



**Australasian  
Pork Research  
Institute Ltd**  
**APRIL**

**APRIL RESEARCH DEED**

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**THIS DEED is dated**

**BETWEEN:**

AUSTRALASIAN PORK RESEARCH INSTITUTE LTD ABN 25 113 703 174

(**Company**)

and

The University of New England, ABN 75 792 454 315

(**Research Participant** and upon the Company's written approval of a Project Proposal to which the Research Participant is a signatory, also a **Project Party**),

collectively the Company and Research Participant are **Parties**.

**BACKGROUND**

- A. The Company is a company limited by guarantee and established to fund, promote and encourage collaborative research, development, education and utilisation activities for the Australasian pork industries.
- B. From time to time the Company's Governing Board may determine that a Project should be undertaken by one or more research participants.
- C. Prior to the commencement of a Project:
  - 1. the Company and the Project Parties selected to undertake the Project must agree upon and execute Project Details;
  - 2. upon execution of this deed and the Project Details by the Company and the Research Participant, those documents will collectively comprise a Research Contract between the Parties for the relevant Project; and
  - 3. each other Project Party, excepting the Research Participant, will separately execute a research deed on substantially similar terms and conditions to this deed. That research deed and the Project Details in respect of the relevant Project, will form a Research Contract between that other Project Party and the Company.
- D. The Parties agree to complete Projects in accordance with the terms and conditions set out in this deed and the relevant Research Contract.

**IT IS AGREED:**

**INTRODUCTION**

**1. Defined terms and interpretation**

**1.1** In this deed:

- (1) **Applicable Jurisdiction** means the State of South Australia.
- (2) **APRIL Account** means the bank account(s) established, maintained and operated by the Company for the purposes of receiving and disbursing cash funds, including the Project Funds.
- (3) **APRIL Objectives** means the stated objects for the Company, as set out in its constitution.
- (4) **Asset** means an item of real or personal property, including a capital item, but does not include Intellectual Property.
- (5) **Authority** means any statutory, public, governmental, municipal or other government entity.
- (6) **Background IP** means:
  - (a) the Intellectual Property specified in the relevant Project Details that a Project Party has agreed to contribute as Background IP to a Project;
  - (b) any other Intellectual Property that a Project Party has offered to contribute as Background IP for a Project, which has been made available by a Project Party during a Project or which has been agreed in writing by the Company and all other Project Parties as Background IP for that Project; and
  - (c) for the avoidance of doubt, does not include any Project IP.
- (7) **Business Day** means, in relation to the doing of any action in a place, a weekday other than a public holiday or bank holiday in that place.
- (8) **Cash Contributions** means the cash and other monetary proceeds to be contributed by a Project Party, as set out in the relevant Project Details.
- (9) **Chief Scientist** means the chief scientist of the Company.
- (10) **Claims** means any costs, expenses, losses, damages, actions, proceedings or other liabilities (whether in contract, tort or otherwise), however arising (whether or not presently ascertained, immediate, future or contingent) and includes legal costs on a full indemnity basis.
- (11) **Commercialise**, in relation to Intellectual Property, means to:
  - (a) manufacture, sell, hire or otherwise exploit a product or process;
  - (b) provide a service, incorporating that Intellectual Property;
  - (c) license any third party to undertake any of the acts in paragraphs (a) or (b) above; or

- (d) otherwise license or assign the Intellectual Property, including for the purpose of establishing a separate entity to undertake any of the activities described in paragraphs (a) to (c) above,

regardless of whether any revenue is generated or intended to be generated and **Commercialisation** has a corresponding meaning.

- (12) **Commercialisation Expenses** means expenses incurred by the Company in carrying out Commercialisation of Project IP (not including costs attributed to time spent by its employees) including:
  - (a) government fees, taxes (other than income and withholding taxes), duties, charges or imposts paid or payable in relation to Commercialisation Income;
  - (b) costs of registering or otherwise protecting the Project IP, including patent attorney fees;
  - (c) legal expenses incurred in relation to Commercialising Project IP, including the obtaining of advice on those matters;
  - (d) relevant travel, insurance, packaging or transportation costs, including in relation to any tangible goods, plant or equipment comprising the Project IP;
  - (e) reasonable costs of seeking licensees of Project IP or other parties to be involved in Commercialisation of Project IP; and
  - (f) any other out-of-pocket expenses reasonably incurred by the Company in carrying out Commercialisation of Project IP.
- (13) **Commercialisation Income** means all royalties, licence fees and other monetary proceeds (including monetary proceeds from the use or disposal of any non-monetary assets) from Commercialisation of Project IP received by or on behalf of the Company.
- (14) **Confidential Information** means all information 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, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, tangible or intangible).
- (15) **Conflict** means any matter, circumstance, interest, or activity affecting a Project Party (including the officers, employees, agents and subcontractors of the Party) which may impair or gives the reasonable appearance of impairing the ability of a Project Party (**Affected Party**) to carry out its part of the Project diligently, fairly and independently in accordance with a Research Contract.
- (16) **Critical Milestone** means a Milestone:
  - (a) directed at achieving a key Project Aim;
  - (b) directed at achieving a key proof of concept for the research activities; or
  - (c) requiring a significant proportion of the total Project Funds or Project Contributions to be expended or utilised.

- (17) **Financial Year** means any period commencing on 1 July and concluding on 30 June, or any part thereof.
- (18) **Deliverables** means the deliverables for a Project, as described in the relevant Project Details.
- (19) **Draft Project Details** means the proposed details of a Project which are:
- (a) set out in a Project Proposal; and
  - (b) yet to be agreed and signed by the Company.
- (20) **Governing Board** means the board of directors of the Company.
- (21) **Head Funding Agreement** means any agreement between the Company and a non-Project Party under which the Company receives Cash Contributions and/or In-Kind Contributions for use in a Project, which has been provided or made available by the Company for review by the parties to the relevant Draft Project Details on a strictly confidential basis, prior to the approval by the Company of the relevant Project Proposal.
- (22) **Improvements** means a modification, enhancement or improvement of the Background IP or Project IP (as the context requires).
- (23) **In-Kind Contribution** means any contribution to a Project by a Research Contract Party, such as Assets, Specified Personnel, facilities and services but does not include Intellectual Property or Cash Contributions.
- (24) **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, 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.
- (25) **Laws** means any:
- (a) Commonwealth, State and local government legislation, including regulations, by-laws, orders, awards and proclamations;
  - (b) common law and equity;
  - (c) Authority requirements and consents, certificates, licences, permits and approvals (including conditions imposed on those consents, certificates, licences, permits and approvals); and
  - (d) Authority guidelines with which a Research Contract Party is legally required to comply.
- (26) **Lead Party** means the Project Party that employs the Project Leader.
- (27) **Member** means a member of the Company as specified in the Company's register of members.
- (28) **Milestones** means the significant actions to be completed for a Project as set out in the relevant Project Details.
- (29) **Moral Rights** has the same meaning as in the *Copyright Act 1968* (Cth).



- (30) **Net Commercialisation Income** means Commercialisation Income in relation to Project IP less payments or reimbursements of Commercialisation Expenses pursuant to clause 39 for the relevant period.
- (31) **Party** means the Company or the Research Participant.
- (32) **Project** means a discrete, time-bounded research, training or Commercialisation activity or series of activities described in the relevant Project Details.
- (33) **Project Aims** means the objectives for a Project as set out in the relevant Project Details.
- (34) **Project Budget** means the budget for a Project as set out in the relevant Project Details including any agreed Variations to that budget.
- (35) **Project Commencement Date** means the date on which a Project is to commence, as set out in the relevant Project Details.
- (36) **Project Completion Date** means the date on which a Project is to be completed, as set out in the relevant Project Details.
- (37) **Project Contribution** means all of the Cash Contributions and In-Kind Contributions to be contributed by a Party to a Project, as set out in the relevant Project Details, but does not include any Intellectual Property contributed by a Party.
- (38) **Project Details** means the Draft Project Details agreed in writing and signed by all Research Contract Parties, including any agreed Variations to those details.
- (39) **Project Funds** means the monies to be paid by the Company to the Lead Party or other Project Parties, to conduct a Project as set out in the relevant Project Details.
- (40) **Project IP** means Intellectual Property developed in the course of carrying out a Project, including Improvements created under clause 32.
- (41) **Project Leader** means the person the person designated as Project Leader in the Project Details.
- (42) **Project Parties** means the Research Participant and any additional individuals or entities (except the Company) who agree to participate in a particular Project and have signed the relevant Project Details.
- (43) **Project Proposal** means a written proposal for a Project containing Draft Project Details, signed by all Project Parties and submitted to the Company for written approval.
- (44) **Project Shares** means the proportionate entitlement of each Research Contract Party to the legal and beneficial interest in Project IP, calculated in accordance with clause 26 and the Valuation Principles.
- (45) **Publication Requirements** means that the benefits of publication, having regards to the APRIL Objectives, outweigh any potential loss of commercially valuable Intellectual Property rights or other potential disadvantages for the Company.

- (46) **Quarter** means a 3 month period ending on 31 March, 30 June, 30 September or 31 December during the Term. However, the first Quarter for this deed or a Research Contract is calculated on and from the date of this deed or Research Contract (as the context requires) until the first to occur of 31 March, 30 June, 30 September or 31 December.
- (47) **Report** means a written report to be submitted by a Lead Party or a Project Party under clauses 16 or 17 respectively.
- (48) **Research Contract** means:
- (a) a contract formed between the Company and the Research Participant in accordance with clause 3; and
  - (b) where the context requires, a contract formed between the Company and a Project Party other than the Research Participant.
- (49) **Research Contract Party** means a party to a Research Contract, being the relevant Project Party and the Company.
- (50) **Rules** means the constitution, articles of association, enacting legislation and its provisions, or any other form of provisions or policy statements governing the organisation and operation of a Party.
- (51) **Special Conditions** means any special conditions expressly set out in the relevant Project Details.
- (52) **Specified Division** means, in relation to a Project Party, the division, department or faculty of that Project Party specified in the relevant Project Details.
- (53) **Specified Personnel** means the personnel of a Project Party allocated to a Project as part of the Project Party's Project Contribution.
- (54) **Stop/Go Milestone** means a Milestone identified as such in the Project Details, being a critical juncture at which the actual and likely commercial applications of the Project results to date is assessed.
- (55) **Term** means the term of this deed, as calculated in accordance with clause 2.
- (56) **Valuation Principles** means the principles specified in Schedule 1 for valuation of Project Contributions.
- (57) **Variation** means a written agreement, signed by all Research Contract Parties, recording any agreed variations to the Project Details for the relevant Project.
- 1.2 In this deed and any Research Contract, 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 deed or Research Contract (as the context requires), and a reference to this deed or Research Contract (as the context requires) 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 deed and any Research Contract) 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 deed or Research Contract (as the context requires) or any part of them;
  - (11) 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;
  - (12) headings are for ease of reference only and do not affect the interpretation of this deed and any Research Contract; and
  - (13) the rights, duties and liabilities of each Party under this deed and each Research Contract will, in every case, be several and not joint or joint and several.
- 1.3 In the event of any inconsistency between the Project Details and this deed, the inconsistency will be resolved in the following order of precedence:
- (1) Special Conditions;
  - (2) this deed; and
  - (3) Project Details other than Special Conditions.
- 1.4 In the event of any inconsistency between the Project Details and the remainder of the Research Contract, the inconsistency will be resolved in the following order of precedence:
- (1) Special Conditions;
  - (2) the remainder of the Research Contract; and
  - (3) Project Details other than Special Conditions.
- 1.5 The Research Participant acknowledges and agrees that each other Project Party is an express third party beneficiary of the warranties, acknowledgements, indemnities and obligations expressed in favour of the other Project Parties within this deed and in the corresponding Research Contract formed between the Company and the

Research Participant. Each other Project Party has the right to enforce those warranties, acknowledgements, indemnities and obligations against the Research Participant:

- (1) as if the Project Party was a party to this deed and in the corresponding Research Contract formed between the Company and the Research Participant;
- (2) irrespective of whether the Company has enforced the equivalent warranties, acknowledgements, indemnities and obligations expressed in its favour within this deed and in the corresponding Research Contract formed between the Company and the Research Participant. For the avoidance of doubt, nothing in this clause constitutes the Company as a trustee of the other Project Parties' rights against the Research Participant; and
- (3) provided that, prior to enforcing any rights against the Research Participant under this clause 1.5, the relevant Project Party first complies with clause 58 (Dispute Resolution) as if they were a named Party

## 2. **Term**

- 2.1 This deed commences on and from the date of the deed and it will continue until its termination in accordance with clause 50.
- 2.2 For the avoidance of doubt, a Research Contract for a Project commences on and from the date of the Company's written approval of the Draft Project Details (being the date of signature of the Draft Project Details by the Company or such other date agreed in writing between the Parties) and it will continue until:
  - (1) withdrawal of the Research Participant from the relevant Project in accordance with clause 45;
  - (2) expulsion of the Research Participant from the relevant Project in accordance with clause 46;
  - (3) the termination of the relevant Project in accordance with clause 48; or
  - (4) completion of the Project in accordance with the relevant Research Contract, whichever occurs the earliest.

## **UNDERTAKING PROJECTS**

### 3. **Projects**

- 3.1 The Projects to be undertaken:
  - (1) will be determined from time to time by the Governing Board;
  - (2) must not commence until all applicable approvals have been obtained from the Governing Board and applicable ethics committees; and
  - (3) must be consistent with the APRIL Objectives.

- 3.2 The Company may, from time to time, advertise for suitable Projects to be undertaken and receive Project Proposals in response.
- 3.3 The Company may, from time to time propose that a Project be undertaken and request that specific participants (selected at the Company's sole discretion) submit to the Company a Project Proposal.
- 3.4 Subject to this deed, selection of Project Parties to participate in a Project is a decision for the Governing Board in its absolute discretion.
- 3.5 The Company will in its discretion:
- (1) approve a Project Proposal, in which case it will notify the Project Parties and separate Research Contracts will be formed by the Company with each Project Party on the date that the Company signs the Draft Project Details;
  - (2) reject a Project Proposal; or
  - (3) reject a Project Proposal and allow it to be amended and resubmitted for consideration.
- 3.6 Where a Project Proposal is approved by the Company in accordance with clause 3.5, the Special Conditions contained in the Project Details within that Project Proposal will take precedence over the terms and conditions of this deed, in the event of any inconsistency. For the avoidance of doubt, Project Parties may submit a Project Proposal which is not in accordance with the terms and conditions of this deed.
- 3.7 The Research Participant acknowledges that all Project Parties will be required to sign a deed on substantially the same terms and conditions as this deed, outlining the terms on which they will undertake each Project.
- 3.8 The Research Participant must carry out each Project in accordance with the relevant Research Contract, as modified by any Special Conditions contained in the relevant Project Details.
- 4. No warranties or representations regarding Projects**
- 4.1 The Research Participant acknowledges and agrees that the Company makes no warranties or representations that:
- (1) Project Proposals for particular research activities will be approved by the Company; or
  - (2) the Company will seek or obtain a minimum threshold of Project Funds in respect of proposed Projects.
- 4.2 Due to the speculative nature of research activities, the Parties acknowledge that the outcome of those activities is uncertain and:
- (1) subject to clause 4.2(2), neither Party will be liable to the other Party for any Claims arising from, or in reliance upon, the research activities achieving a particular result or income; and
  - (2) nothing in this clause 4.2 operates to diminish or derogate from each Party's obligation to diligently provide its Contributions to the relevant Project and to perform its obligations in respect of the relevant Project.

## **PROJECT RESOURCES**

### **5. Company obligations**

5.1 The Company shall:

- (1) draw on the APRIL Account to make payment of any Project Funds to the Lead Party, for the Lead Party to disburse to the remaining Project Parties in accordance with the Project Details; and
- (2) draw on the APRIL Account to meet the other costs identified under this deed and Research Contracts, including the Commercialisation Expenses.

### **6. Cash Contributions**

6.1 For each Project, the Company shall:

- (1) seek and accept from each Project Party its Cash Contributions; and
- (2) credit all such amounts received into the APRIL Account.

6.2 Each Project Party must pay its Cash Contributions to the Company at the times and in the manner specified in the relevant Project Details. Any Cash Contribution not paid by a Project Party in accordance with the Project Details will be treated as a debt due to the Company and payable upon demand, without further proof of debt by the Company.

### **7. In-Kind Contributions**

7.1 In-Kind Contributions to a Project by Project Parties must be specified in the Project Details.

7.2 Each Project Party must make its In-Kind Contributions available for the Project at the times and in the manner specified in the Project Details.

7.3 The valuation of In-Kind Contributions for the purposes of this deed and any Research Contract must be undertaken in accordance with the Valuation Principles and must exclude the value of Intellectual Property contributions.

### **8. Project Funds**

8.1 Subject to any Special Conditions, the provision of a valid tax invoice by the Lead Party and its compliance with the Research Contract, the Company must pay the Project Funds to the Lead Party in the following instalments:

- (1) twenty five percent (25%) of the Project Funds budgeted for the first year of the Project, upon signing of the Project Details by the Company;
- (2) within 30 days after receipt by the Company of an expenditure report pursuant to clause 16.1(2)(f), the amount expended by the Project Parties as shown in that report until 80% of the total Project Funds for that Project have been paid; and

- (3) within 30 days after approval of the final report, project summary and final financial report submitted by the Lead Party pursuant to clauses 16.1(3) to 16.1(5) inclusive, the lower of:
- (a) the remaining twenty percent (20%) of Project Funds; or
  - (b) the total cash expenditure reported to the Company pursuant to clause 16.1(5)(a) less Project Funds paid, or payable, by the Company pursuant to clauses 8.1(1) and 8.1(2).
- 8.2 The Lead Party will make any necessary payments and disbursements of Project Funds to the other Project Parties, as set out in the Project Details.
- 8.3 The Company:
- (1) may withhold Project Funds:
    - (a) if any Milestones have not been achieved or Deliverables have not been provided by their requisite dates, until the Milestone is achieved or Deliverable has been provided as the case may be;
    - (b) if any Project Party has not provided a Project Contribution by the requisite date, until the Project Contribution has been made;
    - (c) if any Project Party has not provided a Report by the requisite date, until the Report is provided;
    - (d) if any Report provided by a Project Party is inaccurate or incomplete, until an accurate and complete replacement report is provided; or
    - (e) as otherwise provided in this deed and any Research Contract;
  - (2) may require the Lead Party to withhold Project Funds from any Project Party if any of the circumstances outlined in clause 8.3(1) exist.
- 8.4 If a Project Party has not paid a Cash Contribution that is due to the Company under a Research Contract, the Company is relieved from its obligation to pay to the Project Parties that proportion of the Project Funds corresponding to those unpaid Cash Contributions whilst they remain unpaid.
- 8.5 At the conclusion of a Project, each Project Party must repay to the Company any Project Funds:
- (1) overpaid to that Project Party by the Company; or
  - (2) overpaid to that Project Party by the Lead Party; or
  - (3) not spent or legally committed for expenditure by that Project Party in accordance with the relevant Research Contract.
9. **Use of Project Funds and other Project Contributions**
- 9.1 The Project Parties must use the Project Funds and other Project Contributions provided to them:
- (1) only for the purposes of the Project; and
  - (2) in accordance with the Project Details.

- 9.2 A Project Party must not use Project Funds for:
- (1) capital works or for the purchase, construction, renovation or extension of buildings and facilities; or
  - (2) reimbursement of the cash equivalent of its In-Kind Contributions.
10. **Specified Personnel**
- 10.1 Each Project Party agrees to make its Specified Personnel available for the Project in accordance with arrangements documented in the Project Details, which will include the time commitment of Specified Personnel and their responsibilities.
- 10.2 Specified Personnel of each Project Party will remain subject to the terms and conditions of employment of that Project Party and will be replaced on reasonable request by the Company if, in the Company's opinion, those Specified Personnel are not performing their obligations to an acceptable standard.
- 10.3 Each Project Party must ensure that any Project IP created by any of its Specified Personnel or any other person directed to work on the Project by that Project Party will be owned and dealt with according to the provisions of this deed and any Research Contract.
- 10.4 A Project Party may withdraw any of its Specified Personnel upon ninety (90) days written notice to the Company provided it replaces such personnel with persons who are reasonably acceptable to the Company. Where a Project Party is unable to provide 90 days notice (for example due to the sudden resignation of Specified Personnel) it must give the maximum amount of notice available in the circumstances. Any replacement Specified Personnel must have the time commitment, qualifications and competency to undertake the relevant activities to the standard required by the Project Details.
11. **Assets**
- 11.1 Unless otherwise agreed in writing:
- (1) a Project Party retains legal ownership of any Asset that it provides as part of its Project Contribution or that the Project Party acquires in whole or in part from Project Funds where the amount of Project Funds used to acquire the Asset is less than \$30,000; and
  - (2) the Company retains ownership of any Asset acquired in whole or in part from Project Funds where the amount of Project Funds used to acquire the asset is \$30,000 or more, irrespective of whether the Asset is purchased by, or situated within the premises of, a Project Party,
- each of those Assets being referred to in the rest of this clause as a **Contributed Asset**.
- 11.2 During the Term each Research Contract Party must:
- (1) make its Contributed Assets available for the Project and use by another Project Party or the Company, as the case may be, as and when required;
  - (2) not deal with its Contributed Assets in a manner that would prevent or hinder the ability of the Company or any Project Party to use the Contributed Asset as and when required for the purposes of the Project; and



- (3) unless the Company expressly permits otherwise, be responsible for insurance, maintenance and, if required, repair and replacement of its Contributed Assets, and any other costs and liabilities associated with maintaining its Contributed Assets in an acceptable state of repair.

## **PROJECT ACCOUNTING AND REPORTING**

### **12. No authority or agency**

- 12.1 Nothing in this deed or any Research Contract shall be taken to authorise or permit the Company or the Research Participant to incur any liabilities or undertake any obligations on behalf of, or in the names of, each other or any of the other Research Contract Parties, except as specifically authorised in a Research Contract.
- 12.2 Except as expressly permitted under this deed or a Research Contract, the Company shall not be taken to be an agent for any of the Project Parties.

### **13. Project Party accounts**

- 13.1 Each Project Party must keep separate financial accounts which record:
  - (1) its Cash Contributions;
  - (2) any payment of Project Funds made to it by the Company or another Project Party;
  - (3) all expenditure incurred by the Project Party utilising its allocation of Project Funds in carrying out the Project;
  - (4) any royalties, licence fees and Net Commercialisation Income paid to it by the Company; and
  - (5) any other expenditure associated with carrying out its obligations in the Project.
- 13.2 The Company shall keep financial accounts which shall record:
  - (1) the Cash Contributions received by it; and
  - (2) the Company's payments of Project Funds to the Lead Party and third parties.

### **14. Provision of information by Project Parties**

- 14.1 Each Project Party must provide to the Company, within 14 days of a written request from the Company (unless a lesser period is required under a Head Funding Agreement):
  - (1) all necessary information from the accounts referred to in clause 13, for the Company to:
    - (a) comply with the financial reporting requirements to the Company's Members;
    - (b) report to the Project Parties as required under this deed and any Research Contract;

- (c) comply with its reporting obligations to an Authority or to any third party under a Head Funding Agreement;
    - (d) conduct its operations in accordance with best practice principles of governance; and
  - (2) any other information reasonably requested by the Company relating to the Projects, which involve the Project Party.
- 14.2 Each Project Party is responsible for keeping separate documentation that records its In-Kind Contribution and it must provide such documentation to the Company if reasonably requested to do so by the Company.
- 14.3 Each Project Party warrants and represents that information provided to the Company and any other Project Party (including Reports provided to the Lead Party) are true and correct, and not false or misleading in any material particular, whether by the inclusion of information, the omission of information, or both.

**15. Project Leader**

- 15.1 If a Project Party is the Lead Party, that Project Party appoints the Project Leader to manage the Project and to report to the Company in accordance with clauses 15 and 16.
- 15.2 Each Project shall be managed by a Project Leader. The Lead Party must use its reasonable efforts to ensure that the Project Leader:
- (1) uses their reasonable efforts to ensure the Project is conducted:
    - (a) in accordance with the Project Details and any timeframes set out in the Project Details;
    - (b) so as to achieve the Milestones and Project Aims; and
    - (c) so as to provide the Deliverables;
  - (2) manages the day to day conduct of the Project;
  - (3) provides scientific leadership to the Project;
  - (4) is responsible for administration of all Project personnel including any students and Specified Personnel; and
  - (5) maintains financial, research, operational and technical records as directed by the Company.

**16. Lead Party Reporting**

- 16.1 The Lead Party of a Project must:
- (1) immediately report to the Company:
    - (a) any substantial deviation from the Project Details; and
    - (b) any matter which the Project Leader considers will, or may, affect the ability of the Project to meet the Project Aims, satisfy any Milestones, provide any Deliverables or to complete the Project within the Project

- Budget, including any failure of a Project Party to provide any of its Project Contributions;
- (2) until a final report is provided, provide a report to the Company within 2 weeks of the conclusion of every Quarter in a form reasonably required by the Company on:
    - (a) progress achieved on the Project and its scientific advances, outcomes, key achievements, Deliverables and Milestones;
    - (b) any matter which the Project Leader considers will, or may, affect the ability of the Project to meet the Project Aims, satisfy any Milestones, provide any Deliverables or be completed within the Project Budget, including any failure to provide Project Contributions;
    - (c) any significant difficulties encountered during the Project and measures taken or plans to resolve them;
    - (d) any Project IP created (including a description of the Project IP, when it was created and by whom);
    - (e) any Background IP used in the Project;
    - (f) for the Quarter and cumulatively, cash expenditure in relation to the Project, separately identifying payments to other Project Parties;
  - (3) provide a final report to the Company by the Project Completion Date in a form reasonably required by the Company containing:
    - (a) an executive summary;
    - (b) introduction;
    - (c) methodology;
    - (d) outcomes;
    - (e) application of research;
    - (f) conclusion;
    - (g) limitations/risks;
    - (h) recommendations;
    - (i) references; and
    - (j) any other information required to satisfy the requirements of a Head Funding Agreement;
  - (4) provide a Project summary to the Company by the Project Completion Date, in a form reasonably required by the Company, summarising the Project's:
    - (a) aims and objectives;
    - (b) key findings;
    - (c) application to industry; and

- (d) any other information required to satisfy the requirements of a Head Funding Agreement;
- (5) provide a final financial report, within 30 days of the Project Completion Date, containing:
  - (a) total cash expenditure in relation to the Project, separately identifying payments to other Project Parties;
  - (b) total staff In-Kind Contributions (in Full time equivalents) provided to the Project by each Project Party;
  - (c) total other In-Kind Contributions provided to the Project by each Project Party, separately identifying personnel (Full time equivalents) from facilities and other services; and
  - (d) any other information required to satisfy the requirements of a Head Funding Agreement;
- (6) provide, within 14 days of a request by the Company, any additional information or explanations reasonably required by the Company in relation to a Project or the reports contemplated by any of clauses 16.1(1) – (5) inclusive.

**17. Project Parties reporting to the Project Leader**

- 17.1 The Project Parties acknowledge that the Lead Party will require information on Project Contributions and the status and results of the Project from time to time in order to fulfil its obligations under a Research Contract.
- 17.2 Each Project Party agrees to provide such information within 5 Business Days after a request by the Project Leader unless otherwise mutually agreed or required in a lesser time period due to the requirements of a Head Funding Agreement.
- 17.3 Each Project Party must notify the Project Leader within 5 Business Days of becoming aware of a breach or suspected breach of this deed or any Research Contract that would affect the Company's ability to comply with its obligations under a Head Funding Agreement, including identifying to the Project Leader the steps that the Project Party intends to take to resolve the matter.
- 17.4 The Company or its nominated representatives may conduct audits relevant to the performance of the Research Participant's obligations under this deed and any Research Contracts. Audits may be conducted of:
  - (1) the Contributed Assets;
  - (2) the accuracy of the Research Participant's invoices and reports;
  - (3) the Research Participant's compliance with its privacy and confidentiality obligations;
  - (4) material, including books and records which are in the possession of the Research Participant and relevant to the research activities; and
  - (5) any other matters relevant to the Company's compliance with its obligations under a Head Funding Agreement.

The requirement for, and participation in, audits does not in any way reduce the Research Participant's responsibility to perform its obligations in accordance with this deed or any Research Contract.

## **PROJECT OUTCOMES & INTELLECTUAL PROPERTY**

### **18. Carrying out the Project**

18.1 The Project Parties must carry out the Project:

- (1) in accordance with the Project Details, including the Project Budget;
- (2) to a professional standard;
- (3) in accordance with all applicable Laws;
- (4) so as to do all things reasonably necessary or desirable to achieve the Project Aims;
- (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; and
- (8) when research in Australia is conducted on or involves humans or animals, in accordance with 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 ethics committee requirements.

### **19. Background IP**

19.1 Each Project Party will make its Background IP available to the Project as specified in the applicable Project Details and this clause 19.

19.2 Each Project Party represents and warrants to the other Project Parties and the Company that:

- (1) to the best of the Project Party's information, knowledge and belief as at the date Background IP is provided for the relevant Project, the Project Party is the owner of, or is otherwise entitled to provide, the Background IP which it makes available for the Project;
- (2) to the best of the Project Party's information, knowledge and belief, there are no third party Intellectual Property rights comprised in the Background IP for which the Research Contract Parties are required to pay any additional fee, or obtain any additional licence, which is not already contemplated by this deed or the Research Contract;
- (3) except to the extent:
  - (a) disclosed in the Project Details; or
  - (b) in the case of any Background IP not specified in the Project Details, notified in writing to the other Research Contract Parties at the time of offering such Background IP,

the Project Party has not entered any agreement regarding, or otherwise dealt with, that Background IP in a manner that is inconsistent with the rights granted to the other Research Contract Parties as described in the Project Details or this clause 19; and

- (4) it will not 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 Research Contract Parties as described in the Project Details or this clause 19.

## 20. **Licence to Background IP**

20.1 Each Project Party grants an irrevocable, non-exclusive, royalty-free, worldwide licence (including a right to sublicense) to the other Research Contract Parties (**Licensees**), to use that Project Party's Background IP, for the purposes of carrying out a Project, subject to compliance by the Licensees with clause 21 and any restrictions on its use:

- (1) specified in the Project Details; or
- (2) in the case of any Background IP not specified in the Project Details, notified in writing to the Licensees at the time of offering such Background IP.

## 21. **Obligations on Project use**

21.1 Where a Licensee is granted a licence under clause 20 for the use of Background IP contributed by another Project Party (**contributing Party**) for a Project, the Licensee must:

- (1) use that Background IP only for the purposes of carrying out the Project and not for any other purpose;
- (2) keep confidential and not disclose that Background IP or any documents or material containing or referring to that Background IP that may prejudice the subsistence of any Intellectual Property in that Background IP (or the ability to register rights in that Background IP with an applicable Authority);
- (3) only disclose that Background IP to its:
  - (a) employees and contractors;
  - (b) directors and officers; and
  - (c) students referred to in clause 51,

who have a need to know for the purposes of the Project (and only to the extent that each has a need to know) and ensure that those persons comply with the obligations under this clause;

- (4) comply with any restrictions on use of the Background IP specified or notified by the contributing Party pursuant to clause 20; and
- (5) on the contributing Party's request, immediately deliver to the contributing Party all documents or materials containing or referring to the Background IP which are:
  - (a) in its possession, power or control; or

- (b) in the possession, power or control of persons who have received the Background IP under clause 21.1(3),

except to the extent that it reasonably requires the Background IP for the purpose of performing its obligations or exercising its rights under this deed, a Research Contract or under applicable Laws.

**22. Licence to Project Parties' Background IP for Commercialisation**

22.1 Each Project Party will grant a licence to the Company, on reasonable commercial terms to be agreed by the Project Party and the Company, to use the Project Party's Background IP for the purposes of Commercialising Project IP from the Project (including the right to sub-license) provided that:

(1) the Project IP has been developed using that Background IP in accordance with the relevant Research Contract; and

(2) that Background IP is required for the Commercialisation of such Project IP,

subject to any restrictions on its use that have been specified or notified in accordance with clause 20.

**23. Acknowledgements**

23.1 Subject to the rights granted in the relevant Research Contract and this deed, the Research Contract Parties acknowledge and agree that a Project Party retains the right to control its Background IP and that ownership of the Background IP does not change, with any Improvements to Background IP being owned in accordance with clause 32.

23.2 If and to the extent that, Background IP is made available by a Project Party and used in a Project without being notified to the Company at the time of making the Background IP available, then that Project Party warrants and represents to the Company and other Project Parties that:

(1) there are no applicable restrictions, limitations or conditions on the use of the Background IP;

(2) no fee or other remuneration will be payable for the licence of that Background IP for Commercialisation purposes; and

(3) all of the covenants in clauses 19 to 22 of this deed and any Research Contract will continue to apply to that Background IP.

**24. Register of Background IP**

24.1 The Company shall maintain a register recording all Background IP provided under Research Contracts, including any encumbrances or restrictions on its use specified or notified in accordance with clause 20.

**25. Infringement of Background IP**

25.1 The Research Contract Parties agree that they will take all necessary steps to provide each other with prompt notice of any infringement of Background IP that comes to their attention.

26. **Project IP**

26.1 Upon its creation, Project IP will be owned as follows:

- (1) the Company will be the owner of the legal interest in the Project IP;
- (2) to the extent that one or more Project Parties are allocated a Project Share in the relevant Project Details, the beneficial interest in the Project IP will be owned by:
  - (a) the Project Parties allocated a Project Share; and
  - (b) the Company,as tenants in common in the Project Shares, with the Company holding the interest of the Project Parties in the Project IP on trust; and
- (3) in all other cases, the Company will be the sole legal and beneficial owner of Project IP.

26.2 The Company is entitled to be indemnified out of the assets of a particular trust created by, or pursuant to, this deed or a Research Contract for any liability incurred by the Company as trustee of the relevant Project IP (except for breach of fiduciary duty). This entitlement survives the termination of this deed and any Research Contract.

27. **Variations to Project Shares**

27.1 Subject to clause 27.3, if a Project Party has been allocated a Project Share pursuant to clause 26.1(2) and the Project Contributions contributed by that Project Party during the Project are less than those specified in the Project Details, that Project Party's Project Share will be proportionately reduced in accordance with the following formula:

$$\text{New Project Share} = \frac{\text{APC}}{\text{BPC}} \times \text{Current Project Share}$$

where:

**APC** refers to actual Project Contributions provided to the Project by or on behalf of the Project Party;

**BPC** refers to Project Contributions of that Project Party specified in the Project Details;

**Current Project Share** refers to that Project Party's Project Share set out in the Project Details incorporating any prior agreed Variation; and

**New Project Share** refers to that Project Party's Project Share after application of this clause 27.1.

27.2 Upon application of clause 27.1, each Research Contract Party that has not been subject to clause 27.1 (**Remaining Research Contract Parties**) will have its Project Share increased by such amount as is necessary so that the total of all Research Contract Parties' Project Shares equals 100%, and the Remaining Research Contract Parties' Project Shares are in the same proportion as before the application of clause 27.1.

27.3 If the total Project Shares detailed in the Project Details (as amended by any prior Variation) do not equal 100%, then before any other amendments to Project Shares



pursuant to a Research Contract or Variation, each Project Share will be proportionately adjusted according to the following formula:

$$\text{New Project Share} = \frac{\text{Current Project Share}}{\text{Total Project Shares}} \times 100$$

where:

**Current Project Share** refers to that Research Contract Party's Project Share set out in the Project Details (incorporating any prior agreed Variation); and

**Total Project Shares** refers to the sum of all Project Shares set out in the Project Details (incorporating any prior agreed Variation); and

**New Project Share** refers to that Research Contract Party's Project Share after application of this clause 27.3.

28. **Vesting of ownership of Project IP**

- 28.1 The Project Parties must co-operate and promptly do all acts and things and execute all documents at their own cost, as may be necessary for the purpose of vesting ownership of the legal and beneficial interest in the Project IP as required under each Research Contract.

29. **Dealing with Project IP**

- 29.1 Each Project Party must:

- (1) use its reasonable efforts to ensure that itself and its Specified Personnel, employees, agents, contractors, students under their supervision or other persons participating in the Project:
  - (a) respond to a request from the Company to provide information in their possession about Project IP that has been developed by the Project Party or is under development by the Project Party;
  - (b) identify Project IP generated or developed by them;
  - (c) promptly communicate details of Project IP to the Project Leader;
  - (d) do not engage in any acts or omissions which may prejudice the protection of Project IP, including any Intellectual Property rights;
  - (e) do not Commercialise, dispose of, encumber or otherwise deal with or enter any agreement in relation to any interest that it might hold in Project IP, except as authorised in this deed or a Research Contract; and
  - (f) do not seek to revoke any appointment of the Company as trustee of that Project Party's interest in the Project IP, except in circumstances of wilful default or fraud by the Company and with the prior written agreement of all other Project Parties who have a Project Share in the relevant Project IP.
- (2) not deal with, Commercialise, dispose of or encumber any interest which it might hold in Project IP, without the written consent of the Company.

- 29.2 The Project Parties must provide the Company with prompt written notice of any infringement of Project IP which comes to their attention and each Project Party agrees to give the Company all assistance which it may reasonably require in order to protect the Project IP (but only if the Company pays the prior agreed reasonable costs and expenses of doing so) and any other information which the Company may reasonably require.
- 29.3 The Company must maintain an IP register recording Project IP notified to the Company, containing at least the following details:
- (1) date of entry on register;
  - (2) description of Project IP; and
  - (3) identity of the inventor(s) and the Project Parties that developed the Project IP; and
  - (4) details of any agreements made by the Company with Project Parties or with third parties in relation to disclosure or use of the Project IP.

30. **Company use of Project IP**

30.1 The Company may at all times:

- (1) Commercialise the Project IP in accordance with clause 35;
- (2) use the Project IP for the Project and for research, training and education purposes of the Company; and
- (3) license any person to use the Project IP for research, training and education purposes of the Company on such terms and conditions as it may determine in its absolute discretion.

and must not use or license the Project IP for any other research, training and education purposes except with the written consent of all Project Parties participating in the particular Project which gave rise to the Project IP.

31. **Project Parties' use of Project IP**

31.1 In relation to Project IP arising under a Project in which a Project Party is involved, that Project Party has a non-exclusive, royalty-free right to use that Project IP:

- (1) for the purpose of undertaking the Project in accordance with the Research Contract;
- (2) for internal, non-commercial purposes including research and teaching within its own organisation; and
- (3) emergency use where a Project Party has statutory or regulatory obligations to respond to the emergency,

provided that the Project Party maintains the confidentiality of Confidential Information and does not prejudice the Company's ability to:

- (1) protect the Project IP;
- (2) use the Project IP to achieve the APRIL Objectives; or

- (3) maximise the commercial return from any Project IP that the Company reasonably considers has commercial potential.
- 31.2 The rights granted to Project Parties under clause 31.1 do not permit the Research Participant or any other person to use Project IP if the Research Participant or that other person is not identified in the Project Details as a Project Party in the Project within which the Project IP was created.
- 31.3 If the Research Participant wishes to use Project IP for any purpose not authorised under clause 31.1, the Research Participant must obtain a licence from the Company authorising such use. The grant of any such licence will be at the Company's absolute discretion and must include, at a minimum, provisions governing ownership and Commercialisation of further Intellectual Property developed from such use.

## 32. **Intellectual Property in Improvements**

- 32.1 Any Improvements made to Background IP or Project IP in the course of carrying out a Project will, for the purposes of this deed and any Research Contract:
- (1) comprise Project IP;
  - (2) be owned in accordance with clause 26.1 and each Project Party will undertake at its own cost and expense such acts which are necessary or desirable to vest ownership of the Improvements in that manner; and
  - (3) be licensed to other Project Parties in accordance with this deed and the relevant Research Contract.
- 32.2 A Project Party must notify the Company of any Improvements as soon as practicable after the Improvement is created.

## 33. **Decision to protect Project IP**

- 33.1 The Company must decide whether any Project IP warrants pursuing patent protection, or other forms of Intellectual Property protection, and if it does, in which countries protection should be sought.
- 33.2 Unless otherwise agreed by the Company, the Company is to apply for, maintain and prosecute any form of Intellectual Property protection determined under clause 33.1.
- 33.3 The APRIL Account may be drawn upon by the Company to meet all costs associated with applying for, maintaining and prosecuting patent or any other form of Intellectual Property protection associated with Project IP (including any action for infringement of the Project IP) and the application, maintenance and prosecution of any actions which may be associated with any such Project IP.

## 34. **Registration in Company name**

- 34.1 If patenting or other registrable forms of Intellectual Property protection of Project IP is pursued, such registration:
- (1) is to be in the Company's name; and
  - (2) where required, will identify:
    - (a) the inventors of the Project IP; and

- (b) the beneficial owners of the Project IP.

**35. Commercialisation of Project IP**

- 35.1 The Company has the exclusive right to Commercialise the Project IP at its discretion (including a right to sublicense), provided that the Company:
- (1) complies with all obligations under this deed, the relevant Research Contract and any requirements in the Project Details regarding Commercialisation; and
  - (2) endeavours to achieve the APRIL Objectives.
- 35.2 The Company will, within 30 days of being requested to do so by the Project Parties to a relevant Project, provide those Project Parties with a report of its progress and strategies for Commercialisation of the Project IP emanating from that Project.

**36. Discretion of Company**

- 36.1 The Company may:
- (1) determine that Commercialisation of Project IP may be undertaken by itself, a Member, a Project Party, a related entity or related body corporate of the Company (as defined in the *Corporations Act 2001* (Cth)), any other person or any combination of them;
  - (2) grant licences to persons who will undertake Commercialisation of the Project IP; and
  - (3) enter into such other arrangements as the Company sees fit to achieve the Commercialisation of the Project IP.
- 36.2 For the avoidance of doubt, no Project Party or any other person involved in a Project has the power to veto a decision of the Company regarding Commercialisation of Project IP.

**37. Commercialisation Income**

- 37.1 Subject to clause 39, if one or more Project Parties has a Project Share, the Company holds all Commercialisation Income with respect to Project IP (other than its own proportion) on trust for the respective Project Parties as tenants in common in proportion to their respective Project Shares.
- 37.2 Subject to compliance with the APRIL Objectives, the Company may apply its proportion of the Commercialisation Income to such purposes as it sees fit.

**38. Commercialisation records**

- 38.1 The Company must keep written records of:
- (1) all Commercialisation Income it receives;
  - (2) all Commercialisation Expenses it incurs; and
  - (3) Net Commercialisation Income payments to each Project Party.

38.2 Upon reasonable notice to the Company, a Project Party allocated a Project Share in respect of a Project, or its nominated representatives, may conduct an audit of Net Commercialisation Income paid to it in respect of that Project for the previous Financial Year within three months of the due date for payment of Net Commercialisation Income.

39. **Commercialisation Expenses**

39.1 The Project Parties agree that the Company may use the Commercialisation Income from Commercialisation of Project IP to pay Commercialisation Expenses or reimburse the Company for previously incurred Commercialisation Expenses incurred in connection with the Commercialisation of that Project IP.

39.2 For the avoidance of doubt, the Project Parties acknowledge that the Company may in any Financial Year use Commercialisation Income received in that Financial Year to reimburse Commercialisation Expenses incurred in previous Financial Years.

40. **Payment of Net Commercialisation Income**

40.1 Subject to clause 40.2, by 31 August each year, the Company must remit to each Project Party its share of Net Commercialisation Income with respect to the Project IP for the previous Financial Year corresponding to Project Shares as at 30 June that year.

40.2 Where the Company, acting reasonably, considers:

- (1) that Commercialisation Expenses will be incurred in the Financial Year that Net Commercialisation Income is due to be paid to the Project Parties; and
- (2) those Commercialisation Expenses are unlikely to be covered by expected Commercialisation Income to be received by the Company in that Financial Year,

then the Company may retain the amount of Net Commercialisation Income that it estimates will be required to pay the excess of those Commercialisation Expenses over the expected Commercialisation Income to be received by the Company in that Financial Year.

41. **End of Trustee Appointment**

41.1 The Company may retire as trustee with respect to specified Project IP by giving at least 3 months' notice in writing to the Project Parties. On resignation as trustee the Company:

- (1) must sign and execute all documents which are necessary or convenient to vest the Commercialisation Income and/or the Project IP in the Project Parties that are beneficially entitled to it or as they direct; and
- (2) except in cases of negligent or unlawful act or omission, wilful misconduct, wilful default or fraud, the Company will be released from any and all Claims of the Project Parties arising from, or in connection with, the Company's role as trustee of the specific Project IP.

41.2 Any trust in relation to Project IP and the provisions of this clause 41 survives termination of this deed, the relevant Research Contract or Project, provided that following termination of this deed or the relevant Research Contract or Project, the

Research Participant may revoke a trust with respect to specified Project IP for which it has beneficial ownership rights if either of the following requirements are satisfied:

- (1) all of the remaining Project Parties that have a beneficial interest in that Project IP unanimously agree with the Research Participant to revoke the trust with respect to that specified Project IP for which they each have beneficial ownership rights; or
- (2) the Company has engaged in negligent or unlawful act or omission, wilful misconduct, wilful default or fraud in its capacity as trustee of the specified Project IP,

provided that, in either case, the Research Participant does not revoke, seek to revoke, or unilaterally amend any licence of the Project IP issued in accordance with the relevant Research Contract or this deed

## ALLOCATION OF RISK

### 42. Mutual Indemnities

42.1 Subject to clauses 42.2 and 42.3, each Research Contract Party (the **indemnifying Party**) irrevocably and unconditionally indemnifies and agrees to keep indemnified each of the other Research Contract Parties and their respective directors, officers, employees, 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) the use or disposal of Assets by the indemnifying Party in breach of this deed or a Research Contract, irrespective of whether those Assets are contributed to the relevant Project by the indemnifying party or some other party;
- (2) the breach of Confidential Information or personal information obligations by the indemnifying Party;
- (3) any breach of this deed or a Research Contract by the indemnifying Party;
- (4) any unlawful or negligent act or omission by the indemnifying Party or any of its directors, officers, employees, agents or contractors arising in connection with this deed or a Research Contract; or
- (5) the exercise by the indemnifying Party of any rights granted to it in relation to Project IP or Background IP.

42.2 The indemnity given by an indemnifying Party pursuant to clause 42.1 shall be reduced proportionately to the extent that the liability, loss, harm, damage, cost or expense referred to in clause 42.1 was caused or contributed to by:

- (1) any breach of this deed or a Research Contract by any of those indemnified;
- (2) any wilful default, unlawful or negligent act or omission by any of those indemnified or any of their directors, officers, employees, agents or contractors; or
- (3) the failure of those indemnified to take reasonable steps to mitigate the liability, loss, harm, damage, cost or expense.

- 42.3 Nothing in clause 42.1 or any other provision of this deed or Research Contract will render an indemnifying Party liable for any special, indirect or consequential loss or damages (including loss of income or profits) arising under or pursuant to this deed or a Research Contract.
- 42.4 Each of those indemnified under clause 42.1 must promptly notify every indemnifying Party of any event or circumstance that may reasonably give rise to those indemnified relying upon the indemnity in clause 42.1.
- 42.5 This clause is a continuing obligation, separate and independent of each Party's other obligations and shall survive the expiration or, where relevant, earlier termination of this deed or the relevant Research Contract and will continue to apply (both as a right and as an obligation) to any Project Party who is expelled or withdraws from a Project.

#### 43. **Insurance**

- 43.1 Each Research Contract Party must effect and maintain on an “occurrence basis”, adequate insurance for the term of each Research Contract that a prudent person would hold with the following minimum insurance amounts with an insurance company authorised by the Australian Prudential Regulation Authority or as otherwise approved by the Company:
- (1) workers' compensation insurance for an amount required by the relevant State or Territory legislation;
  - (2) public liability insurance for ten million dollars (\$10,000,000) or more per claim; and
  - (3) professional indemnity insurance for five million dollars (\$5,000,000) or more per claim.
- 43.2 A Project Party may act as its own insurer provided that it receives the consent of the Company. Consent is deemed to have been provided for any Project Party that is a self-insuring Authority.
- 43.3 Each Project Party must provide the Company with a certificate of currency of its relevant insurance policies within 10 days of receiving a written request to do so by the Company.

### **CHANGES AND TERMINATION**

#### 44. **Amendments to Projects**

- 44.1 Any amendment or change to a Project, including to Milestones or Deliverables, will not take effect until a Variation has been signed by all Research Contract Parties. Unless agreed otherwise in writing, the Research Participant will not receive any further remuneration, operational or financial incentive for work performed in relation to a Variation, beyond any allocation of funds or other resources specified in the Variation.

#### 45. **Withdrawal from Project**

- 45.1 The Research Participant may withdraw from a Project by giving 6 months notice to each other Research Contract Party.

45.2 If the Research Participant withdraws from a Project the remaining Project Parties must meet with the Company for the purpose of agreeing on whether or not to continue the Project or a Variation of the Project and the terms to which that continuation would be subject, including how any students involved in the Project will complete their studies.

45.3 The Research Participant may not withdraw from a Project without the agreement of the other Research Contract Parties if it would result in any of the other Research Contract Parties being in breach of any agreement with a third party, including a breach of a Head Funding Agreement.

46. **Expulsion from a Project**

46.1 The Company may expel the Research Participant (the **Defaulting Participant**) from a Project, provided Due Cause has arisen with respect to the Defaulting Participant and remains unremedied for a period of at least 21 days following written notice to the Defaulting Participant, outlining the Due Cause and what is required to remedy it.

46.2 For the purposes of clause 46.1, **Due Cause** means:

- (1) failure to make Project Contributions when required by the Project Details;
- (2) unauthorised use or Commercialisation of Project IP or Background IP;
- (3) any other material breach of a Research Contract in relation to the Project, including a failure to obtain relevant ethics approvals or to comply with applicable Laws in carrying on the Project;
- (4) a change or proposed change to personnel, including the Specified Personnel, that is likely to adversely affect the Project;
- (5) failure to remedy a Conflict in relation to the Project under clause 57 to the satisfaction of the Company;
- (6) a change in the direct or indirect beneficial ownership or control of the Research Participant that adversely affects, or could reasonably be expected to adversely affect, its ability to comply with its obligations under this deed or a Research Contract;
- (7) disposal of the whole or any part of the Research Participant's assets, operations or business other than in the ordinary course of business;
- (8) ceasing to carry on business;
- (9) becoming insolvent, bankrupt or subject to the appointment of a mortgagee, a receiver or manager or winding up proceedings, or making any arrangement or composition for the benefit of creditors;
- (10) appointment of an investigator to investigate its affairs; or
- (11) assignment of its rights or obligations under this deed or a Research Contract, other than in accordance with clause 64 (Assignment).



**47. Consequences of withdrawal or expulsion from Project**

47.1 If the Research Participant withdraws or is expelled from a Project, the Research Participant will from the effective date of the withdrawal or expulsion:

- (1) cease to be a Project Party in relation to that Project;
- (2) forfeit any rights to a beneficial interest in the Project IP and a share of the Net Commercialisation Income with respect to such Project IP, and must sign any documents necessary to give effect to an assignment of those rights to the remaining Project Parties, pro rata in proportion to their respective Project Shares;
- (3) subject to clause 47.2, relinquish all rights with respect to the Project and Project IP; and
- (4) be relieved of its obligations to make Project Contributions in relation to that Project, to carry out, participate in, report on (unless such report is required by a Head Funding Agreement) or manage that Project.

47.2 The withdrawal or expulsion of the Research Participant from a Project:

- (1) will not affect the enforceability of any obligations of the Research Participant or rights against the Research Participant accrued up to and including the effective date of withdrawal or expulsion;
- (2) will not affect the rights and obligations of the Research Participant or other Research Contract Parties under any other Research Contract to which it is a party;
- (3) will not relieve the Research Participant of the obligations imposed upon it under this deed other than as specified in clause 47.1(4);
- (4) will not affect any licences of Background IP granted by the Research Participant for the Project, which will continue in accordance with clauses 20 and 22 for as long as the Background IP is required for the Project or Commercialisation, as contemplated by those clauses; and
- (5) subject to clause 45.2, will not relieve the remaining Project Parties of their obligations under the Research Contract with respect to the Project and they shall continue to carry out the Project and perform the terms of the Research Contract for that Project.

**48. Termination of Projects by the Company**

48.1 The Company may terminate a Project upon 30 days written notice to the Project Parties if:

- (1) a Milestone is not achieved by the date by which it was required to be achieved and remains outstanding for a period of at least 30 days following a written notice from the Company to the Project Parties (or such extended period of time specified by the Company in the notice);
- (2) a Deliverable has not been provided by the date by which it was required to be provided and remains outstanding for a period of at least 30 days following a notice from the Company to the Project Parties (or such extended period of time specified by the Company in the notice);

- (3) a Report required by clause 16 is not provided by the due date and remains outstanding for a period of at least 30 days following a notice from the Company to the Project Parties (or such extended period of time specified by the Company in the notice);
- (4) its Research Contract with one or more of the other Project Parties to the Project is terminated;
- (5) any Project Party, including the Research Participant, withdraws or is expelled from the Project;
- (6) the Head Funding Agreement for the Project is terminated or a substantial portion of monies under that Head Funding Agreement are withheld or clawed back from the Company;
- (7) in the reasonable opinion of the Company, after consultation with the Project Parties, the Project Aims are unlikely to be achieved and remain unlikely to be achieved for a period of at least 30 days following a notice from the Company to the Project Parties of such opinion (including any supporting reasons for the opinion);
- (8) a Critical Milestone is unlikely to be achieved, or has not been achieved; or
- (9) a review of a Stop/Go Milestone indicates that:
  - (a) the ongoing conduct of the Project is unlikely to yield commercially useful results, in the reasonable opinion of the Company; or
  - (b) the criteria set out in the Stop/Go Milestone for continuation of the Project have not been met.

**49. Consequences of termination of Project**

- 49.1 If a Project is terminated pursuant to clauses 48.1(7) to 48.1(8) inclusive (regarding likelihood of achievement of Project Aims and Critical Milestones), then the Company must reimburse (or require the Lead Party to reimburse to the extent of Project Funds received by the Lead Party and not expended) each Project Party for its reasonable expenses necessarily incurred as a result of the early termination (if any), up to a total amount for each Project Party which would not exceed the balance of the Project Funds that would have been paid to that Project Party if there had been no early termination. The Project Parties acknowledge and agree that the reimbursement of those expenses, whether in accordance with this clause 49.1 or clause 49.2, will fully and finally satisfy all Claims of the Project Parties against the Company resulting from the early termination of the Project.
- 49.2 If there are insufficient funds in the APRIL Account to reimburse all expenses, each Project Party will be reimbursed out of the APRIL Account on a pro-rata basis according to their respective Project Contributions to the relevant Project at the date of termination.
- 49.3 Subject to clause 49.1, termination of a Project for any reason will be without prejudice to the continuing enforceability of any rights or obligations of the Research Contract Parties accrued at the time of termination.

**50. Termination of deed**

- 50.1 Subject to clause 50.2, either Party may terminate this deed upon 3 months written Notice to the other Party.
- 50.2 Neither Party may give Notice of termination of this deed under clause 50.1 if the Research Participant has any remaining obligations to complete a Project under a Research Contract.
- 50.3 The Company may terminate this deed on 30 days written Notice upon the occurrence of any of the circumstances listed in clauses 46.2(2), 46.2(3), or 46.2(6) to 46.2(11) inclusive.
- 50.4 Termination of this deed 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.

**OTHER MATTERS**

**51. Student Involvement**

- 51.1 Project Parties who have enrolled students that participate in a Project, or who have students under their supervision, acknowledge and agree that:
- (1) they must ensure that those students comply with all clauses of this deed relating to Project IP, Background IP and Confidential Information;
  - (2) subject to clause 52, they must ensure that Project IP developed by the student is owned in accordance with clause 26; and
  - (3) 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 setting out the terms on which the student is involved in the Project, which shall be consistent with the principles in this clause and clause 52.

**52. Student Thesis**

- 52.1 Where a publication is a postgraduate student's thesis, then:
- (1) the Research Contract Parties acknowledge and agree that the student retains ownership of copyright in the thesis authored by the student, to the extent that such copyright does not comprise any part of the Project IP, Background IP or Confidential Information of a Research Contract Party;
  - (2) the thesis may be submitted for examination in accordance with the normal procedures of the Project Party at which the student is enrolled (the **University Party**) provided that:
    - (a) the Chief Scientist is first notified by the University Party that the thesis is to be submitted for examination;
    - (b) the examiners are subject to written obligations of confidentiality that are at least equivalent to those imposed on a Research Contract Party under clause 54; and

- (c) the Chief Scientist is provided with a copy of the thesis;
- (3) the Research Contract Parties acknowledge the application of a University Party's Rules and aside from the obligations in this clause 52.1, nothing in this deed will override the operation of those Rules; and
- (4) the University Party must comply with any reasonable request of the Chief Scientist including a request necessary to protect Confidential Information, Background IP or Project IP or any utilisation strategy for those things by either:
  - (a) placing the thesis on restricted availability; or
  - (b) placing any Confidential Information contained in the thesis into a separate schedule to be placed on restricted availability,

for a period of 18 months or the maximum period permitted under the applicable University Party's Rules.

### 53. Other Publications

- 53.1 The Project Parties acknowledge that the dissemination of knowledge is an important function of the Company. Nonetheless, the Project Parties shall not publish any information or material arising from a Project except in accordance with this clause 53.
- 53.2 The Company may publish information or material arising from a Project if it decides at its absolute discretion that the information or material meets the Publication Requirements.
- 53.3 At least 30 days prior to any submission for publication, a Project Party wishing to publish information or material arising from the Project (**Requesting Party**) must forward a written request 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.
- 53.4 The Company must notify the Requesting Party of its decision as to publication of the relevant information or materials within 30 days of receipt of a request.
- 53.5 If the Company acting reasonably decides that the Requesting Party's publication meets the Publication Requirements, then the Company will notify the Requesting Party that permission to publish has been granted. The Company's consent may be subject to any conditions that the Company may reasonably impose, including acknowledgments of the Company's role in, and contribution to, the creation of the information or material in the publication.
- 53.6 If the Company acting reasonably decides that the publication does not meet the Publication Requirements, 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 meets the Publication Requirements; or
  - (2) if altering the publication is impractical, delay publication for a stipulated period as reasonably determined by the Chief Scientist, but not exceeding 18 months from the date of the request.

53.7 Each Project Party must ensure that any of its Publications acknowledges the contributions (if any) made by the other Project Parties and the support of the Company:

- (1) unless otherwise directed by the Project Parties or the Company, as the case may be; and
- (2) provided that a Project Party may not use the logo of any other Research Contract Party without its prior written consent.

54. **Confidential Information**

54.1 Unless authorised under this clause, each Research Contract Party must not publish or disclose to any third party any information or material arising from carrying out a Project.

54.2 Except as otherwise provided in this clause, each Research Contract Party must keep confidential and not disclose any Confidential Information of another Research Contract Party.

54.3 Each Research Contract Party may:

- (1) use Confidential Information of another Research Contract Party solely for the purposes of carrying out its obligations under a Research Contract or this deed;
- (2) disclose Confidential Information to its:
  - (a) employees;
  - (b) directors and officers; and
  - (c) legal, financial or other professional advisers,

who have a need to know for the purposes of a Research Contract (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 54.8;

- (3) use and disclose Confidential Information of another Research Contract Party where authorised under a Research Contract;
- (4) disclose Confidential Information to the extent required by applicable Laws; and
- (5) if the Research Contract Party is the Commonwealth or a State or Commonwealth agency, disclose Confidential Information to its responsible Minister or in response to a request by a House or a Committee of the Parliament of the State, Territory or the Commonwealth of Australia, in which case the Research Contract Party must, to the extent practicable, first consult with and take into account the reasonable requirements of the Company.

54.4 The obligations imposed on a Research Contract Party by this clause will not apply to Confidential Information which:

- (1) is or becomes part of the public domain, other than as a result of an unauthorised act or omission by that Research Contract Party;
- (2) is received by a Research Contract Party from a third party without any obligation of confidence and which Confidential Information has not been

obtained by that third party directly or indirectly from any Research Contract Party;

- (3) is independently developed by an employee or officer of the Research Contract Party, whilst having no knowledge of the Confidential Information;
- (4) in the case of Confidential Information, the Research Contract Party claiming confidentiality has agreed may be disclosed by that other Research Contract Party; or
- (5) in the case of Confidential Information generated in carrying out a Project, the Company has agreed may be disclosed by that other Research Contract Party,

as evidenced in writing to the reasonable satisfaction of the Company.

- 54.5 A Research Contract Party is not obliged to maintain the confidentiality of its own Confidential Information.
- 54.6 The receiving Research Contract Party has the onus of establishing that any of the above exceptions apply.
- 54.7 Confidential Information will not be taken to be in the public domain merely because it contains, or is combined with, other information in the public domain.
- 54.8 Each Research Contract Party must use its reasonable efforts to ensure that:
- (1) its respective employees, directors, officers and advisers who participate in the Project or obtain access to Confidential Information, comply with the obligation of confidentiality under this clause as though they were parties to the Research Contract; and
  - (2) any of the abovementioned employees, directors, officers and advisers who cease to be employees, directors, officers or advisers continue to be bound by such obligations of confidentiality.
- 54.9 The obligations of confidentiality imposed on a Research Contract Party will survive expiry or termination of a Research Contract, including the Research Contract Party's expulsion or withdrawal from a Project.

## 55. **Public announcements**

- 55.1 The Company is principally responsible for making public announcements about the Project and a Project Party must not make any public announcement in relation to a Project or a Research Contract without obtaining the Company's approval, except if:
- (1) required by Laws or a regulatory body (including a relevant stock exchange), in which case the Project Party must, to the extent practicable, first consult with and take into account the reasonable requirements of the Company; or
  - (2) the proposed public announcement is already publicly available and widely known and has been previously approved by the Company for publication in substantially the same form

**56. Use of Research Contract Party's name**

- 56.1 A Research Contract Party must not use the name or logo of any other Research Contract Party without the prior written consent of that Research Contract Party

**57. Conflicts**

- 57.1 , To the best of its knowledge:

- (1) the Research Participant warrants to the Company that at the date of signing this deed no Conflict exists or is likely to arise in the performance of any anticipated Project; and
- (2) each Project Party warrants to the other Research Contract Parties that by signing any Project Proposal no Conflict exists or is likely to arise in the performance of the Project described in that Project Proposal.

- 57.2 If a Conflict arises during a Project, or is reasonably expected to arise, the Affected Party agrees to:

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

- 57.3 The Company will maintain a register of Conflicts disclosed under this deed and any Research Contract.

- 57.4 Nothing in this clause prevents a Project Party carrying out research independently of the Project, whether inside or outside the field of research covered by the Project.

**58. Dispute Resolution**

- 58.1 If a dispute arises out of this deed or a Research Contract (**Dispute**), a Party must comply with this clause 58 before commencing arbitration or court proceedings (except proceedings for interlocutory relief).

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

- 58.3 During the 14 days after a notice is given under clause 58.2 (or such longer period agreed in writing between the Parties), each Party to the Dispute must use its reasonable efforts to resolve the Dispute and if necessary involve the Chief Executive Officers or other senior officers of the Parties directly in the negotiations.

- 58.4 If the Parties cannot resolve the Dispute within that period, they must either:

- (1) if the Dispute relates to a matter of valuation of Project Contributions, Project Shares or other Intellectual Property:

- (a) refer the Dispute to an independent valuer of a minimum of five (5) years' experience and agreed between the Parties, or in the absence of agreement between the Parties within seven (7) days, a valuer appointed by the President of Chartered Accountants Australia and New Zealand ABN 50 084 642 571; and
    - (b) the appointed valuer must determine the Dispute in accordance with the Valuation Principles; or
  - (2) in respect of any other Dispute, refer the Dispute to a mediator appointed by the President of the Law Society of South Australia, upon the request of either Party.
- 58.5 The role of a mediator or valuer is to assist in negotiating a resolution of the Dispute. A mediator or valuer may not make a binding decision on either Party to the Dispute without their prior written agreement.
- 58.6 Any information or documents disclosed by a Party under this clause 58:
- (1) must be treated as Confidential Information of the disclosing Party; and
  - (2) may only be used by the receiving Party for the purpose of a genuine attempt to resolve the Dispute.
- 58.7 Each Party to a Dispute must pay its own costs of complying with this clause 58. The Parties to the Dispute must bear the costs of engaging any mediator or valuer in equal shares.
59. **GST**
- 59.1 In this clause 59:
- (1) **GST exclusive consideration** means the consideration payable or to be provided for a Supply, but for the application of this clause 59;
  - (2) **Recipient** means a party to whom a Supply is made;
  - (3) **Supply** means a supply made under or in connection with this deed or a Research Contract;
  - (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 59.
- 59.2 Any consideration to be paid or provided for a Supply, unless specifically described in this deed as 'GST-inclusive', does not include an amount on account of GST.
- 59.3 Despite any other provision in this deed or the Research Contract if a Supplier makes a Supply on which GST is imposed (excluding a Supply the consideration for which is specifically described in this deed 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 then prevailing rate of GST; and
  - (2) the amount by which the GST-exclusive consideration is increased under clause 59.3(1) 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.

- 59.4 If a payment to a party under this deed or a Research Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that Research Contract Party, then the payment will be reduced by the amount of any input tax credit to which that Research Contract Party is entitled for that loss, cost or expense.
- 59.5 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.
- 59.6 The Research Participant agrees that the Company may issue a Recipient Created Tax Invoice in connection with the supply of In-Kind Contributions by the Research Participant.

60. **Force Majeure**

60.1 In this clause 60, a **Force Majeure Event** affecting a Research Contract Party means anything outside that Research Contract Party's reasonable control including 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 customers, governments or government agencies).

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

- (1) gives each other Research Contract 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 the impact of 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 Research Contract Party will be allowed a reasonable extension of time to perform its obligations.

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

60.4 Nothing in this clause 60:

- (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.

**61. Notices and other communications**

61.1 A notice, demand, consent, approval or communication under this deed or a Research Contract (**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 or email to the recipient's address for Notices specified:
  - (a) in Schedule 2 for Notices under this deed; or
  - (b) the relevant Project Details for Notices under a Research Contract,as varied by any Notice given by the recipient to the sender.

61.2 A Notice given in accordance with clause 61.1 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 fifth Business Day after the date of posting (if posted to and from a place within Australia), or on the tenth Business Day after the date of posting (if posted to or from a place outside Australia);
- (3) if sent by email, when the sender's email system generates a delivery receipt or other message confirming successful transmission of the 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.

**62. Continuing obligations**

62.1 Unless agreed otherwise by the Parties, on the termination of a Research Contract the Research Contract Parties and any former Research Contract Parties shall continue to be bound by the obligations relating to:

- (1) Project IP;
- (2) Indemnities;
- (3) Reporting;
- (4) Commercialisation;
- (5) Insurance;
- (6) Confidentiality;
- (7) Publications;
- (8) Dispute resolution; and
- (9) any other obligations which by their nature are intended to survive the Research Contract and the deed, such as consequences of termination, expulsion or withdrawal from a Project.

**63. Approvals and consents**

63.1 Except where a Research Contract expressly states otherwise, a Research Contract Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under a Research Contract in its absolute discretion.

**64. Assignment**

64.1 The Research Participant may not assign or attempt to assign or otherwise transfer or encumber any right or obligation arising out of this deed or any Research Contract except with the written consent of the Company.

64.2 The Company may assign or otherwise transfer any rights arising out of this deed or any Research Contract without the written consent of the Research Participant, including:

- (1) if undertaken in connection with a winding up or voluntary deregistration of the Company; and
- (2) the third party assignee or transferee agrees in writing by way of a deed of adherence, or a document of similar effect, to be bound by and to observe the terms and conditions of this deed and the applicable Research Contract.

**65. Divisional limitation**

65.1 Notwithstanding any other provision of a Research Contract, the Research Contract Parties acknowledge that the obligations of a Project Party under this deed and any Research Contract are limited to using the resources of any Specified Division of the Project Party.

**66. Relationship**

66.1 The Parties agree that:

- (1) subject to clause 26.1, nothing contained in this deed or any Research Contract constitutes either of them as agent, partner or trustee of any other of them, or creates any agency, partnership or trust for any purpose whatsoever; and
- (2) except as otherwise specifically provided in this deed or a Research Contract no Party has any authority or power to act for, or to create or assume any responsibility or obligation on behalf of, the other Party or any other Research Contract Party.

**67. Sub-contracting**

67.1 No Project Party will sub-contract the performance of a substantial part of any Project without the prior written approval of the Company.

- 67.2 Where the Company gives approval to a Project Party to subcontract any part of a Project, that Project Party:
- (1) will execute a written subcontract with the subcontractor, which includes the following terms at a minimum:
    - (a) the subcontract must not conflict with, or detract from, the rights and entitlements of the Company under this deed and a Research Contract, including in respect of Intellectual Property, Publication and Confidential Information;
    - (b) the subcontractor is prohibited from further sub-contracting the performance of any obligations under this deed without the prior written consent of the Company;
    - (c) the subcontract will be immediately terminated upon the termination or expiration of this deed or a Research Contract (as the case may be);
    - (d) the Company is an express third party beneficiary of the subcontract and each of the covenants and obligations of the subcontractor and will have the right to enforce the subcontract against the subcontractor on its own behalf and in its own right; and
  - (2) remains wholly liable and responsible for the subcontractor's acts or omissions as if they were the acts or omissions of the Project Party.

**68. Costs**

- 68.1 Each Party must pay its own costs of negotiating, preparing and executing this deed and any Research Contract.

**69. Counterparts**

- 69.1 This deed and any Research Contract may be executed in counterparts. All executed counterparts constitute one document.

**70. No merger**

- 70.1 The rights and obligations of the Parties under this deed do not merge on completion of any transaction contemplated by this deed.
- 70.2 The rights and obligations of the Research Contract Parties under a Research Contract do not merge on completion of any transaction contemplated by that Research Contract.

**71. Entire agreement**

- 71.1 This deed and any Research Contracts constitute the entire agreement between the Parties in connection with their subject matter and supersede all previous agreements or understandings between those Parties in connection with their subject matter.

**72. Further action**

- 72.1 Each Party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this deed, any Research Contract and any transaction contemplated by them.

**73. Severability**

- 73.1 A term or part of a term of this deed or Research Contract that is illegal or unenforceable may be severed from this deed or the relevant Research Contract and the remaining terms or parts of the terms of this deed or Research Contract continue in force.

**74. Waiver**

- 74.1 A Party or Research Contract 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.

**75. Governing law and jurisdiction**

- 75.1 This deed and each Research Contract is governed by the law of the Applicable Jurisdiction and each Party and Research Contract Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Applicable Jurisdiction.

**Executed** as a deed and delivered on the date shown on the first page.

Signed sealed and delivered for and on behalf of **AUSTRALASIAN PORK RESEARCH INSTITUTE LTD** ABN 25 113 703 174 by its authorised representative in the presence of:

.....  
Signature of witness

.....  
Signature of authorised representative

.....  
Name of witness  
(BLOCK LETTERS)

.....  
Name of authorised representative  
(BLOCK LETTERS)

.....  
Address of witness

Signed sealed and delivered for and on behalf of:

**The University of New England**

**75 792 454 315**

ABN

by its authorised representative in the presence of:

.....  
Signature of witness

.....  
Signature of authorised representative

.....  
Name of witness  
(BLOCK LETTERS)

.....  
Name of authorised representative  
(BLOCK LETTERS)

.....  
Address of witness

## **Schedule 1 – Valuation Principles**

All **Cash Contributions** are considered equal.

### **In-Kind Contributions**

#### **Staff Contributions**

The nominal value of staff resources from Research Participants will be calculated by reference to the actual salary cost of that staff resource, together with directly applicable salary overheads, including superannuation contributions, leave allowances, payroll tax and workers compensation but does not include bonuses or other incentive payments.

#### **Other non-staff Contributions**

Major In-Kind Contributions of overheads, infrastructure and resources to be supplied to the Company for its specific use will be identified separately as 'Other non-staff In-Kind Contributions', and valued at the cost of providing that contribution.

## Schedule 2 – Address for serving Notices under this deed

<b>Name:</b>	<b>Australasian Pork Research Institute Ltd</b>
<b>ABN:</b>	25 113 703 174
<b>Postal Address:</b>	PO Box 466, Willaston SA 5118
<b>Email address</b>	j.pluske@april.org.au
<b>Attention:</b>	Dr John Pluske

<b>Name:</b>	<b>The University of New England</b>
<b>ABN:</b>	75 792 454 315
<b>Postal Address:</b>	
<b>Email address</b>	
<b>Attention:</b>	