



Australian Government
Director of National Parks



AGREEMENT

FOR THE OPERATION OF

THE CENTRE FOR AUSTRALIAN NATIONAL BIODIVERSITY RESEARCH

BETWEEN

DIRECTOR OF NATIONAL PARKS

AND

**COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH
ORGANISATION**

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THIS AGREEMENT is made on 20th December 2010

BETWEEN

DIRECTOR OF NATIONAL PARKS, ABN 13 051 694 963 a body corporate under the *Environment Protection and Biodiversity Conservation Act 1999* ("DNP")

AND

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION, ABN 41 687 119 230 a body corporate established by the Science and Industry Research Act, 1949 ("CSIRO")

WHEREAS:

- A. Under agreements dated 22 November 1993 and 28 April 1998 ('First Centre Agreement') the Parties were participants in an unincorporated joint venture known as the Centre for Plant Biodiversity Research and Australian National Herbarium, which terminated on 31 December 1999.
- B. Under an agreement dated 14 April 2000 and extended by agreement on 16 December 2009, 28 April 2010 and 24 June 2010 ('Second Centre Agreement'), CSIRO and DNP continued the joint venture under the name "The Centre for Plant Biodiversity Research" to encourage and pursue the performance of co-operative research in the field of plant biodiversity and to create an enhanced herbarium capability.
- C. CSIRO and DNP have conducted a review of the Centre. The review confirmed the valuable role performed by the Centre in supporting nationally critical decision making on biodiversity conservation and the Parties have agreed to continue the joint venture under the name "The Centre for Australian National Biodiversity Research".
- D. 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" means the account established under clause 16.3;

"Activities" means the Research, herbarium curation, botanical information management, educational, outreach, community liaison and commercial activities carried out by the Centre according to the Strategic Plan in pursuit of the Objectives of the Centre;

"Advisory Panel" means the expert advisory panel comprising members with relevant experience from the fields of systematics and taxonomy, conservation genetics and ecology, restoration ecology, biodiversity policy and biodiversity informatics as established under clause 9A;

"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 under clause 14, and **"Annual Contributions"** means the aggregate of the Annual Contribution of each of the Parties;

"Asset" means any item of real or personal property not including Intellectual Property;

"Background Intellectual Property" means that Intellectual Property specified in Schedule A which is made available for the Activities by a Party, 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" means the Board of management for the Centre established under clause 8;

"Board Member" means each person nominated by a Party in accordance with clause 8 to serve on the Board from time to time;

"Budget" means the annual budget for the Centre prepared and approved under clause 14;

"Centre" means the 'CANBR' or Centre for Australian National Biodiversity Research (formerly known as the Centre for Plant Biodiversity Research) including the Australian National Herbarium;

"Centre Agent" means the Party or other person appointed by the Parties under clause 16;

"Centre Intellectual Property" means Intellectual Property developed as a result of the Activities;

"Centre Resources" means the resources made available to the Centre, including the Contributions and any resources provided by third parties;

"Centre Staff" means any personnel seconded by a Party to the Centre as part of its Contributions;

"Commencement Date" means 1 October 2010;

"Commercialise" with respect to Intellectual Property means:

- (a) to manufacture, sell, offer to sell, hire or exploit a product or process or to provide a service, incorporating or using that Intellectual Property for commercial gain; or
- (b) to license any third party to do any of these things specified in (a) for commercial gain;

but does not include:

- (c) carrying out the Research, or
- (d) entering into contracts/funding agreements for the purposes of Research

and **"Commercialisation"** shall be similarly construed;

"Communication Plan" means the communication plan developed under clause 9.2 and clause 10.4 including any strategy, procedures and requirements for any communication, public announcements or publication of matters relevant to this Agreement, as agreed by the Parties and as may be revised from time to time by the Board;

"Confidential Information" means any information, in any form or media, relating or representing:

- (a) all unpublished information relating to the Centre Intellectual Property, a Party's Background IP or the Strategic Plan;
- (b) information about the terms of this Agreement; and
- (c) information which is marked confidential, notified to the other Party to be confidential or by its nature or by the circumstances of its disclosure, is or could be reasonably expected to be regarded as confidential to:
 - (i) a Party; or
 - (ii) any third party with whose consent or approval a Party uses that information,
- (d) all copies and notes of the information in (a) to (c) above;

but does not include information which;

- (A) was in the public domain at the time of its disclosure or subsequently comes into the public domain other than through breach by the receiving Party;
- (B) came into the knowledge of the receiving Party by lawful means and without breach of any obligations of confidentiality by any third party;
- (C) was independently developed or created by an employee of the receiving Party, without regard to the Confidential Information of the disclosing Party; or
- (D) was in fact known to the receiving Party, without breach of any obligation of confidentiality by any third party, prior to its disclosure to the receiving Party;

"Contribution", in relation to a Party, means the cash, Assets, personnel, premises, equipment, services and other non-cash contribution to be contributed by the Party to the Centre, but does not include any Intellectual Property, and **"Contributions"** means the aggregate of the Contribution of each of the Parties;

"Director" means the director of the Centre appointed under clause 10;

"Executive Assistant" means the person appointed to act as executive assistant of the Centre under clause 11;

"Executive Committee" means the executive committee of the Centre appointed under clause 13;

"Financial Year" means a period of twelve months or part thereof ending on 30 June;

"Intellectual Property" or **"IP"** means all intellectual property rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, including:

- (a) patents, plant breeder's rights, copyright, trade marks (including service marks), registered designs, rights in circuit layouts and know how;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a);

but excludes moral rights and similar non assignable personal rights of any person.

"IP Application" means any copyright registration, plant breeders' right, trade mark or patent application arising from the Activities as may be filed in Australia or in any foreign jurisdiction and the resulting registered or granted IP rights including in the case of patents all and any patents granted on any patent applications and all and any amendments, extensions, divisional applications, continuations, continuations-in-part, supplemental disclosures, reissues, regrants or foreign equivalents of any of those patents;

"Living Collections" means those collections of living plant collections, biological materials or otherwise living resources acquired, cultivated, documented and maintained by a Party for research, conservation and educational purposes;

"Objectives of the Centre" means the objectives listed in clause 3;

"Party" means a party to this Agreement at the Commencement Date their permitted assigns and successors and includes any person admitted to be a new member of the joint venture forming the Centre under clause 31;

"Performance Indicators" means those criteria for measuring whether the Centre is achieving its Objectives, as specified in the Strategic Plan;

"Publication" means dissemination of outputs and materials to another person through presenting information in printed, audible electronic, or other forms of media;

"Research" means any research, training, exploration, development, curatorial and information management activities carried out by the Parties in the Centre in the fields of:

- (a) Biodiversity of Australian flora – systematics, biogeography and evolution;
- (b) Conservation biology and utilisation of the Australian flora;
- (c) Australian National Herbarium research collection and services;
- (d) Botanical information and database/network management; and
- (e) Any other research activities as may be agreed between the Parties from time to time.

"Research Leader" means a member of Centre Staff who is appointed by the Board to act as leader of any Research or other Activities;

"Rules" means the 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;

"Strategic Plan" means the plan developed under clause 10.4 by the Director, with approval of the Board under clause 9.2, to reflect the strategic directions of the Centre over the next 5 year period, and incorporating performance indicators;

"Term of the Centre" means the period ascertained in accordance with clause 5.

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

- (a) the expression "person" includes an individual, a body corporate, a joint venture, a trust, 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 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 shall form part of this Agreement;
- (h) all monetary amounts referred to in this Agreement shall be deemed to be in Australian currency;
- (i) all references to clauses are references to clauses in this Agreement.

PART B: CONTINUED OPERATION OF THE CENTRE

2. CONTINUATION OF JOINT VENTURE

- 2.1 The Parties agree to continue to associate themselves together as an unincorporated joint venture to be known as the Centre for Australian National Biodiversity Research for the purpose of carrying out the Activities.
- 2.2 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 joint venturers and is limited to carrying out the Activities so that, except for clause 16, 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, the other Party; and
 - (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 equal shares.

2A TRANSITION ARRANGEMENTS

- 2A.1 At the Commencement Date all funds in the account maintained by the Centre Agent under the Second Centre Agreement will become funds available to the Centre and will be applied to the Activities of the Centre.
- 2A.2 In relation to jointly owned Centre Intellectual Property arising from the activities under the First Centre Agreement, which the Parties own as tenants in common in equal shares ("**First Centre IP**"), the Parties agree to make available the First Centre IP as Background Intellectual Property for the term of the Centre.
- 2A.3 In relation to jointly owned Centre Intellectual Property arising from the activities under the Second Centre Agreement ("**Second Centre IP**") the Parties agree:

- (a) that they own the Second Centre IP as tenants in common in equal shares; and
- (b) to make available the Second Centre IP as Background Intellectual Property for the term of the Centre.

2A.4 In relation to Assets acquired by the Centre under the First Centre Agreement, which the Parties own as tenants in common in proportion to the cash component of each Party's relative share of the total cash Contribution to the Centre account by the Parties, the Parties agree to make available the Assets to the Centre as part of their Contributions.

2A.5 In relation to Assets acquired by the Centre under the Second Centre Agreement the Parties agree:

- (a) that they own the Assets as tenants in common in proportion in proportion to the cash component of each Party's relative share of the total cash Contribution to the Centre by the Parties; and
- (b) to make available the Assets to the Centre as part of their Contributions.

3. OBJECTIVES OF THE CENTRE

3.1 The objectives of the Centre are:

- (a) to be a National Centre of research excellence in the fields of systematics and conservation biology, as a basis for conservation and sustainable management and use of Australian ecosystems;
- (b) to develop and manage scientific collections of Australian and related floras as the Australian National Herbarium, a permanent record of Australian plant diversity, and as a resource for research on these floras, and to provide the scientific authenticity of the Living Collections of the Australian National Botanic Gardens ('ANBG').
- (c) to provide a national focus for and play a role in national botanical database management, and to represent and promote Australia internationally within the botanical database management field;
- (d) to raise public awareness and appreciation of Australia's biodiversity;
- (e) to build Australia's capacity in biodiversity knowledge (including training and education); and

- (f) to maximise the benefits flowing from applications of Centre Intellectual Property.

4. MAJOR COVENANTS

4.1 Each Party covenants and agrees with the other Party:

- (a) to diligently conduct the Activities in accordance with good scientific, academic, commercial and industrial practice and observe and perform its obligations and commitments set out in this Agreement;
- (b) to keep the Board informed about new research opportunities within the scope of the Activities known to Centre Staff (subject to third party obligations of confidence) which could be undertaken as part of the Activities;
- (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 as specified in Schedule B and 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 which would prejudice the protection of any Party's rights to Intellectual Property;
- (g) to use the Contributions and Centre Resources for the purpose of carrying out the Activities; 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.

4.2 Each Party covenants with the other Party that it will do all things necessary and procure that its Centre Staff do all things necessary to ensure that the Centre Resources are applied only towards establishing and operating the Centre for the purposes of the Objectives of the Centre and the performance of the Activities in accordance with this Agreement.

- 4.3 A Party may enter into a contract for the purposes of the Activities without the other Party being a party to that contract provided the contracting Party obtains the written approval of the Board.
- 4.4 Notwithstanding the above, each Party reserves the unrestricted right to continue with or engage in research or training outside the Activities without consulting the other Party and to retain all benefits arising from such research.

5. TERM OF THE CENTRE

- 5.1 This Agreement shall commence operation on the Commencement Date and shall remain in force until 30 September 2015 unless:
- (a) the Parties by written resolution agree to terminate the Centre;
 - (b) the Centre is terminated in accordance with clause 32; or
 - (c) the Agreement is extended in accordance with clause 5.2.
- 5.2 Commencing after 1 October 2014, the Parties will conduct a review of the Centre, with that review to be completed by 31 March 2015. The review will consider the performance of the Centre against the Strategic Plan and will involve an appropriate external review panel, applying appropriate terms of reference. Within sixty (60) days of the conclusion of the review, the Parties must meet and determine whether to continue the operation of the Centre having regard to the outcomes of the review. If the Parties agree to continue the Centre, the Parties will extend this Agreement until 30 September 2020 and will meet and review Contribution and Activities that will apply for the duration of the extension.

6. LOCATION OF ACTIVITIES AND ACCESS

- 6.1 The Activities will be conducted at the premises of CSIRO and the ANBG on Black Mountain using associated equipment, glasshouses, laboratories and facilities, including the herbarium and Living Collections.
- 6.2 Each Party ("the **Host**") shall at all reasonable times give to the other Party or its Centre Staff ("the **Visitor**") access to premises occupied by the Host where the Activities or any part of them are to be carried out.
- 6.3 Notwithstanding clause 6.2, the Host may require as a condition of such access that the Visitor complies with all reasonable directions and procedures relating to occupational health and safety and security in effect at or relating to those premises or in regard to associated equipment or facilities as notified by the Host.

- 6.4 Each Party retains ownership and control of the premises, facilities and equipment that it contributes to the Activities.
- 6.5 Assets purchased by the Centre with funds from Annual Contribution by the Parties shall be owned by the Parties as tenants in common in accordance with Clause 24.1.
- 6.6 The Parties record their intention to work together and use reasonable endeavours to obtain funds for increased accommodation for the Centre Staff and Living Collections.

PART C: ORGANISING THE CENTRE

7. MANAGEMENT STRUCTURE

- 7.1 The management structure for the governance of the Centre shall consist of the Board, the Director, the Advisory Panel, the Executive Committee, and any committee established by the Board from time to time.

8. COMPOSITION AND MEETINGS OF THE BOARD

- 8.1 The Parties shall establish the Board, which shall comprise two appropriately qualified representatives from each Party nominated in writing to the other Party.
- 8.2 Each of the Board Members shall have one vote.
- 8.3 The Director shall attend all Board meetings.
- 8.4 Each Party may at any time and from time to time remove its representative on the Board and appoint another representative in that person's stead. Such appointment and removal shall be effective only upon receipt of notice in writing to the other Party.
- 8.5 The Board must regulate its own proceedings (including mode of operation, frequency of meetings, chair, minutes) and shall meet in person, by telephone or by video link-up and the like, provided however that the Board shall meet at all times necessary for it to discharge its obligations as set out in this Agreement in a proper and timely manner and at least once every six months commencing on the Commencement Date. The Board will meet whenever the Parties determine or when a meeting is called by a Board Member provided that not less than fourteen days written notice has been given to all other Board Members. The Board will appoint an initial chairperson from among the Board Members for the first Board meeting. Thereafter and the Board will appoint a Board Member to act as chairperson for each 12 month period.

- 8.6 All resolutions to be decided by any meeting of the Board shall require unanimous approval from the Board.
- 8.7 Should a place on the Board become vacant, that position shall be replaced by the Party whom the vacating member represents, whether that vacancy is casual or otherwise.
- 8.8 Each Party may from time to time appoint any person as an alternate member in place of its Board Member, whether for a stated period or periods, or until the happening of a specified event, or from time to time, whenever by absence or illness or otherwise a member is unable to attend to duties as a Board Member
- 8.9 The quorum for the Board shall be four Board Members.
- 8.10 Subject to sub-clause 8.11, any approval, decision or determination which the Board is competent to give or make may be submitted to the Board Members for consideration and vote, without holding a meeting, and the vote shall be treated as a vote made at a meeting of the Board, PROVIDED THAT:
- (a) each Board Member is given written notice of such matter;
 - (b) each Board Member or the Board Member's alternate has a period of at least five days (or such other agreed period) after receiving notice of the matter to vote on the matter; and
 - (c) within such period, no Board Member requests that such matter be considered at a meeting of the Board.
- 8.11 Whenever a matter is so submitted, each voting Board Member shall vote by giving written notice of his or her vote to each other Board Member and any matter which receives unanimous approval of Board Members shall be binding on each Party in the same manner as if the resolution had been passed at a meeting of the Board.
- 8.12 A written record of each decision made under clauses 8.10 and 8.11 shall be kept and a copy shall be distributed to each Board Member by the Executive Assistant, as soon as practicable after the vote is taken.

9. FUNCTIONS AND POWERS OF THE BOARD

- 9.1 The Board shall control the policy, practices, management and operation of the Centre taking into account any relevant advice of the Advisory Panel.
- 9.2 The Board shall, in addition to the general power of management conferred on it under clause 9.1, have the following specific powers:

(a) Performance

- (i) to determine and review Centre policy on all matters relating to the Objectives and Activities;
- (ii) to determine or modify the Performance Indicators;
- (iii) to use its best endeavours to ensure that the Centre and its Activities are carried on in accordance with the provisions of this Agreement and that the Objectives are achieved in accordance with the Strategic Plan;
- (iv) to review and amend the strategies to be employed in achieving the Objectives and Activities in accordance with this Agreement;
- (v) to give directions and instructions to the Director and such Centre Staff as it deems fit;
- (vi) to approve, at least annually, changes to the Parties' Contributions in Schedule B;
- (vii) to oversee and review the commitment of the Parties to the Centre;
- (viii) to determine and implement procedures for the protection of and use by the Parties and third parties of Background Intellectual Property and Centre Intellectual Property;
- (ix) to determine the strategy and process of Commercialisation of Centre Intellectual Property, and to assess its success having regard to the individual requirements of Commercialisation and to determine the distribution of any royalties and licence fees derived from such Commercialisation;
- (x) to determine the Centre's research and education strategies;
- (xi) to approve the Communication Plan, including any reviews and updates; and
- (xii) to approve the Strategic Plan, including any reviews and updates.

(b) Staffing

- (i) to appoint, remove and determine the functions of the Director in accordance with clause 10 and to recommend to the Party employing the Director that that Party consult with the other Parties concerning the Director's terms and conditions;
- (ii) to appoint, remove and determine the functions of, the Research Leaders and the Centre Agent in accordance with this Agreement;
- (iii) to appoint, remove and determine the role of such Centre Staff and committees as from time to time may be required;
- (iv) to approve the secondment of Centre Staff as required; and
- (v) to determine in consultation with the Director which Party shall employ persons not currently employed by one of the Parties;

(c) Finance

- (i) to set budgetary priorities;
- (ii) to receive and approve Budgets;
- (iii) to establish protocols for the calculation and the value of a Party's in kind (non-cash) Contributions and to determine, following such protocols, the value of in kind (non-cash) and cash Contributions;
- (iv) to approve any variation in the amount of the Parties' Contributions; and
- (v) to authorise all expenditure on behalf of the Centre;

(d) General

- (i) to approve and terminate Research and to receive and consider reports from the Director concerning the performance of the Activities;
- (ii) to promote co-operation between the Parties;
- (iii) to determine issues of admitting new members to the Centre;

- (iv) to delegate such powers of the Board to such persons as determined by the Board;
- (v) to amend the Schedules, provided that any Party who is thereby required to make additional Contributions or whose Background Intellectual Property or Centre Intellectual Property may be affected has agreed to such amendment; and
- (vi) to carry out such other functions as are ascribed to it under this Agreement or that the Parties may request it in order to meet the Objectives of the Centre.

- 9.3 Each Party warrants that its Board Members are vested with the necessary power and authority to carry out their duties as a member of the Board as set out herein, including the execution of any agreements required to carry out the Activities.
- 9.4 Each Party acknowledges that its chosen Board Member is to be accountable to the Party by whom he or she is chosen with respect to that Party's performance in the Centre.
- 9.5 The authority of the Board will not extend to the following matters, the authority over which is retained by the Parties:
- (a) the acquisition or disposal of any interest in land;
 - (b) external borrowing of funds whether secured or unsecured;
 - (c) the entry into any lease or hire of capital equipment; and
 - (d) career aspects (promotion, salary and other related matters) of staff of a Party, unless otherwise agreed.
- 9.6 The Board shall not act ultra vires of the enabling legislation of DNP or CSIRO.
- 9.7 In exercising its powers and functions under this clause the Board shall have regard to any relevant policy of the Parties as notified to the Board by each Party's Board Member.
- 9.8 A decision of the Board shall be binding on the Parties unless the decision is inconsistent with this Agreement, is expressly reserved to the Parties or any one of them under this Agreement or is one which requires any of the Parties to do or execute any act, document or thing which is ultra vires or conflicts with the internal procedures of that Party.

9A. ADVISORY PANEL

- 9A.1 The Parties will establish an Advisory Panel comprising at least three, but no more than five, members with relevant experience from the fields of systematics and taxonomy, conservation genetics and ecology, restoration ecology, biodiversity policy and biodiversity informatics.
- 9A.2 The Director shall be invited to attend all meetings of the Advisory Panel.
- 9A.3 A member of the Advisory Panel will be jointly appointed by the Parties for a term of either two or three years so as to ensure that there is always a minimum of three appointed Advisory Panel members during the Term. External members must sign a confidentiality agreement containing terms no less onerous than the terms of confidentiality required under this Agreement. Removal of an external Panel member or replacement of retiring Panel members will require agreement by the Parties.
- 9A.4 The primary role of the Advisory Panel will be to provide strategic advice to the Board regarding the Objectives and Activities of the Centre and the Strategic Plan. Decisions of the Advisory Panel are advisory only and shall not bind the Board or the Parties.

10. DIRECTOR

- 10.1 The Director of the Centre is to be appointed and removed by the Board and shall exercise his or her office for as long as the Board determines. The Parties will jointly fund the position of the Director in equal shares.
- 10.2 CSIRO or DNP agrees that one of them will appoint the Director as one of its employees for the term of the directorship. The first Director to be appointed under this Agreement will be an employee of CSIRO.
- 10.3 The Director may resign office by giving three month's written notice to the Board.
- 10.4 The Director's role is to:
- (a) provide scientific leadership to and make every effort to ensure the scientific excellence of the Living Collections and Research carried out by the Centre;
 - (b) ensure that the Activities are carried out in accordance with the Budget;

- (c) report to the Board on all the Activities;
- (d) represent, as authorised by the Board, the Centre in external dealings with others including seeking external sources of funds for Research projects or executing Research contracts in accordance with any delegated authority issued jointly by the Parties from time to time including any conditions imposed on the exercise of such authority;
- (e) approve temporary (less than one year) appointments to the Centre;
- (f) facilitate collaboration between the Parties and co-ordinate liaison between the Centre Staff and the Parties;
- (g) supervise staff engaged in the Activities and oversee research and survey teams working on both flora and fauna;
- (h) work with the Research Leaders to develop and maintain the Research;
- (i) carry the primary financial delegation from the Board and allocate the Contributions to Research in accordance with the Budgets;
- (j) manage the business support facilities of the Centre and promote the role and relevance of the Centre to the community in accordance with the Communication Plan;
- (l) coordinate reporting of Contributions by the Parties to the Board;
- (m) prepare or arrange for the preparation of the Budget and separate budgets for each Activity;
- (n) identify additional personnel requirements of the Centre and arrange for the secondment, release or appointment of the same subject to the approval of the Board;
- (o) monitor the performance of the Centre in carrying out the Activities against the Performance Indicators, the Objectives and Budgets;
- (p) monitor and assess the performance of the Centre Agent, Centre Staff, the Activities and the Centre generally against the Performance Indicators and report such performance to the Board as and when the Board determines;
- (q) monitor and assess the performance of any third parties involved in the Commercialisation of Centre Intellectual Property against any performance criteria stipulated in the relevant

Commercialisation agreement and report such performance to the Board as and when the Board determines;

- (r) approve monetary reimbursement to the Centre Agent for expenses properly incurred by it in carrying out its functions under this Agreement;
- (s) prepare, review and update the Communication Plan, as approved by the Board;
- (t) prepare, review and update the Strategic Plan, as approved by the Board;
- (u) carry out the decisions of the Board;
- (v) carry out such other duties as are ascribed to the Director under this Agreement;
- (w) perform such other functions as are determined by the Board;
and
- (x) nominate an Acting Director from the senior Centre Staff to perform the duties of the Director in his or her absence for a period of up to 4 weeks (or such other period as determined by the Board).

10.5 The Director shall not be responsible to the Parties for any liability, loss, harm, damage, cost or expense (including legal fees) that the Parties may suffer, incur or sustain arising out of the Activities or the tasks of the Director in performing his or her duties or obligations under or by virtue of this Agreement, except to the extent that such liability, loss, harm, damage, cost or other expense arises from the Director's wilful or criminal misconduct or bad faith.

10.6 The Parties hereby indemnify and undertake and agree to keep indemnified and save harmless the Director from and against any and all liability, loss, harm, damage, cost or expense (including legal fees) that the Director may suffer, incur or sustain as a result of any suit, claim or demand brought or made against the Director and arising out of the activities of the Director in performing his or her duties or obligations as the Director under or by virtue of this Agreement except to the extent that such liability, loss, harm, damage, cost or expense arose from the Director's wilful or criminal misconduct or bad faith.

11. EXECUTIVE ASSISTANT

11.1 The Director may appoint an Executive Assistant to carry out the secretarial requirements of the Board and the Centre and to carry out

such other administrative functions as either the Director or the Board determines.

11.2 The Party employing the Director shall be responsible for providing an Executive Assistant. The Parties will jointly fund the position of the Executive Assistant in equal shares.

11.3 Without limiting the generality of clause 11.1, an Executive Assistant appointed under that clause shall:

- (a) in consultation with the Board's chairperson and the Director, give notice of, and prepare an agenda for, each Board meeting;
- (b) prepare minutes in draft form of all meetings of the Board and circulate them to all representatives as soon as possible after the meeting has been held. Approval of minutes must take place at the next following meeting or at such other time as the Board determines; and
- (c) notify the Board Members of the next meeting.

12. COMMITTEES

12.1 The Board may appoint in consultation with the Director committees, comprising scientists eminent in disciplines relevant to the Activities, representatives of user organisations and other appointees as deemed appropriate by the Board.

13. EXECUTIVE COMMITTEE

13.1 The Board will establish an Executive Committee to conduct the day to day activities of the Centre.

13.2 The Executive Committee will consist of:

- (a) the Director;
- (b) the Research Leaders; and
- (c) appointments from DNP and CSIRO as endorsed by the Board.

13.3 The Executive Committee's primary responsibility will be to advise the Director on the following:

- (a) implementation of decisions of the Board;
- (b) the long-term planning of Centre Activities;

- (c) managing day-to-day operations of the Centre;
 - (d) developing Centre policy for consideration by the Board;
 - (e) monitoring Centre Activities against the Strategic Plan and Performance Indicators;
 - (f) communication between the Director and Centre staff; and
 - (g) collaborating and liaising with third parties outside the Centre as required by the Director.
- 13.4 The decisions of the Executive Committee shall be advisory only and shall not bind the Director, the Board or the Parties.
- 13.5 The Executive Committee shall be presided over by the Director.
- 13.6 All questions before the Executive Committee shall be decided by majority vote and the Director shall have a second or casting vote in the case of a deadlock.
- 13.7 Subject to this clause, the Executive Committee shall regulate its own proceedings (including mode of operation, frequency of meetings, minutes) and shall meet (whether in person, by telephone or video link-up or the like) provided however that the Executive Committee shall meet at all times necessary for it to discharge its obligations as set out in this Agreement in a proper and timely manner and at least once every three months commencing from the Commencement Date or such other times as the Director determines.

PART D: MANAGING THE RESOURCES

14. BUDGETING

- 14.1 The forecast Contributions as at Commencement Date are contained in Schedule B.
- 14.2 Prior to the commencement of each Financial Year the Director together with the Parties shall prepare a draft Annual Contribution and Budget setting out the financial requirements for the carrying out of the Activities for that year.
- 14.3 The draft Annual Contribution and Budget shall be submitted to the Board for approval.
- 14.4 In approving the draft Budget, the Board shall determine, for the Financial Year in question:

- (a) the allocation of Centre Resources to Research;
- (b) each Party's Annual Contribution (including cash and non-cash components); and
- (c) the Centre Resources to be made available to each Party in the Financial Year in question for the purpose of carrying out the Activities.

14.5 Subject to approval of the Budget by the Board under this clause 14, each Party's Annual Contribution during the Term of the Centre is as set out in Schedule B.

15. CONTRIBUTIONS

15.1 Each Party covenants and agrees with the other Parties to pay to the Centre Agent the cash component of its Annual Contribution and to apply to the Activities the in-kind component of its Annual Contribution in accordance with the Budget and in the manner determined by the Board.

16. CENTRE AGENT AND ACCOUNT

16.1 The Board shall appoint a Party to act as Centre Agent for the purposes set forth in this clause 16, and for such other purposes as the Board may determine at the time of appointment. It is the intent of the Parties that the Party employing the Director will generally be appointed as Centre Agent. A change in Centre Agent requires the agreement of the Parties.

16.2 At Commencement Date the Centre Agent shall be CSIRO.

16.3 If directed by the Board, the Centre Agent will establish and oversee the operation of a bank account for the Centre. Otherwise funds received by the Centre shall be held in a bank account in the Centre Agent's name and which the Centre Agent solely controls, provided that the Centre Agent must at all times keep separate financial accounts and records for funding relating to the Activities so as to enable all receipts and payments related to the Centre to be identified and reported in accordance with Australian accounting standards.

16.4 It shall be the responsibility of the Centre Agent to consolidate the accounting information provided to it by the Parties in accordance with clause 17.2.

16.5 The Centre Agent shall provide to the Director, at least on a monthly basis, detailed budget versus expenditure reporting as determined by the Director.

- 16.6 The Centre Agent shall seek and accept from each Party the cash component of its Annual Contribution, receive all other income of the Centre arising from Activities and credit those amounts, and any interest earned thereon, to the Account.
- 16.7 The Centre Agent shall disburse moneys credited to the Account as follows:
- (a) income tied to a grant or a particular contract with a third party shall be administered for the purposes of that grant or contract as part of the Activities , which may include the deduction of an amount representing a contribution to the cost of providing facilities used in the project supported by the grant or contract;
 - (b) income in the form of royalties or licence fees derived from the Commercialisation of Centre Intellectual Property shall be distributed in the manner specified by the Board; and
 - (c) any other income shall be used for the Activities.
- 16.8 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.
- 16.9 The Centre Agent shall manage the income and expenditure of the Centre in accordance with proper accounting practice.
- 16.10 The Centre Agent shall not be deemed to be an agent for any of the Parties except for the purposes contemplated by this clause 16 nor shall any inference of partnership be drawn between the Centre Agent and the Parties.
- 16.11 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.
17. SEPARATE ACCOUNTING OF THE PARTIES
- 17.1 Each Party shall be responsible for keeping separate financial accounts which shall record:
- (a) the cash component of its Contribution and expenditure associated with its participation in the Centre;
 - (b) all monies which are received by that Party directly from a third party for the Activities; and

(c) all expenditure incurred by it in carrying out the Activities.

17.2 Each Party shall provide the Centre Agent within fourteen 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 any financial reporting requirements to which the Centre may be subject.

18. ASSETS

18.1 A Party making available any Asset as part its Contributions shall retain ownership and control of such Asset.

18.2 During the Term of the Centre the Party contributing its Assets shall be responsible for insurance, maintenance and any other costs and liabilities associated with the Assets, except for any operating costs attributed to such Assets which are agreed be borne by the Centre and set out in the Budget as approved by the Board.

PART E: RESEARCH AND CENTRE STAFF

19. RESEARCH

19.1 The Parties agree to carry out the Research, which shall be directed towards the achievement of the Objectives of the Centre.

19.2 Each field of Research shall be managed by a Research Leader appointed by the Board from among the Centre Staff.

19.3 Each Research Leader shall report to the Director and shall be responsible for:

- (a) the day to day management of their Research field;
- (b) the total performance of the Research field including associated co-operative functions, scientific and financial management;
- (c) the recognition of current and emerging issues relevant to the Research, and preparation of proposals to address them;
- (d) carrying out the functions ascribed to them in this Agreement;
and
- (e) carrying out such additional functions as the Board may determine.

20. CENTRE STAFF

- 20.1 Each Party covenants and agrees with the other Parties to second to the Centre its Centre Staff for such time and for such purposes as determined by the Board.
- 20.2 Centre Staff 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.
- 20.3 DNP warrants that where its Centre Staff are or include employees provided or made available to the Director by or under an arrangement with a third party the DNP has the approval of that other party to second these employees to the Centre for the purposes of and in accordance with this Agreement.
- 20.4 Each Party covenants and undertakes to ensure that Centre Intellectual Property created by any of its Centre Staff shall be owned and dealt with according to the provisions of this Agreement.
- 20.5 A Party may withdraw from the Centre any of its Centre Staff following consultation with the other Party and upon giving reasonable notice to the Board, provided it replaces such personnel with a person or persons (as the case may be) acceptable to the Board.
- 20.6 Should the Centre require the services of persons not presently employed by any of the Parties, such persons shall be retained under arrangements determined by the Board. Unless otherwise directed by the Board, persons so retained shall be employed by DNP or CSIRO upon terms and conditions set by that Party.
- 20.7 Any persons engaged under clause 20.6 and any work performed by such persons for the purposes of the Centre shall be considered to be the Contribution of the Party employing such persons.

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, on such terms and conditions as it thinks fit and subject to any disclosures or restrictions notified to the other Party.
- 21.2 Each Party represents and warrants to the other Party that:
- (a) it is the owner of or is entitled to use the Background Intellectual Property which it makes available for the Activities;

- (b) except to the extent disclosed to the other Party at the time of making available such Background Intellectual Property, that Background Intellectual Property is unencumbered; and
- (c) it will not encumber or otherwise deal with, dispose of or Commercialise that Background Intellectual Property, during such time as the Board determines it is necessary for the performance of the Activities except with the prior approval of the Board (such approval not to be unreasonably withheld).

- 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 The Director shall maintain a register recording such Background Intellectual Property as is made available by a Party for Research. It shall be the responsibility of the Board Member representing that Party to approve the register and any amendments to it.
- 21.5 Subject to clause 21.1, to strict compliance with this Agreement and a Party not prejudicing the ability of the owner of Background Intellectual Property to seek appropriate protection for Background Intellectual Property, 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.
- 21.6 A Party is free to use its Background Intellectual Property to conduct research or training outside the scope of the Activities.
- 21.7 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 to use another Party's Background Intellectual Property shall only be permitted to do so subject to obtaining a non-exclusive licence upon terms agreed by the Party owning that Background Intellectual Property.
- 21.8 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 all Parties who own such Background Intellectual Property all assistance which they may reasonably require in order to protect that Party's Background Intellectual Property, provided that the Parties requiring such assistance indemnify the Party providing the assistance for all reasonable costs and expenses of so doing.
- 21A. TRANSFER OF BIOLOGICAL RESOURCES

21A.1 The Parties agree that the transfer of biological resources to or from the Centre will be under appropriate material transfer agreements (MTAs) in accordance with applicable Commonwealth policy and all applicable laws including any laws and regulations relating to storage, handling, containment and disposal of biological materials.

22. CENTRE INTELLECTUAL PROPERTY

22.1 Subject to this clause 22 and clause 24, all Centre Intellectual Property developed by CSIRO shall be owned by CSIRO. All Centre Intellectual Property developed jointly by CSIRO and DNP or by persons retained under clause 20.6 shall be owned by the Parties as tenants in common in equal shares. All other Centre Intellectual Property shall be owned by DNP.

22.2 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.

22.3 Each Party shall co-operate 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.

22.4 Each Party shall upon request from either another Party or the Director provide to the Director or that other Party information regarding Centre Intellectual Property and shall give to the Director or other Party access to all records and information in its possession related to the Centre Intellectual Property.

22.5 The Parties shall use their best efforts to ensure that their respective employees (including Centre Staff), 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 that Centre Intellectual Property to the relevant Research 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 in accordance with this Agreement and to otherwise give effect to the intentions of the Parties as set out in clauses 21, 22 and 23.

- 22.6 Subject to a Party not prejudicing the ability of the Director to seek appropriate protection for Centre Intellectual Property, each Party shall have a non-exclusive royalty-free right to use the Centre Intellectual Property for the purposes of the Activities other than Commercialisation, as approved by the Board.
- 22.7 Where a Party who intends to conduct research or training outside the Activities wishes to use Centre Intellectual Property of which it does not have exclusive ownership, the Party so wishing to use the Centre Intellectual Property shall only be permitted to do so subject to obtaining a non-exclusive licence upon terms agreed by the other Parties.
- 22.8 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.
- 22.9 Subject to clause 21 and clause 22.6, where a Party develops Intellectual Property outside the Activities based on Centre Intellectual Property or on Background Intellectual Property ("Further Intellectual Property"), that Further Intellectual Property shall remain the property of the developing Party. Should the developing Party require a licence from the owners of Background Intellectual Property and/or the owners of Centre Intellectual Property in order for the developing Party to Commercialise its Further Intellectual Property, the developing Party shall obtain a licence from the owners of Background Intellectual Property and/or Centre Intellectual Property on terms agreed between the owners of that Background Intellectual Property and/or Centre Intellectual Property.
- 22.10 If a Research Leader considers that a particular development arising from Research may be patentable or the subject of other forms of Intellectual Property protection, the Research Leader shall promptly communicate details of that development to the Executive Committee for referral to the Board through the Director.
- 22.11 The Board shall decide in consultation with the Parties whether the development in clause 22.10 warrants pursuing IP Applications, and if it does, the form of protection and in which countries protection should be sought.
- 22.12 Unless otherwise agreed by the Board, the Director will in consultation with the Parties manage the IP Applications decided upon under clause 22.11.

- 22.13 If patenting or other registrable forms of Intellectual Property protection of Centre Intellectual Property is pursued, it is to be in the names of the Party or Parties by whom it is owned, as set out in clause 22.1.
- 22.14 The obligations of Parties to seek IP Applications in relation to Centre Intellectual Property are subject to the following:
- (a) it is the responsibility of the Executive Committee to advise the Board of any innovative developments arising from the Activities which the Executive Committee believes may be patentable or otherwise protectable or which may constitute Centre Intellectual Property;
 - (b) none of the Parties owning patentable and other registrable Background Intellectual Property and/or Centre Intellectual Property shall unreasonably abandon or allow to lapse any such IP Applications without the prior written consent of the Board; and
 - (c) if the Board decides not to obtain IP Applications in respect of First Centre IP, Second Centre IP and/or Centre Intellectual Property in a particular country, then any Party may seek to obtain and maintain those rights in those countries at its own expense and Commercialise the First Centre IP, Second Centre IP and/or Centre Intellectual Property (in conjunction with its relevant Background IP) in those countries at its own expense and for its own benefit without having to account to the Centre for any benefits it receives as a result of such Commercialisation.
- 22.15 Subject to clause 22.14, the Account may be drawn upon to meet all costs associated with applying for, prosecuting and maintaining IP Applications associated with Centre 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 Where a Party is the sole owner of Centre Intellectual Property that Party may propose a Commercialisation strategy to the Board, and if the strategy is a reasonable one, it shall be adopted by the Board.
- 23.2 Where the Centre Intellectual Property is jointly owned by the Parties, the Board shall be responsible for determining the Commercialisation strategy of Centre Intellectual Property, and in particular:
- (a) marketing the Centre Intellectual Property; and
 - (b) seeking potential licensees of the Centre Intellectual Property and other users of the Centre Intellectual Property for Commercial purposes.

- 23.3 Where possible the Commercialisation strategy will attempt to maximise returns by taking into account any bundling of technology packages made up of Centre Intellectual Property and Background Intellectual Property.
- 23.4 Subject to the terms of this Agreement, the Centre Agent shall pay into the Account any royalties and/or licence fees derived by the Centre from Commercialisation of the Centre Intellectual Property.

24. EQUITY IN THE CENTRE

- 24.1 CSIRO and DNP shall each hold one half of the equity in the Centre. Subject to this Agreement all herbarium specimens acquired by the Centre shall be owned by the Parties as tenants in common in equal shares. Any Asset acquired using funds of the Centre shall be owned by the Parties as tenants in common in proportion to the cash component of each Party's relative total cash Contribution to the Centre.

PART G: PROTECTING THE RESEARCH

25. CONFIDENTIALITY

- 25.1 Each Party agrees that it will keep confidential and not disclose to any third party:
- (a) without the prior written consent of the other Party Confidential Information of the other Party;
 - (b) without the prior written consent of the Board, any Confidential Information of the Centre.
- 25.2 Notwithstanding any obligation imposed by this clause, a Party may, after notifying the other Party:
- (a) disclose Confidential Information to a responsible authority if acting reasonably it deems the information to expose or relate to a potential risk to public health or safety;
 - (b) disclose Confidential Information to its responsible government Minister or in response to a request by a House of Parliament or a Committee of Parliament;
 - (c) disclose Confidential Information to its personnel in order to comply with obligations or exercise its rights under this Agreement; or

- (d) disclose to a Party's internal management personnel or within the Party's own organisation, solely to enable the effective management of the Agreement or the auditing of Agreement-related activities.
- 25.3 Confidential Information shall not be deemed to be in the public domain merely because the Confidential Information is in a Party's possession.
- 25.4 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.
- 25.5 A Party is not obliged to maintain the confidentiality of its own Confidential Information other than Confidential Information pertaining to Centre Intellectual Property. If a receiving Party asserts that any information it receives from the disclosing Party is not Confidential Information, then the receiving Party has the onus of showing that the information is not confidential.
- 25.6 Each Party shall use reasonable efforts to ensure that:
 - (a) Confidential Information is not disclosed to any of its officers, employees, student, advisers or agents (including Centre Staff and Board Members) other than those who are engaged in the Activities;
 - (b) those personnel to whom Confidential Information is disclosed under clause 25.6(a) are made aware of and comply with the obligations of confidentiality as though parties to this Agreement; and
 - (c) any of the above mentioned personnel who cease to be employed by the Party shall continue to be bound by such obligations of confidentiality.
- 25.7 The obligations of confidentiality imposed on a Party shall survive termination of this Agreement or the Party's expulsion or retirement from the Centre and shall continue for a period of five years from the date of such termination, expulsion or retirement.
- 26. PUBLICATIONS AND PUBLIC ANNOUNCEMENTS
- 26.1 Subject to this clause 26, a Party has the right to publish the results of its own work (publications to include institutional affiliations of authors as well as their affiliation with the Centre).
- 26.2 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 protection pursuant to IP Applications.

- 26.3 Notwithstanding clause 26.2, 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.
- 26.4 Prior to any Publication the Party wishing to publish material ("the Requesting Party") must forward a request in writing to the Director seeking permission to publish the material.
- 26.5 The Director must within one month of receipt of any such request notify the Requesting Party whether permission has been granted or delayed.
- 26.6 If the Director determines in his/her absolute discretion that the benefits of publication outweigh the potential loss of commercially valuable Intellectual Property rights, then the Director will inform the Requesting Party that permission to publish has been granted.
- 26.7 All material to which clause 26.6 applies shall be published in the name of the Centre or in the joint names of the Centre and the Party which developed the Intellectual Property, as agreed between the Director and the Party.
- 26.8 No material which involves Background Intellectual Property shall be published without the written consent of the Party to whom that Background Intellectual Property belongs.
- 26.9 If the Director determines in his/her absolute discretion that the benefits of Publication do not outweigh the potential loss of commercially valuable Intellectual Property rights then the Director will either:
- (a) suggest alterations to the publication so that it does not disclose information affecting the commercially valuable Intellectual Property rights as aforesaid; or
 - (b) if altering the Publication is impractical, delay publication for a stipulated period not exceeding twelve months from the date of the request.
- 26.10 If the Director fails to notify the Requesting Party of his/her decision within one month of receipt of the Requesting Party's request, then the Requesting Party will be entitled to proceed to Publication.

- 26.11 A Party must not make any public announcement in relation to the Centre or the contents of this Agreement without obtaining the prior approval of the Board.

PART H: ALLOCATION OF RISK

27. MUTUAL INDEMNITIES

- 27.1 Each Party ("the first Party") indemnifies the other Party and their respective directors, officers, employees and agents from and against any and all liability, loss, harm, damage, cost or expense (including reasonable legal fees on a solicitor-client basis) that the other Party may suffer, incur or sustain as a result of any negligent act or omission or breach of this Agreement by the first Party, its directors, officers, employees or agents. Each Party's liability to indemnify the other Party under this Agreement will be reduced to the extent that any liability, loss, harm, damage, cost or expense is attributable to the negligent act or omission or breach of this Agreement by the other Party.

- 27.2 If in undertaking the Activities as authorised by the Board and in accordance with this Agreement, any Party becomes liable to any other person for any tort, statutory offence or infringement of such person's Intellectual Property committed during the Term of the Centre, except when such liability arises due to the negligence or default of such Party or any of its officers, directors, employees or agents, each Party shall duly discharge its proportion of such liability according to its Contribution and shall indemnify and account to each other Party to the extent that it does not do so.

28. INSURANCE

- 28.1 Each Party shall effect and maintain adequate insurance to cover its participation in the Centre and such insurance shall cover that Party's workers compensation (or equivalent) liabilities, third party liabilities, occupier's liability, comprehensive motor vehicle insurance and any other item of insurance deemed necessary by that Party to indemnify itself against any loss or damage which it may suffer or cause due to its participation in the Centre.
- 28.2 A Party may act as its own insurer provided it receives the prior written consent of all the other Parties.
- 28.3 Each Party shall on written request provide to the other Party, Certificates of Currency evidencing its effect of insurances required under clause 28.1.

PART I: CHANGING OR TERMINATING THE RELATIONSHIP

29. RETIREMENT AND EXPULSION

29.1 Subject to the provisions of this clause 29:

- (a) a Party may retire from the Centre by giving twelve months' notice to the other Party; and
- (b) where one or more new members have been admitted under clause 31 to the Centre, a Party may be expelled from the Centre by the direction of all members of the Board other than the Board Members of the Party to be expelled provided Due Cause has been shown.

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 Board;
- (c) unauthorised disclosure of Confidential Information;
- (d) unauthorised use or Commercialisation of Intellectual Property;
- (e) withdrawal of Centre Staff that adversely affects the Centre's performance and achievement of Objectives;
- (f) breach of any material condition of this 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 other than the Board Members of the Party to be expelled may by unanimous decision 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 be required to assign its rights under this Agreement and any other related agreement to the remaining Parties (if any) in the manner and upon the terms directed by the Board and

(except in the case of expulsion) shall be entitled to be paid by the remaining Parties the capital value of the interests being so assigned;

- (c) it shall grant to the remaining Parties (if any) a royalty-free, non-exclusive licence to its Background Intellectual Property to the extent necessary to allow the remaining Parties to pursue the Activities other than Commercialisation;
- (d) it shall undertake to grant the remaining Parties (if any) a non-exclusive licence to the Background Intellectual Property to the extent necessary to allow the Parties to Commercialise the Centre Intellectual Property, the terms of such licence to be agreed by that retired or expelled Party and the remaining Parties;
- (e) it shall, except for the purposes of the remaining paragraphs of this sub-clause, 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 under this clause 29 and clauses 22, 25, 26, 27, 32 and 36.

29.4 Subject to clause 29.5, 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.

29.5 If there is only one remaining Party to this Agreement following the retirement or expulsion of a Party under clause 29.1, the Agreement shall be terminated.

30. ASSIGNMENT

30.1 This Agreement shall be binding upon and inure to the benefit of each of the Parties and their successors and permitted assigns. No Party shall sell, assign or otherwise dispose of any of its rights or obligations hereunder without the prior written consent of the other Party.

31. NEW MEMBERS

31.1 A third party may be admitted as a new member of the joint venture forming the Centre in accordance with the reasonable directions of the Board. 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 and any other related agreement, and 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. TERMINATION

32.1 This Agreement shall terminate upon the first to occur of the following events:

- (a) the expiration of the Term of the Centre in accordance with clause 5;
- (b) the agreement by the Parties to terminate the Agreement; and
- (c) the termination of the Agreement under clause 29.5.

32.2 Termination of the 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.

32.3 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; and
- (b) the ownership of the Centre Intellectual Property;
- (c) any change to the Parties' future obligations of secrecy with respect to Confidential Information and future obligations of insurance;
- (d) the distribution of any Assets held by the Centre; and
- (e) 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 36 and clause 37.

32.4 Unless agreed otherwise under clause 32.3, upon termination of this Agreement 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).

32.5 A Party that has retired or has been expelled from the Centre under clause 29 shall still be deemed to be a Party for the purposes of this clause 32 and agrees to be so bound.

33. SUB-CONTRACTING

33.1 A Party's right to sub-contract the performance of any substantial part of the Activities shall be subject to the prior approval of the Board. Notwithstanding any such approval to subcontract, a Party will remain responsible to the other Party for its obligations under this Agreement.

33.2 For clarity, the Director may, on behalf of the Parties, enter into contracts with third parties to undertake the Research in accordance with any authority given under clause 10.4(d).

34. CHANGE OF STATUS

34.1 If at any time during the Term it is decided by the Parties that the Centre should change from an unincorporated joint venture to another form of legal entity, each Party shall have the opportunity to review its continuing involvement in the Centre.

34.2 Should a Party not agree to the Centre changing its status from one of unincorporated joint venture, such Party shall be entitled to retire from the Centre according to the provisions of clause 29 on such terms as are agreed to by the Parties.

PART J: CONFLICTS AND DIFFERENCES OF OPINION

35. CONFLICT OF INTEREST

35.1 Each Party must:

- (a) 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 Centre Staff and the interests of the other Parties in the Centre;
- (b) at the request of the other Parties or any of them, 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 would operate to the detriment of the Centre.

35.2 If a Party cannot remove a conflict of interest as required by this clause 35 then it may be expelled under clause 29.

35.3 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.

36. SETTLEMENT OF DISPUTES

36.1 The Parties acknowledge that the Parties shall, without delay and in good faith, attempt to resolve any dispute or difference which may arise between them in relation to the Agreement prior to commencing arbitration proceedings under this Agreement.

36.2 Should any Party require resolution of a dispute or difference with another Party in relation to this Agreement it undertakes to do so in accordance with the succeeding provisions of this clause. 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 under this Agreement or otherwise in respect of such dispute or difference.

36.3 If any Party requires resolution of a dispute or difference:

- (a) that Party must by Notice notify the Party causing the dispute that a dispute exists and forthwith submit such dispute or difference to the Board for resolution;
- (b) if the Board 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 Board Members 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 days, the provisions of clause 37 shall apply.

37. ARBITRATION

37.1 Any dispute, controversy, claim or difference arising between the Parties in relation to this Agreement and which can not be resolved in accordance with clause 36 will be settled by arbitration administered by the Australian Centre for International Commercial Arbitration (ACICA) in accordance with the United National Commission on International Trade Law (UNCITRAL) Arbitration Rules. There is to be a single arbitrator. The Parties must agree on the appointment of an arbitrator. If the Parties do not agree on the arbitrator to be appointed within 14 days of the dispute proceeding to arbitration, the arbitrator is to be appointed by ACICA in accordance with the

UNCITRAL Arbitration Rules. The language of the arbitration is to be English. Any arbitration is to be final and binding including any award as to costs. Offers of settlement or any matter disclosed in the course of arbitration must be treated as without prejudice and not an admission of liability. The arbitration and the decision of the arbitrator will be confidential.

37.2 The Parties shall treat as confidential and shall not disclose to a third party without the other Party's prior written consent all matters relation to the arbitration process including the details of the dispute, except:

- (a) for the purpose of making an application to any competent court in accordance with this clause 37;
- (b) if necessary to obtain legal or financial advice;
- (c) if required by law; or
- (d) disclosure to its responsible government Minister or in response to a request by a House of Parliament or a Committee of Parliament.

37.3 Nothing in this clause or this Agreement prevents any Party from seeking urgent injunctive or similar interim relief from a competent court.

PART K: OTHER MATTERS

38. FORCE MAJEURE

38.1 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.

38.2 If after a period of six months, 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.

- 38.3 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.
- 38.4 In this Agreement, "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, inability 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.
39. CLAUSE SEVERANCE
- 39.1 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.
40. WAIVER
- 40.1 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.
41. GOVERNING LAW
- 41.1 This Agreement shall be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory.
42. USE OF NAMES AND LOGO
- 42.1 Subject to clause 42.2, a Party may only use the name, any trademark or logo of another Party if it first obtains written consent from that other Party, which consent may include conditions imposed by that other

Party.

42.2 In any literature, display or Publication depicting the Activities of the Centre, the Centre logo or the Centre logo and the logos of each Party may be used together in accordance with the Communications Plan.

43. GOODS AND SERVICES TAX AND RECIPIENT CREATED TAX INVOICE

43.1 In this clause, words and expressions which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) have the same meaning as in the GST Act. All monies payable under this Agreement are exclusive of GST. If GST is payable by a supplier on any supply made under this Agreement, the recipient, upon receiving a tax invoice from the supplier, will pay to the supplier an amount equal to the GST payable on the supply. This amount will be paid in addition to, and at the same time, that the consideration for the supply is to be provided.

43.2 If GST is payable on a non-cash Contribution by a Party, that Party will not issue an invoice for those non-cash Contributions, instead

- (a) the recipient party will issue a recipient created tax invoice to that Party for the GST inclusive value of the non-cash Contribution within 28 days of the supply being made; and
- (b) the recipient Party warrants that it complies with the necessary legal requirements for issue of a recipient created tax invoice.

44. NOTICES

44.1 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 which is specified in this clause or if the addressee has in writing notified another address or facsimile number then to that address or facsimile number, or transmitted electronically and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post.

44.2 The address and facsimile number of each Party is:

In the case of DNP:

Director of National Parks
GPO Box 787
Canberra ACT 2601

Facsimile: 02 6274 2349

In the case of CSIRO:

Commonwealth Scientific and Industrial Research
Organisation
GPO Box 1600
Canberra ACT 2601
Attention: The Chief, Plant Industry

Facsimile: (02) 6246 5062

- 44.3 A notice, request, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 44.4 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.
- 44.5 A letter or facsimile or email 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; and
 - (c) in the case of an email, upon receipt by the sender of an acknowledgement that the communication has been properly transmitted to the recipient,

provided that where transmission is completed after 5.00pm 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 the next business day.

45. ENTIRE AGREEMENT

- 45.1 This Agreement, including any Schedules, Annexures or Attachments (and when executed any agreements or licences contemplated under this Agreement) shall set forth the entire agreement between the Parties. There shall be no understandings, promises, terms, conditions (including representations and warranties) oral or written, expressed or implied, other than those contained in this Agreement.

46. AMENDMENTS

46.1 This Agreement may not be changed, modified or waived except by an instrument in writing signed by all Parties.

SIGNED on behalf of the)
DIRECTOR OF NATIONAL PARKS)
by Peter Cochrane, Director of)
National Parks)

[Redacted Signature])

IN THE PRESENCE OF)

[Redacted Signature] [Witness])

PAUL MINOGUE [Name])

SIGNED for and on behalf of the)

COMMONWEALTH SCIENTIFIC AND)

INDUSTRIAL RESEARCH)

ORGANISATION by its duly authorised)

officer **JEREMY J BURDON**)

[Redacted Signature] [Name of officer])

IN THE PRESENCE OF)

[Redacted Signature] [Witness])

MARGARET REDFORD [Name])

SCHEDULE A BACKGROUND IP

Background IP owned by a Party

CSIRO

- The Economic Plants of Australia dataset
- The Australian Tropical Rain Forest Information System dataset
- The EUCLID identification system dataset
- The Australian National Herbarium Specimen Information Register (ANHSIR) containing data on accessions of the herbarium
- ROTAP – Rare and Threatened Australian Plants database

- Herbarium Collections prior to formation of Centre ¹
- Copyright of images
- Indigenous Relatives of Crops Genetic Resources Centre Germplasm Collection and Passport Database

DNP

- The Australian Plant Name Index (APNI) dataset
- The Census of Australian Vascular Plants (CAVP) dataset
- The Integrated Botanical Information System (IBIS), which contains data on

Plant Names accessions of the Herbarium, the Living Collections, the photographic collection and bibliographic material

- Herbarium Collections prior to formation of Centre ¹
- Copyright of images
- Orchid research live collections as at 1993

¹ The collection of preserved botanical specimens totalling: NPWS – c. 250,000 accessions (including c. 860 type specimens) and CSIRO – c. 500,000 accessions (including c. 4,500 type specimens). Each accession is identified by a unique accession number prefixed by the identifier CBG for NPWS and CANB for CSIRO.

[Note: An accession comprises the mounted or packaged dried specimen and associated material such as wood samples, separated fruit, spirit preserved material such as flowers, slides, photographs and living material. Each accession has associated specimen label information derived from field notes.]

First Centre IP (developed during period of the First Centre Agreement)

Joint

- Herbarium Collections since formation of Centre Agreement 1993 and dated accordingly up to end date of the First Centre Agreement
- The Australian Plant Name Index (APNI) including CAVP dataset enhanced since 1993 up to the end date of the First Centre Agreement
- The Integrated Botanical Information System (IBIS), which contains data on Plant Names accessions of the Herbarium, the Living Collections, the photographic collection and bibliographic material enhanced since 1993 up to the end date of the First Centre Agreement
- The International Plant Name Index (IPNI) dataset
- Herbarium specimen ANHSIR database structure and content

Second Centre IP ² (developed during period of the Second Centre Agreement)

Joint

- Herbarium Collections since formation of Centre Agreement 1993 and dated accordingly up to the end date of the Second Centre Agreement
- The Australian Plant Name Index (APNI) including CAVP dataset enhanced since 1993 up to the end date of the Second Centre Agreement
- The Integrated Botanical Information System (IBIS), which contains data on Plant Names accessions of the Herbarium, the Living Collections, the photographic collection and bibliographic material enhanced since 1993 up to the end date of the Second Centre Agreement
- The International Plant Name Index (IPNI) dataset
- Herbarium specimen ANHSIR database structure and content
- The Pea Key dataset
- Orchid keys
- Protocols underpinning the development of datasets

Note 2: An IP register is being compiled at the Centre as at the date of this Agreement and will be tabled by the Director to the Board identifying the Background IP, First Centre IP and Second Centre IP.