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| Release version 1.2  August 2016 |  |  |
|  |  | Participants Agreement  Cooperative Research Centre Project |
|  |  |  |
|  |  | [*insert Project Title]* |
|  |  | **Parties**  [*insert name of each Party]* |

**IMPORTANT**:

This is an example template document only. It is provided as a possible starting point for a CRC-P to develop its Participants Agreement, but its use is not mandatory.

While changes to this template document may be made, it should be noted that the Lead Participant, as the ‘Recipient’ under the Funding Agreement, is responsible for ensuring that the Participants Agreement meets the requirements of both the collaboration and the Commonwealth. More specifically, the Lead Participant must ensure the Participants Agreement requires the Project Partners to comply with obligations consistent with those of a number of clauses in the Funding Agreement that are referred to at clause 5.3 of the Funding Agreement. Any amendments to the relevant clauses in this template document, which have been highlighted in blue purely for ease of identification, should be carefully considered.

This document is not intended as legal or taxation advice. Any person intending to make use of this document should seek their own independent legal, financial and taxation advice to ensure that the document meets the circumstances of the user.

Details

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| Date | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  day month year |
| Parties |  |
| BETWEEN | [insert Lead Participant] (the **Lead Participant**) |
|  | [insert ABN] |
|  | [insert registered address] |
|  | Email : [insert email address] |
|  | Attention : [insert name] |
|  |  |
| AND | [insert name of Participant] |
|  | [insert ABN] |
|  | [insert registered address] |
|  | Email : [insert email address] |
|  | Attention : [insert name] |
|  |  |
| AND | [insert name of Participant] |
|  | [insert ABN] |
|  | [insert registered address] |
|  | Email : [insert email address] |
|  | Attention : [insert name] |
|  |  |
| AND | [insert name of Participant] |
|  | [insert ABN] |
|  | [insert registered address] |
|  | Email : [insert email address] |
|  | Attention : [insert name] |

Background

1. The Parties have agreed to contribute to and participate in the Project.
2. Pursuant to the Funding Agreement with the Commonwealth, the CRC Project, [insert Project title], is funded through the Cooperative Research Centres (CRC) Programme.
3. This Agreement specifies the terms and conditions of the arrangements between the Parties and obliges them, as Participants, to make the Contributions and comply with other obligations as set out in this Agreement.
4. Definitions and interpretation

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

|  |  |
| --- | --- |
| **Agreement** | this agreement between the Participants, as varied from time to time in accordance with clause 16, and including its Schedules and any attachments. |
| **Agreement Material** | any Material created on or following the commencement of the Funding Agreement, for the purpose of, or as a result of, a Participant undertaking and performing its obligations under the Project. |
| **Agreement Period** | the period as specified in clause 18. |
| **Asset** | any item of tangible property purchased, leased, created or otherwise brought into existence either wholly or in part with use of the Funds, but does not include Agreement Material. |
| **Business Day** | a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the Notice is received. |
| **Commonwealth** | the Commonwealth of Australia. |
| **Confidential Information** | information that is by its nature confidential and:  (a) is designated by a Party as confidential; or  (b) a Party knows or ought to know is confidential and is described in item 6 of Schedule 1,  but does not include:  (c) information that is or becomes public knowledge otherwise than by breach of this Agreement or any other confidentiality obligation. |
| **Contribution** | the cash, personnel, facilities and services to be provided by the Participants to the CRC-P, from their own resources, for the purposes of undertaking the Project, as specified in Schedule 3. |
| **CRC Indicia** | the terms "CRC", "CRC-Projects", "CRC-P", "Cooperative Research Centre" and the CRC Programme logo and any additional items specified by the Commonwealth from time to time. |
| **CRC Programme** | the Cooperative Research Centres Programme. |
| **CRC Project (CRC-P)** | the collaboration between the Participants for the purposes of undertaking the Project. |
| **Financial Year** | the Australian financial year beginning 1 July and ending 30 June. |
| **Funds** | the amounts payable by the Commonwealth to the Lead Participant under the Funding Agreement and any interest earned on those amounts. |
| **Funding Agreement** | the funding agreement between the Commonwealth and the Lead Participant for the purposes of funding and managing the Project. |
| **Guidelines** | the Programme Guidelines listed under item 2 of Schedule 1, and any other guidelines issued by the Commonwealth from time to time in relation to the Programme and its administration. |
| **Intellectual Property Rights** | all intellectual property rights, including:   1. copyright, patents, trademarks (including goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts, domain names and any right to have confidential information kept confidential; 2. any application or right to apply for registration of any of the rights referred to in paragraph (a); and 3. all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,   whether or not such rights are registered or capable of being registered. |
| **Law** | any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time. |
| **Lead Participant** | the industry entity Participant that entered into a Funding Agreement with the Commonwealth, who is also known as the ‘Recipient’ in the Funding Agreement. |
| **Material** | includes property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights. |
| **Milestone** | a stage of completion of the Project as set out in Schedule 2. |
| **Moral Rights** | the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the *Copyright Act 1968* (Cth). |
| **Notice** | a notice, demand, consent, approval or communication issued under this Agreement. |
| **Outcomes** | the outcomes of the Project, as set out in Schedule 2. |
| **Participant** | a person, body or organisation that is a signatory to this Agreement and has agreed to support the Project and provide Contributions. |
| **Parties** | means the parties to this Agreement. |
| **Personnel** | in relation to a party, any employee, officer, agent, professional adviser or subcontractor of that party. |
| **Pre-existing Material** | Material owned by a party before execution of this Agreement, including any Material specified in item 3 of Schedule 1. |
| **Project** | the project set out in Schedule 2. |
| **Project Partners** | all Participants other than the Lead Participant. |
| **Schedules** | the schedules to this Agreement. |
| **Shortfall** | any deficit in the total contributions received by the Lead Participant during a Financial Year and the contributions which should have been received by the Lead Participant during that Financial Year as specified in Schedule 3. |
| **Third Party Material** | Material owned by a third party that is:  (a) included, embodied in or attached to the Agreement Material; or  (b) used in undertaking the Project,  as specified in item 4 of Schedule 1. |
| **Utilisation** | technology transfer, take-up and use of research outputs by end-users. Commercial utilisation includes the manufacture, sale, hire or other exploitation of a product or process, or the provision of a service, incorporating Agreement Material or licensing of any third party to do any of those things, or otherwise licensing or assigning the Agreement Material. |
| **WHS Laws** | the *Work Health and Safety Act 2011* (Cth), regulations made under that Act and any Code of Practice approved for the purpose of that Act. |

1. Participant Contributions and Expectations
   * 1. During the Agreement Period, the Participants will make the Contributions to the CRC-P as detailed in Schedule 3.
     2. During the Agreement Period, the CRC-P will provide the Participants with products, services and/or access as outlined in item 4 of Schedule 2.
2. Participant Obligations
   1. **General obligations**

Each Participant agrees that it will:

* + 1. diligently perform its obligations as set out in this Agreement to a high professional standard;
    2. undertake the Project at the times and in the manner specified in Schedule 2 of this Agreement;
    3. make its Contributions to the CRC-P, through the Lead Participant, in accordance with Schedule 3 and any other requirements under this Agreement;
    4. meet the due dates for the Milestones, as specified in Schedule 2;
    5. undertake the Project in accordance with the CRC Programme Guidelines and any related documentation developed to assist the management and administration of the CRC Programme, issued by the Commonwealth and as amended from time to time;
    6. cooperate with and provide to the Lead Participant any information about the Contributions, any anticipated Shortfall and other activities reasonably required by the Lead Participant;
    7. keep the CRC-P informed through the Lead Participant about the results of the Project and any other information relevant to the conduct of the Project in which the Participant is involved;
    8. supporting the Lead Participant to meet its obligations to the Commonwealth under the Funding Agreement;
    9. support the CRC-P in meeting its obligations in compliance with law and policy, and comply with the provisions of any relevant statutes, regulations, by-laws, and requirements of any Commonwealth, State, Territory or local authority; and
    10. act reasonably and in good faith with the other Participants.
  1. **Relationship**
     1. Each Party must not present itself, and ensure its officers, employees, agents and other Personnel do not represent themselves, as being an officer, employee, partner, agent or other Personnel of the Commonwealth or another Participant, or as otherwise able to bind or represent the Commonwealth or another Participant.
     2. This Agreement does not create a relationship of employment or agency between the Parties.
  2. **Acknowledgement of support**

Each Participant must, in all:

* + 1. publications (including reprints), promotional and advertising materials relating to the Project;
    2. public announcements, events and activities in relation to the Project; and
    3. any products, processes or inventions developed as a result of the Project;

acknowledge the financial and other support received from the Commonwealth:

* + 1. through reference to this support and the CRC Programme;
    2. through prominent display of the CRC Indicia; and
    3. by reference to any acknowledgement as otherwise specified by the Commonwealth from time to time.
  1. **In the event the Participant is unable to meet obligations**

Each Participant must notify the Lead Participant and all Project Partners immediately upon becoming aware of any circumstances that are likely to adversely affect the Participant’s ability to comply with the terms of this Agreement, in particular its solvency or ability to ensure that the Project is carried out in accordance with this Agreement. This includes notification of any intent of, or changes in circumstances leading to the need for, withdrawal from the CRC-P and the Project.

* 1. **Breach of the Participants Agreement**

Each Participant must, within 5 Business Days of becoming aware of any breach or suspected breach of this Agreement that would affect the Lead Participant’s ability to comply with its obligations under the Funding Agreement:

* + 1. provide Notice to the Lead Participant and all Project Partners of that breach or suspected breach;
    2. provide all information reasonably required by the Lead Participant in relation to the breach or suspected breach;
    3. identify to the Lead Participant and all Project Partners the steps the Participant intends to take to address the matter;
    4. keep the Lead Participant and all Project Partners informed of any action it takes to remedy the breach; and
    5. provide Notice to the Lead Participant and all Project Partners once the breach is remedied, or if not remedied upon the matter being otherwise resolved.
  1. **Other government funding**

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

* + 1. the amount and source of the funding; and
    2. the name of the programme under which it was provided,

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

1. Intellectual Property Rights

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

* 1. **Intellectual Property**
     1. This clause 4 does not affect the ownership of the Intellectual Property Rights in any Pre-existing Material or Third Party Material.
     2. The Intellectual Property Rights in the Agreement Material will vest in the Participants on creation as agreed in item 5 of Schedule 1.
     3. Each Participant will adhere to the documented arrangements and procedures for dealing with Intellectual Property Rights in Agreement Material as set out in item 5 of Schedule 1.
     4. Each Participant will adhere to the documented arrangements and procedures, as set out in item 5 of Schedule 1, *if applicable*, to ensure that, prior to the publication or disclosure of Agreement Material (but not including reports or other such material to be provided to the Commonwealth for the Commonwealth’s benefit), consideration is given to the potential prejudice to its subsistence or Utilisation, including the possibility that publication or disclosure might preclude the grant of a patent or cause the loss of Intellectual Property Rights.
     5. Each Participant must ensure that any Utilisation of Agreement Material in the context of this Agreement:
        1. is consistent with the nature of the Project and the CRC Programme; and,
        2. maximises the national benefits accruing to Australia.
     6. Each Project Partner will use its reasonable efforts to obtain from its Personnel any consent in relation to their Moral Rights that may be reasonably necessary for the Project or for Utilisation of the Agreement Material.
     7. To the extent that the Commonwealth needs to use any of the Agreement Material in connection with the Funding Agreement or CRC Programme, including but not limited to:
        1. the use of Reports provided by the Lead Participant to the Commonwealth; or
        2. the exercise of the Commonwealth’s rights under clause 11 (Audit & Access);

the Participant 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.

* + 1. The licence granted to the Commonwealth under clause 4.1(g) does not include a right to exploit the Agreement Material for the Commonwealth's commercial purposes.
  1. **Use of Name and Trademarks**

Each Participant shall not use another Participant’s name or trademarks without the express permission of that party.

1. Confidentiality
   1. **Prohibition on disclosure**

Subject to clause 5.3, each Participant must not:

* + 1. without the prior written consent of all Participants, disclose any Confidential Information to a third party; and
    2. without the prior written consent of the Commonwealth, disclose any Commonwealth Confidential Information obtained through Project-related activities to a third party.
  1. **Advisers and third parties**

The Participants agree that, following a request from the Commonwealth, each Participant must provide the Lead Participant with a written undertaking from each Participant’s Personnel relating to the use and non-disclosure of the Commonwealth’s Confidential Information in the form approved by the Commonwealth.

* 1. **Exceptions to obligations**

The obligations on each party under clause 5.1 will not be taken to have been breached to the extent that Confidential Information of the other Parties:

* + 1. is disclosed by a Party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
    2. is disclosed to a Party’s internal management personnel, solely to enable effective management or auditing of activities related to this Agreement;
    3. is required by Law to be disclosed;
    4. is disclosed to the Commonwealth for the purposes of the Project, the CRC Programme or as otherwise provided for under the exceptions listed in clause 20.4 of the Funding Agreement;
    5. is in the public domain otherwise than due to a breach of this Agreement.
  1. **Obligation on disclosure**

Where a Party discloses Confidential Information of a Party to another person, pursuant to clauses 5.3(a) or (b), the disclosing party must:

* + 1. notify the receiving person that the information is Confidential Information; and
    2. not provide the information unless the receiving person agrees to keep the information confidential, including in the case of Commonwealth Confidential Information, the receiving person must give the Commonwealth a legally binding undertaking to that effect in the form approved by the Commonwealth.
  1. **Additional confidential information**
     1. The Parties may agree in writing during the Agreement Period that certain additional information is to constitute Confidential Information for the purposes of this Agreement.
     2. Where the Parties agree in writing during the Agreement Period that certain additional information is to constitute Confidential Information for the purposes of this Agreement, this documentation is incorporated into, and becomes Confidential Information under this Agreement, on the date by which both Parties have signed this documentation.
  2. **Period of confidentiality**

The obligations under this clause 5 continue, notwithstanding the expiry or termination of this Agreement:

* + 1. in relation to an item of information described in item 6 of Schedule 1, for the period set out in that Schedule in respect of that item; and
    2. in relation to any information which the Parties agree in writing after the date of this Agreement is to constitute Confidential Information for the purposes of this Agreement, for the period agreed by the Parties in writing in respect of that information.
  1. **No reduction in privacy obligations**

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

* 1. **Return of information**

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

1. Protection of personal information
   1. **Definitions**

In this clause 6, the terms ‘agency’, ‘Australian Privacy Principle’ (**APP**s), ‘APP privacy policy’ and ‘Australian Privacy Principle Code’ (**APP code**) have the same meaning as they have in section 6 of the *Privacy Act 1988* (Cth) (Privacy Act) , and ‘personal information’, which also has the meaning it has in section 6 of the Privacy Act, means:

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

* 1. **Application of this clause**

This clause 6 applies only where the Participant deals with personal information provided to the Participant by the Commonwealth for the purpose of completing the Project under this Agreement.

* 1. **Obligations**

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

* + 1. Each Participant must, when requested, provide to the Commonwealth through the Lead Participant:
       1. a copy of the Participant’s APP privacy policy which is compliant with APP 1;
       2. copies of the Participant’s security and data protection policies; and
       3. details of the Participant’s processes and procedures implemented to ensure compliance with the Privacy Act.
    2. Each Participant agrees in respect of the Project under this Agreement:
       1. to use or disclose personal information obtained from the Commonwealth during the course of the Project under this Agreement, only for the purposes of this Agreement;
       2. not to do any act or engage in any practice that would breach an APP contained in schedule 1of the Privacy Act, which if done or engaged in by an agency, would be a breach of that APP;
       3. to carry out and discharge the obligations contained in the APPs as if it were an agency under the Privacy Act;
       4. to notify individuals whose personal information the Participant holds, that complaints about acts or practices of the Participant may be investigated by the Privacy Commissioner who has power to award compensation against the Participant in appropriate circumstances;
       5. not to use or disclose personal information or engage in an act or practice that would breach APP 7 (direct marketing) or a registered APP Code which is applicable to the Participant, unless the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Agreement;
       6. to follow any reasonable directions given by the Commonwealth through the Lead Participant to ensure compliance with the Privacy Act;
       7. to not transfer or transmit personal information outside of Australia except with the prior written approval of the Commonwealth, which will not be unreasonably withheld. In giving its approval the Commonwealth may impose such conditions as it thinks fit. The Participant must comply with any term or condition imposed by the Commonwealth under this clause 6.3 (b)(vii);
       8. to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an APP or a registered APP code which is binding on a party to this Agreement;
       9. to immediately notify the Commonwealth through the Lead Participant if the Participant becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 6, whether by the Participant or any Personnel (including any complaints made about acts or practices of the Participant in connection with personal information);
       10. to notify the Commonwealth through the Lead Participant of any subpoena, warrant, order, demand or request made by a foreign court or other authority for the disclosure of personal information to which the Privacy Act applies and to not disclose such information without the prior written approval of the Commonwealth, which will not be unreasonably withheld. In giving its approval the Commonwealth may impose such conditions as it thinks fit. The Participant must comply with any term or condition imposed by the Commonwealth under this clause 6.3(b)(x);
       11. to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, notified to the Participant by the Commonwealth to the extent that they are not inconsistent with the requirements of this clause 6; and
       12. to ensure that any Personnel of the Participant who is required to deal with personal information for the purposes of this Agreement is made aware of the obligations of the Participant as set out in this clause 6.
  1. **Indemnity**

The Project Participants agree to indemnify the Commonwealth in respect of any loss or liability suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Agreement under this clause 6.

1. Insurance
   1. **Obligation to maintain insurance**

In connection with the Project, each Participant must have and maintain:

* + 1. Workers’ compensation insurance for an amount required by the relevant State or Territory legislation;
    2. Public liability insurance for an adequate amount per claim, or occurrence giving rise to a claim, in respect of activities undertaken under this Agreement (where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be);
    3. insurance over any Asset acquired pursuant to clause 14 of the Funding Agreement for its full replacement value; and
    4. any other insurance required by law or by the Commonwealth (acting reasonably).
  1. **Certificates of Currency**

Each Participant must, within 10 Business Days of a request from the Commonwealth or other Participants, provide a current relevant confirmation of insurance documentation from its insurers or insurance brokers certifying that it has insurance as required by clause 7.1.

1. Work health and safety

Each Participant must:

* + 1. ensure the Project is undertaken in a safe manner;
    2. ensure that their Personnel do not, by act or omission, place the Commonwealth in breach of its obligations under the WHS Laws; and
    3. ensure that their Personnel, if using or accessing the Commonwealth’s premises or facilities, comply with all reasonable instructions, directions, policies and procedures relating to work health and safety in operation at those premises or facilities whether specifically drawn to the attention of the Participant or might reasonably be inferred from the circumstances.

1. Conflict of Interest
   1. **Warranty**

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

* 1. **Notification of a conflict of interest**

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

* + 1. notify the Lead Participant or the Commonwealth immediately in writing;
    2. make full disclosure of all relevant information relating to the conflict; and
    3. take such steps as the Commonwealth requires to resolve or otherwise deal with the conflict.

1. Books and records
   1. **Participant to keep books and records**

In this clause 10, Accounting Standards means the standards of that name maintained by the Australian Accounting Standards Board (created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.

Each Participant must:

* + 1. keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable:
       1. all receipts and payments related to the Project to be identified and reported in accordance with this Agreement; and
       2. the amounts payable by the Commonwealth under the Funding Agreement to be determined; and
    2. retain for a period of seven years after the expiry or termination of this Agreement, all books and records relating to the Project.
  1. **Costs**

Each Participant must bear its own costs of complying with this clause 10.

1. Audit and access
   1. **Right to conduct audits**

The Participants agree that the Commonwealth, or a representative of the Commonwealth as per clause 11.3, may conduct audits relevant to the performance of a Participant's obligations under this Agreement. Audits may be conducted of:

* + 1. the Assets;
    2. the Participant’s operational practices and procedures as they relate to this Agreement or the Funding Agreement;
    3. the accuracy of the Participant’s invoices and reports;
    4. the Participant’s compliance with its confidentiality and privacy obligations under this Agreement;
    5. Material (including books and records) in the possession of the Participant relevant to the Project or this Agreement; and
    6. any other matters determined by the Commonwealth to be relevant to the Project or this Agreement.
  1. **Access by the Commonwealth**
     1. The Participants agree that the Commonwealth, or a representative of the Commonwealth as per 11.3, may, at reasonable times and on giving reasonable Notice to the Participants:
        1. access the premises of the Participants to the extent relevant to the performance of this Agreement;
        2. require the provision by the Participants or its Personnel of records and information in a data format and storage medium accessible by the Commonwealth by use of the Commonwealth’s existing computer hardware and software;
        3. inspect and copy documentation, books and records, however stored, in the custody or under the control of the Participants or its Personnel; and
        4. require assistance in respect of any inquiry into or concerning the Project or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department of Industry, Innovation and Science), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.
     2. The Participants agree that they will provide access to their computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under this clause 11, and provide the Commonwealth with any reasonable assistance requested by the Commonwealth to use that hardware and software.
  2. **Auditor-General and the Australian Information Commissioner**

The Participants agree that the rights of the Commonwealth under clause 11.2(a)(i) to 11.2(a)(iii) apply equally to the Auditor General or a delegate of the Auditor-General, or the Australian Information Commissioner or a delegate of the Australian Information Commissioner, for the purpose of performing the Auditor-General’s or Australian Information Commissioner’s statutory functions or powers.

* 1. **Participants to comply with Auditor-General’s requirements**

Each Participant must do all things necessary to comply with the Auditor-General’s or his or her delegate’s or the Australian Information Commissioner’s or his or her delegate’s requirements, notified under clause 11.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Australian Information Commissioner, or his or her respective delegate.

* 1. **No reduction in responsibility**

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

* 1. **Subcontractor requirements**

Each Participant must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 11.

* 1. **No restriction**

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

* 1. **Costs**

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

1. False or misleading information

Each Participant:

* + 1. acknowledges that giving false or misleading information to the Commonwealth is a serious offence under section 137.1 of the *Criminal Code Act 1995* (Criminal Code); and
    2. must ensure that all of its Personnel engaged in connection with this Agreement acknowledges the information contained in this clause.

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

1. Safe and Ethical Research

When research in Australia is conducted on or involving humans or animals, each Participant will support the CRC-P in meeting its obligations in regards to compliance with safe and ethical research by ensuring that:

* + 1. the research complies with, and observes, all relevant ethics codes and guidelines adopted by the National Health and Medical Research Council, the Office of the Gene Technology Regulator and all other relevant regulatory agencies operating in Australia and any place in which the research is being conducted being codes and guidelines in force from time to time during the Agreement Period, including requirements to obtain prior approval in writing (including from any relevant ethics committee) that the research to be undertaken is so compliant;
    2. one or several higher education institution(s), or Commonwealth or State research organisation(s), or medical institution(s) with a relevant ethics committee constituted in accordance with the codes and guidelines referred to in clause 13(a), is engaged to oversee all ethical clearances which may be required under those codes and guidelines;
    3. when conducting research in Australia which involves the use of ionising radiation, that persons performing procedures involving ionising radiation are appropriately trained and hold a relevant current licence from the appropriate State authority; and
    4. whenever reasonably required by the Lead Participant, a Project Partner will promptly furnish written evidence of compliance with the requirements of this clause.

1. Responsible conduct of research
   * 1. Each Participant must ensure that the research conducted by it conforms to the principles outlined in the following and successor documents:
        1. the *NHMRC/ARC/UA Australian Code for the Responsible Conduct of Research* (2007); and
        2. if applicable, the *NHMRC/ARC/AVCC National Statement on Ethical Conduct in Human Research* (2007).
     2. Each Participant agrees that it will:
        1. promote the responsible conduct of research;
        2. maintain high standards of responsible research;
        3. report research responsibly;
        4. respect all research participants;
        5. respect animals used in research;
        6. respect the environment; and
        7. report research misconduct.
     3. Each Participant must have procedures in place for dealing with instances of suspected or alleged research misconduct which are consistent with clause 14(a).
2. Survival

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

* + 1. Clause 3.1(h) (General Obligations);
    2. Clause 3.3 (Acknowledgement of support);
    3. Clause 4 (Intellectual Property Rights);
    4. Clause 5 (Confidentiality);
    5. Clause 6 (Protection of personal information)
    6. Clause 7 (Insurance);
    7. Clause 10 (Books and records) for a period of seven years from the expiry or termination of the Funding Agreement; and
    8. Clause 11 (Audit and access) for a period of seven years from the expiry or termination of the Funding Agreement,

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

1. Changes to the Agreement

No agreement or understanding varying this Agreement shall be legally binding unless it is signed in writing by all Parties.

1. Relationship to the Funding Agreement[[1]](#footnote-1)

Nothing in this Agreement will reduce or otherwise affect the obligations of the Lead Participant under the Funding Agreement. In the event of any inconsistency between this Agreement and the Funding Agreement, the Funding Agreement takes precedence.

1. Agreement Period and Termination
   1. **Agreement Period**

This Agreement commences on [insert commencement date] and will end on [insert end date], or when all reporting requirements relating to the Project under the Funding Agreement have been met, whichever is the later, unless otherwise terminated in accordance with clauses 18.4 or 18.5 of this Agreement .[[2]](#footnote-2)

* 1. **Change of Project Partner** 
     1. Subject to clause 18.2(c), the Lead Participant may, acting reasonably, elect to remove from the Project a Project Partner by providing written Notice to that Project Partner, with a copy to all other Project Partners and the Commonwealth.
     2. A change of Project Partners is subject to the Lead Participant gaining the Commonwealth’s approval under clause 5.7 of the Funding Agreement.
     3. The Lead Participant may remove a Project Partner from the Project with immediate effect by written Notice to the Project Partner, if:
        1. the Project Partner breaches any provision of this Agreement and fails to remedy the breach within 14 days after receiving Notice requiring it to do so;
        2. the Project Partner breaches a provision of this Agreement which is not capable of remedy;
        3. the Project Partner persistently breaches a provision of this Agreement despite Notice of the breach;
        4. in the reasonable opinion of the Lead Participant, the Project Partner is not conducting the Project in a competent and diligent manner;
        5. the Project Partner fails to notify the Lead Participant of a conflict of interest, or in the opinion of the Lead Participant, a conflict of interest exists which would prevent the Project Partner from performing its obligations under this Agreement;
        6. the Lead Participant is unable to obtain Participant Contributions from the Project Partner in accordance with Schedule 3, or obtain them in time to provide for the Project Outcomes, Activities or Milestones as outlined in the Project Details (Schedule 2);
        7. the Project Partner does not comply with a Commonwealth direction, requiring the Project Partner to comply with any obligation owed to the Commonwealth under this Agreement; or
        8. an event specified in clause 18.2(d) occurs.
     4. The Project Partner must notify the Lead Participant immediately if:
        1. there is any change in the direct or indirect beneficial ownership or control of the Project Partner;
        2. the Project Partner disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
        3. the Project Partner ceases to carry on business;
        4. the Project Partner ceases to be able to pay its debts as they become due;
        5. proceedings are initiated with a view to obtaining an order for the winding up of the Project Partner, or any person convenes a meeting for the purpose of considering or passing any resolution for the winding up of the Project Partner;
        6. the Project Partner applies to come under, the Project Partner receives a Notice requiring it to show cause why it should not come under, an order has been made for the purpose of placing the Project Partner under, or the Project Partner otherwise comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or equivalent provisions in State or Territory legislation in relation to incorporated associations;
        7. the Project Partner being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors;
        8. where the Project Partner is a partnership, any step is taken to dissolve that partnership; or
        9. anything analogous to an event referred to in clause 18.2(d)(v) – (viii) occurs in relation to the Project Partner.
  2. **Consequences of removal of a Project Partner** 
     1. If a Project Partner is removed from the Project pursuant to clause 18.2, it:

(i) is not entitled to reimbursement of any costs incurred as a result of expulsion;

(ii) must assign its share of ownership of the Agreement Material/Intellectual Property Rights in accordance with item 5 of Schedule 1 or as otherwise agreed in writing by the Participants;

(iii) grants to the other Participants and Commonwealth a world-wide, irrevocable, perpetual royalty–free non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate any of its Agreement Material, Pre-existing Material or Third Party Material:

(A) that meets the description in clause 4.1(b) and (g); and

(B) subject to any limitations provided for under clause 4.1**;**

* + 1. Subject to clause 18.2(a), removal will not affect the enforceability of any rights or obligations accrued under this Agreement which survive termination;
    2. From the date of removal, the Lead Participant will cease to be liable to pay or provide to the removed Project Partner any monies due under this Agreement, except to the extent those monies have been legally committed for expenditure by the Project Partner in accordance with this Agreement and are payable by the Project Partner as a current liability (written evidence of which will be required) before the date on which the Project Partner receives Notice of the removal; and
    3. From the date of removal, the removed Project Partner will cease to be liable to make any Contribution to the Project scheduled to be made after the removal date.
  1. **Termination of this Agreement for default**

The Lead Participant may terminate this Agreement with immediate effect by written Notice to the other Project Partners if any of the events detailed in clauses 18.2(c)(i) to (viii) occur.

* 1. **Termination by Notice**

The Lead Participant may terminate this Agreement [insert *with immediate effect by* **OR** *with x days’*] written Notice where the Commonwealth terminates the Funding Agreement.

* 1. **Consequences of termination – ownership of Contributions and Commercialisation Income**

If the Lead Participant terminates this Agreement under clause 18.4 or 18.5, all Participants must assign their share of ownership of the Agreement Material/Intellectual Property Rights in accordance with item 5 of Schedule 1 or as otherwise agreed in writing by the Participants.

* 1. **Other consequences of termination**

If the Lead Participant terminates this Agreement under clause 18.4 or 18.5:

* + 1. termination will not affect the enforceability of any rights or obligations accrued under this Agreement which survive termination;
    2. the Lead Participant is not obliged to pay to the Project Partners any outstanding amount of the monies due under this Agreement, except to the extent that those monies have been legally committed for expenditure by the Project Partner in accordance with this Agreement and payable by the Project Partner as a current liability (written evidence of which will be required) by the date the Project Partner receives the Notice of termination;
    3. as of the date the Project Partners receive the Notice of Termination, the Participants will cease to be liable to make further Contributions to the Project;

1. the Lead Participant is entitled to recover from Project Partners any Project monies provided by the Lead Participant to a Project Partner which have not been spent, or legally committed for expenditure by the Project Partner in accordance with this Agreement and payable by the Project Partner as a current liability (written evidence of which will be required), by the date the Project Partner receives the Notice of termination; and
2. any licences of Pre-existing Material, Third Party Material and copyright in Reports remain in force and survive termination.
3. Dispute resolution
   1. No arbitration or court proceedings

If a dispute arises in relation to the conduct of this Agreement (**Dispute**), a party must comply with this clause 19 before starting arbitration or court proceedings except proceedings for urgent interlocutory relief. After a party has sought or obtained any urgent interlocutory relief, that party must follow this clause 19.

* 1. Notification

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

* 1. Parties to resolve Dispute

During the 14 days after a notice is given under clause 19.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of CEOs (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

* 1. Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 19.3, the chairperson of the Resolution Institute or the chairperson's nominee will appoint a mediator.

* 1. Role of mediator and obligations of parties

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 19.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

* 1. Confidentiality

Any information or documents disclosed by a party under this clause 19:

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

Each party to a Dispute must pay its own costs of complying with this clause 19. The parties to the Dispute must equally pay the costs of any mediator.

* 1. Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 19.1 to 19.5. Clauses 19.6 and 19.7 survive termination of the dispute resolution process.

Schedule 1 – CRC-P Details

|  |  |  |  |
| --- | --- | --- | --- |
| **Item number** | **Issue** | **Clause Reference** | **Details** |
| 1. | Project Title | **Background A** | [*insert title of project*] |
| 2. | Guidelines | **1.1 and 3.1** | The Cooperative Research Centres Programme Guidelines, and any related documentation developed to assist the management and administration of the CRC Programme, issued by the Commonwealth and as amended from time to time. |
| 3. | Pre-existing Material | **1.1 and 4.1** | [*specify the pre-existing Material of each Participant, if any*] |
| 4. | Third Party Material | **1.1 and 4.1** | [*specify Third Party Material, if any*] |
| 5. | Intellectual Property/  Agreement Material | **1.1 and 4.1** | [*insert title/s of the document/s, details or arrangements that the CRC-P has developed for the management of Agreement Material/Intellectual Property, if applicable. Alternatively, details of IP arrangements might be included under a discrete schedule for the purpose.*] |
| 6. | Confidential Information | **1.1 and 5** | [*insert each party's Confidential Information (decided by reference to the Department of Finance’s Guidance on Confidentiality in Procurement found at: http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/practice.html), including any Agreement provisions or Schedules that are to be kept confidential. The period of confidentiality should be specified for each item. If the parties agree that different items of information are to be confidential for different* *periods of time, the different periods should be recorded next to each item. An assessment will need to be made by the parties on a case-by-case basis about what is to be included in this item.*] |

Schedule 2 – Project Details

* 1. Project Overview, Outcomes and impacts (clause 1.1 and 3.1)

[*Set out objectives, key activities, outcomes, and expected impacts i.e. what the CRC-P is to achieve in undertaking the Project*.]

* 1. Project activities (clause 1.1)

[*Describe the Project by reference to activities which it will actually involve, i.e. what the Recipient will spend the Funds doing. It is important to include sufficient detail to allow the Department to judge whether what the Recipient is doing/spending the Funds on falls within the approved scope.*]

* 1. Milestones (clause 1.1 and 3.1)

[*Describe the Project, i.e. what the CRC-P will spend the Funds actually doing, and develop a timeline for the completion of Project milestones. It is important to include sufficient detail to allow the Department to understand what the CRC-P is undertaking and whether the spending of the Funds falls within the approved scope*. *It is recommended that this be in the form of a one-paragraph description for each milestone. Milestone titles and start and end dates are to be included in the table below.]*

| **No.** | **Milestone** | **Start Date** | **End Date** |
| --- | --- | --- | --- |
|  | **Project Milestone Title** |  |  |
|  |
| **Description** |
|  |
|  | **Project Milestone Title** |  |  |
|  |
| **Description** |
|  |
|  | **Project Milestone Title** |  |  |
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|  | **Project Milestone Title** |  |  |
|  |
| **Description** |
|  |
|  | **Project Milestone Title** |  |  |
|  |
| **Description** |
|  |
| 8. | Completion of the Project |  |  |

* 1. Participant Expectations of the CRC-P (clause 2(b))

[*Insert detail of the products/services/access that the Participants will receive from the CRC-P. Examples include: copies of all research reports prepared by the CRC-P; attendance at all stakeholder meetings; recognition in all the CRC-P’s publications and website as a sponsor of the Project.*]

|  |  |
| --- | --- |
| **Item** | **Product / Service / Access** |
| 1. |  |
| 2. |  |
| 3. |  |
| 4. |  |

Schedule 3 – Contributions and Budget

* 1. Participant Contributions (clause 1.1, 2(a) and 3.1)

[*Insert amount of financial and in-kind contributions the Participants must provide to the Project, and the amount and date of each contribution. This may also include other Commonwealth funding, State, Territory or local government funding or industry assistance. The following tables are provided as an example.*]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| [Lead Participant Name] | | | | |
| **Contribution Type** | **2016-17** | **2017-18** | **2018-19** | **Total** |
| Cash |  |  |  |  |
| FTE |  |  |  |  |
| FTE Value |  |  |  |  |
| Non-staff in-kind |  |  |  |  |
| Total value of contributions |  |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| [Participant Name] | | | | |
| **Contribution Type** | **2016-17** | **2017-18** | **2018-19** | **Total** |
| Cash |  |  |  |  |
| FTE |  |  |  |  |
| FTE Value |  |  |  |  |
| Non-staff in-kind |  |  |  |  |
| Total value of contributions |  |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| [Participant Name] | | | | |
| **Contribution Type** | **2016-17** | **2017-18** | **2018-19** | **Total** |
| Cash |  |  |  |  |
| FTE |  |  |  |  |
| FTE Value |  |  |  |  |
| Non-staff in-kind |  |  |  |  |
| Total value of contributions |  |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Total Participant Contributions | | | | |
| **Contribution Type** | **2016-17** | **2017-18** | **2018-19** | **Total** |
| Cash |  |  |  |  |
| FTE |  |  |  |  |
| FTE Value |  |  |  |  |
| Non-staff in-kind |  |  |  |  |
| Total value of contributions |  |  |  |  |

Note: FTE = Full-Time Equivalent as it relates to staff in-kind contributions. FTE Value is calculated by multiplying the FTE value by $250,000.

* 1. Budget

*[Include a Budget table which accords with the Budget in the Funding Agreement. CRC-Ps may remove this item if they wish.]*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Heads of Expenditure** | **2016-17** | **2017-18** | **2018-19** | **Total** |
| Employee |  |  |  |  |
| Supplier |  |  |  |  |
| Capital |  |  |  |  |
| Other |  |  |  |  |
| Total Expenditure |  |  |  |  |

Signing page

[Select one of the following execution clauses for each of the contracting Parties as appropriate].

[Party 1 – Company execution block]

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[insert company name]** in accordance with section 127 of the *Corporations Act 2001* (Cth) in the presence of |  |  |  |
|  | ← |  | ← |
| Signature of director |  | Signature of director/company secretary/sole director and sole company secretary  (Please delete as applicable) |  |
| Name of director (print) |  | Name of director/company secretary/sole director and sole company secretary (print) |  |

[Party 1 – Alternative execution block]

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for **[insert contracting party name]** by an authorised officerin the presence of |  |  |  |
|  | ← |  | ← |
| Signature of witness |  | Signature of officer |  |
|  |  |  |  |
| Name of witness (print) |  | Name of officer (print) |  |
|  |  |  |  |
|  |  | Office held |  |

[Party 2 – Company execution block]

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[insert company name]** in accordance with section 127 of the *Corporations Act 2001* (Cth) in the presence of |  |  |  |
|  | ← |  | ← |
| Signature of director |  | Signature of director/company secretary/sole director and sole company secretary  (Please delete as applicable) |  |
| Name of director (print) |  | Name of director/company secretary/sole director and sole company secretary (print) |  |

[Party 2 – Alternative execution block]

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for **[insert contracting party name]** by an authorised officerin the presence of |  |  |  |
|  | ← |  | ← |
| Signature of witness |  | Signature of officer |  |
|  |  |  |  |
| Name of witness (print) |  | Name of officer (print) |  |
|  |  |  |  |
|  |  | Office held |  |

[Party 3 – Company execution block]

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[insert company name]** in accordance with section 127 of the *Corporations Act 2001* (Cth) in the presence of |  |  |  |
|  | ← |  | ← |
| Signature of director |  | Signature of director/company secretary/sole director and sole company secretary  (Please delete as applicable) |  |
| Name of director (print) |  | Name of director/company secretary/sole director and sole company secretary (print) |  |

[Party 3 – Alternative execution block]

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for **[insert contracting party name]** by an authorised officerin the presence of |  |  |  |
|  | ← |  | ← |
| Signature of witness |  | Signature of officer |  |
|  |  |  |  |
| Name of witness (print) |  | Name of officer (print) |  |
|  |  |  |  |
|  |  | Office held |  |

[Party 4 – Company execution block]

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[insert company name]** in accordance with section 127 of the *Corporations Act 2001* (Cth) in the presence of |  |  |  |
|  | ← |  | ← |
| Signature of director |  | Signature of director/company secretary/sole director and sole company secretary  (Please delete as applicable) |  |
| Name of director (print) |  | Name of director/company secretary/sole director and sole company secretary (print) |  |

[Party 4 – Alternative execution block]

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for **[insert contracting party name]** by an authorised officerin the presence of |  |  |  |
|  | ← |  | ← |
| Signature of witness |  | Signature of officer |  |
|  |  |  |  |
| Name of witness (print) |  | Name of officer (print) |  |
|  |  |  |  |
|  |  | Office held |  |

1. This order of precedence is based on the *CRC Programme Guidelines.* It is strongly advised that this clause be retained and not be further amended. [↑](#footnote-ref-1)
2. Note that the CRC-P Participant Agreement will need to continue beyond the end date of the Funding Agreement in order to complete reporting requirements. The end date inserted in this clause should be no less than 60 calendar days after the agreement period of the Funding Agreement. [↑](#footnote-ref-2)