

BACKGROUND

- A. The Project has been approved by the Company in accordance with the policies and delegations adopted by the Board.
- B. The Parties enter into this Agreement to set out the terms and conditions which will apply to the conduct of the Project.

NOW IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Advisers means:

- (a) the financial or legal advisers of a party;
- (b) the respective officers and employees of those financial or legal advisers; and
- (c) the wholly owned commercialisation company of a Project Participant that is a university.

Agreement means the agreement consisting of the Project Details and these Project Terms (including the Schedules and Annexures to such documents), and any amendment agreed to in writing by the Parties.

Background IP means:

- (a) the Intellectual Property specified in Item 5 of the Project Details that a Party has agreed to contribute as Background IP to the Project; and
- (b) any other Intellectual Property that the Party has offered to contribute as Background IP for the Project and has been agreed in writing by all Parties as being accepted as Background IP for the Project,

but does not include any Project IP.

Board means the board of directors of the Company from time to time.

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

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

Cash Contribution means a cash contribution which the Project Participant has agreed is to be used for expenditure on the Project, as detailed in Item 8 of the Project Details.

Commencement Date means the commencement date for the Project specified in Item 2.1 of the Project Details.

Company means iMOVE Australia Limited.

Completion Date means the completion date for the Project specified in Item 2.2 of the Project Details.

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

Constitution means the constitution of the Company.

CRC means the research collaboration operated by the Company known as the iMOVE Cooperative Research Centre.

CRC Account means the cash component of the Participant Contributions and any Third Party Contributions, held in an account by the Company.

CRC Branding means the terms "CRC", "CRC Projects", "CRC-P", "Cooperative Research Centre" and the Programme logo and any additional items specified by the Commonwealth from time to time.

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

CRC Objective means the objects of the Company as set out in the Constitution.

Deliverables means the required deliverables for the Project as described in Items 4.4 and 9 of the Project Details.

Grant means the funds to be provided by the Company to the Project, as described in the Project Details

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

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

Lead Project Party (or LPP) means the Project Participant identified at Item 3.1 of the Project Details.

Milestone Payment means a payment of Project Funds due on completion of a particular Milestone, as detailed in Item 9 of the Project Details.

Milestones means the milestones for the Project as set out in Item 9 of the Project Details.

Participants means those persons or bodies (other than the Company) who are parties to the Participants Agreement from time to time.

Participants Agreement means the agreement entered into by the Company and the Participants dated 22 September 2017, as varied or amended from time to time.

Parties means the parties to this Agreement, being the persons detailed in the Project Details, and **Party** means one of them.

Party Confidential Information means any Confidential Information of a Party that is disclosed by that Party to another Party, or of which another Party becomes aware, whether before or after the date of this Agreement, but does not include CRC Confidential Information.

Personnel means the personnel, including employees, officers, agents, contractors, consultants and professional advisers of a Party allocated to or

otherwise involved in the Project, and includes Specified Personnel.

Project means the project described in the Project Details.

Project Budget means the budget for the Project as set out in Item 8 of the Project Details, including any variations to that budget as agreed by the Parties in writing.

Project Contributions means a contribution to the Project (whether money, Assets, Personnel, facilities or services but not including any Intellectual Property) to be contributed by a Party to the Project (and in the case of Cash Contributions, applied to the Project) as set out in Item 7 and 8 of the Project Details and the Project Budget.

Project Details means the project details applicable to the Project attached to these Project Terms together with any variations to those details agreed by the Parties in writing.

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

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

Project IP Rights Holder means the party identified as such in the Project Details.

Project Leader means the person appointed to act as a leader of the Project, as detailed in Item 3.5 of the Project Details.

Project Objectives means the objectives for the Project as set out in Item 4.2 of the Project Details.

Project Participants means the Parties other than the Company.

Project Terms means these clauses 1 to 22 (inclusive).

Related Entity, in relation to a Project Participant, means the parent entity of the Project Participant (being a corporation that beneficially holds 100% of the shares issued in the Project Participant), a corporation in which at least 50% of the equity is beneficially owned by such parent entity or a wholly-owned subsidiary of the Project Participant.

Responsible Participants mean, with respect to the Project, the Project Participants specified in Item 3.3 of the Project Details who are responsible for carrying out specified research, education, training or Utilisation under the Project.

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

Special Conditions means the special conditions set out in Item 11 of the Project Details which are to prevail over every other term of this Agreement in accordance with clause 1.3.

Specified Personnel means the Personnel of the Company or a Party that are identified as Specified Personnel in Item 3.4 of the Project Details.

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

Utilisation means technology transfer and take-up and use of research outputs. Commercial utilisation includes the manufacture, sale, hire or other exploitation of a product or process, or the provision of a service, incorporating Intellectual Property or the licensing of any third party to do any of those things, or otherwise licensing or assigning the IP. **Utilise** has a corresponding meaning.

Utilisation Plan means the plan specifying the approach to be adopted with respect to the Utilisation of Project IP as set out in Item 4.7 of the Project Details.

1.2

Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, Schedule or Annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to 'A\$', '\$A', 'dollar' or '\$' is to Australian currency;
- (f) a reference to a party to a document (including this Agreement) includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (j) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it;
- (k) the liabilities of the Parties are not joint nor joint and several, but are several liabilities and obligations;
- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and

headings are for ease of reference only and do not affect interpretation.

1.3

Priority

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

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

2. TERM OF AGREEMENT

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

3. BACKGROUND IP

3.1 Making available

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

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

3.2 Warranty

Each Party represents and warrants to the other Parties that:

- (a) to its actual knowledge or belief, without the need to make additional enquiries, conduct searches or seek legal or patent opinion, it is the owner of, or is otherwise entitled to provide, the Background IP which it makes available for the Project;
- (b) except to the extent:
 - (i) disclosed in Item 5 of the Project Details; or
 - (ii) in the case of any Background IP not specified in the Project Details, notified in writing to the other Parties at the time of offering such Background IP,
 - (iii) the Party has not entered any agreement regarding that Background IP, or otherwise dealt with that Background IP in any manner, that is inconsistent with the rights granted to the other Parties as described in the Project Details or this clause 3; and
- (c) it will not, without the written consent of the other Parties, enter any agreement in relation to or otherwise deal with that Background IP in a manner that restricts the exercise of the rights granted to the other Parties as described in the Project Details or this clause 3.

3.3 Licence for Project use

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

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

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

3.4

Licence for Utilisation

- (a) If a Party requires for the purposes of Utilisation of Project IP (but only to the extent permitted by this Agreement) a licence to use Background IP that was licensed in accordance with clause 3.3, that Party must notify the Party that has made the Background IP available (**BIP Owner**) in writing.
- (b) If a BIP Owner receives a notice in accordance with clause 3.4(a), the BIP Owner will grant to the Party that has provided notice, on reasonable commercial terms to be agreed by the BIP Owner and the Party that has provided notice, a licence to use the BIP Owner's Background IP for the purposes of Utilisation of the Project IP provided that:
 - (i) the Project IP has been developed using that Background IP in accordance with this Agreement; and
 - (ii) that Background IP is required for the Utilisation of such Project IP,
 subject to any restrictions on its use specified or notified in accordance with clause 3.3(a) or 3.3(b).

3.5

Acknowledgement

Subject to the rights granted in this clause 3, the Parties acknowledge and agree that a BIP Owner (as defined in clause 3.4(a)) retains the right to control and use its Background IP and that ownership of the Background IP does not change. The BIP Owner may continue to use its Background IP freely (provided that the use is not inconsistent with the terms of this Agreement).

3.6

Infringement of Background IP

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

4.

PROJECT FUNDS AND PROJECT CONTRIBUTIONS

4.1

Project Funds

- (a) Subject to the Company receiving the Cash Contributions from the applicable Project Participants, the Company will pay the Project Funds to the Responsible Participants in Milestone Payments on achievement of the

applicable Milestone, as determined by the Company and the Lead Project Party (each acting reasonably), and in accordance with the Project Details.

- (b) Without limitation to clause 8.2, if the Company and the Lead Project Party determine in accordance with clause 4.1(a) that a Milestone has not been achieved, the Company (following consultation with the Lead Project Party):
 - (i) may suspend or reduce the payment of Project Funds; and
 - (ii) will release the withheld Project Funds once the Responsible Participants have achieved the missed Milestone.

4.2 Cash Contributions

- (a) Each Project Participant must ensure that it has paid or pays its Cash Contributions to the Company at the times and in the manner sufficient to ensure that the Project can continue without interruption.
- (b) Cash Contributions to be made by a Project Participants may only be varied with the agreement of the Project Participant and the Company.
- (c) If a Project Participant fails to pay its Cash Contributions when due, the Company may suspend that Project Participant's role and involvement in the Project and the benefits arising therefrom, until such time as the outstanding amount has been paid.
- (d) If it is necessary to suspend the Project as a consequence of late or non-payment of Cash Contributions by a Project Participant, that Project Participant must pay to the Company (and in turn the Company will pay to the relevant Parties) the reasonable costs incurred by the other Parties that directly result from the suspension of the Project, not to exceed the amount of the late or unpaid Cash Contribution (and such amount will be in addition to the late or unpaid Cash Contribution).

4.3 Project Contributions

Each Project Participant must make its cash and non-cash Project Contributions available for the Project at the times and in the manner specified in the Project Details.

5. PROJECT MANAGEMENT AND REPORTING

5.1 Project Leader

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

- (a) uses his or her reasonable efforts to ensure the Project is conducted:
 - (i) in accordance with the Project Details;
 - (ii) so as to achieve the Milestones and Project Objectives; and
 - (iii) so as to provide the Deliverables;

- (b) manages the day to day conduct of the Project; and
- (c) maintains records as reasonably directed by the Company.

5.2 Carrying out the Project

The Responsible Participants must carry out the Project:

- (a) in accordance with this Agreement (including the Project Details and the Project Budget);
- (b) diligently and to a professional standard;
- (c) using the Specified Personnel (if any);
- (d) so as to do all things reasonably necessary or desirable to achieve the Project Objectives;
- (e) so as to achieve the Milestones by their required dates;
- (f) so as to provide the Deliverables by their required dates;
- (g) in accordance with the Project Leader's reasonable directions;
- (h) in accordance with the risk management provisions set out in Item 4.6 of the Project Details; and
- (i) in accordance with all applicable law.

5.3 Project reporting

The Project Participant that employs the Project Leader must:

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

5.4 Parties reporting to the Project Leader

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

5.5 Separate Project financial accounts

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

- (a) any Project Contributions it makes under clause 4.3;
- (b) any payments of Project Funds made to it by the Company under clause 4.1;
- (c) all expenditure incurred by the Project Participant from Project Funds in carrying out the Project; and
- (d) any other expenditure associated with its carrying out the Project.

5.6 Assets

To the extent that any Assets are to be purchased for the purposes of the Project, they will be purchased, owned, located and made available as set out in Item 8 of the Project Details.

6. WITHDRAWAL AND EXPULSION FROM PROJECT

6.1 Withdrawal from Project

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

6.2 Expulsion from Project

- (a) A Project Participant may be expelled from the Project by notice from the Company if Due Cause exists in relation to the Project Participant and remains unremedied after 21 days following notice to that Project Participant.
- (b) For the purposes of clause 6.2(a), **Due Cause** means any of:
 - (i) failure to make Project Contributions when required by this Agreement;
 - (ii) unauthorised use or Utilisation of Project IP or Background IP;
 - (iii) any other material breach of this Agreement in relation to the Project;
 - (iv) change or proposed change to Personnel that is likely to adversely affect the Project;

- (v) failure to remedy a conflict in relation to the Project in accordance with clause 18 to the satisfaction of the Company;
- (vi) change in the direct or indirect beneficial ownership or control of the Project Participant that would affect its ability to comply with its obligations under this Agreement;
- (vii) disposal of whole or any part of the Project Participant's assets, operations or business other than in the ordinary course of business;
- (viii) ceasing to carry on business;
- (ix) insolvency;
- (x) steps taken by a mortgagee to take possession or dispose of the whole or any part of the Project Participant's assets, operations or business;
- (xi) steps taken to enter into any arrangement between the Project Participant and its creditors other than in the ordinary course of business;
- (xii) steps taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person, concerning the whole or any part of the Project Participant's assets, operations or business;
- (xiii) appointment of an investigator to investigate its affairs; or
- (xiv) assignment of its rights or obligations under this Agreement other than in accordance with clause 22.2.

6.3 Consequences of withdrawal or expulsion from Project

- (a) If a Project Participant withdraws or is expelled from the Project, the Project Participant will from the date of effect of the withdrawal or expulsion:
 - (i) cease to be a Party;
 - (ii) subject to clause 6.3(b), relinquish all rights with respect to the Project and the Project IP (including, for the avoidance of doubt, all rights to use the Background IP of another Party and Project IP under the licences granted in clause 3.3 and clauses 10 and 11, respectively); and
 - (iii) subject to clause 6.3(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.
- (b) The withdrawal or expulsion of a Project Participant from the Project:
 - (i) will not affect:
 - (A) the enforceability of any obligations of that Project Participant;

- (B) rights against that Project Participant accrued at that time or arising as a result of the withdrawal or expulsion;
 - (C) any obligation upon the Project Participant to make available its Background IP under clause 3; or
 - (D) licences to the Project Participant's Background IP granted or to be granted under clause 3;
- (ii) will not relieve the Project Participant of the obligations imposed upon it under this Agreement other than as specified in clause 6.3(a)(iii); and
 - (iii) subject to clause 6.1(b), will not relieve the remaining Parties of their obligations under this Agreement and they will continue to carry out the Project in accordance with the terms of this Agreement.

7. VARIATION TO PROJECT

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

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

8. TERMINATION OF PROJECT & AGREEMENT

8.1 Termination generally

The Project and this Agreement will terminate immediately:

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

8.2 Termination by the Company

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

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

and remains not provided after 30 days following a notice from the Company to the Project Participants (or longer period of time specified by the Company in the notice),

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

8.3 Consequences of termination

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

8.4 Termination of Participants Agreement

The Project and this Agreement will automatically terminate if the Participants Agreement is terminated for whatever reason, unless otherwise agreed by the Parties.

8.5 Ceasing to be a Participant

If a Project Participant that is a Participant at the Commencement Date ceases to be a Participant prior to the end of the Term but does not withdraw from the Project in accordance with clause 6, then the Board, acting reasonably, will determine the consequences for the Project Participant under this Agreement.

9. PROJECT IP

9.1 Ownership of Project IP

Project IP will vest legally and beneficially in the Project IP Rights Holder upon creation.

9.2 Vesting of ownership

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

9.3 Dealing with Project IP

Each Project Participant:

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

9.4 Publication and disclosure

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

10. PROJECT PARTICIPANTS' RIGHT TO USE PROJECT IP

10.1 Project Participants

Subject to clause 10.2, each Project Participant has a non-exclusive royalty-free right to use the Project IP for the purpose of undertaking the Project in accordance with this Agreement.

10.2 Conditions on use rights

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

- (a) maintaining the confidentiality of Confidential Information; and
- (b) not prejudicing:
 - (i) the Utilisation of the Project IP in accordance with clause 11; and
 - (ii) the protection of the Project IP

10.3 Reporting by Project Participants

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

11. UTILISATION OF PROJECT IP

11.1 Utilisation Plan

- (a) The Utilisation Plan for the Utilisation of the Project IP is set out in Item 4.7 of the Project Details.
- (b) The Project IP Rights Holder must Utilize the Project IP in accordance with the Utilisation Plan and must report the Company in respect thereof as when reasonably required by the Company.

12. MORAL RIGHTS

Prior to any Personnel of a Project Participant or students under its supervision participating in the Project, the Project Participant will ensure that any consents in relation to those persons' Moral Rights are obtained as may be reasonably necessary for the Project or for the use and Utilisation of the Project IP in accordance with this Agreement.

13. INDEMNITIES

13.1 Mutual Indemnity

Subject to clauses 13.2, and 13.3, each Party (**the indemnifying Party**) irrevocably and unconditionally indemnifies and agrees to keep indemnified each of the other Parties and their respective directors, officers, employees, students engaged in the Project, agents and contractors (**those indemnified**) from and against any and all liability, loss, harm, damage, cost or expense (including legal fees on a full indemnity basis and net of any GST input tax credits to which those indemnified are entitled) howsoever arising that those indemnified may suffer, incur or sustain as a result of:

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

13.2 Reduction of indemnity

The indemnities given by an indemnifying Party pursuant to clause 13.1 will be reduced proportionately to the extent that the liability, loss, harm, damage, cost or expense referred to in clause 13.1 was caused or contributed to by:

- (a) any breach of this Agreement (including material breach of any warranty given under this Agreement) by any of those indemnified;
- (b) any unlawful or negligent act or omission by any of those indemnified or any of its directors, officers, employees, agents or contractors;
- (c) the exercise by any of those indemnified of any rights granted to it in relation to the Project IP or Background IP; or
- (d) the exercise by those indemnified of any Utilisation rights granted to those indemnified pursuant to this Agreement.

13.3 Consequential losses

Nothing in clause 13.1 or this Agreement 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.

13.4 Notification of acts

Each of those indemnified under clause 13.1 must promptly notify every indemnifying Party of any event or circumstance that may reasonably give rise to those indemnified relying upon the indemnities in clause 13.1.

13.5 Survival

The indemnities provided under clause 13.1 are a continuing obligation, separate and independent of each Party's other obligations and will survive the expiration or, where relevant, earlier termination of this Agreement and will continue to apply (both as a right and as an obligation) to any Party who withdraws or is expelled from the Project.

14. INSURANCE

14.1 Obligation to insure

- (a) Each Party must effect and maintain adequate insurance that a prudent person participating in the Project would maintain, to cover its participation in the Project,. Such insurance must cover loss or damage the

Project Participant may suffer or any liability the Project Participant may incur in connection with its participation in the Project, and must include adequate run-off cover after this Agreement has expired or terminated with respect to the Project Participant.

- (b) Without limitation to clause 14.1(a), with respect to a Party's Utilisation of Project IP, such Party must effect and maintain adequate insurance that a prudent person Utilising the Project IP would maintain to cover its Utilisation of the Project IP, including public liability insurance and product liability insurance. Such insurance must cover loss or damage the Party may suffer or any liability the Party may incur in connection with its Utilisation of the Project IP, and must include adequate run-off cover after this Agreement has expired or terminated with respect to the Project Participant.

14.2 Act as own insurer

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

14.3 Evidence of insurance

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

15. AMENDMENTS

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

16. ACKNOWLEDGEMENT

The Project IP Rights Holder must make such acknowledgement of the provision of the Grant as the Company, acting reasonably requires,

17. CONFIDENTIAL INFORMATION

17.1 Obligation

Except as otherwise provided in this clause 17, each Party must keep confidential and not disclose any Confidential Information (including CRC Confidential Information).

17.2 Permitted use and disclosure

Each Party may:

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

- (iv) students;
- (v) Related Entities; and
- (vi) consultants and contractors,

who have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know), provided the disclosure is made subject to an obligation of confidentiality in accordance with clause 17.6;

- (d) use and disclose Confidential Information where authorised under this Agreement;
- (e) disclose Confidential Information to the extent required by law or the rules of any stock exchange; and
- (f) disclose Confidential Information to a bona fide prospective purchaser of all or a majority of a Party's shares or assets and undertaking (including an entity with whom the Party is conducting bona fide negotiations directed towards a merger or consolidation) provided the prospective purchaser previously agrees in writing to keep the same confidential in accordance with clause 17.6.

17.3 Exceptions

- (a) The obligations imposed on a Party by this clause 17 will not apply to Confidential Information which:
- (i) prior to disclosure is in the public domain or subsequent to disclosure to the Party becomes part of the public domain other than as a result of an unauthorised act or failure to act by that Party;
 - (ii) is received by the Party from a third party without any obligation to hold in confidence and which has not been obtained by that third party directly or indirectly from any Party;
 - (iii) is independently developed by an employee or officer of the Party owing the obligation of confidentiality while having no knowledge of the Confidential Information;
 - (iv) in the case of Party Confidential Information, the Party claiming confidentiality has agreed may be disclosed by that other Party; or
 - (v) in the case of CRC Confidential Information, the Company has agreed may be disclosed by that other Party.
- (b) A Party is not obliged to maintain the confidentiality of its own Party Confidential Information.

17.4 Onus

The receiving Party has the onus of showing that any of the exceptions in clause 17.3 apply.

17.5 Combination of information

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

17.6 Employees and other persons

Each Party must use its reasonable efforts to ensure that:

- (a) its respective employees, directors, officers, Advisers, students, Related Entities, consultants and contractors who participate in the Project or acquire access to Confidential Information, must comply with the obligation of confidentiality under this clause 17 as though parties to this Agreement; and
- (b) any of the above mentioned employees, directors, officers, Advisers, students, Related Entities, consultants and contractors must continue to be bound by such obligations of confidentiality, including following the end of their employment or other position or relationship with the Party.

17.7 Survival

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

18. DISPUTE RESOLUTION

18.1 Notification and good faith efforts

If a dispute arises out of this Agreement (**Dispute**), the Party claiming a Dispute has arisen must give the other Parties involved in the Dispute notice setting out details of the Dispute. During the 14 days after a notice of Dispute is given (or longer period if the Parties involved in the Dispute agree in writing), each Party involved in the Dispute must negotiate in good faith and use its reasonable efforts to resolve the Dispute.

18.2 Appointment of mediator

If the Parties involved in the Dispute cannot resolve the Dispute within the period set out in clause 18.1, any of those Parties may require the Dispute to be referred to mediation. If the Parties to the Dispute cannot agree on a mediator within seven days after a request by one of them to refer the Dispute to mediation, the chair of the Resolution Institute or the chairman's nominee will appoint a mediator.

18.3 Role of mediator

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

18.4 Confidentiality

Any information or documents disclosed by a Party under this clause 18:

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

18.5 Costs

Each Party involved in a Dispute must pay its own costs of complying with this clause 18. The Parties involved in the Dispute must equally pay the costs of any mediator.

18.6 Termination of process

A Party involved in a Dispute may terminate the dispute resolution process by giving notice to each other Party in the Dispute after it has complied with

clauses 18.1 to 18.3. Clauses 18.4 and 18.5 survive termination of the dispute resolution process.

18.7 No arbitration or court proceedings

A Party must comply with this clause 18 before starting arbitration or court proceedings (except proceedings for interlocutory relief).

19. GST AND R&D TAX INCENTIVE

19.1 Meaning of words

In this clause 19:

- (a) **GST exclusive consideration** means the consideration payable or to be provided for a Supply, but for the application of this clause 19;
- (b) **Recipient** means a party to whom a Supply is made;
- (c) **Supply** means a supply made under or in connection with this Agreement;
- (d) **Supplier** means a party making a Supply; and
- (e) words or expressions that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 19.

19.2 Presumption

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

19.3 Gross-up

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

- (a) the GST-exclusive consideration for that Supply, is increased by, and the Recipient must also pay to the Supplier, an amount equal to the GST-exclusive consideration multiplied by the prevailing rate of GST; and
- (b) the amount by which the GST-exclusive consideration is increased under clause 19.3(a) must be paid to the Supplier by the Recipient without set-off, deduction or requirement for demand, at the same time as the GST-exclusive consideration is payable or to be provided.

19.4 Reimbursement or indemnification

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

19.5 Tax invoices

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

20. FORCE MAJEURE

20.1 Definition

- (a) In this clause 20, a **Force Majeure Event** affecting a Party means, subject to clause 20.1(b), anything outside that Party's reasonable control including, but not limited to, fire, storm, flood, earthquake, explosion, war, invasion, rebellion, sabotage, epidemic, labour dispute, labour shortage and failure or delay in transportation and act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including but not limited to, subcontractors, customers, governments or government agencies).
- (b) If a Party to this Agreement is a government agency it will not be within the reasonable control of that Party merely because that Party is part of the government that has the legal capacity to perform an act or omission that may otherwise constitute a Force Majeure Event.

20.2 Suspension of obligation

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

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

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

20.3 Parties to meet

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

20.4 Exceptions

Nothing in this clause 20:

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

21. NOTICES AND OTHER COMMUNICATIONS

21.1 Service of notices

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

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post, facsimile or email to the recipient's address for Notices set out in the Project Details, as

varied by any Notice given by the recipient to the sender.

21.2 Effective on receipt

A Notice given in accordance with clause 21.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the third 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); and
- (c) if sent by email, on delivery of a read receipt from the receiver or, if no read receipt is delivered, one day after the notice has been sent by email (subject to the sender receiving a written notification indicating that the intended recipient has not received the email or will not receive it until a later date). The sender will keep a record of the notice and the date on which it was sent and any other communications in respect of that notice,

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

22. GENERAL

22.1 Approvals and consents

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

22.2 Assignment

Except where this Agreement expressly states otherwise, no Party may assign or attempt to assign or otherwise transfer or encumber any right or obligation arising out of this Agreement except with the written consent of the other Parties. Nothing in this clause 22.2 will limit or restrict the transfer or assignment of Intellectual Property as contemplated in clause 9.2.

22.3 Subcontracting

A Project Participant will not subcontract its performance of a substantial part of the Project which it is to perform, except with the prior written approval of the Company. The Project Participant will be fully responsible for undertaking its part of the Project and will be liable for the performance of all its obligations under this Agreement, even if it subcontracts any aspect of the Project.

22.4 Costs

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

22.5 Survival

Any term of this Agreement that by its nature is intended to survive termination of this Agreement survives termination of this Agreement. Without limitation to the foregoing, the following clauses will survive the termination of this Agreement: clauses 3.2, 3.4, 5.6, 6.3, 8.3, 9, 10, 11, 13, 14, 16, 17, 18, 21, 22.9, 22.12 and this clause 22.5.

22.6 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document. Counterparts may be exchanged and relied on in facsimile or digital scanned form.

22.7 No merger

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

22.8 Entire Agreement

This Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

22.9 Further action

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

22.10 Severability

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

22.11 Waiver

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

22.12 Governing law and jurisdiction

This Agreement is governed by the laws of Victoria, Australia and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and of the Commonwealth of Australia.