|  |  |  |
| --- | --- | --- |
|  |  | Description: iMove:Communications and Marketing:branding:iMOVE corporate branding:iMOVE CORPORATE LOGO:WEB:JPG:IMOV4607 Logo Update_RGB.jpg  iMOVE CRC  Project  Agreement |
|  |  |  |
|  |  | iMOVE Australia Limited  *[Insert* *Project Participant name]*  University of South Australia  **Project No:** [*Insert Project Number*]  **Project Title:** An Autonomous Boat Navigation System |

| **Project Executive Summary** |
| --- |
| Recent advances in intelligent sensors and machine intelligence have proliferated the autonomy in transport and logistics, such as the growing popularity of ADAS (Advanced Driver Assistance Systems) on motor vehicles. By relieving drivers from the stress on the road, such technology is expected to bring in significant benefits with its social economic impact. Similar benefits also apply for controlling water surface vessels, as controlling a boat can be daunting for inexperienced individuals, increasing the risk of collisions with obstacles. To mitigate this risk, this project aims to develop an assisted boat control system, inspired by ADAS in cars. By reducing the complexity of boat control and alleviating collision-related stress, the proposed system helps expanding boat ownership and rental markets. Key aspects of the project include evaluating sensor technologies for reliable object detection, interfacing to boat motor systems to retrofit existing houseboats for autonomous navigation, developing user-friendly interfaces for simplified boat control, analysing human factors psychology, and conducting business analysis in this context. As a proof of concept, an autonomous houseboat prototype will be developed and tested on a local lake or a nearby water runway. Beyond this project, it is foreseeable the developed navigation technology may be adapted or extended to other applications, for devices including but not limited to marine vessels and ground vehicles. |

# iMOVE CRC Project Agreement

**Nature of Agreement**

This Project Agreement consists of the Project details below (**Project Details**), together with the *Project Terms* attached to these Project Details.These Project Details are to be read together with the attached Project Terms.

# Unless separately defined, terms used in these Project Details will have the meaning set out in the Project Terms.

**Parties**

The Project Parties are the Participants listed below

| **3. Project Participants** | | | | |
| --- | --- | --- | --- | --- |
| **3.1 Lead Project Party** | | | | |
| *Jeremy’s company* | | | | |
| **3.2 Other Project Participants** | | | | |
| *University of South Australia (UniSA)* | | | | |
| **3.3 Responsible Participants** (those carrying out the project activities) | | | | |
| **Participant Organisation** | **Contact details for Project Personnel** | | | |
| **Name/Position** | | **Email** | **Phone** |
| UniSA | Ivan Lee  Associate Professor | | ivan.lee@unisa.edu.au | (08)83023051 |
|  |  | |  |  |
| **3.4 Specified Personnel** | | | | |
| **Participant Organisation** | | **Name / Position** | | | |
| UniSA | | Adam Jenkins – Lecturer | | | |
| UniSA | | Michelle Oppert – Research Associate | | | |
| ENSTA Bretagne (France) | | Benoit Clement – Professor | | | |
| UniSA | | Akshay Vij – Associate Professor | | | |
| UniSA | | Christopher Chow – Professor | | | |
| UniSA | | Siobhan Banks – Professor | | | |
| **3.5 Project Leader** | | | | |
| Jeremy (for [company]) and Ivan Lee (for UniSA) | | | | |

**Project Details**

| **1. Project Summary** | |
| --- | --- |
| **1.1 Project Title** | An Autonomous Boat Navigation System |
| **1.2 Project Number** |  |

| **2. Project Dates** |
| --- |
| **2.1 Commencement Date** |
| *Sep 2023* |
| **2.2 Completion Date** |
| *Aug 2026* |

| **4. Project Description** |
| --- |
| **4.1 Background** |
| Water surface vessels, such as ships and boats, offer a range of significant benefits in transportation and logistics. These advantages contribute to the efficiency, cost-effectiveness, and sustainability of cargo and goods movement across waterways. The increasing availability and accessibility of boats also drives notable surge in water activities, with a growing interest in recreational pursuits, leisure travel, and the exploration of aquatic environments. Technologies that support water activities hence represent a growing market to explore.  From the operational perspective, boat rental business often faces challenges due to a lack of experienced drivers, leading to occasional damages to the boat or infrastructure. Additionally, relying solely on manual driving can be stressful for individuals seeking a relaxing holiday experience. Therefore, incorporating an autonomous driving mechanism becomes a crucial feature that alleviates the attention required from human drivers, reducing the risk of accidents, and enhancing the overall enjoyment of the vacation.  Autonomous boat navigation system is an emerging technology for water surface vessels, with market potentials that attracts international boat manufacturer introducing new products and solutions, such as the introduction of autonomous boat in 2022 from Avikus (a subsidiary of Hyundai Heavy Industries, a major boat manufacturer from Korea). The system is an integrated component of Avikus product, which significantly limit its applicability for retrofitting existing boats.  To support semi-autonomous and full-autonomous houseboat driving, multi-sensor fusion is frequently used technique. Commonly used on-board sensors included 3D LIDAR, camera (including stereoscopic vision), GPS, and mmWave radar, to address challenges posed by different weather condition, including fog, rain, and strong light [1][2]. Upon obtaining sensing data, algorithms for object detection are developed to recognize obstacles hence avoiding collision [3]. Autonomous control of boats, such as using Deep Reinforcement Learning, has been explored for autonomous surface vessel operating under complex dynamics of the environment [4].  While the design of the autonomous navigation system is generic to water surface vessels, the prototype will be developed and tested for a specific application: houseboat.  Houseboat vacations have become increasingly popular across the globe, representing a growing market opportunities for businesses in the tourism and hospitality industry. Captivating regions like the Murray River in South Australia, the Hawkesbury River in New South Wales, and the Gold Coast in Queensland showcase breathtaking scenery, encounters with wildlife, and a wide range of recreational activities for houseboat enthusiasts. Beyond domestic market, opportunities exists for major lakes in the United States and Canada, canal networks in the Netherlands, etc. Thus, it represents a niche with global market potential for [Jeremy’s company].  This project aims to develop an autonomous navigation system for autonomous boat control, with a working system retrofitting on a river houseboat for full testing. The houseboat testing will be conducted on a local lake or a nearby river waterway, with relativity steady waterflow and lower wind level compares to outer sea, and without the presence of large ships. This project will also investigate human behaviour psychology and conducts business analysis.  Beyond this project, it is foreseeable the developed navigation technology may be adapted or extended to other applications, for devices including but not limited to marine vessels and ground vehicles.  [1] W. Wang et al., ‘Roboat II: A Novel Autonomous Surface Vessel for Urban Environments’, in 2020 IEEE/RSJ International Conference on Intelligent Robots and Systems (IROS), Oct. 2020, pp. 1740–1747.  [2] Y. Cheng, M. Jiang, J. Zhu, and Y. Liu, ‘Are We Ready for Unmanned Surface Vehicles in Inland Waterways? The USVInland Multisensor Dataset and Benchmark’, IEEE Robotics and Automation Letters, vol. 6, no. 2, pp. 3964–3970, Apr. 2021.  [3] J. Lin, L. Koch, M. Kurowski, J.-J. Gehrt, D. Abel, and R. Zweigel, ‘Environment Perception and Object Tracking for Autonomous Vehicles in a Harbor Scenario’, in 2020 IEEE 23rd International Conference on Intelligent Transportation Systems (ITSC), Sep. 2020, pp. 1–6. [4] W. Wang et al., ‘Deep Reinforcement Learning Based Tracking Control of an Autonomous Surface Vessel in Natural Waters’. arXiv, Feb. 20, 2023 |

| **4.2 Project Objectives** |
| --- |
| Development of autonomous navigation system for assisted boat control. In particular, the system aims to:   1. Develop an assisted navigation system control for water surface vessels on lakes and river waterways 2. Develop an improved information visualisation on dashboard and portable device for situational awareness, that allows partial automation of boat control for a human operator (partial automation, L2 equivalent) 3. Develop a sensor-based control module for conventional boat retrofit, specifically target for houseboats, that allows automated control in the presence of a human operator (conditional automation, L3 equivalent) 4. Conduct a business analysis of autonomous navigation systems for transportation and logistics on lakes and waterways |

|  |
| --- |
| **4.3 Project Strategy / Scope of Work** |
| We propose to sub-divide this project into 5 components, including boat prototype and autonomous control, boat sensing system, navigation and dashboard visualisation, human behaviour psychology, and business analysis:   1. **Boat prototype development and autonomous control**    1. **Prototype boat development**   A small prototyping boat, with dimension around 1 meter by 1 meter, will be developed in this project for testing individual sensor components. This boat can be used for testing in a small swimming pool, or operated in nearby water bodies, such as the main lake of Mawson Lakes which is in close proximity to the campus.   * 1. **Mechanism design for retrofitting conventional boat control system**   A review of convention boat control system will be firstly conducted, and a mechanism will be designed for retrofitting generic systems encompassing steering and thrust. To meet the requirement of L3 equivalent in automobile, the design should consistently verify the presence of human operator with hands on the control mechanism.   * 1. **Autonomous boat control**   Sensor-based control of the designed mechanism to support L3 automobile equivalent of conditional automation, for (1) auto-docking; (2) collision avoidance between the houseboat and the prototype boat. This task includes both simulation and real deployment.   1. **Boat sensing system**    1. **On-boat sensor design**   Design a sensing system that supports autonomous boat control, and implement the system on the prototyping boat. The sensors include LIDAR, cameras, GPS, and sonar. LIDAR and camera system should cover all angles of the boat, supporting 360 vision.   * 1. **Object detection and distance estimation**   Machine-learning (ML) based autonomous object detection will be developed and the trained model will be utilised as the inference with on-board computing. While most standard object detection algorithms are trained using public dataset such as MS COCO, it should be noted that with different levels of glare and reflection, objects on water surface may appear differently with standard photos. It is essential to record image/video footage and apply extended data augmentation to improve the detection accuracy. The detection will be cross mapped to LIDAR signals, to determine the estimated distance to the target. The feature should assimilate the object detection and distance estimation feature from a commercial system illustrated below.    Figure 1: sample object detection and distance estimation from ClearWater AR’s LOOKOUT   * 1. **Underwater depth mapping and object detection**   In addition to detecting objects on water surface, it is also valuable to explore what’s underneath the boat. Underwater sonar will be deployed for this purpose, and depth sensing and object detection will be investigated. The reading will be converted to OpenSeaMap format, illustrated in the figure below:    Figure 2: Water depth contour in OpenSeaMap   1. **Navigation and dashboard visualisation**    1. **Dashboard design for real-time sensor data visualisation**   Similar to modern vehicles with proximity sensors and rear-view cameras to assist parking, a dashboard will be designed to assist the operator to better control the boat. A dashboard consists of large screen, similar to commercial products such as the following from Avikus:    Figure 3: boat control dashbard from Avikus   * 1. **Navigation system**   The on-board GPS system will be utilised to localise the boat, and display on an open source navigation system OpenSeaMap. A sample screenshot of the OpenSeaMap nautical chart is illustrated in the following figure:    Figure 4: sample screenshot of OpenSeaMap   * 1. **Remote control through a portable device**   Consider a scenario where the operator wishes to observe how close when the boat approaches the dock, it is desirable to have remote control function through a portable device.    Figure 5: A usage scenario of a portable device for houseboat docking control (image credit: AI generated content by DALL-E)  **Research Team**  **Ivan Lee** is the Technology Development Leader of the Sustainable Infrastructure and Resource Management (SIRM) research concentration at University of South Australia. He is a REDI Fellow in 2022/2023. He received BEng, MCom, MER, and PhD degrees from the University of Sydney, Australia. He was a software development engineer at Cisco Systems, a software engineer at Remotek Corporation, and an Assistant Professor at Ryerson University. He is/was a Chief Investigator of 28 funded projects (15 as sole/lead investigator), include 4 national competitive grants (3 as sole/lead investigator) in Australia and in Canada.  **Adam Jenkins** is a lecturer at the University of South Australia, deliver courses in programming, web development, and general "technology" courses covering current, past and future developments in technology. He was UniSA’s team lead of 2022 Maritime RobotX Challenge in Sydney, and won the Judges’ Special Awards on Closest to Average Award.  **Michelle Oppert** is an early career applied researcher in the fields of human factors and organisational psychology, with a focus on real-world outcomes through problem-solving. Presently a Research Associate in the Behaviour-Brain-Body (BBB) Research Centre at the University of South Australia, Michelle has worked as an academic researcher since 2016 at the University of South Australia and the University of Queensland (UQ). She received her PhD in 2023, which explored creativity and the future of work, with engineering exemplars. She has demonstrated extensive mixed-methods research with various stakeholders, including user experience research. She has won awards for her work that exhibits *high quality and relevance* (Engineers Australia). Michelle is also a member of the CROSSING International Research Lab (IRL) between French and South Australian universities. She is experienced in understanding stakeholders’ problems and working collaboratively with other disciplines to address sociotechnical problems and phenomena.  **Akshay Vij** holds a PhD in Civil and Environmental Engineering from the University of California (UC), Berkeley. Vij’s research has made significant contributions to the development of statistical methods for the study of human behaviour, and their application to transport and land use contexts. He has collaborated extensively with industry and government partners to conduct research that addresses major practical challenges facing the transport, urban and regional development sectors. These include the South Australian Department for Infrastructure and Transport (DIT); the Australian Housing and Urban Research Initiative (AHURI); and the Regional Australia Institute (RAI).  **Benoit Clement:** Benoit Clement is a Professor at ENSTA Bretagne (Brest, France). He is currently researcher withe CROSSING joint Research Lab between French CNRS and South Australia Universities (UniSA, Uni of Adelaide and Flinders Uni). He has served as a member of IFAC technical committees on Robust Control and also on Marine Systems since 2020. His current research focuses including global optimization used for structured robust control applied to robotics, and machine learning for adaptive control.  **Christopher Chow** is the Director of Sustainable Infrastructure and Resource Management (SIRM) research concentration. He is an industry sensor technology researcher with experience in coordinating a multi-disciplinary research team and specified in implementing research outcomes for industrial application. Chris brings in extensive experience as a research manager and leader of the Technology Approval Group (to evaluate new technologies through industry trials) from his former job at SA Water and is an expert in water quality sensor and the use of sensor to improve treatment process as a value-added output. During his 20 years in industry research, he has successfully obtained funding from different sources, Premier’s Science Research Fund, Water Research Australia (WaterRA), CRC for Water Quality and Treatment (CRCWQT), American Water Works Association Research Foundation (AWWARF) and Australian Research Council (ARC) / 7 ARC Linkage Projects.  **Siobhan Banks** is Director of the Behaviour-Brain-Body Research Centre. Her research sits at the nexus of biology, behaviour and technology. She works with 24/7 industries such as healthcare, transportation, defence and space to improve human factors and manage fatigue and stress to optimize performance and wellbeing. In recent years she has received over $11M in research funding, ranging from basic to applied research and in 2021 she was a finalist for the ADM Women in Defence Awards – R&D Category. |

| **4.4 Project Outputs and Milestones** |
| --- |
| This project is designed to deliver a working system in two years, followed by one year to develop extended features:  Q2: Prototype demonstration  Q4: Mechanical design of autonomous houseboat control, dashboard design  Q6: Analysis of user adoption on autonomous houseboat  Q8: Sensor system deployment, information visualization, full system testing  Q8: Human factor analysis  Q12: Business analysis  Q12: Navigation system, object detection, human factor analysis, final project delivery   |  |  |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | | Task | Q1 | Q2 | Q3 | Q4 | Q5 | Q6 | Q7 | Q8 | Q9 | Q10 | Q11 | Q12 | | **Autonomous boat control** |  |  |  |  |  |  |  |  |  |  |  |  | | Technology feasibility analysis |  |  |  |  |  |  |  |  |  |  |  |  | | Boat prototype development |  |  |  |  |  |  |  |  |  |  |  |  | |  |  |  |  |  |  |  |  |  |  |  |  |  | | **Boat sensing system development** |  |  |  |  |  |  |  |  |  |  |  |  | | On-boat sensor design |  |  |  |  |  |  |  |  |  |  |  |  | | Object detection and distance estimation |  |  |  |  |  |  |  |  |  |  |  |  | | Underwater depth mapping and object detection |  |  |  |  |  |  |  |  |  |  |  |  | |  |  |  |  |  |  |  |  |  |  |  |  |  | | **Navigation and dashboard visualisation** |  |  |  |  |  |  |  |  |  |  |  |  | | Dashboard design |  |  |  |  |  |  |  |  |  |  |  |  | | Navigation system |  |  |  |  |  |  |  |  |  |  |  |  | | Remote control through a portable device |  |  |  |  |  |  |  |  |  |  |  |  | |  |  |  |  |  |  |  |  |  |  |  |  |  | | **Business analysis** |  |  |  |  |  |  |  |  |  |  |  |  | |  |  |  |  |  |  |  |  |  |  |  |  |  | | **Human Factors Psychology** |  |  |  |  |  |  |  |  |  |  |  |  | |  |  |  |  |  |  |  |  |  |  |  |  |  | | Full system testing for autonomous boat control |  |  |  |  |  |  |  |  |  |  |  |  | |

| **4.5 Project Management** |
| --- |
| The initial project will be signed up and commence by iMove, subsequently pass the project management role to UniSA. UniSA will coordinate and lead regular meetings during the term of the Project:  1. Lead weekly development team meetings, focusing on the technical details of project development;  2. Lead fortnightly progress meetings between UniSA and [company], focusing on project management and progress review;  3. Deliver four work-in-progress reports to iMOVE in accordance with Section 4.4.  As necessary, additional meetings, updates, conference calls and workshops can be organized by UniSA with Project Participants, as required by any of the Project Participants. For each of these meetings, UniSA must consult with all Parties on agenda and on any relevant documents for meeting preparation purposes, with the final meeting agenda and relevant documents to be provided to all Parties no later than 48 hours prior to the meeting. |

| **4.6 Risk Management Plan Assessment** | | | | |
| --- | --- | --- | --- | --- |
| *Outline key project risks (including OH&S if applicable) below. Provide any other relevant comments in this section, or leave blank.* | | | | |
| **Description** | **Likelihood** | **Impact** | **Combined** | **Risk strategy** |
| *Summarise risk* | [Use L, M or H] | [Use L, M or H] | [Use L, M or H] | *Detail strategy to manage risk* |
| Regulation on fully autonomous vehicle | M | H | M | Fully autonomous system may be restricted depending on policies in different states and in different countries. L2 and L3 equivalent of automobile for partial and conditional automation will be developed in this project. This project will also study the terms and conditions from off-the-shelf products on autonomous navigation, such as from Avikus and Volvo Penta. |

| **4.7 Utilisation Plan** |
| --- |
| [company] will use the Project output to:   * Commercialise the autonomous boat navigation system; * Utilise the Business Analysis report for planning marketing strategy; * Utilise the Human Behaviour Psychology report for fine-tuning the project for improved user experience and informed policy making.   UniSA will seek to publish Project outcomes and outputs to peer-reviewed journals or conference proceedings, subject to agreement and approval, including any conditions from [company] and the CRC. |

| **5. Background IP**  A description of the Background IP (“BIP”) is listed below, along with any warranties, restrictions or conditions. All Parties making BIP available provide the warranties under clause 3.2 of the Project Terms. | | | |
| --- | --- | --- | --- |
| **Party Providing BIP** | **Description of BIP**  (where subject to registered protection, e.g., patent, full registration details should be provided) | **Warranties in relation to BIP**  (exceptions to warranty in clause 3.2(b) of the Project Terms relating to prior rights granted to BIP) | **Restrictions or Conditions on Use**  (unless detailed below, license at clause 3.3 of the Project Terms will apply) |
| **NA** | **NA** | **NA** | **NA** |

| **6. Project IP** |
| --- |
| **6.1 Ownership (clause 9.1)** |
| As set out in clause 9.1 |
| **6.2 Project IP Rights Holder (clause 9.1(b))** |
| [company] |
| **6.3 Lead Project Party’s Utilisation Rights, LPP Field and LPP Field Conditions (clause 11.2)** |
| As set out in clause 11.2 |
| **6.4 Other Parties Utilisation Rights and conditions of use (clause 11.3)** |
| As set out in clause 11.3 |
| **6.5 Exclusive Rights (clause 11.4)** |
| N/A |
| **6.6 Strategy for Protection of Project IP (clause 9.4)** |
| N/A |

|  |
| --- |
| **7. In-kind Contributions** |
| A description of the in-kind resources is provided below:   * Prof. Benoit Clement will spend 0.1FTE for 3 years in this project, for HDR student co-supervision, advice on project development, and liaise international connections. In-kind value: 78,000. * Prof. Siobhan Banks and Prof. Christopher Chow will be involved in co-supervising of research staff and HDR students, and give advice on this project. * GPU servers from CI Ivan Lee’s lab will be utilised for supporting the computational demand for machine learning in this project. |

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| --- |
| **8. Project Budget** |
| Note that research rates applied to research staff are as per standard iMOVE rates provided below.   |  |  |  | | --- | --- | --- | |  | **Category Abbreviation** | **iMOVE project labour charge rates per FTE, per annum (ex-GST)** | | **Base Technical** | Cat 1 | $110,000 | | **Research Assistant** | Cat 2 | $140,000 | | **Research Fellow** | Cat 3 | $175,000 | | **Senior Research Fellow** | Cat 4 | $210,000 | | **Professor / Associate Professor** | Cat 5 | $260,000 |   A description of the cash-funded resources is provided below:   |  |  |  |  | | --- | --- | --- | --- | | **Person** | **FTE** | **CRC full-time costing rate** | **Cost** | | Ivan Lee | 0.2 | 260,000 | 104,000 | | Adam Jenkins | 0.5 | 140,000 | 140,000 | |  | 0.5 | 175,000 | 140,000 | | Benoit Clement | 0.0 | - | - | | Akshay Vij | 0.1 | 260,000 | 52,000 | | Siobhan Banks | 0.0 | - | - | | **Sub-total for personnel costs** | | | **436,000** | |  | | | | | **Other costs** | | | | | Sensors and prototype development | | | 150,000 | |  | | | 46,000 | | PhD 1  Boat sensing system design | | | 100,000 | | PhD 2  Navigation and dashboard visualisation | | | 100,000 | | PhD 3 or Part-time postdoc  Business analysis | | | 100,000 | | Fieldwork | | | 50,000 | | Host Benoit visit (1 return trip) | | | 15,000 | | Misc (recruitment, conference, publication) | | | 20,000 | | **Sub-total for other costs** | | | **570,000** | |  | | | | | **TOTAL (ex GST)** | | | **1,017,000** | |

| **9. Project Payment Milestones** | | | |
| --- | --- | --- | --- |
| **Milestone Number** | **Due date** | **Milestone Description** | **Milestone Payment Amount** |
| M01 | Date of agreement last executed by a Party (EDC) | Project Agreement signed by all Parties | $45,000 |
| M02 | EDC + 03 months | Delivery of work-in-progress report 01 | $100,000 |
| M03 | EDC + 06 months | Delivery of work-in-progress report 02 | $100,000 |
| M04 | EDC + 09 months | Delivery of work-in-progress report 03 | $100,000 |
| M05 | EDC + 12 months | Delivery of work-in-progress report 04 | $100,000 |
| M06 | EDC + 15 months | Delivery of work-in-progress report 05 | $100,000 |
| M07 | EDC + 18 months | Delivery of work-in-progress report 06 | $100,000 |
| M08 | EDC + 21 months | Delivery of work-in-progress report 07 | $100,000 |
| M09 | EDC + 24 months | Delivery of work-in-progress report 08 | $100,000 |
| M10 | EDC + 27 months | Delivery of work-in-progress report 09 | $43,000 |
| M11 | EDC + 30 months | Delivery of work-in-progress report 10 | $43,000 |
| M12 | EDC + 33 months | Delivery of work-in-progress report 11 | $43,000 |
| M13 | EDC + 36 months | Delivery of work-in-progress report 12 | $43,000 |
| TOTAL |  |  | $1,017,000 |
| iMOVE will invoice [company] for the full contributions amount detailed in Table 8 upon execution of this agreement. Full payment is required within 7 days of invoicing before the project can kick off. | | | |

| **10. Student Details (if applicable)** |
| --- |
| N/A |

| **11. Special Conditions (per clause 1.3 of Project Terms)** |
| --- |
| N/A |

**EXECUTED BY THE PARTIES AS AN AGREEMENT (Comprising These Project Details and the Project Terms)**

|  |  |  |  |
| --- | --- | --- | --- |
| EXECUTED for iMOVE AUSTRALIA LIMITED ABN 11 618 758 491 by an authorised officer in the presence of |  |  | ← |
| Signature of officer |  |
|  | ← |  |  |
| Signature of witness |  | Name of officer (print) |  |
|  |  |  |  |
| Name of witness (print) |  | Office held |  |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

|  |  |  |  |
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| EXECUTED for YYYYYYYYYYYYY ABN XX XXX XXX XXX by  an authorised officer in the presence of |  |  | ← |
| Signature of officer |  |
|  | ← |  |  |
| Signature of witness |  | Name of officer (print) |  |
|  |  |  |  |
| Name of witness (print) |  | Office held |  |

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| --- | --- | --- | --- |
| EXECUTED for YYYYYYYYYYYYY ABN XX XXX XXX XXX by  an authorised officer in the presence of |  |  | ← |
| Signature of officer |  |
|  | ← |  |  |
| Signature of witness |  | Name of officer (print) |  |
|  |  |  |  |
| Name of witness (print) |  | Office held |  |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

**BACKGROUND**

1. Pursuant to the Commonwealth Agreement, the CRC has been partially funded by the Commonwealth under the Cooperative Research Centres Programme (**CRC Programme**).
2. The Company operates the CRC pursuant to the Participants Agreement.
3. The Project has been approved by the Company in accordance with the policies and delegations adopted by the Board.
4. Some or all of the Project Participants are Participants in the CRC and party to the Participants Agreement.
5. 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. **Definitions**

In this Agreement:

**Advisers** means:

* + 1. the financial or legal advisers of a party;
    2. the respective officers and employees of those financial or legal advisers; and
    3. 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:

* + 1. 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
    2. 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 to the CRC made by a Project Participant 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.

**Commonwealth** means the Commonwealth of Australia, as represented by the Department.

**Commonwealth Agreement** means the agreement between the Commonwealth and the Company, dated 22 June 2017, under which the Commonwealth provides funding for the CRC, as amended from time to time.

**Commonwealth Funding** means the financial assistance to be provided by the Commonwealth to the Company under the Commonwealth Agreement.

**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 all Grant Funds, and 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.

**CRC Programme** has the meaning set out in paragraph A of the Background.

**Department** means the Department of Industry, Innovation and Science and its successors, that administer the CRC Programme.

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

**LPP Field** means the Lead Project Party’s Utilisation field set out in Item 6.3 of the Project Details.

**LPP Field Conditions** means any conditions relevant to the LPP Field specified in Item 6.3 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 Commonwealth Funding, 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** has the meaning set out in clause 9.1(c).

**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 25 (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. **Interpretation**

In this Agreement, except where the context otherwise requires:

* + 1. the singular includes the plural and vice versa, and a gender includes other genders;
    2. another grammatical form of a defined word or expression has a corresponding meaning;
    3. 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;
    4. a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
    5. a reference to 'A$', '$A', 'dollar' or '$' is to Australian currency;
    6. a reference to a party to a document (including this Agreement) includes the party's executors, administrators, successors and permitted assigns and substitutes;
    7. a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
    8. 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;
    9. the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
    10. 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;
    11. the liabilities of the Parties are not joint nor joint and several, but are several liabilities and obligations;
    12. 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. **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:

* + 1. the Special Conditions;
    2. the Project Details;
    3. the clauses of these Project Terms; and
    4. the remaining Schedules and the Annexures.

1. 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**).

1. background ip
   1. **Making available**

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

* + 1. as specified in the Project Details; and
    2. in accordance with:
       1. this clause 3; and
       2. any written agreement between the Parties subsequent to the Project Details being agreed.
  1. **Warranty**

Each Party represents and warrants to the other Parties that:

* + 1. 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;
    2. except to the extent:
       1. disclosed in Item 5 of the Project Details; or
       2. 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,
       3. 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
    3. 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.
  1. **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:

* + 1. specified in the Project Details (including, any restrictions in relation to sublicensing); or
    2. 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).

* 1. **Licence for Utilisation**
     1. 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.
     2. 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:
        1. the Project IP has been developed using that Background IP in accordance with this Agreement; and
        2. 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).

* 1. **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).

* 1. **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.

* 1. **Licence for the Commonwealth**

If a Project Participant makes its Background IP available under this Agreement, that Project Participant grants to the Company an irrevocable right to grant to the Commonwealth a perpetual, worldwide, royalty free, non-exclusive sublicence (including the right for the Commonwealth to sublicense) to use, reproduce, adapt, modify and communicate such Background IP to the extent necessary for the Commonwealth to exercise its rights in relation to the ‘Agreement Material’ (as defined in the Commonwealth Agreement) under clause 16 of the Commonwealth Agreement (a copy of clause 16 is set out at Annexure 1 to these Project Terms).

1. project FUNDS AND PROJECT contributions
   1. **Project Funds**
      1. Subject to the Company receiving the necessary Commonwealth Funding and the receipt by the Company of 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.
      2. 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):
         1. may suspend or reduce the payment of Project Funds; and
         2. will release the withheld Project Funds once the Responsible Participants have achieved the missed Milestone.
   2. **Cash Contributions**
      1. 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.
      2. Cash Contributions to be made by a Project Participants may only be varied with the agreement of the Project Participant and the Company.
      3. 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.
      4. 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).
   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.

1. PROJECT MANAGEMENT and reporting
   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:

* + 1. uses his or her reasonable efforts to ensure the Project is conducted:
       1. in accordance with the Project Details;
       2. so as to achieve the Milestones and Project Objectives; and
       3. so as to provide the Deliverables;
    2. manages the day to day conduct of the Project; and
    3. maintains records as reasonably directed by the Company.
  1. **Carrying out the Project**

The Responsible Participants must carry out the Project:

* + 1. in accordance with this Agreement (including the Project Details and the Project Budget);
    2. diligently and to a professional standard;
    3. using the Specified Personnel (if any);
    4. so as to do all things reasonably necessary or desirable to achieve the Project Objectives;
    5. so as to achieve the Milestones by their required dates;
    6. so as to provide the Deliverables by their required dates;
    7. in accordance with the Project Leader's reasonable directions;
    8. in accordance with the risk management provisions set out in Item 4.6 of the Project Details; and
    9. in accordance with all applicable law.
  1. **Project reporting**

The Project Participant that employs the Project Leader must:

* + 1. immediately report to the Company:
       1. any substantial deviation from the Project Details; and
       2. 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,;
    2. provide reports to the Company at least every three months on:
       1. progress with the Project, its outcomes, key achievements, Deliverables and Milestones;
       2. 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,;
       3. any significant difficulties encountered during the Project and measures taken or plans to resolve them;
       4. any Project IP created (including a description of the Project IP, when it was created and by whom); and
       5. the Background IP used in the Project.
  1. **Parties reporting to the Project Leader**
     1. 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.
     2. Each Party agrees to provide such information in a timely fashion when requested by the Project Leader.
  2. **Separate Project financial accounts**

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

* + 1. any Project Contributions it makes under clause 4.3;
    2. any payments of Project Funds made to it by the Company under clause 4.1;
    3. all expenditure incurred by the Project Participant from Project Funds in carrying out the Project; and
    4. any other expenditure associated with its carrying out the Project.
  1. **Company reporting obligations to the Commonwealth**

The Project Participants will cooperate with the Company and provide such information and assistance as requested by the Company to enable the Company to comply with its reporting obligations to the Commonwealth under the Commonwealth Agreement.

* 1. **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.

1. withdrawal and expulsion from project
   1. **Withdrawal from Project**
      1. 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.
      2. 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.
      3. 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.
   2. **Expulsion from Project**
      1. 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.
      2. For the purposes of clause 6.2(a), **Due Cause** means any of:
         1. failure to make Project Contributions when required by this Agreement;
         2. unauthorised use or Utilisation of Project IP or Background IP;
         3. any other material breach of this Agreement in relation to the Project;
         4. change or proposed change to Personnel that is likely to adversely affect the Project;
         5. failure to remedy a conflict in relation to the Project in accordance with clause 21 to the satisfaction of the Company;
         6. 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;
         7. disposal of whole or any part of the Project Participant's assets, operations or business other than in the ordinary course of business;
         8. ceasing to carry on business;
         9. insolvency;
         10. 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;
         11. steps taken to enter into any arrangement between the Project Participant and its creditors other than in the ordinary course of business;
         12. 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;
         13. appointment of an investigator to investigate its affairs; or
         14. assignment of its rights or obligations under this Agreement other than in accordance with clause 25.2.
   3. **Consequences of withdrawal or expulsion from Project**
      1. 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:
         1. cease to be a Party;
         2. 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
         3. 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.
      2. The withdrawal or expulsion of a Project Participant from the Project:
         1. will not affect:
            1. the enforceability of any obligations of that Project Participant;
            2. rights against that Project Participant accrued at that time or arising as a result of the withdrawal or expulsion;
            3. any obligation upon the Project Participant to make available its Background IP under clause 3; or
            4. licences to the Project Participant's Background IP granted or to be granted under clause 3;
         2. 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
         3. 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.
2. variation to project

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

* + 1. 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
    2. 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).

1. Termination of Project & Agreement
   1. **Termination generally**

The Project and this Agreement will terminate immediately:

* + 1. if the Parties by unanimous written resolution agree to terminate the Project and this Agreement;
    2. where pursuant to clause 6 all but one of the Parties has withdrawn or been expelled from the Project and this Agreement; and
    3. as provided in clause 8.4.
  1. **Termination by the Company**

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

* + 1. 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
    2. 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.

* 1. **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.

* 1. **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.

* 1. **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.

1. project ip
   1. **Ownership of Project IP**

Except to the extent otherwise detailed in Item 6.1 of the Project Details and subject at all times to the licences detailed in clause 10:

* + 1. Project IP will vest legally and beneficially in the LPP upon creation;
    2. the Company will hold the Project IP on trust for the Parties during the Term; and
    3. at the end of the Term:
       1. the LPP will assign the legal and/or beneficial interest in the Project IP to such other of the Parties as detailed in Item 6.1 of the Project Details; or
       2. the LPP will retain the legal and/or beneficial interest in the Project IP for such period and on such terms as detailed in Item 6.1 of the Project Details,
       3. (and the Lead Project Party and/or other Parties under 9.1(c)(i),, is or are the Project IP Rights Holder).
  1. **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.

* 1. **Dealing with Project IP**

Subject to clauses 10 and 11, no Party may deal with, use, Utilise, dispose of or encumber any interest which it might hold in Project IP, without the prior written consent of:

* + 1. the Company during the Term; and
    2. the Project IP Rights Holder following the end of the Term.
  1. **Decision to protect & application for protection**
     1. Subject to Item 6.6 of the Project Details or unless otherwise agreed by the Parties:
        1. the Lead Project Party will have the first right to seek registered IP rights protection for Project IP (including patent and trade mark protection);
        2. other Parties may only seek registered IP rights protection for Project IP if the Lead Project Party declines to do so; and
        3. the applicant for the registered IP rights protection will be solely responsible for the costs of seeking and maintaining that protection.
     2. The Parties will take all necessary steps and sign such documents as are reasonably required by the applicant for the registered IP rights protection to support an application.
  2. **Registration**

If patenting or other registrable form of Intellectual Property protection of Project IP is pursued in accordance with clause 9.4, such registration:

* + 1. is to be in the applicant’s name;
    2. where required, will identify the inventors of the Project IP; and
    3. must not be discontinued or abandoned without the prior written consent of the Company during the Term and the Project IP Rights Holder following the end of the Term.
  1. **Notice of Infringement**

Each Party must give the Company, the Lead Project Party and the Project IP Rights Holder (if different) prompt notice of any infringement of Project IP which comes to its attention and each Party agrees to give the Company, the Lead Project Party and the Project IP Rights Holder (as the case may be) all assistance which may be reasonably required in order to protect the Project IP (but only if the Company, the Lead Project Party or the Project IP Rights Holder (as the case may be) pays the Party providing the assistance for all reasonable costs and expenses of doing so).

* 1. **Dealing with Project IP**

Each Project Participant:

* + 1. 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;
    2. 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:
       1. identify Project IP generated or developed by them;
       2. promptly communicate details of Project IP to the Project Leader; and
       3. do not prejudice protection of Project IP; and
    3. 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.
  1. **Company’s right to use Project IP**

The Company may at all times:

* + 1. use the Project IP for the research, training and education purposes of the CRC;
    2. license any Participant, Project Participant or any other person to use the Project IP for the research, training and education purposes of the CRC; and
    3. grant the licences to the Commonwealth to the use the Project IP as required under clause 16 of the Commonwealth Agreement (refer to Annexure 1).
  1. **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.

1. Project Participants’ right to use Project IP
   1. **Lead Project Party**

Subject to clause 10.3, the Lead Project Party:

* + 1. has a non-exclusive royalty-free right to use the Project IP for:
       1. the purpose of undertaking the Project in accordance with this Agreement; and
       2. the Lead Project Party’s internal research, education and teaching purposes other than Utilisation; and
    2. has the Utilisation rights detailed in clause 11.2.
  1. **Other Project Participants**

Subject to clause 10.3, each Project Participant:

* + 1. has a non-exclusive royalty-free right to use the Project IP for:
       1. the purpose of undertaking the Project in accordance with this Agreement; and
       2. the Project Participant’s internal research, education and teaching purposes other than Utilisation; and
    2. has the Utilisation rights detailed in clause 11.3.
  1. **Conditions on use rights**

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

* + 1. maintaining the confidentiality of Confidential Information; and
    2. not prejudicing:
       1. the Utilisation of the Project IP in accordance with clause 11; and
       2. the protection of the Project IP in accordance with clauses 9.4 and 9.5.
  1. **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.

1. **UTILISATION OF PROJECT IP**
   1. **Utilisation Plan**
      1. The Utilisation Plan for the Utilisation of the Project IP is set out in Item 4.7 of the Project Details.
      2. Each Party in its Utilisation of Project IP will comply with the terms of the Utilisation Plan (to the extent that the Utilisation Plan is applicable to its Utilisation of the Project IP).
   2. **Lead Project Party’s rights**

Subject to Item 6.3 of the Project Details and clauses 11.6 and 11.7, the Lead Project Party has an exclusive, royalty-free right and licence to Utilise the Project IP (including the right to sublicense) within the LPP Field, and subject to any LPP Field Conditions detailed in the Project Details.

* 1. **Other Party’s Utilisation rights**

Subject to Item 6.4 of the Project Details and clauses 11.6 and 11.7, each Party (other than the Lead Project Party) will have a non-exclusive, royalty-free right and licence to Utilise the Project IP outside the LPP Field and subject to any conditions detailed in the Project Details.

* 1. **Exclusive rights**

1. Without limitation to clause 11.2 with respect to the Lead Project Party and the LPP Field, in the event that a Party seeks and has been granted (as specified in Item 6.5 of the Project Details) or is later granted:
2. exclusive Utilisation rights for Project IP for particular uses or purposes, such rights will be limited in field and time as set out in Item 6.5 of the Project Details or as otherwise agreed by the Parties; and
3. exclusive Utilisation rights for Project IP for all uses or purposes, such Party will provide additional funds to compensate the other Parties for their loss of access to the Project IP, as set out in Item 6.5 of the Project Details or as otherwise agreed by the Parties. Without limitation to the foregoing, the amount of the additional funds payable will be equal to or greater than the total combined Project Contributions made available by the other Parties, unless otherwise agreed by the Parties; and

any such exclusive rights to Utilise the Project IP will, in any event, be subject to clauses 11.6 and 11.7.

* 1. **Grant of rights**

To the extent not granted under this Agreement at the Commencement Date, the Company or Project IP Rights Holder (as the case may be) must do all acts and things and execute all documents which may be necessary for the purpose of granting the rights to Utilise the Project IP as required from time to time under this clause 11.

* 1. **Conditions on Utilisation**

Without limitation to clause 11.1, in its Utilisation of Project IP a Party must:

* + 1. not do anything that may prejudice the protection of Project IP or the rights of other Parties to Utilise the Project IP; and
    2. indemnify each other Party in accordance with clause 13.
  1. **Loss of Utilisation rights**
     1. If a Project Participant that has been granted exclusive rights to Utilise Project IP pursuant to this clause 11 has failed to substantially commence to Utilise the Project IP within 2 years of the grant of rights or the completion of the Project, whichever is later, then the Project Participant will meet with the Company (if it is still in existence to review the proposed Utilisation of Project IP and to develop strategies to facilitate Utilisation by the Project Participant.
     2. If:

1. the Project Participant fails to substantially commence to Utilise the Project IP for the initial 2 year period referred to in clause 11.7(a) above and a further 12 month period thereafter; or
2. is at any time subject to any of the events set out in clauses 6.2(b)(vi) to (xiii) (inclusive),

that Project Participant will immediately forfeit any exclusive ownership of Project IP and non-exclusive Utilisation rights will transfer to the LPP and following which:

1. the LPP will be entitled to Utilise the Project IP and exploit the Utilisation rights, on a non-exclusive basis, at its absolute discretion without having to account to the Parties for any revenue arising from such Utilisation or otherwise;
2. subject only to clause 11.7(b), the loss of Utilisation rights by a Party will not affect the previously granted rights of any other Party in relation to the use or Utilisation of the Project IP; and
3. the forfeiting Project Participant hereby appoints an officer of the LPP (as the case may be) as its power of attorney to execute all documents required to effect the transfer or grant of the rights to use or Utilise the Project IP as contemplated by this clause.
4. 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.

1. indemnities
   1. **Mutual Indemnity**

Subject to clauses 13.2, 13.3 and 13.4, 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:

* + 1. any breach of this Agreement (including material breach of any warranty given under this Agreement) by the indemnifying Party;
    2. 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;
    3. the exercise by the indemnifying Party of any rights granted to it in relation to the Project IP or Background IP; or
    4. 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.
  1. **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:

* + 1. any breach of this Agreement (including material breach of any warranty given under this Agreement) by any of those indemnified;
    2. any unlawful or negligent act or omission by any of those indemnified or any of its directors, officers, employees, agents or contractors;
    3. the exercise by any of those indemnified of any rights granted to it in relation to the Project IP or Background IP; or
    4. the exercise by those indemnified of any Utilisation rights granted to those indemnified pursuant to this Agreement.
  1. **Commonwealth and State exception**

If the Commonwealth, or a State or Territory of Australia is a Party it is excluded from the obligation under clause 13.1 to indemnify any other Party. This clause 13.3 does not exclude or reduce the liability of, or benefit to, the Commonwealth or the State or Territory of Australia that may arise by operation of the common law or breach of statute.

* 1. **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.

* 1. **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.

* 1. **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.

1. insurance
   1. **Obligation to insure**
      1. 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.
      2. 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.
   2. **Act as own insurer**

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

* 1. **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.

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

If a Project Participant has enrolled students or is supervising students that are involved in the Project (as detailed in Item 10 of the Project Details), the Project Participant acknowledges and agrees that:

* + 1. it must ensure that those students comply with clause 18 (Confidential Information);
    2. it must ensure that Project IP developed by the student is owned in accordance with clause 9 (Project IP), provided that the student will own the copyright in his or her thesis;
    3. publication of a student’s thesis will be subject to the terms of clause 17.
    4. the Company will not inhibit the right of a student to have his or her thesis examined, but an examiner may be required to sign a confidentiality agreement to protect Confidential Information; and
    5. before a student becomes involved in the Project, the Company may require that the student and the institution in which the student is enrolled enter into a written agreement, in a form approved by the Company, setting out the terms on which the student is involved in the Project, which will be consistent with the principles in this clause 16.

1. publications
   1. **Acknowledgement**

As described in clause 16.3(g) of the Commonwealth Agreement (refer to Annexure 1), the CRC is obliged to balance the competing demands for dissemination of knowledge and protection of the opportunities for Utilisation of Project IP. To that end, all publications in relation to the Project will be subject to this clause 17.

* 1. **Request for permission**

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

* 1. **Notification of decision**

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

* + 1. of the Requesting Party's affiliation with the CRC; and
    2. in accordance with clause 17.6.
  1. **Delaying publication or declining permission to publish**

If the Company decides, after consultation with the other Parties and having regards to the CRC Objective, that the benefits of publication do not outweigh the potential loss of valuable Intellectual Property rights or other potential disadvantage for the Company or the other Parties, then the Company will notify the Requesting Party to that effect, giving reasons for the decision, and either:

* + 1. suggest alterations to the publication so that it does not disclose information affecting the valuable Intellectual Property rights or cause potential disadvantage for the Company or the other Parties; or
    2. if altering the publication is impractical, delay publication for a stipulated period as determined by the Board but not exceeding 12 months from the date of the request, unless otherwise stipulated in the Project Details.
  1. **Party Confidential Information**

Notwithstanding the other provisions of this clause 17, no Party may publish any information or material containing Party Confidential Information of a Party unless authorised by that Party or unless an exception in clause 18.3 applies.

* 1. **Recognition**

Subject to clause 20, each Project Participant must ensure that any publication which it makes pursuant to this clause 17 acknowledges the contributions made by the Project Participants and the support of the Commonwealth and the Company in such form as advised by those parties (or if not so advised, in a reasonable form):

* + 1. unless directed otherwise by a Project Participant to be acknowledged or by the Commonwealth or the Company (as the case requires); and
    2. provided that the Project Participant may not use the logo of any other Party without the prior written consent of that Party.

1. Confidential information
   1. **Obligation**

Except as otherwise provided in this clause 18, each Party must keep confidential and not disclose any Confidential Information (including CRC Confidential Information).

* 1. **Permitted use and disclosure**

Each Party may:

* + 1. use Confidential Information only for the purposes of this Agreement;
    2. 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;
    3. disclose Confidential Information to its:
       1. employees;
       2. directors and officers;
       3. Advisers;
       4. students;
       5. Related Entities; and
       6. 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 18.6;

* + 1. use and disclose Confidential Information where authorised under this Agreement;
    2. disclose Confidential Information to the extent required by law or the rules of any stock exchange; and
    3. if the Party is the Commonwealth, or a State or Territory of Australia or other government entity, disclose Confidential Information to its responsible Minister or in response to a request by a House or a Committee of the Parliament; and
    4. 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 18.6.
  1. **Exceptions**
     1. The obligations imposed on a Party by this clause 18 will not apply to Confidential Information which:
        1. 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;
        2. 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;
        3. is independently developed by an employee or officer of the Party owing the obligation of confidentiality while having no knowledge of the Confidential Information;
        4. in the case of Party Confidential Information, the Party claiming confidentiality has agreed may be disclosed by that other Party; or
        5. in the case of CRC Confidential Information, the Company has agreed may be disclosed by that other Party.
     2. A Party is not obliged to maintain the confidentiality of its own Party Confidential Information.
  2. **Onus**

The receiving Party has the onus of showing that any of the exceptions in clause 18.3 apply.

* 1. **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.

* 1. **Employees and other persons**

Each Party must use its reasonable efforts to ensure that:

* + 1. 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 18 as though parties to this Agreement; and
    2. 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.
  1. **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.

1. Public announcements

The Company is principally responsible for making public announcements about the CRC. The Company will develop a policy (**PA Policy**) for the making of public announcements and circulate the PA Policy to the Project Participants. A Project Participant may only make a public announcement in relation to the CRC or this Agreement in accordance with the terms of the PA Policy or otherwise with the Company's prior approval, except if required by law or a regulatory body (including a relevant stock exchange), in which case the Project Participant required to make an announcement must, where reasonably practical to do so, first consult with and take into account the reasonable requirements of the Company and each other Project Participant.

1. use of party’s name & CRC BRANDING
   1. **Use of Party's name**
      1. Subject to clause 20.1(b), a Party must not use the name or logo of any other Party without the prior written consent of that Party.
      2. Each Project Participant agrees that the Company may use the Project Participant's name and logo for the purposes of publicising the details of the persons involved in the CRC and the Project. The Company must comply with any reasonable directions of a Project Participant in relation to how its name or logo is to be displayed.
   2. **Sub-licence to use CRC Branding & Acknowledgement**
      1. The Company grants each Project Participant a non-exclusive sub-licence of the licence rights granted to the Company under clause 16.3 of the Commonwealth Agreement (refer to Annexure 1) to use the CRC Branding during the Term or until a Project Participant is expelled or retires from the Project (whichever occurs first), on the terms set out in clause 16.3 of the Commonwealth Agreement.
      2. Without limitation to clause 17, each Project Participant must ensure that all publications (including reprints), promotional and advertising materials, public announcements, events and activities in relation to the Project, or any products, processes or inventions developed as a result, whether published by the Project Participant or on its behalf, acknowledge the financial and other support received from the Commonwealth:
         1. through reference to this support and to the CRC Programme; and
         2. by reference to any acknowledgement required by the Commonwealth including through use of the CRC Branding (as notified by the Company to the Project Participants from time to time).
2. dispute resolution
   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.

* 1. **Appointment of mediator**

If the Parties involved in the Dispute cannot resolve the Dispute within the period set out in clause 21.1, 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.

* 1. **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.

* 1. **Confidentiality**

Any information or documents disclosed by a Party under this clause 21:

* + 1. must be kept confidential; and
    2. may only be used to attempt to resolve the Dispute.
  1. **Costs**

Each Party involved in a Dispute must pay its own costs of complying with this clause 21. The Parties involved in the Dispute must equally pay the costs of any mediator.

* 1. **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 21.1 to 21.3. Clauses 21.4 and 21.5 survive termination of the dispute resolution process.

* 1. **No arbitration or court proceedings**

A Party must comply with this clause 21 before starting arbitration or court proceedings (except proceedings for interlocutory relief).

1. gst and r&d tax incentive
   1. **Meaning of words**

In this clause 22:

* + 1. **GST exclusive consideration** means the consideration payable or to be provided for a Supply, but for the application of this clause 22;
    2. **Recipient** means a party to whom a Supply is made;
    3. **Supply** means a supply made under or in connection with this Agreement;
    4. **Supplier** means a party making a Supply; and
    5. 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 22.
  1. **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.

* 1. **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'):

* + 1. 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
    2. the amount by which the GST-exclusive consideration is increased under clause 22.3(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.
  1. **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.

* 1. **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.

1. force majeure
   1. **Definition**
      1. In this clause 23, a **Force Majeure Event** affecting a Party means, subject to clause 23.1(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).
      2. 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.
   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:

* + 1. 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
    2. 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.

* 1. **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.

* 1. **Exceptions**

Nothing in this clause 23:

* + 1. affects any obligation to pay money; or
    2. 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.

1. notices and other communications
   1. **Service of notices**

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

* + 1. in writing, in English and signed by a person duly authorised by the sender; and
    2. 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.
  1. **Effective on receipt**

A Notice given in accordance with clause 24.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

* + 1. if hand delivered, on delivery;
    2. 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
    3. 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.

1. general
   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.

* 1. **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 25.2 will limit or restrict the transfer or assignment of Intellectual Property as contemplated in clauses 9.1 and 11.7.

* 1. **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.

* 1. **Costs**

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

* 1. **Survival**

Any term of this Agreement that by its nature is intended to survive termination of this Agreement survives termination of this Agreement. Without limitation to the foregoing, the following clauses will survive the termination of this Agreement: clauses 3.2, 3.4, 3.5, 3.7, 5.6, 5.7, 6.3, 8.3, 9, 10, 11, 13, 14, 17, 18, 19, 20, 21, 24, 25.2, 25.9, 25.12 and this clause 25.5.

* 1. **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.

* 1. **No merger**

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

* 1. **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.

* 1. **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.

* 1. **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.

* 1. **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.

* 1. **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.

**ANNEXURE 1**

**Extract from Commonwealth Agreement – Clause 16**

2. Intellectual Property Rights
   1. Pre-existing Material and Third Party Material

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

* 1. Third Party Material
     1. The Recipient must obtain all necessary copyright and other Intellectual Property Rights permissions before making any Third Party Material available for the purpose of this Agreement or the Activities.
     2. The Recipient must specify which parts (if any) of the Intellectual Property Rights are Third Party Material and who owns the Intellectual Property Rights in that material.

* 1. Intellectual Property Rights in Agreement Material
     1. The Intellectual Property Rights in the Agreement Material vest in the Recipient and/or the Participants on creation, as determined and agreed in the Participants Agreement.
     2. To the extent that:
        1. the Commonwealth needs to use any of the Agreement Material in connection with this Agreement or the Programme, or for any other legitimate carriage of its responsibilities, including but not limited to:
           1. the use of Reports provided by the Recipient to the Commonwealth, or
           2. the exercise of its rights under clause 26;

the Recipient grants to, or must obtain for, the Commonwealth a perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Material; or

* + - 1. the Recipient needs to use any of the Commonwealth Material (excluding the CRC Branding) for the purpose of performing its obligations under this Agreement, the Commonwealth grants to the Recipient, subject to any conditions, directions or restrictions of the Commonwealth specified in item 13 of Schedule 1, a world-wide, royalty free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate the Commonwealth Material solely for the purpose of undertaking the Activities; or
      2. the Recipient needs to use any of the CRC Branding for the purposes of clause 4.2, the Commonwealth grants to the Recipient, subject to any conditions, directions or restrictions of the Commonwealth specified in item 13 of Schedule 1, a world-wide, royalty free, non-exclusive, non-transferable licence (including the right to sublicense, with the exception of the Recipient being able to grant a sublicence to the Participants) to use, reproduce and communicate the CRC Branding solely for the purposes of undertaking the Activities.
    1. The licence granted to the Commonwealth under clause 16.3(b)(i) does not include a right to exploit the Agreement Material, Pre-existing Material or Third Party Material for the Commonwealth's commercial purposes.
    2. The Recipient must, or where the Agreement Material vests in a Participant must ensure that, at all times during the Agreement Period, the Recipient and/or Participant has in place and adheres to documented procedures to ensure that, before any Agreement Material is published or disclosed to any person other than the Commonwealth or a Participant, consideration is given to the potential prejudice to the subsistence or Utilisation of the Agreement Material, including the possibility that publication or disclosure might preclude the grant of a patent or cause the loss of Intellectual Property Rights.
    3. The Recipient must, or where the Agreement Material vests in a Participant must ensure that, the Recipient and/or Participant uses its best endeavours to ensure Utilisation of Agreement Material (but not including reports or other such material to be provided to the Commonwealth for the Commonwealth’s benefit) by the Participants.
    4. The Recipient must, or where the Agreement Material vests in a Participant must ensure that, any Utilisation of Agreement Material, including by any third party, is consistent with any Milestones, the nature of the Activities and the objectives of the Programme, including the maximisation of benefits accruing to Australia.
    5. The Recipient must ensure that in order to maximise the benefits from research, after appropriate commercialisation and Utilisation decisions have been taken, consideration is given, where relevant, to dissemination of the results from the Activities.
    6. If at any time, the Commonwealth is of the reasonable view that the Utilisation of the Agreement Material by the Recipient and/or Participant, including any third party, is not consistent with clause 16.3(f), the Commonwealth may, by Notice at its sole and unfettered discretion:
       1. require the Recipient to repay some or all of the Grant Funds spent Utilising the Agreement Material;
       2. reduce or suspend payment of the Grant Funds, or terminate the Agreement, under clause 28; or
       3. exercise any other right it may have under this Agreement.

* 1. Commonwealth Material

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