedule 1.
<b>Financial Account</b>	the account the CRC Entity will establish to receive financial contributions provided for the Activities.
<b>Financial Year</b>	the Australian financial year beginning 1 July and ending 30 June.
<b>Grant Funds</b>	the amounts payable by the Commonwealth to the CRC Entity under the Grant Agreement and which can only be used to undertake the Activities.
<b>Grant Agreement</b>	the grant agreement between the Commonwealth and the CRC Entity for the purposes of funding and managing the CRC.
<b>Guidelines</b>	the Program Guidelines listed under item 6 of Schedule 1, and any other guidelines issued by the Commonwealth from time to time in relation to the Program and its administration.
<b>Initial Projects</b>	the Projects specified at item 5 of Schedule 1.
<b>Intellectual Property Rights</b>	means all copyright, patents, registered and unregistered trademarks (including service marks), registered designs, and other rights resulting from intellectual activity (other than moral rights under the <i>Copyright Act 1968</i> ).
<b>Law</b>	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
<b>Material</b>	includes documents, equipment, software (including source code and object code versions), goods, information and data stored by any means including all copies and extracts of them.

<b>Milestone</b>	a stage of completion of the Activities as set out in Schedule 3.
<b>Moral Rights</b>	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
<b>Notice</b>	a notice, demand, consent, approval or communication issued under this Agreement.
<b>Outcomes</b>	the outcomes of the Activities, as set out in Schedule 3.
<b>Partner</b>	a person, body or organisation, listed in Schedule 2, that is a signatory to this Agreement and has agreed to support the Activities of the CRC and provide Contributions.
<b>Participating Shares</b>	a Partner's interest in the Agreement Material as specified in item 6 of the Project Details (Schedule 4) as varied in accordance with clause 20.3.
<b>Parties</b>	the parties to this Agreement.
<b>Personnel</b>	in relation to a Party, any employee, officer, agent, professional adviser or subcontractor of that Party.
<b>Project</b>	a discrete, time-bounded research, training or Utilisation activity or series of activities to be carried out under clause 14 by some or all of the Parties or third parties and that has been recognised as a 'Project' by the CRC Entity agreeing to the Project Details (being a Third Party Project Agreement in the case of third party participation) in accordance with this Agreement.
<b>Project Contribution</b>	a Contribution to a Project to be contributed by a Party.
<b>Project Details</b>	the details applicable for a Project, as agreed in writing by all Project Parties and specified in Schedule 4, as amended by the Project Parties from time to time. In the case of a Project including one or more third parties as Project Partners, the Project Details means the details contained in the respective Third Party Project Agreement.
<b>Project Funds</b>	the money to be paid to the Responsible Partners for conducting the Project, and may include Grant funds received by the CRC Entity.
<b>Project Leader</b>	the person appointed under clause 16 to act as leader of a Project.
<b>Project Partners</b>	with respect to a Project, the Project Parties other than the CRC Entity.
<b>Project Parties</b>	the partners in a Project including the CRC Entity.
<b>Project Plan</b>	the plan for carrying out a Project as set out in the Project Details, including any variations to that plan as agreed by the Project Parties in writing.
<b>Project Shares</b>	with respect to a Project, the proportional entitlement of a Project Party as specified in the Project Details, as varied pursuant to clause 20.2. <i>[delete this definition if Agreement Material is to be owned legally and beneficially by the CRC Entity]</i>

<b>Reporting Material</b>	all Material which the CRC Entity is required to provide to the Commonwealth under the Grant Agreement for reporting purposes as specified in the Grant Details to the Grant Agreement, and includes any Existing Material that is incorporated in or supplied with the Reporting Material.
<b>Responsible Partners</b>	with respect to a Project, the Project Partners specified in the Project Details who are responsible for carrying out specified research, education, training or Utilisation under the Project.
<b>Schedules</b>	the schedules to this Agreement.
<b>Shortfall</b>	any deficit in the total Contributions received by the CRC Entity during a Financial Year and the Contributions which should have been received by the CRC Entity during that Financial Year as specified in Schedule 5.
<b>Special Board Resolution</b>	a resolution of the CRC Board requiring approval of [insert special majority number here] the directors able to attend and vote.
<b>Special Majority Issues</b>	the CRC issues listed in item 3 of Schedule 1.
<b>Specified Personnel</b>	means the Personnel of a Party allocated to the CRC or to a Project as part of that Party's Contribution.
<b>Third Party Material</b>	Material owned by a third party that is: <ul style="list-style-type: none"> <li>(a) included, embodied in or attached to the Agreement Material; or</li> <li>(b) used in undertaking the Activities,</li> </ul> as specified in item 8 of Schedule 1.
<b>Third Party Project Agreement</b>	an agreement between the CRC Entity and one or more third parties (and possibly also one or more Partners) setting out the terms upon which a Project will be funded and conducted.
<b>Utilisation</b>	technology transfer, take-up and use of research outputs by end-users. Commercial utilisation includes the manufacture, sale, hire or other exploitation of a product or process, or the provision of a service, incorporating Agreement Material or licensing of any third party to do any of those things, or otherwise licensing or assigning the Agreement Material.
<b>WHS Laws</b>	the <i>Work Health and Safety Act 2011</i> (Cth), regulations made under that Act and any Code of Practice approved for the purpose of that Act.

## 1.2 Interpretation

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

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;

- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Agreement;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;
- (n) if a day on which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (o) headings are for ease of reference only and do not affect interpretation.

## 2. Relationship to other agreements

### 2.1 Relationship to the Grant Agreement

Nothing in this Agreement will reduce or otherwise affect the obligations of the CRC Entity under the Grant Agreement. In the event of any inconsistency between this Agreement and the Grant Agreement, the Grant Agreement takes precedence.

### 2.2 CRC Entity authority to vary the Grant Agreement

The CRC Entity must not:

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

without:

- (i) [unanimous resolution/Special Board Resolution]<sup>4</sup> of the CRC Board approving the variation; and/or

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<sup>4</sup> Delete whichever is inapplicable, or if neither is applicable then delete this subparagraph.

if the matters specified in clauses 2.2(a) or (b) are Special Majority Issues, compliance with clause 3.7.

### **2.3 Relationship to the Constitution**

In the event of any inconsistency between this Agreement and the Constitution, this Agreement will prevail and the Parties will use their reasonable efforts to remove the inconsistency from the Constitution.

### **2.4 Relationship to the Project Details**

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

## **Part B The CRC Entity**

### **3. The CRC Entity**

#### **3.1 Role of CRC Entity**

The CRC Entity will operate the CRC in accordance with the Grant Agreement, this Agreement and the Constitution. The CRC Entity will be responsible for the overall management and governance of the CRC.

#### **3.2 Governance**

The CRC Entity and the CRC Board must manage and govern the CRC under the Constitution and ensure that the Activities are at all times carried out in accordance with the Grant Agreement. This clause 3.2 is not intended to limit the ways in which the CRC Entity may participate in the CRC.

#### **3.3 CRC Entity objects and powers**

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

#### **3.4 CRC Entity Constitution**

- (a) The Constitution may only be amended by a resolution of the members of the CRC Entity in accordance with the *Corporations Act 2001* (Cth), provided that any amendment to the Constitution that would be inconsistent with this Agreement requires the prior written agreement of all Parties.<sup>5</sup>
- (b) The Parties must ensure that the Constitution is consistent with the obligations under Schedule 1 clauses 4 and 5.1 of the Grant Agreement and otherwise allows the CRC Entity to meet its obligations under the Grant Agreement.

#### **3.5 Management of the CRC Entity**

- (a) The CRC Entity will be managed by the CRC Board in accordance with the Constitution.
- (b) The Parties must:

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<sup>5</sup> The Corporations Act requires a 75% majority resolution. A Partner will not have a vote in changing the Constitution if it is not a member of the CRC Entity, although its agreement is required for any change that would be inconsistent with this Agreement.

- (i) ensure that the Chairperson is independent of each Partner and the management of the CRC, and is free of any business or other relationship that could materially interfere, or could reasonably be perceived to materially interfere, with the exercise of their unfettered and independent judgment;
- (ii) select appropriate persons for the CRC Board, which should comprise a majority of members that are independent of the Partners; and
- (iii) ensure that the Chairperson and Chief Executive Officer of the CRC Entity are not the same individual.

### **3.6 Membership of CRC Entity**

The Partners are either members of the CRC Entity, or entitled to become members of the CRC Entity, in accordance with the Constitution. The CRC Entity and the Partners agree to promptly admit as a member of the CRC Entity any Partner that is not a member but has requested to be admitted.

### **3.7 Special majority approval of CRC Entity members**

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

### **3.8 Other consents required**

Clause 3.7 does not limit or prevail over any other consent or approval required under the *Corporations Act 2001* (Cth), the Grant Agreement or the Constitution.

### **3.9 Provision of products, services and/or access**

During the Agreement Period, the CRC Entity will provide the Partners with products, services and/or access as outlined in item 11 of Schedule 1.

## **Part C General Principles**

### **4. CRC Objectives**

#### **4.1 Objectives**

The Parties intend for the CRC Entity to [be a: *include incorporation approach here if relevant*]<sup>6</sup>:

- (a) create a Cooperative Research Centre in the CRC Field with the capability of pursuing world class research and training relevant to the CRC Field;
- (b) ensure that the Parties with their differing disciplines and backgrounds will, through their participation in the CRC, add value to each other so that the performance of the CRC will be greater than that of each Party acting independently;
- (c) increase the skills of persons already working in the CRC Field and to train and equip new postgraduate and other students with skills and attributes to continue being productive in the CRC Field;
- (d) promote a managed and cooperative approach to research and education in the CRC Field so as to maximise the benefits from that research and education;

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<sup>6</sup> This reference may relate to the CRC Entity pursuing income tax exemption.

- (e) carry out education activities in the CRC Field for students and for the professional development of persons working in the CRC Field;
- (f) promote the CRC Program; and
- (g) act as a trustee of Agreement Material and commercialisation income in accordance with the Partners Agreement.<sup>7</sup>

## 4.2 Interpretation

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

## 5. General Obligations

### 5.1 Mutual obligations

Each Party agrees that it will:

- (a) diligently perform its obligations as set out in this Agreement and the Constitution to a high professional standard;
- (b) undertake the Activities at the times and in the manner specified in Schedule 3 of this Agreement and, in doing so, actively promote the CRC Objectives and raise the profile of the CRC Program;
- (c) undertake the Activities in accordance with the CRC Program Guidelines and any related documentation developed to assist the management and administration of the CRC Program issued by the Commonwealth and as amended from time to time;
- (d) make its Contributions to the CRC in accordance with Schedule 5 and any other requirements under this Agreement, including Project Details and Third Party Project Agreements to which it is a party; noting that:
  - (i) any Contribution not paid by a Partner in accordance with this Agreement is to be treated as a debt due to the CRC Entity and payable upon demand;
- (e) apply the CRC Funds and CRC Resources only for the purpose of carrying out the Activities in accordance with this Agreement and Project Details to which it is a party (including Third Party Project Agreements);
- (f) meet the due dates for the Milestones, as specified in Schedule 3;
- (g) not unreasonably delay any action, approval, direction, determination or decision which is required of it in relation to the CRC;
- (h) use reasonable efforts to ensure that its Personnel, students and other representatives involved in any way with the CRC give full force and effect to the provisions of this Agreement including the other provisions of this clause 5;
- (i) ensure that all Activities will be carried out by or through the CRC Entity; and
- (j) act reasonably and in good faith with the other Parties, and in performing its obligations under this Agreement.

### 5.2 Acknowledgement of support (refer Grant Agreement Schedule 1 clause 3.2)

Each Party must, in all:

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<sup>7</sup> Delete this subparagraph if the CRC Entity is to legally and beneficially own all Agreement Material.



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

acknowledge the financial and other support received from the Commonwealth:

- (d) through reference to the CRC Program;
- (e) in relation to 5.2(c), through prominent display of the CRC Program logo in accordance with the CRC Program branding guidelines; and
- (f) by reference to any acknowledgement as otherwise specified or approved by the Commonwealth from time to time.

### **5.3 Partner obligations (refer Grant Agreement Grant Details (Item B) and Supplementary Terms clause ST1 Other Contributions and ST20 Legislative Compliance)**

Without limiting any other obligation of a Party under this Agreement, each Partner agrees that it will:

- (a) cooperate with and provide to the CRC Entity any information about its Contributions and Activities reasonably required by the CRC Entity;
- (b) cooperate with the CRC Entity in relation to the CRC Entity's obligations under Supplementary Terms clause ST1 of the Grant Agreement;
- (c) keep the CRC informed about the results of the Activities and any other information relevant to the conduct of the Activities in which the Partner is involved;
- (d) cooperate with and support the CRC Entity by providing the information necessary to enable the CRC Entity to meet its obligations to the Commonwealth under the Grant Agreement; and
- (e) support the CRC Entity in meeting its obligations in compliance with law and policy, and comply with the provisions of any relevant statutes, regulations, by-laws, and requirements of any Commonwealth, State, Territory or local authority.

### **5.4 In the event the Partner is unable to meet obligations**

Each Partner must notify the CRC Entity immediately upon becoming aware of any circumstances that are likely to adversely affect the Partner's ability to comply with the terms of this Agreement, in particular its solvency or ability to ensure that the Activities are carried out in accordance with this Agreement. This includes notification of any intent of, or changes in circumstances leading to the need for, withdrawal from the CRC and the Activities.

### **5.5 Breach of the Partner Agreement (refer Grant Agreement Grant Details item B)**

Each Partner must, within 5 Business Days of becoming aware of any breach or suspected breach of this Agreement that would affect the CRC Entity's ability to comply with its obligations under the Grant Agreement:

- (a) provide Notice to the CRC Entity of that breach or suspected breach;
- (b) provide all information reasonably required by the CRC Entity in relation to the breach or suspected breach;
- (c) identify to the CRC Entity the steps the Partner intends to take to address the matter;
- (d) keep the CRC Entity informed of any action it takes to remedy the breach; and

- (e) provide Notice to the CRC Entity once the breach is remedied, or if not remedied upon the matter being otherwise resolved.

## 5.6 Other government funding

Each Partner must provide to the CRC Entity full details of any financial assistance for activities in connection with the Activities which the Partner receives from another Commonwealth, State or Territory government source or agency after the commencement of this Agreement (**Other Financial Assistance**), including;

- (a) the amount and source of the funding; and
- (b) the name of the program under which it was provided,

within 10 Business Days of the Partner receiving Notice that the Other Financial Assistance has been approved.

## 6. Relationship of the Parties (refer Grant Agreement Schedule 1 clause 5)

### 6.1 General

The Parties agree that:

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

### 6.2 Variation Agent

Each Partner other than those specified in item 4 of Schedule 1 authorises the CRC Entity to negotiate and sign for and on its behalf documents that have the purpose of:

- (a) varying the Grant Agreement, Project Details and Third Party Project Agreements for Projects in which that Partner is a party;
  - (b) admitting new parties to this Agreement; or
  - (c) rectifying an error in this Agreement,
- so as to bind that Partner, provided that:
- (d) the CRC Board has approved the variation;
  - (e) the variation does not require the Partner to increase its Contribution; and
  - (f) the variation does not have a material adverse impact upon the Partner including any increase in liability.

## Part D CRC resources, accounting and reporting

## 7. Budgeting

### 7.1 Annual Budget

Prior to the commencement of each Financial Year, the CRC Entity will prepare an Annual Budget conforming to the Budget and setting out the financial requirements for the carrying out of the Activities for that year, including:

- (a) each Party's Contribution for the year (including cash and non-cash components);
- (b) cash and non-cash Contributions to the CRC to be procured from third parties;
- (c) the allocation of CRC Funds and CRC Resources to Projects and other Activities;
- (d) the allocation of CRC Funds and CRC Resources to heads of expenditure;
- (e) the portion of the CRC Funds (**Activity Payment**) and the CRC Resources to be made available for the purpose of carrying out the Activities to:
  - (i) each Partner; and
  - (ii) any third parties;
- (f) the portion of the CRC Funds and the CRC Resources to be used by the CRC Entity for the purpose of carrying out the Activities; and
- (g) the proposed allocation of CRC Funds to be paid to the CRC Entity for its operating expenses in accordance with clause 10.1(h).

### 7.2 Circulation of Annual Budget

The CRC Entity must provide a copy of each Annual Budget to all Partners promptly after the Annual Budget is approved.

### 7.3 Forward forecasts

At the time of preparing the Annual Budget, the CRC Entity will also prepare indicative budget forecasts for the two Financial Years following the Financial Year to which the Annual Budget relates.

## 8. Specified Personnel

### 8.1 Make available

Each Party agrees to make its Specified Personnel available for the operation of the CRC or the respective Project (as the case may be).

### 8.2 Terms of employment

Specified Personnel of each Partner will remain subject to the terms and conditions of employment of that Partner and will be replaced on reasonable request by the CRC Entity in accordance with clause ST6 of the Supplementary Terms of the Grant Agreement.

### 8.3 Agreement Material

Each Party must ensure that Agreement Material created by any of its Specified Personnel will be owned and dealt with according to the provisions of this Agreement.

### 8.4 Withdrawal

A Partner may withdraw any of its Specified Personnel upon 90 days' notice to the CRC Entity provided it provides replacements for such personnel who are acceptable to the CRC Entity. The CRC Entity may withdraw any of its Specified Personnel upon 90 days' notice to the Partners.

## 9. Assets

### 9.1 Application of clause

This clause 9 applies to an Asset:

- (a) included as part of a Contribution by a Partner to the Activities;
- (b) acquired by a Partner in whole or in part from the Activity Payment made to that Partner;
- (c) acquired by the CRC Entity from the CRC Funds; or
- (d) forming part of the CRC Resources made available to a Partner for the purposes of carrying out the Activities.

### 9.2 Acquisition of Assets

The Partners must not use Grant Funds for:

- (a) capital works or the purchase or construction of facilities such as buildings or laboratories; or
- (b) renovation or extension of buildings and facilities except in exceptional circumstances and with written Commonwealth approval.

### 9.3 Ownership

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

### 9.4 Obligations of Asset Owner

For the Agreement Period, the Asset Owner:

- (a) must make the Asset available for use by the CRC Entity or any Project Party as and when required;
- (b) must not sell, hire, charge, mortgage, pledge or otherwise encumber the Asset; and
- (c) is responsible for insurance, maintenance and, if required, repair and replacement of the Asset, and any other costs and liabilities associated with the Asset.

### 9.5 Costs

The CRC Entity may, at its discretion, treat the costs mentioned in clause 9.4(c), or part of them, as an additional Contribution by the Asset Owner.

## 10. Financial Management

### 10.1 CRC Entity obligations

The CRC Entity will:

- (a) establish and operate the Financial Account;
- (b) pay the Grant Funds into the Financial Account;
- (c) liaise with, report to and meet any other accounting and financial requirements of the Commonwealth under the Grant Agreement, in order to secure instalments of the Grant Funds in a timely fashion;
- (d) seek and accept from each Partner the cash component of its Contribution;
- (e) seek and accept any money to be procured from third parties contributing to the Activities;

- (f) pay the amounts received under clause 10.1(d) and (e) into the Financial Account;
- (g) draw on the Financial Account to make Activity Payments; and
- (h) draw on the Financial Account to meet the operating costs of the CRC Entity, including:
  - (i) the costs incurred by the CRC Entity associated with the protection of Agreement Material as described in clause 20.6;
  - (ii) the costs incurred by the CRC Entity associated with the Utilisation of Agreement Material, including legal and other professional fees; and
  - (iii) the costs of remuneration of the CRC Board, the Chief Executive Officer and the CRC Entity's other employees.

## **10.2 CRC Entity not agent**

Except as expressly permitted under clause 6.2, the CRC Entity will not be taken to be an agent for any of the Partners.

## **10.3 No authority**

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

# **11. Accounting**

## **11.1 Partner Accounts**

Each Partner is responsible for keeping separate financial accounts which will record:

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

## **11.2 CRC Entity accounts**

The CRC Entity will keep separate financial accounts which will record:

- (a) receipt of the Commonwealth's payments of Grant Funds to the CRC Entity;
- (b) the cash component of each Partner's Contribution received;
- (c) the cash component received from third parties contributing to the Activities;
- (d) the CRC Entity's payments of CRC Funds to the Partners and third parties;
- (e) withdrawals from the Financial Account under clause 10.1(h);
- (f) commercialisation income and commercialisation expenses; and
- (g) any other income of or expenditure by the CRC Entity.

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

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

## **12. Reporting by CRC Entity**

### **12.1 Reporting**

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

- (a) all reports provided to the Commonwealth; and
- (b) any Notices, other than normal correspondence, the CRC Entity receives from the Commonwealth.

### **12.2 Notification of critical events**

The CRC Entity must, as soon as reasonably practicable, but in any event within 14 days of becoming aware, give written Notice to each Partner should any of the following occur:

- (a) any litigation threatened or commenced against the CRC Entity;
- (b) any notification from any government agency of breach or alleged breach of any legal obligation;
- (c) any substantial dispute between the CRC Entity and any Partner;
- (d) any substantial dispute between the CRC Entity and any third party;
- (e) the receipt by the CRC Entity of an application to a court to wind up the CRC Entity; or
- (f) the CRC Entity becomes aware that a Partner is in default of its material obligations under this Agreement, including a failure to pay its cash Contributions.

## **Part E Project provisions**

### **13. Existing Material**

#### **13.1 Contribution of Existing Material for general Activities**

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

- (a) in accordance with this clause 13; and
- (b) other such terms as agreed in writing between the CRC Entity and the Party providing the Existing Material.

#### **13.2 Contribution of Existing Material to Project**

- (a) Each Project Partner will make its Existing Material available to the Project:
  - (i) as specified in the applicable Project Details; and
  - (ii) in accordance with this clause 13 and any written agreement between the CRC Entity and the Project Partner that offers to provide that Existing Material subsequent to the Project Details being agreed.

- (b) Each Project Partner represents and warrants to the other Project Parties that:
- (i) 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 Existing Material which it makes available for the Project;
  - (ii) except to the extent:
    - (A) disclosed in the Project Details; or
    - (B) in the case of any Existing Material not specified in the Project Details, notified in writing to the other Project Parties at the time of offering such Existing Material,the Partner has not entered any agreement regarding, or otherwise dealt with, that Existing Material that is inconsistent with the rights granted to the other Project Parties as described in the Project Details or this clause 13; and
  - (iii) it will not enter any agreement in relation to or otherwise deal with that Existing Material in a manner that restricts the exercise of the rights granted to the other Project Parties as described in the Project Details or this clause 13.

### **13.3 Licence for Project use**

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

- (a) specified in the Project Details (including a right to sublicense); or
- (b) in the case of any Existing Material not specified in the Project Details, notified in writing to the other Project Parties at the time of offering such Existing Material (including a right to sublicense).

### **13.4 Licence for general use**

If a Party makes available its Existing Material in accordance with clause 13.1, that Party grants to the other Parties an irrevocable, non-exclusive, royalty-free, worldwide licence to use the Party's Existing Material during the Agreement Period for the purposes of carrying out Activities that relate to purposes not directly related to the conduct of a Project, subject to any restrictions on its use:

- (a) specified in the Project Details (including a right to sublicense); or
- (b) in the case of any Existing Material not specified in the Project Details, notified in writing to the other Project Parties at the time of offering such Existing Material (including a right to sublicense).

### **13.5 Licence for Utilisation**

- (a) If the CRC Entity requires for the purposes of the Utilisation of Agreement Material a licence to use Existing Material that was licensed in accordance with clause 13.3 or 13.4 the CRC Entity must notify that Partner in writing.
- (b) If a Partner has received a Notice in accordance with clause 13.5(a) that Partner will grant a licence to the CRC Entity, on reasonable terms to be agreed by the Partner and the CRC Entity, to use the Partner's Existing Material for the purposes of Utilising Agreement Material from the Project (including the right to sub-licence) provided that:

- (i) the Agreement Material has been developed using that Existing Material in accordance with this Agreement and, where applicable, the relevant Project Details; and
- (ii) that Existing Material is required for the Utilisation of such Agreement Material,

subject to any restrictions on its use specified or notified in accordance with clause 13.3 or 13.4.<sup>8</sup>

### **13.6 Acknowledgement and infringement of Existing Material**

- (a) Subject to the rights granted in this clause 13, applicable Project Details or Third Party Project Agreement, the Parties acknowledge and agree that a Party retains the right to control and use its Existing Material and that ownership of the Existing Material does not change. The Existing Material owner may continue to use its Existing Material freely (provided that the use is not inconsistent with the terms of this Agreement, Project Details or any Third Party Project Agreement).
- (b) The CRC Entity will maintain a register recording all Existing Material under this Agreement, including any encumbrances or restrictions on its use specified or notified in accordance with clause 13.3.
- (c) The Parties agree that they will take all necessary steps to give each other prompt Notice of any infringement of Existing Material which comes to their attention.

### **13.7 Sublicence to use CRC Branding**

When using CRC Branding, Partners must acknowledge that the Commonwealth owns all rights in the CRC Branding.

## **14. Projects**

### **14.1 Activities through Projects**

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

### **14.2 Research Activities**

All Activities involving research will be carried out through Projects.<sup>9</sup>

### **14.3 Determined by the CRC Entity**

Subject to the Grant Agreement, the Projects to be carried out:

- (a) will be determined from time to time by the CRC Board; and
- (b) must not commence until all applicable approvals have been obtained from the CRC Board and applicable ethics committees.

### **14.4 Project Plan**

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

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<sup>8</sup> The parties may wish to expressly foreshadow that the licensor of the Existing Material will receive remuneration. To make such a clause legally enforceable the parties will need to specify an objectively determinable methodology for calculation of the remuneration.

<sup>9</sup> This template Agreement has been drafted on the basis that research work carried out by the Partners will be governed by the terms of this Agreement. This clause has been included to ensure that the Project-related provisions of this Agreement apply to all research activities.



- (a) Project Leader;
- (b) start and end dates;
- (c) objectives;
- (d) proposed strategy to be followed;
- (e) potential outcomes;
- (f) Milestones;
- (g) Deliverables;
- (h) a budget;
- (i) contributions to be made by third parties;
- (j) resource requirements, including Contributions, Existing Material and CRC Funds;
- (k) student requirements (if any);
- (l) required expenditure on new Assets (if any);
- (m) an analysis of risk; and
- (n) an analysis of the likely opportunities for Utilisation of potential outcomes.

#### **14.5 Selection of Project Partners**

Subject to this Agreement and the Grant Agreement, selection of Project Partners to participate in a Project (other than the Initial Projects) is a decision for the CRC Board in its absolute discretion.

#### **14.6 Initial Projects**

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

#### **14.7 Project Documents**

The Partners acknowledge that the CRC Entity will require:

- (a) that Project Details be agreed in writing by all Project Parties; and
- (b) without limitation to clause 14.7(a), in the case of each Project which includes third parties as Project Partners, that a Third Party Project Agreement be executed by all Project Parties.

#### **14.8 Project Details**

- (a) In the case of each Project which does not include third parties as Project Partners, the Project Details must include as a minimum the issues listed in Schedule 4.
- (b) For the avoidance of doubt each Project which does not include third parties as Project Partners is governed by Project Details and the terms of this Agreement.

#### **14.9 Third Party Project Agreements**

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

- (a) addresses the issues listed in Schedule 4;
- (b) contains provisions that are consistent with this Agreement; and
- (c) may be subsequently amended with the agreement of all Project Parties.

## **14.10 Third Party Project Partners**

Without limitation to clause 14.9(b), for the avoidance of doubt the rights and obligations applicable to Project Partners under this Agreement do not apply to third party Project Partners except to the extent that such third parties have entered a Third Party Project Agreement containing corresponding rights and obligations.

## **15. Project Funds and Project Contributions**

### **15.1 Project Funds**

- (a) Each Project Partner must pay its cash Contributions to the CRC Entity at the times and in the manner specified in the Project Details.
- (b) Subject to clause 15.1(d), the CRC Entity must pay the Project Funds to the Responsible Partners for the Project in accordance with the Project Details.
- (c) The CRC Entity:
  - (i) may withhold Project Funds if any Milestones have not been achieved or Deliverables have not been provided by their required dates; and
  - (ii) must release the withheld Project Funds once the Responsible Partners have achieved the missed Milestones or provided the required Deliverables as the case requires.
- (d) If a Project Partner has not paid a cash Project Contribution that is due to the CRC Entity in accordance with the Project Details, the CRC Entity is relieved from its obligation to pay to the Responsible Partners that part of the Project Funds corresponding to those unpaid cash Contributions while they remain unpaid. The obligations of the Responsible Partners to carry out the Project will be reduced to the extent of any Project Funds withheld pursuant to this clause 15.1(d).

### **15.2 Project Contributions**

- (a) Contributions to a Project by Project Parties must be specified in the respective Project Details.
- (b) Each Project Partner must make its non-cash Contributions available for the Project at the times and in the manner specified in the Project Details.
- (c) The CRC Entity must make its non-cash Contributions available for the Project at the times and in the manner specified in the Project Details.
- (d) The valuation of non-cash Project Contributions for the purposes of this Agreement must be in accordance with the in-kind contributions requirements in Appendix C of the Guidelines and labour calculations in Appendix B of the Guidelines and must exclude the value of Intellectual Property contributions.

### **15.3 Use of Project Funds and other Project Contributions**

The Responsible Partners may use the Project Funds and other Project Contributions provided to them:

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

## 16. Project management and reporting

### 16.1 Project Leader

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

- (a) uses his or her reasonable efforts to ensure the Project is conducted:
  - (i) in accordance with the Project Plan;
  - (ii) so as to achieve the Milestones; and
  - (iii) so as to provide the Deliverables;
- (b) manages the day to day conduct of the Project;
- (c) provides scientific leadership to the Project;
- (d) is responsible for administration of all Project Personnel including any students; and
- (e) maintains financial records and research and technical records as directed by the CRC Entity.

### 16.2 Carrying out of the Project

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

- (a) in accordance with the Project Plan, including the Project Budget;
- (b) so as to achieve the Milestones by their required dates;
- (c) so as to provide the Deliverables by their required dates; and
- (d) in accordance with the Project Leader's reasonable directions.

### 16.3 Project reporting

A Project Partner that employs the Project Leader must:

- (a) immediately report to the CRC Entity:
  - (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 objectives, satisfy any Milestones, provide any Deliverables or be completed within the Project Budget, including any failure to provide Contributions;
- (b) provide three monthly reports to the CRC Entity 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 objectives, satisfy any Milestones, provide any Deliverables or be completed within the Project Budget, including any failure to provide Contributions;
  - (iii) any significant difficulties encountered during the Project and measures taken or plans to resolve them;
  - (iv) any Agreement Material created (including a description of the Agreement Material, when it was created and by whom); and
  - (v) the Existing Material used in the Project.

## 16.4 Parties reporting to the Project Leader

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

## 16.5 Separate Project financial accounts

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

- (a) any Project Contributions it makes under clauses 15.1(a) and 15.2(b);
- (b) any payments of Project Funds made to it by the CRC Entity under clause 15.1(b);
- (c) all expenditure incurred by the Project Partner from Project Funds in carrying out the Project; and
- (d) any other expenditure associated with its carrying out the Project.

## 17. Variation to Projects

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

## 18. Withdrawal and removal from Projects

### 18.1 Withdrawal from Projects

- (a) A Project Partner may withdraw from the Project by giving six months' Notice to each other Project Party.
- (b) If a Project Partner withdraws from the Project the remaining Project Parties must meet for the purpose of agreeing 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 Partner may not withdraw from the Project without the agreement of the other Project Parties if it would result in the Project Parties being in breach of any agreement with a third party.

### 18.2 Removal from Projects

- (a) A Project Partner may be removed from the Project by Notice from the CRC Entity if Due Cause exists in relation to that Project Partner and remains unremedied after 21 days following Notice to that Project Partner.
- (b) For the purposes of clause 18.2(a), **Due Cause** means:
  - (i) failure to make Project Contributions when required by the Project Details;
  - (ii) unauthorised use or Utilisation of Agreement Material or Existing Material;
  - (iii) any other material breach of this Agreement in relation to the Project or of the Project Details;
  - (iv) change or proposed change to Personnel that is likely to adversely affect the Project;

- (v) failure to notify the CRC Entity of a conflict of interest under clause 26, or in the opinion of the CRC Entity, a conflict of interest exists which would prevent the Project Partner from performing its obligations under the Project Details;
- (vi) any change in the direct or indirect beneficial ownership or control of the Project Partner in question that would affect its ability to comply with its obligations under this Agreement;
- (vii) disposal of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- (viii) ceasing to carry on business;
- (ix) insolvency;
- (x) steps taken by a mortgagee to take possession or dispose of the whole or any part of the Project Partner's assets, operations or business;
- (xi) steps taken to enter into any arrangement between the Project Partner and its creditors other than in the ordinary course of business;
- (xii) the Project Partner applying to come under, or receiving a Notice requiring it to show cause why it should not come under, an order being made for the purposes of placing the Project Partner under, or the Project Partner otherwise coming under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or equivalent provisions in State or Territory legislation in relation to incorporated associations;
- (xiii) appointment of an investigator to investigate its affairs;
- (xiv) where the Project Partner is a partnership, steps taken to dissolve that partnership; or
- (xv) assignment of its rights or obligations under this Agreement other than with the written consent of the other Parties.

### 18.3 Consequences of withdrawal or removal from Project

- (a) If a Project Partner withdraws or is removed from the Project, the Project Partner will from the date of effect of the withdrawal or removal:
  - (i) cease to be a Project Party;
  - (ii) retain any rights to a beneficial interest in the Agreement Material and a share of the net commercialisation income with respect to such Agreement Material, subject to future variation to its Project Share pursuant to the Project Details; **[delete this subparagraph if the CRC Entity beneficially owns all Agreement Material]**
  - (iii) subject to clause 18.3(b), relinquish all rights with respect to the Project and the Agreement Material;
  - (iv) subject to clause 18.3(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;
  - (v) not be entitled to reimbursement of any costs incurred as a result of removal; and
  - (vi) be required to repay any unspent Project Funds to the CRC Entity, except to the extent those monies have been legally committed for expenditure by the Project

Partner in accordance with the Project Details and are payable by the Project Partner as a current liability (evidence of which will be required) before the date on which the Project Partner notifies its withdrawal or receives Notice of its removal.

- (b) The withdrawal or removal of any Project Partner from the Project:
  - (i) will not affect:
    - (A) the enforceability of any obligations of that Project Partner;
    - (B) rights against that Project Partner accrued at that time or arising as a result of the withdrawal or removal; or
    - (C) any obligation upon the Project Partner to make available its Existing Material under clause 13;
  - (ii) will not relieve that Project Partner of the obligations imposed upon it under this Agreement other than as specified in clause 18.3(a)(iv); and
  - (iii) subject to clause 18.1(b), will not relieve the remaining Project Parties of their obligations under this Agreement with respect to the Project and they will continue to carry out the Project and perform the terms of this Agreement with respect to the Project.

## 19. Termination of Projects

### 19.1 Termination of Projects by the CRC Entity

The CRC Entity may terminate a Project upon 30 days' written Notice to the Project Partners 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 CRC Entity to the Project Partners (or longer period of time specified by the CRC Entity in the Notice); or
- (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 CRC Entity to the Project Partners (or longer period of time specified by the CRC Entity in the Notice);

provided that:

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

### 19.2 Consequences of termination of Project

- (a) The CRC Entity must advise the Partners of the termination of any Project.
- (b) Termination of a Project for any reason will be without prejudice to the continuing enforceability of any rights or obligations of the Project Parties accrued at the time of termination.

### 19.3 Consequences of termination of Agreement

All Projects will terminate if this Agreement is terminated.

## Part E General requirements

### 20. Intellectual Property Rights

*Note: In Schedule 1, the Parties may insert detail of the arrangements and procedures for managing Intellectual Property Rights OR may refer to other documents that the Partner has been provided with and or will be party to (e.g. Project Agreements) that detail these arrangements.*

#### 20.1 Intellectual Property Rights in Agreement Material (refer Grant Agreement Schedule 1 clause 17)

- (a) This clause 20 does not affect the ownership of the Intellectual Property Rights in any Existing Material or Third Party Material.
- (b) The Intellectual Property Rights in the Agreement Material will vest in the [Partners/CRC Entity] on creation as agreed in item 9 of Schedule 1, and as agreed in the applicable Project Details.
- (c) Each Party will adhere to the documented arrangements and procedures for dealing with Intellectual Property Rights in Agreement Material as set out in item 9 of Schedule 1.
- (d) Each Party will adhere to the documented arrangements and procedures, as set out in item 9 of Schedule 1 and the Project details, to ensure that, prior to the publication or disclosure of Agreement Material (but not including reports or other such material to be provided to the Commonwealth for the Commonwealth's benefit), consideration is given to the potential prejudice to its subsistence or Utilisation, including the possibility that publication or disclosure might preclude the grant of a patent or cause the loss of Intellectual Property Rights.
- (e) Each Party must ensure that any Utilisation of Agreement Material in the context of this Agreement:
  - (i) is consistent with the nature of the Project and the CRC Program; and
  - (ii) maximises the national benefits accruing to Australia.
- (f) To the extent that the Commonwealth needs to use any of the Existing Material or Third Party Material provided by the Partner, or Agreement Material, in connection with the Activities or CRC Program, the Partner grants to, or must obtain for, the Commonwealth a perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Material.
- (g) The licence granted to the Commonwealth under clause 20.1(f) does not include a right to exploit the Agreement Material, Existing Material or Third Party Material for the Commonwealth's commercial purposes.

#### 20.2 Variations to Project Shares

*[only include this clause if Partners are to beneficially own the Project-generated Agreement Material]*

If the Project Contributions contributed by one or more Project Parties in a Financial Year differs from that specified in the Project Details for that Financial Year, each Project Party's Project Share will be recalculated by the CRC Entity in accordance with the following formula as at 1 July of the following Financial Year and will apply to that following Financial Year:

$$PS = (PC/TPC) \times (100\% - CPS\%)$$

where:

PS is the Project Share for a Project Party;

CPS is the CRC Entity's Project Share;

TPC is the total of all Project Parties' Project Contributions made (not Project Contributions owing nor future Project Contributions promised) up to the most recent 30 June; and

PC means the Project Contributions of a Project Party made (not Project Contributions owing nor future Project Contributions promised) up to the most recent 30 June,

provided that the deemed monetary valuation of non-cash Project Contributions for the purposes of this clause 20.2 is made in accordance with clause 15.2(d).

### 20.3 Calculation of Participating Share

*[only include this clause if members of the CRC (but not the CRC Entity) beneficially own Agreement Material and the CRC Entity holds legal interest on trust]*

Each Partner's Participating Share must reflect its proportionate contribution to the conduct of the Activities and the general operation of the CRC calculated in accordance with the following formula:

$$PS = (PC/TPC)$$

where:

PS is the Participating Share for a Partner;

TPC is the total of all Partners' Contributions made (not Contributions owing nor future Contributions promised) up to the most recent 30 June; and

PC means the Contributions of a Partner made (not Contributions owing nor future Contributions promised) up to the most recent 30 June.

provided that the deemed monetary valuation of non-cash Contributions for the purposes of this clause 20.3 is made in accordance with clause 15.2(d). *(NB: This formula does not account for contributions made by the CRC Entity)*

### 20.4 Moral Rights

Each Partner will use its reasonable efforts to obtain from its Personnel any consent in relation to their Moral Rights that may be reasonably necessary for the Activities or for Utilisation of the Agreement Material.

### 20.5 Agreement Material Register

The CRC Entity must maintain an Agreement Material register recording Agreement Material notified to the CRC Entity, containing at least the following details:

- (a) the date of entry on register;
- (b) description of Agreement Material;
- (c) identity of the inventor and the Party that developed the Agreement Material; and
- (d) details of any arrangements made by the CRC Entity with Partners or with third parties in relation to disclosure or use of the Agreement Material.



## 20.6 Costs of protection

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

## 20.7 Use of Name and Trademarks

Each Party must not use another Party's name or trademarks without the express permission of that party.

## 21. Confidentiality (refer Grant Agreement Schedule 1 clause 15)

### 21.1 Prohibition on disclosure

Subject to clause 21.3, each Party must not:

- (a) without the prior written consent of all Parties, disclose any Confidential Information to a third party; and
- (b) without the prior written consent of the Commonwealth, disclose any Commonwealth Confidential Information obtained through Activities-related activities to a third party.

### 21.2 Advisers and third parties

The Partners agree that, following a request from the Commonwealth, each Partner must provide the CRC Entity with a written undertaking from each Partner's Personnel relating to the use and non-disclosure of the Commonwealth's Confidential Information in the form approved by the Commonwealth.

### 21.3 Exceptions to obligations

The obligations on each Party under clause 21.1 will not be taken to have been breached to the extent that Confidential Information of the other Parties:

- (a) is disclosed by a Party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of activities related to this Agreement;
- (c) is required by Law to be disclosed;
- (d) is disclosed to the Commonwealth for the purposes of the Activities, the CRC Program or as otherwise provided for under the exceptions listed in clause 15.2 of Schedule 1 of the Grant Agreement; or
- (e) is in the public domain otherwise than due to a breach of this Agreement.

### 21.4 Obligation on disclosure

Where a Party discloses Confidential Information of a Party to another person, pursuant to clauses 21.3(a) or 21.3(b), the disclosing party must:

- (a) notify the receiving person that the information is Confidential Information; and
- (b) not provide the information unless the receiving person agrees to keep the information confidential, including in the case of Commonwealth Confidential

Information, the receiving person must give the Commonwealth a legally binding undertaking to that effect in the form approved by the Commonwealth.

## 21.5 Additional confidential information

- (a) The Parties may agree in writing during the Agreement Period that certain additional information is to constitute Confidential Information for the purposes of this Agreement.
- (b) Where the Parties agree in writing during the Agreement Period that certain additional information is to constitute Confidential Information for the purposes of this Agreement, this documentation is incorporated into, and becomes Confidential Information under this Agreement, on the date by which both Parties have signed this documentation.

## 21.6 Period of confidentiality

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

- (a) in relation to an item of information described in item 10 of Schedule 1, for the period set out in that Schedule in respect of that item; and
- (b) in relation to any information which the Parties agree in writing after the date of this Agreement is to constitute Confidential Information for the purposes of this Agreement, for the period agreed by the Parties in writing in respect of that information.

## 21.7 No reduction in privacy obligations

The Parties agree that nothing in this Agreement derogates from any obligation which any Party may have under the *Privacy Act 1988* (Cth) (Privacy Act) as amended from time to time in relation to the protection of ‘personal information’ as defined in that Act, or information that is protected by the *Census and Statistics Act 1905* (Cth), or any other Law requiring secrecy or confidentiality in dealing with information.

## 21.8 Return of information

The Parties agree that at the request of the Commonwealth or on the expiry or termination of the Grant Agreement, each Party must promptly return all of the Commonwealth’s physical and written records containing Confidential Information, and all documentation relating to that Confidential Information (including copies), to the Commonwealth in a form reasonably requested by the Commonwealth. Alternatively, the Parties agree that if requested by the Commonwealth, each Party must destroy such items in the manner specified by the Commonwealth and promptly certify to the Commonwealth in writing that it has done so.

## 22. Protection of personal information (refer Grant Agreement Schedule 1 clause 14)

### 22.1 Definitions

In this clause 22, the terms ‘agency’, ‘Australian Privacy Principle’ (APPs), ‘APP privacy policy’ and ‘Australian Privacy Principle Code’ (APP code) have the same meaning as they have in section 6 of the Privacy Act, and ‘personal information’, which also has the meaning it has in section 6 of the Privacy Act, means:

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

## 22.2 Application of this clause

This clause 22 applies only where the Partner deals with personal information provided to the Partner by the Commonwealth for the purpose of completing the Activities under this Agreement.

## 22.3 Obligations

Each Partner agrees in respect of the Activities under this Agreement to take all necessary measures to ensure that personal information in its possession or control in connection with this Agreement is protected against loss and unauthorised access, use, disclosure or modification.

- (a) Each Partner must, when requested, provide to the Commonwealth through the CRC Entity:
  - (i) a copy of the Partner's APP privacy policy which is compliant with APP 1;
  - (ii) copies of the Partner's security and data protection policies; and
  - (iii) details of the Partner's processes and procedures implemented to ensure compliance with the Privacy Act.
- (b) Each Partner agrees in respect of the Activities under this Agreement:
  - (i) to use or disclose personal information obtained from the Commonwealth during the course of the Activities under this Agreement, only for the purposes of this Agreement;
  - (ii) not to do any act or engage in any practice that would breach an APP contained in schedule 1 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that APP;
  - (iii) to carry out and discharge the obligations contained in the APPs as if it were an agency under the Privacy Act;
  - (iv) to notify individuals whose personal information the Partner holds, that complaints about acts or practices of the Partner may be investigated by the Privacy Commissioner who has power to award compensation against the Partner in appropriate circumstances;
  - (v) not to use or disclose personal information or engage in an act or practice that would breach APP 7 (direct marketing) or a registered APP Code which is applicable to the Partner, unless the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Agreement;
  - (vi) to follow any reasonable directions given by the Commonwealth through the CRC Entity to ensure compliance with the Privacy Act;
  - (vii) not to transfer or transmit personal information outside of Australia except with the prior written approval of the Commonwealth, which will not be unreasonably withheld. In giving its approval the Commonwealth may impose such conditions as it thinks fit. The Partner must comply with any term or condition imposed by the Commonwealth under this clause 22.3(b)(vii);
  - (viii) to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an APP or a registered APP code which is binding on a party to this Agreement;
  - (ix) to immediately notify the Commonwealth through the CRC Entity if the Partner becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 22, whether by the Partner or any

Personnel (including any complaints made about acts or practices of the Partner in connection with personal information);

- (x) to notify the Commonwealth through the CRC Entity of any subpoena, warrant, order, demand or request made by a foreign court or other authority for the disclosure of personal information to which the Privacy Act applies and to not disclose such information without the prior written approval of the Commonwealth, which will not be unreasonably withheld. In giving its approval the Commonwealth may impose such conditions as it thinks fit. The Partner must comply with any term or condition imposed by the Commonwealth under this clause 22.3(b)(x);
- (xi) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, notified to the Partner by the Commonwealth to the extent that they are not inconsistent with the requirements of this clause 22; and
- (xii) to ensure that any Personnel of the Partner who is required to deal with personal information for the purposes of this Agreement is made aware of the obligations of the Partner as set out in this clause 22.

## 22.4 Indemnity

The Partners agree to indemnify the Commonwealth in respect of any loss or liability suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Agreement under this clause 22.

## 23. Indemnities

### 23.1 Mutual indemnity

Subject to clauses 23.2, 23.3, 23.4 and 23.5, each indemnifying Party (**the Party**) irrevocably and unconditionally indemnifies and agrees to keep indemnified each of the other Parties and their respective Personnel, directors and contractors (**the indemnified**)<sup>10</sup> from and against any and all liability, loss, harm, damage, cost or expense (including legal fees on a full indemnity basis and net of any GST input tax credits to which those indemnified are entitled) howsoever arising that those indemnified may suffer, incur or sustain as a result of:

- (a) any breach of this Agreement (including material breach of any warranty given under this Agreement) by the indemnifying Party;
- (b) any unlawful or negligent act or omission by the indemnifying Party or any of its Personnel, directors or contractors arising in connection with the CRC; or
- (c) the exercise by the indemnifying Party of any rights granted to it in relation to the Agreement Material or Existing Material.

### 23.2 CRC Entity indemnity

In addition to any indemnity provided by the CRC Entity under clause 23.1, and subject to clauses 23.3, 23.4 and 23.5, the CRC Entity irrevocably and unconditionally indemnifies and agrees to keep indemnified each of the Partners and their respective Personnel, directors and contractors (**those indemnified**) from and against any and all liability, loss, harm, damage, cost or expense (including legal fees on a full indemnity basis and net of any GST input tax credits to which those indemnified are entitled) howsoever arising that

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<sup>10</sup> The Partners do not indemnify the Chairperson or any other director as it is assumed the CRC Entity will acquire directors and officers insurance.

those indemnified may suffer, incur or sustain as a result of any breach of the Grant Agreement by the CRC Entity.

### **23.3 Reduction of indemnity**

The indemnities given by an indemnifying Party pursuant to clause 23.1 and the CRC Entity under clause 23.2 will be reduced proportionately to the extent that the liability, loss, harm, damage, cost or expense referred to in clauses 23.1 and 23.2 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 or any of its Personnel, directors or contractors; or
- (c) the exercise by any of those indemnified of any rights granted to it in relation to the Agreement Material or Existing Material.

### **23.4 Commonwealth exception**

The Parties agree that, to the extent permitted by law, the Commonwealth is excluded from the obligation under clause 23.1 to indemnify any other Party.

### **23.5 Consequential losses**

Nothing in clauses 23.1 and 23.2 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.

### **23.6 Notification of acts**

Each of those indemnified under clauses 23.1 and 23.2 must promptly notify every indemnifying Party of any event or circumstance that may reasonably give rise to those indemnified relying upon the indemnities in clauses 23.1 and 23.2.

### **23.7 Indemnity of the CRC Entity as trustee**

*[delete this clause if the Agreement Material is to be legally and beneficially owned by the CRC Entity]*

The CRC Entity is entitled to be indemnified out of the assets of a particular trust created by, or pursuant to, this Agreement for any liability incurred by the CRC Entity as trustee of that particular trust (other than for breach of fiduciary duty).

## **24. Insurance** (refer Grant Agreement Schedule 1 clause 16)

### **24.1 Obligation to maintain insurance**

- (a)
  - (i) For as long as any obligations remain under this Agreement, each Partner, in connection with the Activities agrees to: conduct a risk assessment to identify the risks associated with undertaking the Activity; and
  - (ii) effect and maintain adequate and appropriate insurance to mitigate the risks identified in the risk assessment prepared under clause 24.1(a).
- (b) Each Partner must, provide proof of insurance to the Commonwealth upon request from the Commonwealth or the CRC Entity and within the time specified in the request.

## 25. Work health and safety (refer Grant Agreement Supplementary Terms clause ST21)

Each Party must:

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

## 26. Conflict of Interest (refer Grant Agreement Schedule 1 clause 7)

### 26.1 Warranty

- (a) Each Party warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.
- (b) For the avoidance of doubt, any conflict of interest declared by a Partner is not material where researchers in the Partner organisation conduct research in competition with the CRC if:
  - (i) those researchers are not part of the CRC; and
  - (ii) the researchers have not received Confidential Information related to the CRC.

### 26.2 Notification of a conflict of interest

If, during the Agreement Period, a conflict of interest arises, or appears likely to arise, each Party must:

- (a) notify the other Parties and the Commonwealth immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict of interest; and
- (c) take such steps as the CRC Entity may reasonably require to resolve or otherwise deal with the conflict of interest.

### 26.3 Register of conflicts of interest

The CRC Entity will maintain a register of conflicts of interest disclosed under this Agreement.

## 27. Books and records (refer Grant Agreement Schedule 1 clause 12)

### 27.1 Partner to keep books and records

In this clause 27, Accounting Standards means the standards of that name maintained by the Australian Accounting Standards Board (created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.

Each Partner must:

- (a) keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable:

- (i) all receipts and payments related to the Activities to be identified and reported in accordance with the Grant Agreement and this Agreement; and
  - (ii) the amounts payable by the Commonwealth under the Grant Agreement to be determined; and
- (b) retain for a period of seven years after the expiry or termination of this Agreement, all books and records relating to the Activities or deliver them to the CRC Entity or other person as directed by the CRC Entity.

## 27.2 Costs

Each Party must bear its own costs of complying with this clause 27.

## 28. Audit and access (refer Grant Agreement Supplementary Terms clause ST4)

### 28.1 Right to conduct audits

The Parties agree that the Commonwealth, or a representative of the Commonwealth as per clause 28.3, may conduct audits relevant to the performance of a Party's obligations under this Agreement. Audits may be conducted of:

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

### 28.2 Access by the Commonwealth

- (a) The Partners agree that the Commonwealth, any persons authorised in writing by the Commonwealth, or the CRC Entity at the request of the Commonwealth, may, at reasonable times and on giving reasonable Notice to the Partners:
  - (i) access the premises of the Partners to the extent relevant to the performance of this Agreement;
  - (ii) require the provision by the Partners or its Personnel of records and information in a data format and storage medium accessible by the Commonwealth by use of the Commonwealth's existing computer hardware and software;
  - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Partners or its Personnel; and
  - (iv) require assistance in respect of any inquiry into or concerning the Activities or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department of Industry, Science and Resources), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) The Partners agree that they will provide access to their computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under

this clause 28, and provide the Commonwealth with any reasonable assistance requested by the Commonwealth to use that hardware and software.

### **28.3 Auditor-General and the Australian Information Commissioner**

The Partners agree that for the purpose of clause 28.2, the Auditor General or a delegate of the Auditor-General, or the Australian Information Commissioner or a delegate of the Australian Information Commissioner are persons authorised in writing by the Commonwealth.

### **28.4 Partners to comply with Auditor-General's requirements**

Each Partner must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Australian Information Commissioner's or his or her delegate's requirements, notified under clause 28.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Australian Information Commissioner, or his or her respective delegate.

### **28.5 No reduction in responsibility**

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

### **28.6 Subcontractor requirements**

Each Partner must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 28.

### **28.7 No restriction**

The Partners agree that nothing in this Agreement reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Australian Information Commissioner or a delegate of the Office of the Australian Information Commissioner. The Partners agree that the rights of the Commonwealth under this Agreement are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Australian Information Commissioner or a delegate of the Australian Information Commissioner.

### **28.8 Costs**

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

## **29. Fraud (refer Grant Agreement Supplementary Terms clause ST13)**

### **29.1 Obligation to prevent Fraud**

- (a) The Partners must ensure that their Personnel and subcontractors do not engage in any Fraud in relation to Activities.

### **29.2 Investigation of Fraud**

- (a) If a Partner becomes aware of:
  - (i) any Fraud in relation to the performance of Activities; or
  - (ii) any other Fraud that has had or may have an effect on the performance of the Activities,



then it must within five Business Days report the matter to the Commonwealth and all appropriate law enforcement and regulatory agencies.

- (b) In additions to its obligations under clause 29.2(a), the Partner must also, at its own cost, investigate any Fraud which it becomes aware of in accordance with the Australian Government Investigations Standards available at [www.ag.gov.au](http://www.ag.gov.au).
- (c) The Partner agrees that the Commonwealth may, at its discretion, investigate any Fraud in relation to the Activities. The Partner agrees to co-operate and provide all reasonable assistance at its own cost with any such investigation.

### 30. Legislative compliance (refer Grant Agreement Supplementary Terms clause ST20)

- (a) In this Agreement, Legislation means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority.
- (b) Each Partner agrees to comply with all Legislation applicable to its performance of this Agreement.
- (c) Each Partner agrees, in carrying out its obligations under this Agreement, to comply with any of the Commonwealth's policies as notified, referred or made available by the Commonwealth via the CRC Entity.
- (d) In carrying out the Activities, each Partner must comply with the following applicable policies and laws:
  - (i) where relevant, the Building Code 2016<sup>11</sup> (Building Code) and the Australian Government's Work Health and Safety Accreditation Scheme<sup>12</sup> (the Scheme).
  - (ii) The National Principles for Child Safe Organisations<sup>13</sup>
  - (iii) All State, Territory or Commonwealth law relating to the employment or engagement of people who work or volunteer with children or vulnerable people, including compliance with any requirements for mandatory reporting, permits, licences, registration and checks however described and, if requested, provide the Commonwealth, at the Grantee's cost, with an annual statement of compliance with these requirements in such form as may be specified by the Commonwealth.
  - (iv) all relevant ethics codes and guidelines adopted by the National Health and Medical Research Council, the Office of the Gene Technology Regulator, and all other relevant regulatory agencies operating in Australia and in any place in which the research is being conducted;
  - (v) The NHMRC/ARC/UA Australian Code for the Responsible Conduct of Research (2018), and, if applicable, the NHMRC/ARC/AVCC National Statement on Ethical Conduct in Human Research (2007).
  - (vi) Commonwealth laws relating to the export of controlled goods. Information regarding export controls legislation is available at <https://www1.defence.gov.au/business-industry/export/controls>.

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<sup>11</sup> The Building Code 2016 can be found at <https://www.abcc.gov.au/building-code/building-code-2016>

<sup>12</sup> The Work Health and Safety Accreditation Scheme can be found at <https://www.fsc.gov.au/what-accreditation-1>

<sup>13</sup> The National Principles for Child Safe Organisations can be found at <https://childsafe.humanrights.gov.au/national-principles>

### 31. False or misleading information (refer Grant Agreement Schedule 1 clause 13)

Each Partner:

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

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

### 32. Responsible conduct of research

- (a) Each Partner agrees that it will:
  - (i) promote the responsible conduct of research;
  - (ii) maintain high standards of responsible research;
  - (iii) report research responsibly;
  - (iv) respect all research partners;
  - (v) respect animals used in research;
  - (vi) respect the environment; and
  - (vii) report research misconduct.
- (b) Each Partner must have procedures in place for dealing with instances of suspected or alleged research misconduct.

### 33. Student involvement

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

- (a) they must ensure that those students comply with clause 21;
- (b) they must ensure that Agreement Material developed by the student is owned in accordance with clause 20, provided that the student will own the copyright in his or her thesis;
- (c) the only restrictions on publishing a student's thesis will be those reasonably necessary to protect Party and CRC Confidential Information, Existing Material and Agreement Material;
- (d) the CRC Entity will not inhibit the right of a student to have his 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 any Activities, the CRC Entity may require that the student and the research organisation in which the student is enrolled enter into a written agreement, in a form approved by the CRC Entity, setting out the terms on which the student is involved in the Activities, which will be consistent with the principles in this clause 33.

## 34. Publications

- (a) The Parties acknowledge that the dissemination of knowledge is an important function of the CRC. Nonetheless, the Parties must not publish any information or material arising from the Activities except in accordance with this clause 34.
- (b) The CRC Entity may publish information or material arising from the Activities if it decides at its absolute discretion that the benefits of publication, having regards to the CRC Objectives, outweigh any potential loss of commercially valuable Intellectual Property Rights or other potential disadvantage for the CRC Entity or the CRC.
- (c) At least 30 days prior to any submission for a publication, a Partner wishing to publish information or material arising from the Activities (Requesting Party) must forward a request in writing to the CRC Entity, seeking permission to publish the information or material, and specifying in the request any Agreement Material or Confidential Information contained or referred to in the proposed publication.
- (d) The CRC Entity must notify the Requesting Party of its decision as to publication of the relevant information or materials within 30 days of receipt of a request. The CRC Entity's permission may be subject to any conditions that the CRC Entity may reasonably impose, including a requirement that the publication comply with any relevant provisions of the Grant Agreement, and include acknowledgements of:
  - (i) the CRC's role in and contribution to the creation of the information or material in the publication; and
  - (ii) the Requesting Party's affiliation with the CRC.
- (e) If the CRC Entity decides in its absolute discretion that the benefits of the Requesting Party's publication, having regards to the CRC Objectives, outweigh the potential loss of commercially valuable Intellectual Property Rights or other potential disadvantage for the CRC Entity or the CRC, then the CRC Entity will notify the Requesting Party that permission to publish has been granted, and notify the other Parties to that effect.
- (f) If the CRC Entity decides in its absolute discretion that the benefits of publication, having regards to the CRC Objectives, do not outweigh the potential loss of commercially valuable Intellectual Property Rights or other potential disadvantage for the CRC Entity or the CRC, then the CRC Entity will notify the Requesting Party to that effect, giving reasons for the decision, and either:
  - (i) suggest alterations to the publication so that it does not disclose information affecting the commercially valuable Intellectual Property Rights; or
  - (ii) if altering the publication is impractical, delay publication for a stipulated period as determined by the CRC Board, but not exceeding 18 months from the date of the request in the case of a student thesis.
- (g) Notwithstanding the other provisions of this clause 34, no Party may publish any information or material containing Confidential Information of a Party unless authorised by that Party or unless an exception in clause 21.3 applies.
- (h) Subject always to clauses 5.2 and 20, each Partner must ensure that any publication which it makes pursuant to this clause 34 acknowledges the contributions (if any) made by other Partners and the support of the Commonwealth and the CRC Entity:
  - (i) unless directed otherwise by a Partner to be acknowledged or by the Commonwealth or the CRC Entity (as the case requires); and

- (ii) provided that a Partner may not use the logo of any other Party without the prior written consent of that Party.

## 35. Notices and other communications

### 35.1 Service of Notices

A Notice must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or by electronic means to the recipient's address for Notices specified in Schedule 2, as varied by any Notice given by the recipient to the sender.

### 35.2 Effective on receipt

A Notice given in accordance with clause 35.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
- (c) if sent by email, as provided under sections 14 and 14A of the *Electronic Transactions Act 1999* (Cth),

but if the delivery, receipt or transmission is not on a Business Day or is after 5:00 pm on a Business Day, the Notice is taken to be received at 9:00 am on the next Business Day.

## 36. Public announcements (refer Grant Agreement Schedule 1 clause 3.1)

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

## 37. Survival (refer Grant Agreement Schedule 1 clause 21)

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

- (a) clause 5.2 (Acknowledgement of support);
- (b) clause 5.3(d) (Partner obligations);
- (c) clause 20 (Intellectual Property Rights);
- (d) clause 21 (Confidentiality);
- (e) clause 22 (Protection of personal information);
- (f) clause 23.1, 23.2 and 23.7 (Indemnities);
- (g) clause 24 (Insurance);
- (h) clause 27 (Books and records) for a period of seven years from the expiry or termination of the Grant Agreement;

- (i) clause 28 (Audit and access) for a period of seven years from the expiry or termination of the Grant Agreement; and
- (j) clause 39 (Retirement and removal from the CRC),

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

## 38. Changes to the Agreement

### 38.1 Variation to be in writing

Subject to clause 6.2, no agreement or understanding varying this Agreement will be legally binding unless it is signed in writing by all Parties.

### 38.2 Commonwealth approval

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

- (a) are or may be inconsistent with the Grant Agreement; or
- (b) affect the CRC Entity's ability to comply with any of its obligations under the Grant Agreement,

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

### 38.3 Notice of variations

The Parties agree that they must provide the Commonwealth with a copy of any alteration or variation described in clause 38.2 within 10 Business Days of the completion of the change.

## 39. Retirement and removal from the CRC

### 39.1 Retirement or removal of Partners

- (a) A Partner may retire from the CRC by giving 12 months' Notice<sup>14</sup> to each other Party.
- (b) Subject to clause 39.1(d), the CRC Entity may, by resolution of at least 75% of all other Partners at that time (each Partner having one vote), remove from the CRC a Partner by providing written Notice to that Partner, with a copy to all Partners and the Commonwealth.
- (c) A change of Partner is subject to the CRC Entity gaining the Commonwealth's approval under Grant Details (Item B) of the Grant Agreement.
- (d) The CRC Entity may remove a Partner from the CRC as per clause 39.1(b), if:
  - (i) the Partner breaches any provision of this Agreement and fails to remedy the breach within 21 days after receiving Notice requiring it to do so;
  - (ii) the Partner breaches a provision of this Agreement which is not capable of remedy;
  - (iii) the Partner persistently breaches a provision of this Agreement despite Notice of the breach;

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<sup>14</sup> It is open to the Parties to agree to a different period of notice. Item B (Grant Details) of the Grant Agreement requires the CRC Entity to give the Commonwealth at least 60 days' notice of any change to the Partners.

- (iv) in the reasonable opinion of the CRC Entity, the Partner is not conducting the Activities in a competent and diligent manner;
  - (v) the Partner fails to notify the CRC Entity of a conflict of interest, or in the opinion of the CRC Entity, a conflict of interest exists which would prevent the Partner from performing its obligations under this Agreement;
  - (vi) the CRC Entity is unable to obtain Contributions from the Partner in accordance with Schedule 5, or obtain them in time to provide for the Outcomes, Activities or Milestones as outlined in Schedule 3 and the Project Details;
  - (vii) the Partner does not comply with a Commonwealth direction requiring the Partner to comply with any obligation owed to the Commonwealth under this Agreement; or
  - (viii) an event specified in clause 39.1(e) occurs.
- (e) The Partner must notify the CRC Entity immediately if:
- (i) there is any change in the direct or indirect beneficial ownership or control of the Partner;
  - (ii) the Partner disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
  - (iii) the Partner ceases to carry on business;
  - (iv) the Partner ceases to be able to pay its debts as they become due;
  - (v) proceedings are initiated with a view to obtaining an order for the winding up of the Partner, or any person convenes a meeting for the purpose of considering or passing any resolution for the winding up of the Partner;
  - (vi) the Partner applies to come under, the Partner receives a Notice requiring it to show cause why it should not come under, an order has been made for the purpose of placing the Partner under, or the Partner otherwise comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or equivalent provisions in State or Territory legislation in relation to incorporated associations;
  - (vii) an investigator is appointed to investigate the Partner's affairs;
  - (viii) where the Partner is a partnership, any step is taken to dissolve that partnership;  
or
  - (ix) anything analogous to an event referred to in clause 39.1(e)(v)-(viii) occurs in relation to the Partner.

### **39.2 Consequences of retirement or removal of a Partner from the CRC**

- (a) If a Partner retires or is removed from the CRC pursuant to clause 39.1, it:
- (i) will cease to be a Party to this Agreement;
  - (ii) will cease to be a member of the CRC Entity;
  - (iii) will cease to be a Project Party with respect to any Project, except any Project for which a Third Party Project Agreement is in force and to which it remains a party in which case it remains a party in accordance with its terms;
  - (iv) is not entitled to reimbursement of any costs incurred as a result of expulsion;

- (v) must assign its share of ownership of the Agreement Material in accordance with item 8 of Schedule 1 or as otherwise agreed in writing by the CRC Entity;
- (vi) grants to the CRC Entity and Commonwealth a world-wide, irrevocable, perpetual royalty-free non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate any of its Agreement Material, Existing Material or Third Party Material:
  - (A) that meets the description in clause 20.1(b) and 20.1(f); and
  - (B) subject to any limitations provided for under clause 20.1.
- (b) Subject to clause 39.1(b), removal will not affect the enforceability of any rights or obligations accrued under this Agreement which survive termination.
- (c) From the date of removal, the CRC Entity will cease to be liable to pay or provide to the removed Partner any monies due under this Agreement, except to the extent those monies have been legally committed for expenditure by the Partner in accordance with this Agreement and are payable by the Partner as a current liability (written evidence of which will be required) before the date on which the Partner receives Notice of the removal.
- (d) From the date of removal, the removed Partner will cease to be liable to make any Contribution to the CRC Entity scheduled to be made after the removal date.

## 40. Agreement Period and Termination

### 40.1 Agreement Period

This Agreement commences on [insert commencement date] and will remain in force until all reporting requirements relating to the Activities under the Grant Agreement have been met, unless otherwise terminated in accordance with clauses 40.2 or 40.3 of this Agreement.<sup>15</sup>

### 40.2 Termination by consensus

The Parties may terminate this Agreement by unanimous written agreement.

### 40.3 Termination by Notice

The CRC Entity may terminate this Agreement [insert with immediate effect by OR with x days'] written Notice where the Commonwealth terminates the Grant Agreement.

### 40.4 Consequences of termination – ownership of Contributions and commercialisation income

If the CRC Entity terminates this Agreement under clause 40.3, all Partners must assign their share of ownership of the Agreement Material in accordance with item 9 of Schedule 1 or as otherwise agreed in writing by the CRC Entity.

### 40.5 Other consequences of termination

If the CRC Entity terminates this Agreement under clause 40.3:

- (a) termination will not affect the enforceability of any rights or obligations accrued under this Agreement which survive termination;
- (b) the CRC Entity is not obliged to pay to the Partners any outstanding amount of the monies due under this Agreement, except to the extent that those monies have been

<sup>15</sup> Note that the CRC Partners Agreement will need to continue beyond the end date of the Grant Agreement in order to complete reporting requirements.

legally committed for expenditure by the Partners in accordance with this Agreement and payable by the Partners as a current liability (written evidence of which will be required) by the date the Partners receive the Notice of termination;

- (c) as of the date the Partners receive the Notice of Termination, the Partners will cease to be liable to make further Contributions to the CRC Entity;
- (d) the CRC Entity is entitled to recover from Partners any monies provided by the CRC Entity to the Partners which have not been spent, or legally committed for expenditure by the Partners in accordance with this Agreement and payable by the Partners as a current liability (written evidence of which will be required), by the date the Partners receive the Notice of termination; and
- (e) any licences of Existing Material, Third Party Material and copyright in reports provided to the Commonwealth remain in force and survive termination.

## **41. Dispute resolution**

### **41.1 No arbitration or court proceedings**

If a dispute arises in relation to the conduct of this Agreement (**Dispute**), a Party must comply with this clause 41 before starting arbitration or court proceedings except proceedings for urgent interlocutory relief. After a Party has sought or obtained any urgent interlocutory relief, that Party must follow this clause 41.

### **41.2 Notification**

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

### **41.3 Parties to resolve Dispute**

During the 14 days after a Notice is given under clause 41.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of CEOs (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

### **41.4 Appointment of mediator**

Failing settlement by negotiation in accordance with clause 42.3, the Parties may agree to refer the dispute to an independent third person with power to intervene and direct some form of resolution, in which case the Parties will be bound by that resolution. If the Parties do not agree to refer the dispute to an independent third person, either Party may initiate legal proceedings.

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

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 41.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

### **41.6 Confidentiality**

Any information or documents disclosed by a party under this clause 41:

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



#### **41.7 Costs**

Each party to a Dispute must pay its own costs of complying with this clause 41. The parties to the Dispute must equally pay the costs of any mediator.

#### **41.8 Termination of process**

A party to a Dispute may terminate the dispute resolution process by giving Notice to each other party after it has complied with clauses 41.1 to 41.5. Clauses 41.6 and 41.7 survive termination of the dispute resolution process.

SAMPLE

# Schedule 1 CRC Details

Item	Issue	Clause Reference	Details
1.	Name of the CRC	<b>Background A</b>	[insert CRC name]
2.	CRC Field	<b>1.1, 4.1</b>	[Insert a description of the field of research that is the focus of the CRC]
3.	Special Majority Issues	<b>1.1, 3.7</b>	[Insert CRC Entity issues requiring special majority approval of CRC Entity members under clause 3.7]
4.	Variation Agent	<b>6.2</b>	[Insert names of parties who do not authorise the CRC Entity to be their variation agent]
5.	Initial Projects	<b>1.1, 14.6</b>	The Projects that are the subject of Project Details (including Third Party Project Agreements if there are third parties participating) entered into contemporaneously with this Agreement are: [insert names of projects]
6.	Guidelines	<b>1.1, 5.1</b>	The Cooperative Research Centres Program Round 24 Guidelines, and any related documentation developed to assist the management and administration of the CRC Program, issued by the Commonwealth and as amended from time to time.
7.	Existing Material	<b>1.1, 20.1</b>	[specify the pre-existing Material of each Partner, if any]
8.	Third Party Material	<b>1.1, 20.1, 39.2</b>	[specify Third Party Material, if any]
9.	Agreement Material	<b>1.1, 20.1</b>	[insert title/s of the document/s, details or arrangements that the CRC has developed for the management of Agreement Material, if applicable. Alternatively, details of Agreement Material arrangements might be included under a discrete schedule for the purpose.]
10.	Confidential Information	<b>1.1, 21</b>	[insert each party's Confidential Information, including any Agreement provisions or Schedules that are to be kept confidential. The period of confidentiality should be specified for each item. If the parties agree that different items of information are to be confidential for different periods of time, the different periods should be recorded next to each item. An assessment will need to be

			<i>made by the parties on a case-by-case basis about what is to be included in this item.]</i>
11.	Partner Expectations of the CRC	<b>3.9</b>	<p><i>[Insert detail of the products/services/access that the Partners will receive from the CRC. Examples include: copies of all research reports prepared by the CRC; attendance at all stakeholder meetings; recognition in all the CRC's publications and website as a sponsor of the Activities.]</i></p> <ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> <li>4.</li> <li>5.</li> </ol>

SAMPLE

# Schedule 2 Partners

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Name [insert]  
ABN [insert]  
Short form name [insert]  
Notice details [insert postal address]  
Phone: (xx) xxxx xxxx  
Email: [insert]  
Attn: [insert]

Name [insert]  
ABN [insert]  
Short form name [insert]  
Notice details [insert postal address]  
Phone: (xx) xxxx xxxx  
Email: [insert]  
Attn: [insert]

Name [insert]  
ABN [insert]  
Short form name [insert]  
Notice details [insert postal address]  
Phone: (xx) xxxx xxxx  
Email: [insert]  
Attn: [insert]

Name [insert]  
ABN [insert]  
Short form name [insert]  
Notice details [insert postal address]  
Phone: (xx) xxxx xxxx  
Email: [insert]  
Attn: [insert]

Name [insert]  
ABN [insert]  
Short form name [insert]  
Notice details [insert postal address]  
Phone: (xx) xxxx xxxx  
Email: [insert]  
Attn: [insert]

## Schedule 3 Activities

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*[Insert the description of Activities that appears in the Grant Agreement] Located at Grant Details (Item B) subsections Project title, Project scope and description and Project outcomes and Schedule 3 of the Grant Agreement (Activity Schedule).*

SAMPLE

# Schedule 4 Project Details

**[Note: This is a list of issues that should be addressed. It is not a document that needs to be signed (although that is a matter for the Project Partners). This table should be completed for each Project.]**

Item	Issue	Clause Reference	Details
1.	Project Partners	1.1, 13.2	
2.	Responsible Partners	1.1, 15	
3.	Project Funds	1.1, 15, 16.5	
4.	Project Contributions	1.1, 15, 16.5	<p><b>[Project Party 1]</b>            Amount:            Timing for Contribution:            Manner of payment:</p> <p><b>[Project Party 2]</b>            Amount:            Timing for Contribution:            Manner of payment:</p> <p><b>[Project Party 3]</b>            Amount:            Timing for Contribution:            Manner of payment:</p>
5.	Pre-existing IP	1.1, 13.1	Description <sup>16</sup> : Warranties: Restrictions:
6.	Project Shares <b>[delete this item 6 from this Schedule if IP is owned by the CRC Entity]</b>	1.1, 20.2	CRC Entity <sup>17</sup> : __%  Project Partners <sup>18</sup> <ul style="list-style-type: none"> <li>• <b>[Partner 1]</b>: __%</li> <li>• <b>[Partner 2]</b>: __%</li> <li>• <b>[Partner 3]</b>: __%</li> </ul>
7.	Utilisation plan	20.1	Risk Position <ul style="list-style-type: none"> <li>• <b>[Partner 1]</b>: __%</li> <li>• <b>[Partner 2]</b>: __%</li> <li>• <b>[Partner 3]</b>: __%</li> </ul> Share of commercialisation income <ul style="list-style-type: none"> <li>• <b>[Partner 1]</b>: __%</li> </ul>

<sup>16</sup> This should include descriptions of 'know how' (without destroying any confidentiality that applies).

<sup>17</sup> The CRC Entity share or a Project Partner's share can be specified as nil if required. Project shares may impact eligibility for the R&D Tax Incentive. Project Partners should seek specialist advice and/or obtain a tax ruling.

<sup>18</sup> Partners and the CRC Entity must agree between themselves on the formula to be used to determine the Project Partner's Project Shares.

			<ul style="list-style-type: none"> <li>• [Partner 2]: __%</li> <li>• [Partner 3]: __%</li> </ul>
8.	Risk position where withdrawal from involvement in Utilisation	20.1	[Project Partner that has withdrawn from Utilisation of particular Agreement Material might be required to indemnify the withdrawing Project Partner]
9.	Rights to net commercialisation income where withdrawal from involvement in commercialisation  [delete this item from this Schedule if IP is owned by the CRC Entity]	20.1	[State whether or not a Project Partner's rights to a share of net commercialisation income will reduce if it withdraws from commercialisation, and if so by how much or by what formula. Your approach may depend on whether and to what extent risk has reduced under item 10 (otherwise there may appear to be an incentive to withdraw), e.g., if a broad indemnity is granted in item 10, it may be reasonable to state that the share is to reduce to nil or by some large % with respect to the particular Agreement Material.]
10.	Project Plan	1.1, 14.4	<p>[Note: this is likely to be a separate attachment]</p> <p>Plan should include, as a minimum, the following:</p> <ol style="list-style-type: none"> <li>the completion date;</li> <li>the objectives;</li> <li>the proposed strategy to be followed;</li> <li>potential outcomes;</li> <li>the Deliverables;</li> <li>a budget;</li> <li>contributions to be made by third parties;</li> <li>resource requirements, including Contributions, Pre-existing IP, CRC Funds;</li> <li>student requirements (if any);</li> <li>required expenditure on new Assets (if any);</li> <li>a risk analysis; and</li> <li>an analysis of the likely opportunities for commercialisation of potential outcomes.</li> </ol>

# Schedule 5 Partner Contributions and Budget

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*[Insert Partner Contributions and Budget tables from Schedules 4 and 5 of the Grant Agreement.]*

SAMPLE



# Signing page

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*[Replicate, using one of the following execution clauses as appropriate for each party, for each of the contracting Parties as required.]*

## [Party 1 – Company execution block]

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

\_\_\_\_\_  
Signature of director ←

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

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

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

## [Party 1 – Alternative execution block]

Signed for **[insert contracting party  
name]** by an authorised officer in the  
presence of

\_\_\_\_\_  
Signature of witness ←

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

\_\_\_\_\_  
Signature of officer ←

\_\_\_\_\_  
Name of officer (print)

\_\_\_\_\_  
Office held