

**AGREEMENT FOR THE ESTABLISHMENT AND OPERATION OF
THE COOPERATIVE RESEARCH CENTRE FOR
THE SUSTAINABLE DEVELOPMENT OF TROPICAL SAVANNAS**

to be conducted by

Northern Territory University

and

The Australian National University

and

The James Cook University of North Queensland

and

Department of Conservation and Land Management (Western Australia)

and

Department of Agriculture (Western Australia)

and

The State of Queensland

and

Northern Territory of Australia

and

Australian Nature Conservation Agency

and

Commonwealth Scientific and Industrial Research Organisation

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THIS AGREEMENT is made between

NORTHERN TERRITORY UNIVERSITY, a body established under the Northern Territory University Act 1988 as amended and having its principal office situate at Ellengowan Drive, Casuarina in the Northern Territory of Australia (in this Agreement called "NTU"); and

THE AUSTRALIAN NATIONAL UNIVERSITY, a body corporate established by the Australian National University Act 1991 ("ANU"); and

THE JAMES COOK UNIVERSITY OF NORTHERN QUEENSLAND, a body corporate established under the James Cook University of North Queensland Act (1970) ("JCU"); and

THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CONSERVATION AND LAND MANAGEMENT, a body corporate under the Conservation and Land Management Act 1984 of Western Australia ("CALM"); and

CHIEF EXECUTIVE OFFICER OF THE DEPARTMENT OF AGRICULTURE, a body corporate under the provisions of the Agriculture Act 1988, having its office situate at 3 Baron-Hay Court, South Perth 6151, in the State of Western Australia ("WADA"); and

THE STATE OF QUEENSLAND acting through its Department of Lands and Department of Primary Industries ("QLD"); and

THE NORTHERN TERRITORY OF AUSTRALIA acting through its Conservation Commission, its Power and Water Authority, its Department of Primary Industry and Fisheries, its Department of Lands, Planning and Environment and its Department of Mines and Energy ("NT"); and

THE DIRECTOR OF NATIONAL PARKS AND WILDLIFE, a corporation established under Section 33 of the National Parks and Wildlife Conservation Act 1975 (Commonwealth) which for the purposes of this Agreement is acting through the Australian Nature Conservation Agency ("ANCA"); and

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION, a body corporate established by the Science and Industry Act 1949 (Commonwealth) which for the purposes of this Agreement is acting through its Division of Wildlife and Ecology in its Institute of Natural Resources and Environment and its Division of Tropical Crops and Pastures and its Division of Soils in its Institute of Plant Production and Processing ("CSIRO").

WHEREAS

- A. The Commonwealth of Australia, by the provision of financial assistance under a program known as the Cooperative Research Centres Program, wishes to enhance scientific and technological capabilities and support scientific research in higher education institutions, CSIRO and other Commonwealth and State Government research organisations and in the private sector, and to encourage applications of science and technology in industry and other sectors such as health and the environment.
- B. The principal objectives of the CRC Program are:
- to support long-term high-quality scientific and technological research which contributes to national objectives, including economic and social development, the maintenance of a strong capability in basic research and the development of internationally competitive industry sectors;
 - to capture the benefits of research, and to strengthen the links between research and its commercial and other applications, by the active involvement of the users of research in the work of Cooperative Research Centres;
 - to build centres of research concentration by promoting cooperative research, and through it a more efficient use of resources in the national research effort;
 - to stimulate education and training, particularly in graduate programs, through the active involvement of researchers from outside the higher education system in educational activities, and graduate students in major research programs.
- C. The Parties wish to establish a research centre known as the “Cooperative Research Centre for the Sustainable Development of Tropical Savannas “, and to enter into an agreement with the Commonwealth of Australia by which the Centre will be partially funded by the Commonwealth under the CRC Program;
- D. As a necessary precondition of the above funding arrangement, the Parties have agreed between themselves that the Activities of the Centre are to be regulated upon the terms and conditions set out in this Agreement.

NOW IT IS AGREED AS FOLLOWS:

PART A: INTRODUCTION

1. **DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement, unless a contrary intention appears from the context, the following definitions shall apply:

“Account” has the meaning ascribed to it in the Commonwealth Agreement;

“Activities” has the meaning ascribed to “Activities of the Centre” in the Commonwealth Agreement, and includes the research, training and Commercialisation activities more specifically set out in this Agreement;

“Annual Budget” means the annual budget for the Centre prepared and approved pursuant to clause 13;

“Annual Contribution”, in relation to a Party, means that part of the Party's Contribution to be made available to the Centre in a particular Financial Year as determined pursuant to clause 13 and **“Annual Contributions”** means the aggregate of the Annual Contribution of each of the Parties;

“Annual Payment” means that portion of the Centre Funds to be made available to a Party in a particular Financial Year as determined pursuant to clause 13;

“Applicable Jurisdiction” means the Northern Territory of Australia;

“Asset” means an item of real or personal property but does not include Intellectual Property;

“Background Confidential Information” means Confidential Information comprised in Background Intellectual Property;

“Background Intellectual Property” means that Intellectual Property which is made available for the Activities by a Party, either at the Commencement Date or during the Term of the Centre, and which has been adequately identified by that Party before being so made available;

“Board of Management” means the board of management of the Centre established pursuant to clause 9;

“Budget Plan” has the meaning ascribed to “Budget” in the Commonwealth Agreement and includes any Budget Plan which might be substituted for it in accordance with the Commonwealth Agreement;

“Centre” means the Cooperative Research Centre referred to in Recital C and agreed to be established by the Parties under this Agreement;

“Centre Agent” means the Party or other person appointed by the Parties under clause 15 to carry out the financial requirements stipulated in the Commonwealth Agreement;

“Centre Funds” means the monies comprised in the Account; including the Grant, the cash Contributions, monies procured from third parties in accordance with the Budget Plan, and interest on the Account, but not including any proceeds derived from the Commercialisation of Intellectual Property;

“Centre Confidential Information” means Confidential Information comprised in Centre Intellectual Property;

“Centre Intellectual Property” means Intellectual Property developed pursuant to the Activities;

“Centre Resources” means the non-cash resources made available for use by the Parties in carrying out the Activities, including the non-cash Contributions and any non-cash resources procured from third parties in accordance with the Budget Plan;

“Centre Title” means the name of the Centre specified in Recital C;

“Commencement Date” means the date of commencement of the Grant Period;

“Commercial Agent” means the Party or other person appointed under clause 23 to Commercialise Centre Intellectual Property;

“Commercialise”, in relation to Intellectual Property, means to manufacture, sell, hire or otherwise exploit a product or process, or to provide a service, incorporating that Intellectual Property, or to license any third party to do any of those things; and **“Commercialisation”** shall be similarly construed;

“Commercialisation Account” means the Account referred to in clause 23 ;

“Commonwealth Agreement” means the agreement referred to in Recital C;

“Confidential Information” means all trade secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) and which is marked or verbally identified as being confidential but excludes the interpretation, analysis and application of general information in the public domain;

“Contribution”, in relation to a Party, means all of the monies, Assets, Seconded Personnel, facilities and services to be contributed by the Party to the Centre, as set out in the Budget Plan, but does not include any Intellectual Property, and

“Contributions” means the aggregate of the Contribution of each of the Parties;

“CRC Program” means the program referred to in Recital A;

“Deputy Director” means the person appointed to act as deputy to the Director pursuant to clause 11;

“Director” means the director of the Centre appointed pursuant to clause 10;

“Field” means the field of research indicated in the Centre Title;

“Financial Year” has the meaning ascribed to it in the Commonwealth Agreement;

“Grant” has the meaning ascribed to it in the Commonwealth Agreement;

“Grant Period” has the meaning ascribed to it in the Commonwealth Agreement;

“Head of Expenditure” has the meaning ascribed to it in the Commonwealth Agreement;

“Intellectual Property” includes all copyright and neighbouring rights, all rights in relation to inventions (including patents), plant varieties, registered and unregistered trade marks (including service marks), registered designs, Confidential Information and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

“Objectives of the Centre” means the objectives listed in clause 4;

“Objectives of the CRC Program” means the objectives listed in Recital B;

“Participating Share”, in relation to a Party, means that Party's equity share in the Centre as determined pursuant to clause 24;

“Party” means a party to this Agreement;

“Program” means a research, training or Commercialisation program to be carried out under clause 18 as part of the Activities, and referred to as a Sub-program in the Activities;

“Program Leader” means a person appointed by the Board of Management pursuant to clause 18 to act as leader of a Program;

“Project” means a discrete, time-bounded research, training or Commercialisation activity to be carried out under clause 19 by some or all of Parties within the ambit of a Program;

“Project Leader” means the person appointed by the Board of Management pursuant to clause 19 to act as a leader of a Project;

“Rules” means the Constitution, enacting legislation and provisions thereunder, Memorandum and Articles of Association or any other form of provisions or policy statements governing the organisation and operation of a Party;

“Seconded Personnel” means the personnel of a Party whose time (or part of their time) is made available by the Party for the Activities as part of that Party's Contribution pursuant to clause 20 and the personnel of a Party whose employment is paid for by the Grant, and includes the Specified Personnel within the meaning of the Commonwealth Agreement;

“Term of the Centre” means the period ascertained in accordance with clause 6.

1.2 In this Agreement, unless the context indicates to the contrary:

- (a) the expression “person” includes an individual, a body corporate, an agency or other body;
- (b) references to any Party to this Agreement shall include the Party's legal successor (including executors and administrators) and permitted assigns;
- (c) words importing the singular shall include the plural (and vice versa) and words denoting a given gender shall include all other genders;
- (d) clause headings and notes in square brackets are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross reference;
- (e) references to any document or agreement shall be deemed to include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (f) references to any legislation or to any provision of any legislation shall include any modification or re-enactment of such legislation or any legislative provision substituted for, and all legislation and statutory instruments issued under such legislation;
- (g) all attachments to this Agreement form part of this Agreement;

- (h) all monetary amounts referred to in this Agreement are in Australian currency.

2. RELATION TO THE COMMONWEALTH AGREEMENT

- 2.1 The provisions of the Commonwealth Agreement shall be read with and form part of this Agreement. Wherever there is any inconsistency between the provisions of this Agreement and those of the Commonwealth Agreement, the latter shall prevail.
- 2.2 Nothing in this Agreement shall reduce or otherwise affect the obligations of the Parties under the Commonwealth Agreement.

PART B: ESTABLISHING THE CENTRE

3. ESTABLISHMENT OF JOINT VENTURE

- 3.1 The Parties hereby form and agree to constitute themselves in an unincorporated collaborative venture to be known by the Centre Title for the purpose of carrying out the Activities.
- 3.2 The Parties agree that:
- (a) the rights, duties, obligations and liabilities of the Parties shall in every case, be several and not joint or joint and several;
 - (b) the relationship between the Parties is one of collaborative venturers and is limited to carrying out the Activities so that, except for clause 15 and clause 23, nothing contained in this Agreement constitutes any of them as agent, partner or trustee of any other of them, or creates any agency, partnership or trust for any purpose whatsoever;
 - (c) except as otherwise specifically provided in this Agreement, a Party does not have any authority or power to act for, or to create or assume any responsibility or obligation on behalf of, any other Party;
 - (d) except as otherwise specifically provided in this Agreement, liabilities of the Centre incurred by or on behalf of all Parties for the purposes of the Activities shall be incurred severally and not jointly by each Party in proportion to their Participating Shares; and
 - (e) the conditions set out in this Agreement will apply only to work carried out between the Division of Wildlife and Ecology, the Division of Tropical Crops and Pastures and the Division of Soils of CSIRO and the other Parties. The

other Parties acknowledge that this agreement does not affect or commit in any way the operations or resources of any other Division of CSIRO, the activities of which are acknowledged by the other Parties to be completely independent of this agreement.

4. OBJECTIVES OF THE CENTRE

4.1 In accordance with the Commonwealth Agreement, the Objectives of the Centre are:

- (a) to create a centre of excellence in the Field with the capability of pursuing world class research and training relevant thereto;
- (b) to ensure that the Parties with their differing disciplines and background will, through their participation in the Centre, add value to each other so that the performance of the Centre will be greater than that of each Party performing independently;
- (c) to increase the skills of persons already working in the Field and to train and equip new postgraduate students with skills and attributes to continue being productive in the Field;
- (d) to Commercialise Centre Intellectual Property in such a manner as to ensure that the maximum benefit accrues to Australia, including Australian industry, the Australian environment and the Australian economy generally; and
- (e) to promote the Objectives of the CRC Program.

5. MAJOR COVENANTS

5.1 Each Party agrees :

- (a) to diligently conduct the Activities and observe and perform its obligations and commitments set out in this Agreement and the Commonwealth Agreement;
- (b) to keep each other Party informed about new research opportunities within the scope of the Activities known to it which could be undertaken as part of the Activities, subject to any prior third party obligations of confidence disclosed to the other Parties at the time of this Agreement;
- (c) to make the Centre and its role widely known within each Party's organisation, with the aim of encouraging all relevant Activities to be undertaken in connection with the Centre and not independently;

- (d) to provide its Contribution to the Centre in accordance with the terms of this Agreement;
- (e) to make available Background Intellectual Property in accordance with the terms of this Agreement;
- (f) not to do or cause or permit to be done any act, matter or thing whereby any Party's rights to Intellectual Property could be in any way jeopardised;
- (g) to apply the Centre Funds and Centre Resources only for the purpose of carrying out the Activities in accordance with this Agreement and the Commonwealth Agreement; and
- (h) that it shall operate within its own Rules when carrying out the Activities and that it shall not impose an obligation on another Party to carry out Activities which may be contrary to that Party's Rules.

6. TERM OF THE CENTRE

- 6.1 This Agreement shall commence operation on the Commencement Date and shall remain in force until one of the following occurs :
- (a) the Parties by unanimous written resolution agree to terminate the Centre;
 - (b) following the retirement or expulsion of a Party pursuant to clause 29 only one Party remains in the Centre;
 - (c) the Commonwealth Agreement is terminated pursuant to the terms of that Agreement;
 - (d) the Grant Period as defined in the Commonwealth Agreement expires; or
 - (e) the Centre fails to receive Grant monies for any other reason.

7. LOCATION OF ACTIVITIES AND ACCESS

- 7.1 The Activities shall be conducted at the locations specified in relation to each of those Activities in the Commonwealth Agreement and in such other places as may be determined in accordance with the Commonwealth Agreement.
- 7.2 Each Party ("the Host") shall at all reasonable times give to any other Party, its Seconded Personnel or other officers, agents or contractors ("the Visitor") access to

premises occupied by the Host where the Activities or any part of them are to be carried out.

- 7.3 Notwithstanding clause 7.2, the Host may impose as a condition of such access that the Visitor execute an agreement, in a form acceptable to the Host, which:
- (a) sets out the terms of the visit;
 - (b) contains obligations of confidentiality and non-disclosure that protect the interests of the Host, and
 - (c) addresses the liability of the Parties in the event of injury to the Visitor while visiting the premises.

PART C: ORGANISING THE CENTRE

8. MANAGEMENT STRUCTURE

- 8.1 The Management Structure of the Centre shall consist of the Board of Management, the Director and the Deputy Director, the Management Committee, the Consultative Committee and the Scientific Program Advisory and Evaluation Group.
- 8.2 Lines of communication and control within the Management Structure shall be as depicted in the chart contained in Schedule 1 .

9. BOARD OF MANAGEMENT

- 9.1 The Board of Management will be comprised of: an independent Chairperson, the Chairperson of the Consultative Committee, and representatives of the Parties and users of the research outcomes of the Centre as follows:
- (a) Aboriginal representative;
 - (b) Mining Industry representative;
 - (c) Pastoral Industry representative;
 - (d) Universities' representative;
 - (e) Northern Territory representative;
 - (f) Western Australian representative;

- (g) Queensland representative;
 - (h) CSIRO representative; and
 - (i) ANCA representative.
- 9.2 The independent Chairperson will be appointed by the other members of the Board of Management under terms and conditions and with functions determined by the other members of the Board of Management.
 - 9.3 The Aboriginal representative will be nominated by the Northern Land Council .
 - 9.4 The Mining Industry representative will be nominated by the Chamber of Mines and Petroleum (Incorporated) Northern Territory.
 - 9.5 The Pastoral Industry representative will be nominated by the North Australia Beef Research Council .
 - 9.6 The Universities' representative will be nominated by NTU.
 - 9.7 The Western Australian representative will be nominated jointly by CALM and WADA.
 - 9.8 The Queensland, Northern Territory, CSIRO and ANCA representatives will be nominated by QLD, NT, CSIRO and ANCA respectively.
 - 9.9 The Chairperson of the Consultative Committee will be nominated by the Office of Northern Development.
 - 9.10 The independent Chairperson shall have a casting vote only on the Board of Management. All other members shall have one vote each.
 - 9.11 Each nominating organisation may at any time and from time to time remove its representative on the Board of Management, and appoint another representative in that person's stead. Such appointment and removal shall be effective only upon receipt of notice in writing to that effect by the independent Chairperson.
 - 9.12 The Board of Management will regulate its own proceedings but shall meet at least on a six monthly basis from 1 July 1995. Subject to the foregoing, the Board of Management will meet whenever its members determine or when a meeting is called by three members provided that no less than fourteen (14) days written notice has been given to all other members.

- 9.13 The Chairperson of the Board of Management shall take the chair at its meetings. In the absence of the Chairperson, the members present shall elect one from their number to take the chair for the duration of that meeting.
- 9.14 Subject to clauses 29.1(c) and 9.10, all resolutions to be decided by any meeting of the members of the Board of Management must be decided by a majority of the voting members present.
- 9.15 Should a place on the Board of Management become vacant, that position shall be filled by a nominee of the organisation who nominated the vacating member.
- 9.16 Each organisation entitled to nominate representatives to the Board of Management may from time to time appoint any person as an alternate member in place of its nominee. The appointment shall be in writing, signed on behalf of the organisation and a copy of the appointment shall be given to the independent Chairperson.
- 9.17 The quorum for the Board of Management shall be six (6) representatives, not including the independent Chairperson.
- 9.18 Any approval, decision or determination which the Board of Management is competent to give or make may be submitted to the members of the Board of Management for consideration and determination, without holding a meeting, and any vote in respect of such approval, decision or determination shall be treated as a vote made at a meeting of the Board of Management, PROVIDED THAT:
- (a) each member is given written notice of such matter;
 - (b) each member or his alternate has a period of at least five (5) days (or such other agreed period) after receiving notice of the matter to vote on the matter;
 - (c) within such period, no member requests that such matter be considered at a meeting of the Board of Management; and
 - (d) at least six members of the Board of Management entitled to vote at meetings of the Board of Management cast votes in respect of the matter.
- 9.19 Whenever a matter is submitted to members in accordance with clause 9.18, each member shall vote by post or electronic mail transfer to the Director. Any matter which receives approval of a majority of voting members shall be binding in the same manner as if the resolution had been passed at a meeting of the Board of Management.
- 9.20 The written record of each decision made under clause 9.19 shall be distributed to each member of the Board of Management, as soon as practicable after the vote is taken.

9.21 Meetings of the Board of Management shall be held at such places and in such manner as the Board of Management may from time to time decide.

9.22 The Board of Management shall have the following functions and powers:

- (a) to determine the strategic directions and major policies for the Centre within the Objectives of the Centre;
- (b) to determine and modify the performance indicators specified in Schedule 6 of the Commonwealth Agreement;
- (c) to review and determine the Activities;
- (d) to appoint the Director;
- (e) to appoint the Deputy Director;
- (f) to approve at least annually, the calculation of the Annual Contributions in accordance with clause 24.6 and amend Schedule 2 accordingly;
- (g) to use its best endeavours to ensure that the Objectives of the Centre are achieved;
- (h) to appoint a Qualified Accountant in accordance with the requirements of clause 14.1(f) of the Commonwealth Agreement;
- (i) to determine the powers and functions of:
 - (i) the Director;
 - (ii) the Deputy Director;
 - (iii) the Management Committee;
 - (iv) the Consultative Committee;
 - (v) the Scientific Program Advisory and Evaluation Group and any matter ancillary or related thereto.
- (j) to authorise:
 - (i) all expenditure on behalf of the Centre;

- (ii) the Annual Report prepared in accordance with clause 14 of the Commonwealth Agreement;
- (iii) the Annual Budget in accordance with clause 13;
- (k) to oversee and review:
 - (i) the commitment of the Parties to the Centre;
 - (ii) the performance of the Centre;
 - (iii) the performance of the Director;
 - (iv) the performance of the Deputy Director.
- (l) to approve and terminate the Sub-programs and receive progress reports on the Sub-programs;
- (m) to undertake commercialisation of Centre Intellectual Property in accordance with clause 23, and establish bodies corporate and appoint agents as it sees fit for this purpose, provided that none of the Parties shall be required to legally or beneficially own any shareholding or be subscribers to any company or be required to be involved in the establishment, operation, management or winding up of any company.
- (n) from time to time to delegate such powers of the Board of Management to such persons as might be determined by the Board of Management; and
- (o) to appoint, remove and determine the functions of the Centre Agent in accordance with clause 15.

9.23 The Board of Management shall have no power in respect of the following matters:

- (a) the acquisition or disposal of any interest in land;
- (b) borrowing of funds whether secured or unsecured;
- (c) any amendments, variations, additions, waiver, release of any of the terms and conditions of this Agreement; and
- (d) career aspects (promotion, salary and other related matters) of staff of a Party, unless otherwise agreed.

9.24 The Board of Management shall not act in breach of the rules of any of the Parties or of any enabling legislation establishing any of the Parties.

- 9.25 In exercising its powers and functions pursuant to this clause the Board of Management shall have regard to any relevant policy of the Parties as notified to the Board of Management by each Party's representative on the Board of Management.
- 9.26 A decision of the Board of Management shall be binding on the Parties unless the decision is inconsistent with this Agreement or the Commonwealth Agreement or in breach of the rules of any of the Parties or of any enabling legislation establishing any of the Parties.

10. DIRECTOR

10.1 The Board of Management shall appoint a person to act as Director of the Centre.

10.2 The Director shall hold the office for such period as the Board of Management determines.

10.3 Subject to clause 9.22(i), the Director's role is to:

- (a) provide scientific leadership;
- (b) act as Liaison Officer with the Commonwealth;
- (c) facilitate collaboration between the Parties;
- (d) report to the Board of Management on all the Activities;
- (e) represent the Centre, as authorised by the Board of Management;
- (f) act jointly with the Party making any appointment of Seconded Personnel being employed with the Grant, in approving appointments to the Centre;
- (g) facilitate and coordinate liaison between the Centre research personnel and the Parties;
- (h) carry the primary financial delegation from the Board of Management;
- (i) supervise Seconded Personnel engaged in the Activities;
- (j) work with the Program Leaders to develop and maintain the Programs;
- (k) manage the business support facilities of the Centre;
- (l) prepare the Annual Report for the approval of the Board of Management;

- (m) ensure that the Annual Contributions in Schedule 2 is updated annually with approval of the Board of Management;
- (n) carry out the decisions of the Board of Management; and
- (o) perform such other functions as determined by the Board of Management.

11. DEPUTY DIRECTOR

- 11.1 The Board of Management shall appoint a person to act as Deputy Director of the Centre.
- 11.2 The Deputy Director shall exercise the functions and powers of the Director in the absence of the person appointed to that office.
- 11.3 Subject to clause 9.22(i), the Deputy Director shall assist the Director in the Management of the Centre and perform such functions as the Board of Management otherwise determines.

12. COMMITTEES

- 12.1 The Board of Management will establish a Management Committee to conduct the day to day activities of the Centre.
- 12.2 The Management Committee will consist of:
 - (a) the Director;
 - (b) the Deputy Director; and
 - (c) the Program Leaders.
- 12.3 The function of the Management Committee will be to promote achievement of the Objectives of the Centre through implementation of policies as determined by the Board of Management in relation to research, finance, staff, education, training, information services, publication of research outcomes, technology transfer and commercialisation. The Management Committee must act in accordance with the directions of the Board of Management and must keep the Board of Management regularly informed of its activities.

- 12.4 The Board of Management will establish a Consultative Committee to advise it and the Management Committee on the research, development, education and extension activities to be undertaken by the Centre.
- 12.5 The members of the Consultative Committee will be appointed by the Board of Management and will be comprised of persons who are representatives of the users of the outcomes of the Centre and such other persons as the Board of Management may determine. As a minimum, the Committee shall have two members representing each of aboriginal and pastoral interests and one member representing each of mining, tourism and conservation interests.
- 12.6 The Board of Management will establish a Scientific Program Advisory and Evaluation Group to advise it and the Management Committee on research directions and the quality of the research of the Centre and to evaluate the research outcomes of the Centre.
- 12.7 The members of the Scientific Program Advisory and Evaluation Group will be appointed by the Board of Management and will be comprised of persons who are nationally and internationally recognised experts in the Field.

PART D: MANAGING THE RESOURCES

13. BUDGETING

- 13.1 Prior to the commencement of each Financial Year the Director shall prepare a draft Annual Budget conforming to the Budget Plan and setting out the financial requirements for the carrying out of the Activities for that year.
- 13.2 The draft Annual Budget shall be submitted to the Board of Management for approval.
- 13.3 In approving the draft Annual Budget, the Board of Management shall determine, for the Financial Year in question -
- (a) each Party's Annual Contribution (including cash and non-cash components);
 - (b) the monies and non-cash resources to be procured from third parties for the operation of the Centre;
 - (c) the allocation of Centre Funds and Centre Resources to Programs and Projects;
 - (d) the allocation of Centre Funds and Centre Resources to Heads of Expenditure; and

- (e) the portion of the Centre Funds (the “Annual Payment”) and the Centre Resources to be made available to each Party for the purpose of carrying out the Activities.

14. CONTRIBUTIONS

- 14.1 Each Party agrees to pay to the Centre Agent the cash component of its Annual Contribution for the purpose of pursuing the Activities, and to apply to the Activities the non-cash component of its Annual Contribution, in accordance with the Annual Budget and in the manner determined by the Board of Management.
- 14.2 All of the Parties shall cooperate in securing the monies and non-cash resources to be obtained from third parties for the purpose of pursuing the Activities in accordance with the Annual Budget.

15. CENTRE AGENT

- 15.1 Until such time as it determines otherwise, the Board of Management shall appoint NTU to act as Centre Agent for the Parties severally for the purposes set forth in this clause, and for such other purposes as the Board of Management may determine at the time of appointment.
- 15.2 The Centre Agent shall establish and oversee the operation of the Account.
- 15.3 The Parties agree that the financial requirements of the Commonwealth of Australia as set out in the Commonwealth Agreement shall be carried out or controlled by the Centre Agent, under the direction of the Board of Management.
- 15.4 Without limiting the generality of clause 15.3, it shall be the responsibility of the Centre Agent to consolidate the accounting information provided to it by the parties in accordance with clause 16.2.
- 15.5 The Centre Agent shall seek and accept from each Party the cash component of its Annual Contribution, and shall seek and accept any monies to be procured from third parties in accordance with the Annual Budget, and credit those amounts to the Account.
- 15.6 The Centre Agent shall pay each Party its Annual Payment for the purpose of carrying out the Activities subject to and promptly upon such Party's payment of its Annual Contribution.

- 15.7 The Centre Agent may, subject to the terms of its appointment, draw upon the Account to meet its reasonable expenses and agreed remuneration, and such drawings shall be deemed to be expenses incurred in the performance of the Activities.
- 15.8 The Centre Agent shall not be deemed to be an agent for any of the Parties except for the purposes contemplated by this clause nor shall any inference of partnership be drawn between the Centre Agent and the Parties.
- 15.9 Nothing in this Agreement shall be taken to in any way authorise or permit the Centre Agent to incur any liabilities or undertake any obligations on behalf of or in the names of any of the Parties except as specifically authorised herein.

16. SEPARATE ACCOUNTING OF THE PARTIES

- 16.1 Each Party shall be responsible for keeping separate financial accounts which shall record:
- (a) the cash component of its Contribution;
 - (b) the Annual Payment made to it by the Centre Agent;
 - (c) all expenditure incurred by the Party from its Annual Payment in carrying out the Activities; and
 - (d) any royalties or licence fees paid to it by the Commercial Agent.
- 16.2 Each Party shall provide the Centre Agent within fourteen (14) days of a written request being received from the Centre Agent all necessary information from the above accounts for the Centre Agent to comply with the financial reporting requirements contained in the Commonwealth Agreement.

17. ASSETS

- 17.1 This clause applies to any Asset:
- (a) included as a part of the Annual Contribution of a Party to the Centre;
 - (b) acquired by a Party in whole or in part from the Annual Payment made to that Party; or
 - (c) forming part of the Centre Resources made available to a Party in a particular Financial Year for the purpose of carrying out the Activities.

- 17.2 Each of the Parties represents and warrants to each other Party that, except to the extent disclosed in writing to the other Parties at the time of making available an Asset to which this clause 17 applies, that Asset is unencumbered.
- 17.3 Unless otherwise agreed between the Parties, an Asset to which this clause 17 applies shall be or remain vested in the Party concerned.
- 17.4 Unless otherwise agreed between the Parties an Asset shall remain at the premises of the Party having title to the Asset.
- 17.5 During the Term of the Centre the Party having title to an Asset shall not sell, hire, charge, mortgage, pledge or otherwise encumber the Asset.
- 17.6 During the Term of the Centre the Party having title to an Asset shall be responsible for insurance, maintenance and any other costs and liabilities associated with the Asset. However, the Board of Management may treat those costs or part thereof as part of the Annual Contribution of the Party.
- 17.7 During the Term of the Centre the Party having title to an Asset shall make the Asset available for the Activities.

PART E: RESEARCH AND TRAINING

18. PROGRAMS

- 18.1 The Parties agree to carry out Programs relating to the Field.
- 18.2 The particulars of the Programs to be carried out shall be as specified in the Activities.
- 18.3 Each Program shall be carried out pursuant to, and directed towards the achievement of, the Objectives of the Centre.
- 18.4 Each Program shall be managed by a Program Leader appointed by the Board of Management.
- 18.5 The Program Leaders will report to the Director and shall be responsible for:
 - (a) the scientific leadership of and day to day management of their Program;
 - (b) the total performance of the Program including the Program's cooperative functions, scientific and financial management;

- (c) the recognition of current and emerging issues relevant to the Program, and preparation of proposals to address them;
- (d) liaising with the Project Leaders to ensure that the Project Leaders are fulfilling their Project management functions;
- (e) liaising with the other Program Leaders to ensure integration of the Activities;
- (f) carrying out the functions ascribed to them in this Agreement; and
- (g) carrying out such additional functions as the Board of Management may determine.

19. PROJECTS

- 19.1 The activities within Programs may be carried out in part through discrete Projects, each of which contributes to dominantly one, but sometimes more, Programs.
- 19.2 The Projects to be carried out shall be defined from time to time by the Board of Management.
- 19.3 In relation to each Project, it shall be the responsibility of the Board of Management to define a project charter specifying the following matters:
- (a) a statement of aims;
 - (b) an outline of the strategy to be followed;
 - (c) potential outcomes;
 - (d) milestones;
 - (e) performance indicators;
 - (f) a budget;
 - (g) resource requirements;
 - (h) student requirements;
 - (i) expenditure on new Assets; and
 - (j) communications strategy.

- 19.4 Each Project shall be managed by a Project Leader appointed by the Board of Management.
- 19.5 The Project Leader shall be responsible to the Program Leader for the management of a Project.
20. SECONDED PERSONNEL
- 20.1 Each Party agrees to make available to the Centre its Seconded Personnel for such time and for such purposes as determined by the Board of Management.
- 20.2 Seconded Personnel of each Party shall remain subject to the terms and conditions of employment of that Party and shall be replaced if recommended by the Board of Management in compliance with the Commonwealth Agreement.
- 20.3 Each Party covenants and undertakes to procure that Centre Intellectual Property created by any of its Seconded Personnel shall be owned and dealt with according to the provisions of this Agreement.
- 20.4 A Party may withdraw from the Centre any of its Seconded Personnel upon 90 days' notice to the Board of Management provided it replaces such personnel with a person or persons (as the case may be) acceptable to the Board of Management.
- 20.5 Should the Centre require the services of persons not presently employed by any of the Parties, such persons shall be retained pursuant to arrangements determined by the Board of Management, and the expenses incurred in so doing shall be deemed to be expenses incurred in the performance of the Activities.

PART F: OUTCOMES AND RESULTS

21. **BACKGROUND INTELLECTUAL PROPERTY**
- 21.1 From time to time during the Term of the Centre, a Party may make Background Intellectual Property available for the Activities.
- 21.2 Each of the Parties represents and warrants to each other that:
- (a) it is the owner of, or is otherwise entitled to provide, the Background Intellectual Property which it makes available for the Activities; and
 - (b) except to the extent disclosed in writing to the remaining Parties at the time of making available such Background Intellectual Property, that Background Intellectual Property is unencumbered.

- 21.3 The Parties acknowledge and agree that the Background Intellectual Property shall remain the property of the Party which made the Background Intellectual Property available for the Activities.
- 21.4 Each Program Leader shall maintain a register recording such Background Intellectual Property as is made available by a Party for Projects contained in the Program. It shall be the responsibility of the member or members of the Board of Management representing that Party to approve the register and any amendments to it.
- 21.5 Subject to this Agreement, each Party shall have a non-exclusive royalty-free right to use any other Party's Background Intellectual Property for the purposes of the Activities other than Commercialisation, as approved by the Board of Management.
- 21.6 Where a Party who intends to conduct research or training outside the Activities wishes to use Background Intellectual Property owned by another Party, the Party so wishing shall only be permitted to do so subject to obtaining a licence upon terms agreed by the Party owning that Background Intellectual Property.
- 21.7 The Parties agree that they will take all necessary steps to protect Background Intellectual Property and give each other prompt notice of any infringement of Background Intellectual Property which comes to their attention. Each Party agrees to give a Party which owns such Background Intellectual Property all assistance which they it reasonably require in order to protect that Party's Background Intellectual Property, provided that the Party requiring such assistance indemnifies the Party providing the assistance for all reasonable costs and expenses of so doing.

22. CENTRE INTELLECTUAL PROPERTY

- 22.1 Subject to this clause 22 and clause 24, all Centre Intellectual Property shall be owned by the Parties as tenants in common in proportion to their Participating Shares.
- 22.2 Each Party shall cooperate with each other Party and promptly do all acts and things and execute all documents which may be necessary for the purpose of vesting ownership of the Centre Intellectual Property in the Parties as contemplated by clause 22.1.
- 22.3 Each Party shall forthwith respond to a request from the Director or any other Party to provide information in its possession regarding Centre Intellectual Property which has been developed or is in prospect.

- 22.4 The Parties shall use their best efforts to ensure that their respective employees (including Seconded Personnel), agents, sub-contractors, postgraduate students under their supervision or other persons participating in the Activities:
- (a) shall identify Centre Intellectual Property generated or developed by them;
 - (b) shall promptly communicate details of it to the relevant Project Leader; and
 - (c) shall promptly do all acts and things and execute all documents necessary for the purpose of vesting ownership of the Centre Intellectual Property in the Parties as contemplated by clause 22.1.
- 22.5 No Party shall deal with, Commercialise, dispose of or encumber any interest which it might hold in Centre Intellectual Property, except as authorised in this Agreement or with the written consent of all other Parties.
- 22.6 Subject to this Agreement, each Party shall have a non-exclusive royalty-free right to use Centre Intellectual Property for the purposes of the Activities other than Commercialisation, as approved by the Board of Management.
- 22.7 A Party wishing to use Centre Intellectual Property in connection with research or training outside the Activities shall first obtain a licence, covering such use, upon terms agreed with the other Parties.
- 22.8 Subject to clause 21 and clause 22.7, where a Party outside the Activities develops further Intellectual Property based on or incorporating Centre Intellectual Property or Background Intellectual Property, that further Intellectual Property shall remain the property of the developing Party. However, the developing Party shall not Commercialise its further Intellectual Property without first obtaining a licence, covering such Commercialisation, on terms agreed between the owners of that Background Intellectual Property and/or Centre Intellectual Property.
- 22.9 If a Project Leader considers that a particular development arising from that Project may be patentable or the subject of other forms of Intellectual Property protection, the Project Leader shall promptly communicate details of that development to the Board of Management.
- 22.10 The Director shall decide in consultation with the Parties whether the development warrants pursuing patent protection, or other forms of Intellectual Property protection, and if it does, in which countries protection should be sought.
- 22.11 Unless otherwise agreed by the Board of Management, the Director is to apply for, maintain and prosecute any form of Intellectual Property protection decided upon pursuant to clause 22.10.

- 22.12 If patenting or other registrable forms of Intellectual Property protection of Centre Intellectual Property is pursued, it is to be in the joint names of all Parties as tenants-in-common in proportion to their Participating Shares.
- 22.13 The Parties shall give each other prompt notice of any infringement of Centre Intellectual Property which comes to their attention and each Party agrees to give a Party all assistance which it may reasonably require in order to protect that Party's interest in Centre Intellectual Property, provided that the Party requiring such assistance indemnifies the Party providing the assistance for all reasonable costs and expenses of so doing.
- 22.14 The Account may be drawn upon to meet all costs associated with applying for, maintaining and prosecuting patent or any other form of Intellectual Property protection associated with Centre Intellectual Property and the application, maintenance and prosecution of any actions which may be associated with any such Intellectual Property and such drawings shall be deemed to be expenses incurred in the performance of the Activities.

23. COMMERCIALISATION OF CENTRE INTELLECTUAL PROPERTY

- 23.1 The Board of Management shall appoint a Party or other person to act as Commercial Agent for the Parties severally for the purposes set forth in this clause, and for such other purposes as the Parties may determine at the time of appointment.
- 23.2 The Commercial Agent shall be responsible for the Commercialisation of Centre Intellectual Property, in accordance with the Commonwealth Agreement, and in particular:
- (a) marketing the Centre Intellectual Property to industry;
 - (b) seeking potential licensees of the Centre Intellectual Property and other users of the Centre Intellectual Property for commercial purposes;
 - (c) presenting Commercialisation options to the Board of Management; and
 - (d) any other task relating to Commercialisation of Centre Intellectual Property that the Board of Management may lawfully delegate to the Commercial Agent.
- 23.3 No Party has the power to veto a decision of the Board of Management regarding Commercialisation of Centre Intellectual Property, except where that Party reasonably believes that the proposed manner of Commercialisation would fail to maximise the benefits to Australia, contrary to clause 4.1(d), or would conflict with its rules, contrary to clause 5.1(h).

- 23.4 Where Commercialisation of Centre Intellectual Property requires access to a Party's Background Intellectual Property, that Party shall licence its Background Intellectual Property to the other Parties on the terms agreed between the Party and the other Parties. Such terms shall be based upon a determination to be made in accordance with clause 23.5 and shall be no less favourable than the Party would offer to any third party in an arm's length, commercial dealing.
- 23.5 Unless otherwise agreed, determination of the proportion of Background Intellectual Property contained in Intellectual Property arising from the performance of a Project shall be made by the Parties to a Project prior to Commercialisation. Should a conflict arise, it shall be resolved by unanimous decision of the Board of Management. Failing agreement, such proportion shall be determined in the manner provided in clause 34.
- 23.6 It shall be the responsibility of the Commercial Agent to :
- (a) establish a "Commercialisation Account";
 - (b) collect and pay all royalties, licence fees and other receipts derived from Commercialisation of Centre Intellectual Property into the Commercialisation Account on behalf of the Parties severally in proportion to their respective Participating Shares;
 - (c) pay all agreed expenses associated with the Commercialisation of Centre Intellectual Property (including all monies due to the owners of Background Intellectual Property as a result of such Commercialisation and any agreed remuneration payable to the Commercial Agent) from the Commercialisation Account; and
 - (d) pay the agreed balance standing in the Commercialisation Account from time to time (after retaining a reasonable amount to cover agreed expenses) to the Parties in proportion to their respective Participating Shares.

24. EQUITY IN THE CENTRE

- 24.1 Subject to clause 24.6, the equity of a Party in the Centre shall be in the same proportion as the total pledged cumulative value of a Party's Contribution bears to the total pledged cumulative value of the Contributions of all Parties. Such equity shall be divided into shares to be known as Participating Shares.
- 24.2 The cash component of a Party's Contribution to the Activities shall be calculated for equity purposes in Australian dollars

- 24.3 The value of the non-cash component of a Party's Contribution pledged to the Centre shall be determined by unanimous decision of the Board of Management. Failing agreement, the valuation shall be determined in the manner provided in clause 34.
- 24.4 Subject to this clause 24, as at the Commencement Date the respective Participating Shares are as set out in Schedule 2.
- 24.5 The allocation of Participating Shares in clause 24.4 is agreed to on the basis that each Party shall contribute to the Centre its pledged Contributions in accordance with this Agreement.
- 24.6 At the end of each Financial Year the Director shall arrange for an audit to be conducted of each Party's actual Annual Contribution for that Financial Year. Retrospective adjustments will be made to each Party's Participating Share by the Board of Management based on the results of that audit, it being the intention of the Parties that their respective Participating Shares be based on and commensurate with their respective actual Contributions to the date of that audit.
- 24.7 Subject to clause 29.3(b), any adjustment to the Participating Shares pursuant to clause 24.6 shall result in corresponding adjustments to the Party's share in the Commercialisation of the Centre Intellectual Property.

PART G: PROTECTING THE RESEARCH

25. CONFIDENTIALITY

- 25.1 Each Party agrees that it will keep secret and confidential and not disclose:
- (a) without the prior written consent of the Board of Management (such consent not to be unreasonably withheld) its Background Confidential Information or any part of it;
 - (b) without the prior written consent of the Board of Management, any Centre Confidential Information or any part of it; or
 - (c) any Background Information of another Party or any part of it,
- to any other legal entity.
- 25.2 Each Party agrees that it will
- (a) use Confidential Information only for the purposes of carrying out the Activities;

- (b) not disclose Confidential Information to any person other than those people who need to know it for the purposes of carrying out the Activities and who have been directed to keep that information confidential; and
- (c) not copy Confidential Information other than as strictly necessary for the purposes of carrying out the Activities.

25.3 The obligations imposed on a Party by this clause shall not apply to data or Confidential Information which:

- (a) prior to disclosure is in the public domain or in published literature or subsequent to disclosure to the Party becomes part of the public domain or is published other than as a result of an unauthorised act or failure to act by that Party;
- (b) is received by a Party from a third party without any obligation to hold in confidence and which has not been obtained by that third party directly or indirectly from any Party;
- (c) is independently developed by an employee or officer of the Party owing the obligation of confidentiality whilst having no knowledge of the other Party's Confidential Information; or
- (d) the Party claiming confidentiality has identified in writing as being released from the obligation of confidentiality;

25.4 A combination of information shall not be deemed to be in the public domain merely because it contains information in the public domain.

25.5 Confidential Information shall not be deemed to be in the public domain merely because it is embraced by a general disclosure in the public domain.

25.6 The onus of showing that any of the above exceptions apply will rest upon the receiving Party.

25.7 Each Party shall ensure that:

- (a) its respective employees (including Seconded Personnel and representatives on the Board of Management) who participate in the Activities or acquire access to Background Confidential Information and Centre Confidential Information, shall comply with the obligations of confidentiality as though parties to this Agreement; and

- (b) any of the above mentioned employees who cease to be employed by the Party shall continue to be bound by such obligations of confidentiality.

25.8 The obligations of confidentiality imposed on a Party shall survive termination of this Agreement or the Party's expulsion or retirement from the Centre.

26. PUBLICATIONS & PUBLIC ANNOUNCEMENTS

26.1 The Parties shall use their best endeavours to ensure nothing is done which might prejudice the subsistence or Commercialisation of Background Intellectual Property or Centre Intellectual Property, and in particular the Parties shall not publish or disclose any such Intellectual Property to any third person so as to preclude the grant of a patent or cause the loss of Intellectual Property in any Confidential Information.

26.2 Notwithstanding clause 26.1, the Parties acknowledge that the dissemination of knowledge is an important function of the Centre and that publication of books, papers, theses and other forms of dissemination of information is encouraged.

26.3 A Party must not make any public announcement on behalf of the Centre in relation to this Agreement or to the policy of the Centre or which makes commitments on behalf of the Centre without obtaining the approval of the Board of Management.

PART H: ALLOCATION OF RISK

27. MUTUAL INDEMNITIES.

27.1 Each Party ("the indemnitor") hereby irrevocably and unconditionally indemnifies and agrees to keep indemnified each of the other Parties and their respective directors, officers, employees, agents, contractors and representatives ("the indemnitee") from and against any and all liability, loss, harm, damage, cost or expense (including legal fees) howsoever arising that the indemnitee may suffer, incur or sustain as a result of any act or omission of, or any purported assumption of any obligation or responsibility by, the indemnitor or any of its directors, officers, employees, agents, contractors or representatives, done or omitted to be done, or undertaken, or apparently done or omitted to be done or undertaken, on behalf of the indemnitee in connection with the Centre and not authorised by or pursuant to this Agreement.

27.2 If any Party ("the Indemnitee") becomes liable to any other person for any tort, statutory offence or infringement of such person's Intellectual Property committed in the course of carrying out any of the Activities, each Party (including the Indemnitee) shall duly discharge such liability in proportion to its Participating Share

and shall indemnify and account to each other Party to the extent that it does not do so, save and except that such liability arose due to the negligence, default or unauthorised actions of the Indemnitee.

28. INSURANCE

- 28.1 Each Party shall effect and maintain adequate insurance to cover its participation in the Centre and such insurance shall cover each Party's workers compensation liabilities, third party liabilities, occupier's liability, comprehensive motor vehicle insurance and any other item of insurance deemed necessary by each of the Parties to indemnify them against any loss or damage which they may suffer or cause due to their participation in the Centre.
- 28.2 A Party may act as its own insurer provided it notifies all the other Parties in writing of its intention to do so.
- 28.3 Subject to clause 28.2, unless a Party has already done so, prior to the execution of this Agreement, a statement of insurance stating the date of policy expiry and a certificate of currency shall be provided to the Director as soon as possible after the Commencement Date and thereafter each Party shall annually provide the Director with a certificate of currency of its relevant insurance policies within 14 days of their renewal.

PART I: CHANGING OR TERMINATING THE RELATIONSHIP

29. RETIREMENT AND EXPULSION

- 29.1 Subject to the provisions of the Commonwealth Agreement and this clause 29:
- (a) a party may not assign or in any way charge or otherwise encumber its Participating Share;
 - (b) a Party may retire from the Centre by giving 12 months' notice to each other Party; and
 - (c) a Party may be expelled from the Centre by the direction of all members of the Board of Management other than the representative of the Party to be expelled provided Due Cause has arisen and remains unremedied after 21 days notice to the Party.
- 29.2 For purposes of clause 29.1, "Due Cause" shall include:
- (a) failure to make Contributions when required;

- (b) failure to remedy a conflict of interest to the satisfaction of the Commonwealth;
- (c) unauthorised disclosure of Confidential Information;
- (d) unauthorised use or Commercialisation of Intellectual Property;
- (e) proposed changes to Seconded Personnel that are contrary to clause 7 of the Commonwealth Agreement and likely to adversely affect the Centre's performance with respect to the Objectives of the CRC Program;
- (f) breach of any material condition of this Agreement or the Commonwealth Agreement;
- (g) becoming insolvent, bankrupt or being subject to the appointment of a mortgagee, a receiver or manager or an investigator to investigate its affairs, or making any arrangement or composition for the benefit of creditors or being the subject of winding up proceedings; and
- (h) such other matters as the members of the Board of Management other than the representative(s) of the Party to be expelled may by unanimous decision reasonably and properly declare to be a due cause.

29.3 If a Party is expelled or retires from the Centre:

- (a) it shall be relieved of its obligation to make further Contributions;
- (b) it shall assign its Participating Share to the remaining Parties or as they may direct, and shall be entitled to be paid by the assignees the capital value of the interests being so assigned. Failing agreement, such capital value shall be determined in the manner provided in clause 34;
- (c) it hereby agrees to continue in force for the Term of the Centre the royalty-free, non-exclusive licence to its Back ground Intellectual Property provided in clause 21.5 to enable the remaining Parties to pursue the Activities other than Commercialisation;
- (d) it shall continue to be bound, for the Term of the Centre, by the obligation provided in clause 23.4 to licence its Background Intellectual Property, on favourable terms, to the remaining Parties for purposes of Commercialisation of Centre Intellectual Property.
- (e) it shall cease to be a Party to this Agreement;

- (f) such expulsion or retirement shall not affect the enforceability of any other obligations of that Party or rights against that Party accrued at that time; and
- (g) such expulsion or retirement shall not relieve the Party of the obligations imposed upon it pursuant to this clause 29 and clauses 22, 25, 26, 27, 30 and 34.

29.4 Retirement or expulsion of any Party shall not relieve the remaining Parties of their obligations under this Agreement and they shall continue to carry on the Activities and perform the terms of this Agreement between them.

30. EFFECT OF TERMINATION

30.1 Unless the Parties otherwise agree, this Agreement shall terminate upon expiration of the Term of the Centre in accordance with clause 6.

30.2 Termination of this Agreement for any reason shall be without prejudice to the continuing enforceability of any rights or obligations of the Parties accrued at the time of termination.

30.3 Prior to termination of this Agreement or as soon as possible thereafter the Parties shall meet for the purpose of agreeing upon:

- (a) future Commercialisation of Centre Intellectual Property and any necessary Background Intellectual Property;
- (b) whether the Parties shall retain ownership of the Centre Intellectual Property in proportion to their Participating Shares at such date;
- (c) any change to the Parties' future obligations of secrecy with respect to Confidential Information and future obligations of insurance; and
- (d) any other matter not addressed in this Agreement but requiring resolution at that point in time.

Failing agreement on any of the above matters, such matters shall be resolved in accordance with clause 34 and clause 35.

30.4 Unless agreed otherwise pursuant to clause 30.3, upon termination of this Agreement:

- (a) the Parties shall continue to be bound by the obligations of confidentiality and insurance and the indemnities given under this Agreement (to the extent that these obligations are applicable to them); and

(b) the Parties shall abide by the obligations imposed upon them by virtue of clause 15 of the Commonwealth Agreement.

30.5 A former Party that has retired or has been expelled from the Centre pursuant to clause 29 shall still be deemed to be a Party for the purposes of this clause 30 and agrees to be so bound.

31. NEW MEMBERS

31.1 Subject to the unanimous agreement of the Parties, a person previously approved by the Commonwealth may be admitted as a new member of the joint venture forming the Centre in accordance with the reasonable directions of the Board of Management. Without limiting the generality of the foregoing, such directions shall require the person to execute an agreement under which it, inter alia, agrees to be bound by the terms of this Agreement, the Commonwealth Agreement and any other related Agreement, and to its allocation of equity in the Centre. Upon execution of such agreement, the new person shall be deemed to be a Party for the purposes of this Agreement.

32. SUB-CONTRACTING

32.1 A Party shall not sub-contract the performance of a substantial part of the Activities except in accordance with clause 16 of the Commonwealth Agreement, and subject to the prior approval of the Board of Management .

PART J: CONFLICTS AND DIFFERENCES OF OPINION

33. CONFLICT OF INTEREST

33.1 Each Party must:

- (a) immediately disclose to the other Parties actual or potential conflicts of interest which may exist or might reasonably be thought to exist between the interests of the Party or its Seconded Personnel and the interests of the other Parties in the Centre;
- (b) at the request of the other Parties or any of them, within seven (7) days or such further period as may be allowed, take such steps as are necessary and reasonable to remove any conflict of interest referred to in paragraph (a); and
- (c) not carry on or be interested in any business or activity which may operate to the detriment of the Centre.

33.2 If a Party cannot remove a conflict of interest as required by this clause 33 then it may be expelled pursuant to clause 29.

33.3 Each Party warrants to the other Parties that to the best of its knowledge, at the Commencement Date no conflict of interest exists which is likely to affect the performance of its obligations under this Agreement.

34. SETTLEMENT OF DISPUTES

34.1 The Parties shall without delay and in good faith attempt to resolve any dispute or difference which may arise between them in relation to this Agreement.

34.2 Any dispute or difference arising between the Parties relating to a matter of valuation which cannot be resolved between them shall be finally determined by valuation undertaken at the shared expense of the Parties (in proportion to their respective Participating Shares) by:

- (a) a licensed valuer agreed on by the Parties experienced in undertaking such valuations; or if the Parties are unable to agree
- (b) a licensed valuer appointed by the President or Acting President, within the Applicable Jurisdiction, of the Licensing Executives Society.

34.3 Any dispute or difference relating to a matter other than valuation shall be resolved in accordance with the following procedure :

- (a) the Party claiming that a dispute exists shall notify the other Parties that a dispute exists and forthwith submit such dispute or difference to the Board of Management for resolution;
- (b) if the Board of Management is unable to resolve the dispute or difference within a reasonable time, a meeting shall be convened forthwith between senior representatives of the disputing Parties not being members of the Board of Management for resolution of the dispute or difference; and
- (c) if the dispute or difference is not resolved by the persons referred to in paragraph (b) above, within such time as they agree but not being more than sixty (60) days, the provisions of clause 35 shall apply.

34.4 Each Party acknowledges that the compliance with these provisions is a condition precedent to any entitlement to a claim, relief or remedy, whether by way of proceedings in a court of competent jurisdiction or by arbitration proceedings pursuant to this Agreement or otherwise in respect of such dispute or difference.

However this shall not preclude any Party from seeking urgent interlocutory relief in a court of competent jurisdiction.

35. ARBITRATION

35.1 In the event of any dispute or difference arising between the Parties to this Agreement which cannot be resolved between them in accordance with clause 34, and which does not impinge upon a question of law or call for the rectification of this Agreement, such dispute shall forthwith be referred for determination at the capital city in the Applicable Jurisdiction, by an arbitrator agreed on by the Parties to the dispute or difference. If such Parties are unable to agree upon an arbitrator the matter shall be dealt with in accordance with the laws relating to expedited commercial arbitration for the time being in force in the Applicable Jurisdiction.

PART K: OTHER MATTERS

36. FORCE MAJEURE

36.1 Where a Party is unable, wholly or in part, by reason of force majeure, to carry out any obligation under this Agreement, and that Party:

(a) gives each other Party prompt notice of that force majeure 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;

(b) uses all possible diligence to remove that force majeure as quickly as possible,

that obligation is suspended so far as it is affected by force majeure during the continuance of that force majeure and that Party shall be allowed a reasonable extension of time to perform its obligations.

36.2 If after a period of thirty (30) days, the force majeure has not ceased, the Parties shall meet in good faith to discuss the situation and endeavour to achieve a mutually satisfactory resolution to the problem.

36.3 The requirement that any force majeure must be removed with all possible diligence does not require the settlement of strikes, lockouts or other labour disputes or claims or demands by any government on terms contrary to the wishes of the Party affected.

36.4 In this clause, "force majeure" means an act of God, strike, lockout or other interference with work, war (declared or undeclared), blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi

governmental restraint, expropriation, prohibition, intervention, direction or embargo, unavailability or delay in availability of equipment or transport, in ability or delay in obtaining governmental or quasi governmental approvals, consents, permits, licenses, authorities or allocations, and any other cause, whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the Party affected.

37. CLAUSE SEVERANCE

37.1 Any provision of this Agreement that is held void by a court of competent jurisdiction or is voidable by a Party or is or becomes at that time unlawful or unenforceable shall, to the extent to which it is void or voidable or is unlawful or unenforceable, be deemed to be excised from and not form part of this Agreement, without affecting the validity or enforceability of the remaining provisions to the fullest extent permitted by law or in equity.

38. WAIVER

38.1 A waiver by a Party of any rights arising from a breach or non-observance by any other Party of a term of this Agreement shall not be taken to operate in any way as a waiver of any rights arising from any subsequent continuation of that breach or non-observance, or any further or other breach or non-observance of the same or any other term.

39. GOVERNING LAW

39.1 This Agreement shall be governed by and construed in accordance with the law for the time being in force in the Applicable Jurisdiction.

40. NOTICES

40.1 Any notice, request, consent or other communication in connection with this Agreement:

- (a) must be in writing; and
- (b) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee or sent by electronic mail transfer to the electronic mail number of the addressee or if the addressee has in writing notified another address, facsimile number or

electronic mail number then to that address, facsimile number or electronic mail number.

- 40.2 The address, facsimile number and electronic mail number of each Party is as specified in Schedule 3.
- 40.3 A notice, request, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 40.4 A notification of change of address shall not take effect until each other Party notifies the Party changing its address that the notice of change of address has been received.
- 40.5 A letter, facsimile or electronic mail transfer is taken to be received:
- (a) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting;
 - (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient PROVIDED THAT where transmission is completed after 5.00 pm on a business day or is sent on a day that is not a business day, the message will not be deemed to have been received until 9.00 am the next business day; and
 - (c) in the case of electronic mail transfer, on the production of a delivery report by the transmitting computer.

41. ENTIRE AGREEMENT

- 41.1 This Agreement constitutes the entire agreement between the Parties, and supersedes all prior communications, negotiations, arrangements and agreements, whether oral or written, with respect to the subject matter of this Agreement.

42. AMENDMENTS

- 42.1 No agreement or understanding varying or extending this Agreement shall be legally binding unless it is in writing signed by all Parties.
- 42.2 Any substantial changes to this Agreement require the prior approval of the Commonwealth pursuant to clause 3.4 of the Commonwealth Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates respectively set out below.

SIGNED for and on behalf of)
the Northern Territory University)
by its duly authorised officer)
)
_____ [Name]) X
)
in the presence of)
)
_____ [Name]) X
)
_____ [Date])

SIGNED for and on behalf of)
The Australian National University)
by its duly authorised officer)
)
_____ [Name]) X
)
in the presence of)
)
_____ [Name]) X
)
_____ [Date])

THE COMMON SEAL of the James Cook)
University of North Queensland was)
hereto affixed pursuant to a resolution of)
the Council dated 6th October 1977)
by me as the proper officer having custody)
thereof)
)
_____ [Name]) X
)
in the presence of)
)
_____ [Name]) X
)
_____ [Date])

THE COMMON SEAL of The Department)
of Conservation and Land Management)
was affixed in accordance with The)
Conservation and Land Management Act)
by)
_____ [Name]) X
)
in the presence of)
)
_____ [Name]) X
)
_____ [Date])

THE COMMON SEAL of the Chief)
Executive Officer of the Department of)
Agriculture was hereto affixed by)
)
_____ [Name]) X
)
in the presence of)
)
_____ [Name]) X
)
_____ [Date])

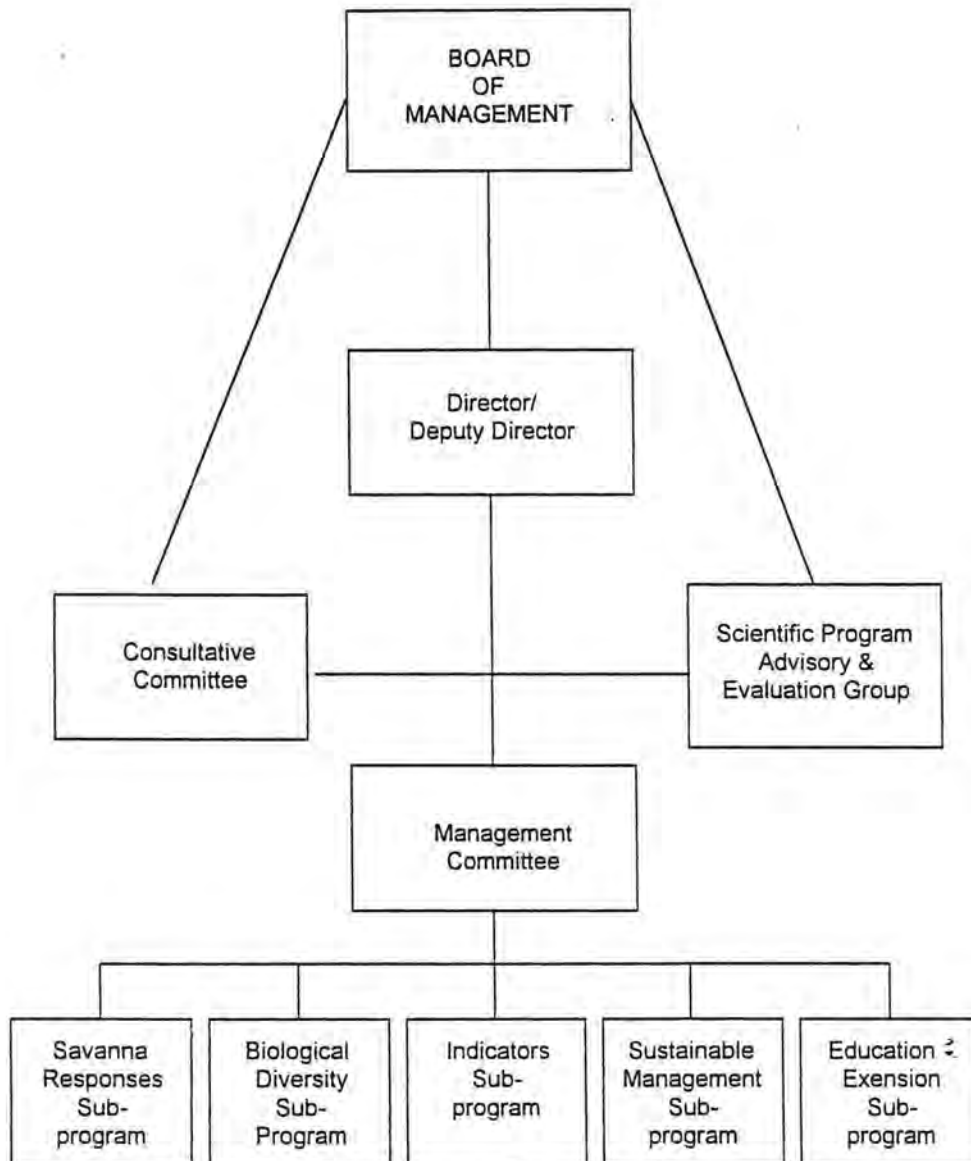
SIGNED for and on behalf of The State)
of Queensland by)
)
_____ [Name]) X
)
in the presence of)
)
_____ [Name]) X
)
_____ [Date])

SIGNED for and on behalf of)
The Northern Territory of Australia by)
)
_____ [Name]) X
)
in the presence of)
)
_____ [Name]) X
)
_____ [Date])

SIGNED on behalf of The Director)
of National Parks and Wildlife by)
)
_____ [Name]) X
)
in the presence of)
)
_____ [Name]) X
)
_____ [Date])

SIGNED for and on behalf of the)
Commonwealth Scientific and Industrial)
Research Organisation by)
)
_____ [Name]) X
)
in the presence of)
)
_____ [Name]) X
)
_____ [Date])

SCHEDULE 1



SCHEDULE 2

PARTICIPATING SHARES AT COMMENCEMENT

		\$'000			
	In-kind (Table 1)	Cash	Other	Total	Equity (%)
Northern Territory Univ	1193.3	33.3	29.5	1256.1	19.6
Australian National Univ	390.6			390.6	6.1
James Cook University	337.1	50.0		387.1	6.0
Dept of CALM (WA)	290.3			290.3	4.5
Dept of Agriculture (WA)	420.4			420.4	6.6
State of Queensland	985.2			985.2	15.4
Nthn Territory of Australia	1815.4		116.0	1931.4	30.1
Aust Nature Cons Agency	55.4			55.4	0.9
CSIRO	695.5			695.5	10.8
Total	6183.2	83.3	145.5	6412.0	100.0

SCHEDULE 3

ADDRESSES FOR SERVICE OF NOTICE

Northern Territory University

The Vice Chancellor
Northern Territory University
DARWIN NT 0909

Facsimile: (089) 273 480

E-mail: To be advised

The Australian National University

The Director, Institute of Advanced Studies and Deputy Vice Chancellor
Australian National University
CANBERRA ACT 0200

Facsimile: (06) 249 2510

E-mail: To be advised

with a copy to

Head, Grants Office,
Australian National University
CANBERRA ACT 0200

Facsimile: (06) 249 4807

E-mail: To be advised

The James Cook University of North Queensland

The Vice Chancellor
James Cook University
JAMES COOK UNIVERSITY QLD 4811

Facsimile: (077) 814 165

E-mail: To be advised

Department of Conservation and Land Management (Western Australia)

The Executive Director
Department of Conservation and Land Management
50 Hayman Rd
COMO WA 6151

Facsimile: (09) 386 1578
E-mail: To be advised

Department of Agriculture (Western Australia)

The Director General
Department of Agriculture
3 Baron-Hay Court
SOUTH PERTH WA 6151

Facsimile: (09) 368 1205
E-mail: ediew@infotech.agric.gov.wa.au

The State of Queensland

The Director General
Queensland Department of Lands
Locked Bag 40
COORPAROO DELIVERY CENTRE QLD 4151

Facsimile: (07) 896 3697
E-mail: To be advised

and

The Director General
Department of Primary Industries
GPO Box 46
BRISBANE QLD 4001

Facsimile: (07) 239 3949
E-mail: To be advised

with a copy to

Northern Director
Department of Primary Industries
PO Box 1085
TOWNSVILLE QLD 4810

Facsimile: (077) 78 3634
E-mail: To be advised

Northern Territory of Australia

The Deputy Director
Conservation Commission of the Northern Territory
PO Box 496
PALMERSTON NT 0831

Facsimile: (089) 32 3849
E-mail: To be advised

with copies to

The Secretary
Department of Primary Industry and Fisheries
GPO Box 990
DARWIN NT 0801

Facsimile: (089) 89 2010
E-mail: To be advised

and

Chief Executive Officer
Power and Water Authority
GPO Box 1921
DARWIN NT 0801

Facsimile: (089) 82 7200
E-mail: To be advised

and

The Secretary
Department of Mines and Energy
GPO Box 2901
DARWIN NT 0801

Facsimile: (089) 41 1284
E-mail: To be advised

and

The Secretary
Department of Lands, Planning and Environment
GPO Box 1680
DARWIN NT 0801

Facsimile: (089) 32 3849
E-mail: To be advised

Australian Nature Conservation Agency

Executive Director
Australian Nature Conservation Agency
GPO Box 126
DARWIN NT 0801

Facsimile: (089) 813 497
E-mail: To be advised

Commonwealth Scientific and Industrial Research Organisation

The Director
Institute of Natural Resources and Environment
Commonwealth Scientific and Industrial Research Organisation
PO Box 225
DICKSON ACT 0202

Facsimile: (06) 276 6207
E-mail: val.blackley@cbr.inre.csiro.au